BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

Published at
NEW YORK UNIVERSITY LAW CENTER

VOL. 2, NO. 1 AUGUST, 1954

Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

Published at New York University Law Center
40 Washington Sq. South, New York 11, N. Y.

Printed and distributed by Fred B. Rothman & Co.
200 Canal St., New York 13, N. Y.

CONTENTS

THE BULLETIN of The Copyright Society of the U.S.A. is published 6 times a year by The Society at the Law Center of New York University, 40 Washington Square South, New York 11, New York: Samuel W. Tannenbaum, *President;* Joseph A. McDonald, Louis E. Swarts, *Vice-Presidents;* Harry G. Henn, *Treasurer;* Theodore R. Kupferman, *Secretary;* Paul J. Sherman, *Assistant Treasurer;* Charles B. Seton, *Assistant Secretary.* Annual subscription: $10.

All communications concerning the contents of *The Bulletin* should be addressed to the Chairman of the Editorial Board, at the Law Center of New York University, 40 Washington Sq. So., New York 11, N. Y.

Business correspondence regarding subscriptions, bills, etc., should be addressed to the distributor, Fred B. Rothman & Co., 200 Canal Street, New York 13, N. Y.

CITE: 2 BULL. CR. SOC. page no., Item .....(1954).

MESSAGE

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

The Copyright Society of the U.S.A. has completed the publication of the first six issues (nos. 1 to 6) comprising Volume 1. This issue is No. 1 of Vol. II.

The Bulletin has, in this brief period, attained favorable recognition and enthusiastic response from the Copyright Bar throughout the United States and many of the principal countries of the world.

The Bulletin has become a ready reference work for pertinent copyright problems, consisting of digests of domestic and foreign legislation, conventions, treaties, proclamations, decisions of the courts in the United States and foreign countries, bibliography of books, law review articles and other writings pertaining to copyright and other copyright material in the field of literature, drama, art, music, motion pictures, radio and television. In many cases, the Bulletin is the earliest source of information, a feature which enhances its usefulness.

The Society will continue to publish six issues of the Bulletin during the ensuing year.

Every effort will be made so that the future issues of the Bulletin will be an increasing source of information and of greater usefulness not only to the Copyright Bar, but also to the creators and users of works affected by copyright and to all interested in literary and intellectual properties generally.

The ratification by the United States Senate of the Universal Copyright Convention signed by the United States and 39 of the intellectually and culturally advanced countries of the world and the enactment on August 18, 1954, by Congress of amendments to the United States Copyright Act, implementing the Universal Copyright Convention, present to the Copyright Society further opportunity for the dissemination of copyright information of world wide character and interest.

SAMUEL W. TANNENBAUM

PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

UNITED STATES OF AMERICA AND TERRITORIES

1. *U.S. CONGRESS PASSES IMPLEMENTING DOMESTIC COPYRIGHT LEGISLATION.*

For the purpose of enabling the United States to deposit its ratification of the Universal Copyright Convention, it was necessary to implement U.S. domestic copyright law in several important respects. For this purpose, H.R. 6616, the Crumpacker Bill, was introduced in the House of Representatives and, at the same time, S. 2559, the Langer Bill, was introduced in the Senate. On August 3, 1954, the House Committee on the Judiciary reported favorably on H.R. 6616 in H. Report No. 2608 (10 *p.*, 83d *Cong., 2d Sess.,* H.R. 6616), and the House of Representatives passed the bill on the same day.

2. S. 2559 was favorably reported by the Senate Committee on the Judiciary in S. Rep. 1936 of July 19, 1954 (8 *p.*, 83d *Cong., 2d Sess.,* S. 2559), and was passed by the Senate on August 18, 1954.

As this issue goes to press, the measure as passed by both the House and the Senate awaits the President's signature.

3. *U.S. Congress.*

Public Law 517, approved July 22, 1954.

15 *p.* (83d *Cong.* 2d *Sess.,* S. 3378).

Under this Act the legislative authority and power of the Virgin Islands is extended to all subjects of local application not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands. Section 8 (d) provides for a Presidential commission to survey the field of Federal statutes and to make recommendations to Congress as to which United States statutes should be declared inapplicable. It appears, therefore, that the United States Copyright Act continues to apply to the Virgin Islands until further action is taken.

4. *U.S. Congress. Senate. Committee on Foreign Relations.*

Universal Copyright Convention. Committee report on Executive M, 83d Cong., 1st Sess.

27 *p.* (83d *Cong.*, 1st *Sess., Exec. Rep.* 5).

Ratification of the Universal Copyright Convention is favored and the purpose of the necessary implementing legislation is explained in this report. The English text of the convention is given in an appendix.

5. *U.S. Congress. Senate. Committee on Foreign Relations and the Committee on the Judiciary.*

Universal Copyright Convention and implementing legislation. Hearings before a subcommittee of the committee on Foreign Relations and a subcommittee of the Committee on the Judiciary on Executive M, 83d Cong., 1st Sess., and S. 2559, April 7, 8, 1954. Washington, Government Printing Office, 1954.

208 *p.* (83d *Cong.*, 2d *Sess., Exec. M and S.* 2559).

Hearings on the Universal Copyright Convention and implementing legislation, S. 2559. See 1 BULL. CR. SOC. 29, 30, Items 85, 89 (1953).

6. *The Universal Copyright Convention.*

Congressional Record, vol. 100, *no.* 118 (*Friday, June* 25, 1954), *pp.* 8487-8495.

An account of the manner in which the Universal Copyright Convention was presented to the U.S. Senate for ratification and the roll-call of votes thereon.

7. *U.S. Dept. of State.*

The Department of State Bulletin, vol. 31, *no.* 785, *July* 12, 1954, *pp.* 69-71.

In a letter from Secretary Dulles to Senator Dirksen regarding S. 3423 which would provide for the return of either vested assets or the liquidated proceeds therefrom to certain former enemy nations, the Secretary stated in part as follows: "Regardless of what policy is followed with respect to vested assets in general, the Department believes that

the return of vested trademarks and copyrights is particularly desirable. . . . At the request of the Department, the Office of Alien Property on December 19, 1952, released from blocking German and Japanese trademarks which had not previously been vested. However, it continues to hold about 400 vested trademarks and 500,000 vested copyrights which cannot be released without new enabling legislation. Particularly in the case of Germany, the trademarks are important to export trade with the United States, and return of copyrights would eliminate a point of friction in our cultural relations."

FOREIGN NATIONS

8. *France. Ministère de l'Industrie et de l'Energie. Institut National de la Propriéte Industrielle.*

Dessins et modèles, guide du déponsant. Paris, Impr. Nationale, 1953. 25 *p.*

A guide to the legal requirements for the deposit of two and three dimensional designs which are protected under the laws of France.

9. *Guatemala. Laws, Statutes, etc.*

Loi concernant de droit d'auteur sur les oeuvres littéraires, scientifiques et artistiques (du 8 fevrier 1954).

Le Droit d'Auteur, vol. 67, *no.* 6 (*June* 1954), *pp.* 105-108.

A French translation of the new Guatemalan Copyright Law.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

10. *International Copyright Union.*

Berne convention for the protection of literary and artistic works signed on the 9th September 1886, completed at Paris on the 4th May 1896, revised at Berlin on the 13th November 1908, completed at Berne on the 20th March 1914, revised at Rome on the 2nd June 1928 and revised at Brussels on the 26th June 1948.

24 *p.* (*Berne, Office of the International Union for the Protection of Literary and Artistic Works,* n.d.)

An English language edition of the text of the Berne Copyright Convention as revised in 1948.

11. *International Labour Organisation. Advisory Committee on Salaried Employees and Professional Workers.*

Resolution with regard to performers' rights.

2 *p.* (*mimeo.*) *Geneva, May* 1954.

On May 21, 1954, the ILO Advisory Committee on salaried employees and professional workers, adopted a resolution by a vote of 77 to 0 requesting the Mixed Committee of Experts which had prepared the so-called Rome draft convention on the protection of the rights of performers, phonograph record manufacturers and radio broadcasting organizations to make preparations, without delay, for the holding of a diplomatic conference to adopt the draft convention.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions

12. *Republic Pictures Corporation et al. v. Rogers,* 101 U.S.P.Q. 475 (9th Cir. June 4, 1954).

Appeal from issuance of an injunction restraining defendants, in an action for breach of contract and unfair competition, from using motion pictures featuring plaintiff on commercially sponsored television.

The two contracts involved in litigation both used the phrases, "acts, poses, plays and appearances" and "name, voice and likeness." The court, per Bone, C. J., framed the issue as follows: "If these two sets of descriptive words mean one and the same thing, then appellants must probably be denied the result which they seek here, for it is clear . . . that any

contractual right which appellants had, to the use of appellee's 'name, voice or likeness,' in advertising anything other than the motion pictures expired with the expiration of the contracts. . . . But if these two sets of descriptive words mean two entirely different things, then any restriction upon one need not necessarily have any relation to rights to the other. . . . Appellants distinguish the use of the product and reproduction of his acts, poses, plays and appearances in motion pictures, from the use of appellee's name, likeness and voice apart from their embodiment in motion pictures."

Held: Reversed. Interpreting these contracts in accordance with California law, the court said that the parties contracted ". . . with respect to a number of different and separate rights, using separate and distinct phrases which apparently seemed apt to the parties at the time to separately designate those rights." The court continued: "The subject matter of those rights was (1) photography and reproduction of the artist's 'acts, poses, plays and appearances'; (2) ownership of the products of that photography; (3) use of the 'name, voice and likeness' of the artist in advertising and exploiting the products of the photography; and (4) use of the 'name, voice and likeness' of the artist in advertising commercial products other than the products of the photography. Each of these matters is separately provided for, and the terminology . . . is consistently used so as to maintain the distinction. Taking the instruments as a whole, it seems clear to us that 'acts, poses, plays and appearances' has reference to the activities of the artist in connection with the motion pictures which it was the main purpose of these agreements to facilitate; whereas 'name, voice and likeness' has reference to non-motion picture reproductions of characteristics of the artist, which last said reproductions themselves are valuable because of the notoriety of the artist and his great public following. . . . We are called upon to settle the uses, at least in part, which appellants may make of the motion pictures containing appearances of the artist, which are owned by appellants. Appellee, the artist, was paid full measure for his services in creating these films, and has specifically relinquished 'all rights of every kind and character whatsoever in and to the same . . . perpetually.' We therefore hold that appellants may exercise their ownership and rights to the products of artist's employment, whether or not such exercise involves exhibition of the subject motion pictures in connection with commercial advertising. The restrictions which involved advertising were restrictions upon the use of artist's 'name, voice and likeness,' not upon appellants' use of artist's 'acts, poses, plays and appearances' or the product thereof."

With respect to the charge of unfair competition, the court held that plaintiff may not complain since he had consented to the use of his acts, poses, plays and appearances.

13. *Autry v. Republic Productions Inc., et al.,* 101 U.S.P.Q. 478 (9th Cir. June 4, 1954).

Appeal from denial of injunction by the district court in an action for breach of contract and unfair competition. The court found the same descriptive phrases were involved as in *Republic Pictures Corporation v. Rogers,* above item. However, the terms of the contract permitted the producer to use the motion pictures on television.

Held: Modified. In order to make the motion pictures suitable for television programming, it was necessary that each be edited to 53 minutes in length. In accordance with the License Agreement between the parties, the editing may not be done in such a manner to make it appear that appellant endorsed any of the products advertised during the televised showing. The language of the trial court judgment was held to be too broad insofar as it permitted appellees, "'* * * to cut, edit and otherwise revise and to license others (to do likewise) * * * in any manner, to any length and for any purpose * * *'" since it nullified the protection afforded appellant by the employment contracts.

Plaintiff's argument that the editing process might so alter the motion pictures as to make them substantially different was rejected by the court as not properly presented for consideration, but the matter was left open. Another argument that the use of these old pictures would be harmful to plaintiff's reputation since they were not performed in modern clothes, and so forth, was also rejected on the ground that he had consented to such use. As in the *Rogers* case, the court found no unfair competition in the use of these motion pictures for television.

14. *Jones v. Craig,* 101 U.S.P.Q. 429 (6th Cir. April 30, 1954).

Appeal from a judgment dismissing an action for copyright infringement of the song, "Just an Old Fashioned Mother and Dad" by the defendant's composition, "Near You."

Held: Affirmed. The court held, Per Curiam, that the doctrine of res judicata applied. Plaintiff was the same plaintiff in *Jones v. Supreme Music Corporation,* 101 F. Supp. 989 (D.C. S.D.N.Y. 1951). She raised the same issue which was adjudicated against her in that action. Defend-

ant, pursuant to a warranty agreement had assisted in the defense of that action by the music publisher, and had borne one-fourth of the expense of that litigation. All these factors made the parties in privity with each other and the prior judgment applied in this action.

15. *The Harry Alter Co., Inc. v. A. E. Borden Co., Inc.,* 102 U.S.P.Q. 2 (D.C.D. Mass. June 7, 1954).

Action for infringement of plaintiff's copyrighted trade catalogs of refrigeration supplies and accessories. The district court found that plaintiff had a valid copyright and that defendant had made exact copies of numerous items in plaintiff's catalogs, including descriptions of the product as well as illustrations. Plaintiff's catalogs were made by using an expensive printing process, while defendant used the relatively inexpensive system of photo-offset printing. In the course of seventeen years, plaintiff had prepared and copyrighted forty-nine trade catalogs while defendant had published three catalogs.

Held: Judgment for plaintiff. Each item in a catalog was a component part protected by § 3 of the Copyright Act. However, there was but one copyright on each catalog and each copying constituted an infringement of that copyright. The court rejected the plaintiff's theory that where the copied item had appeared in several catalogs, it should be held that the catalog in which it first appeared was the one which was copied. The court said: "In the present case, it would be highly unrealistic to suppose that Borden (defendant) went through the whole series of Alter (plaintiff) catalogs to select the first appearance of each item as the one to be copied. The logical assumption would be that when Borden wanted to copy Alter material it would turn to the current Alter catalog as its source." The court found three distinct infringements of three catalog copyrights for which defendant was responsible since the technical nature of the material copied was beyond the knowledge of the advertising agency which had prepared the catalogs. Defendant was not permitted to interpose the Massachusetts statute of limitations since he distributed the infringing material within six years of the filing of the complaint.

As to one infringement the court awarded damages of $3,000 for the 3,000 copies printed; the two other infringements were assessed at the statutory amount of $250 each. In addition, an attorney's fee of $1,000 was awarded as part of costs.

16. *Lampert v. Hollis Music, Inc., et al.,* 101 U.S.P.Q. 444 (D.C. E.D.N.Y. June 3, 1954).

Motion by defendants for summary judgment. Plaintiff claims to be the composer of four songs which she gave to defendant, Streeter. He told her that he sent them on to MGM but in fact he threw them away. Plaintiff now claims that one of her songs, "Annabella" was published by defendant Hollis Music, Inc. and recorded by R.C.A. and Columbia under the name "Cause I Love You," purported to have been written by defendants Edith Piaf and Eddie Constantine. Defendant Loew's Inc. submitted affidavits stating that it had made no recordings of any of the plaintiff's compositions of the song "Cause I Love You." Plaintiff admits that the only basis of her claim against Loew's Inc. was that some person at Loew's might have given her songs to some of the other defendants.

Held: Motion for summary judgment as to Loew's Inc. granted. "The latter had no dealings with the plaintiff. It did not publish or record her compositions. She makes no claim that it did, nor does she assert that it was in any other way connected or associated with the other defendants." Motion as to other defendants denied since there are triable issues of fact respecting the plaintiff's claim against them.

2. State Court Decisions

17. *Stowe v. Croy,* 101 U.S.P.Q. 500 (N.Y. Sup. Ct. App. Div. 1st Dept., May 25, 1954).

Plaintiff is executor of testatrix, sole owner of the works of her late brother, Don Marquis, who created "Archy and Mehitabel." Testatrix entered into a contract with defendant to work these characters up into a salable form. Defendant was given power of attorney to dispose of the adaptations, with this authority to continue after death of testatrix. The trial court had dismissed the complaint and counterclaim holding that the contract was terminated by reason of the joint registration of claims to copyright. See 1 BULL. CR. SOC. 71, Item 186 (1953).

Held: Modified. "Thus, although copyrights were registered to the literary works which were the subject matter of the contract, the rights in suit are those which arise under the contract, and no question of copyright infringement is involved. The registration of the copyrights is

material only to the extent that it evidences, as a matter of practical construction, the intention of the parties, explicit in the agreement itself, that each have an equal interest in the stage or screen play to be written by them in collaboration."

Defendant was entitled to summary judgment declaring her a joint owner of the plays on which she worked, and had the right to arrange for the sale of the plays. Plaintiff was entitled to a declaratory judgment of exclusive ownership of the works and literary characters created by Don Marquis, except as to the plays of which defendant is joint owner.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

18. American Bar Association. *Section of Patent, Trade-Mark and Copyright Law.*

1954 Committee reports to be presented at the annual meeting to be held August 14-18, 1954, Chicago, Illinois.

Chicago, American Bar Association, 1954. 85 p.

Reports by the Committees on Copyright Law Revision, Copyright Office Affairs, International Copyrights and Program for Revision of the Copyright Law, are to be found on pages 65 through 73.

19. U.S. Courts.

Decisions of the United States courts involving copyright, 1951-1952.

Washington, Copyright Office, 1954. 578 p. (Copyright Office Bulletin No. 28).

This compilation of copyright and literary property cases is the twelfth in a series compiled by the Copyright Office for official use and for the information of the public. It contains substantially all copyright

cases, as well as many cases involving related subjects in the field of literary property decided by the federal and state courts during the years 1951 and 1952.

2. Foreign Publications

20. Asociación Guatemalteca de Autores y Compositores.

Decreto 1037, ley sobre el derecho de autor en obras literarias, científicas y artistîcas. Del organismo legislativo, promulgado por el organismo ejecutivo, el 8 de febrero de 1954 y aranceles de la Asociación Guatemalteca de Autores y Compositores. Para el uso público de obras de sus miembros y de aquellos a quienes representa en el territorio de la Republica.

Guatemala, Imp. El Faro, 1954. 18 p.

Issued by AGAYC, the Guatemalan performing right society; this publication comprises the text of the new Guatemalan Copyright Law and a schedule of rates to be charged for public performance of theatrical works.

21. Monnet, Pierre

Nouveau memento de propriété littéraire pour la France et l'etranger. 2d ed.

Paris, Librairie Générale de Droit et de Jurisprudence, 1954. 220 p.

The work deals primarily with the copyright aspects of book publishing in France. Protection of foreign works in France and the protection of French works in various foreign countries is discussed.

22. Mouchet, Carlos

Los Derechos del escritor y del artista, por . . . y Sigfrido A. Radaelli.

Madrid, Ediciones Cultura Hispánica, 1953. 465 p. (Cuadernos de Monografías, num. 11).

Written by two Argentine professors of copyright law this is an analytical treatment of the intellectual rights of authors and artists. The

book covers moral rights, publication and reproduction rights, restrictions on the exercise of such rights, criminal penalties, motion picture rights, the rights of interpreting artists and the status of the artist and author under the Washington convention and the U.C.C.

23. Parès, Philippe

Histoire du droit de reproduction mécanique.

Paris, La Compagnie du Livre, 1953. 238 p.

This history of the rights of mechanical reproduction in France is divided into three parts and an appendix. First is presented the legislative and judicial origins of the rights and the formation of the French mechanical rights societies. The second part is devoted to a discussion of the different aspects of mechanical rights. The third part summarizes the rights available in some other countries, including moral rights, motion picture and television uses of such rights. Important judicial opinions handed down by French and Belgian courts relative to mechanical rights are found in the appendix.

24. Musik und Dichtung, 50 Jahre deutsche Urheberrechtsgesellschaft.

München, Münchner Buchgewerbehaus GMBH, 1953. 157 p.

In a commemorative publication issued by GEMA to celebrate its fiftieth anniversary, the following articles by foreign and domestic lawyers are of interest to those in the copyright field.

Bobbio, Pedro Vicente. Direito de Autor estrangeiro no Brasil; Das Urheberrecht auslandischer Autoren in Brasilien, pp. 59-61. (Copyright of foreign works in Brazil.)

Hepp, Francois. La Convention Universelle sur le Droit d'Auteur de Genève (1952) et la Convention de Berne, pp. 56-58. (The Universal Copyright Convention, Geneva, 1952, and the Bern Copyright Convention.)

Immer, W. A. Einige Gedanken und ein Versuch zur Lösung der Tonbandfrage in der Schweiz, pp. 61-63. (A few thoughts and an attempt to solve some of the recording problems in Switzerland.)

Mentha, Bénigne. Der gegenwärtige Stand des Internationalen Verbandes zum Schutze von Werken der Literatur und der Kunst, pp. 55-56. (The present situation with regard to international organizations for the protection of literary and artistic works.)

Möhring, Philipp. Schallplattenmusik und Lautsprecher, pp. 54-55. (Recorded music and spoken language. A survey of the effect radio has had on the uses and rights arising from recordings of music and speeches.)

Schorno, Werner. Zur Frage der Wiedergabemöglichkeit von urheberrechtlich geschützten Werken auf Tonbänder zu privaten Zwecken nach Art. 22 des schweizerischen Urheberrechtes, pp. 63-64. (Concerning the question of potential reproduction of recordings of copyrighted works for private use under Article 22 of the Swiss Copyright Law.)

25. Sidjanski, Dusan

Droit d'Auteur ou copyright, pour . . . et Stelios Castanos.

Lausanne, F. Rouge & Cie., 1954. 133 p.

The major portion of the work is devoted entirely to French texts of multilaterial copyright conventions currently in force.

B. LAW REVIEW ARTICLES

1. United States

26. Bootz, Andrew J.

Unfair competition—news—literary property.

West Virginia Law Review, vol. 56, *no.* 1 (*Feb.* 1954), *pp.* 74-76.

A case comment based upon the recent case of *Veatch v. Wagner,* 109 F. Supp. 537 (D.C. Alaska 1953) and *Loeb v. Turner,* 257 S.W. 2d 800 (Tex. Civ. App. 1953), (see 1 BULL. CR. SOC. 69, Item 184 (1953).)

27. Gambrell, J. B., Jr.

What is a printed publication within the meaning of the patent act?

Journal of the Patent Office Society, vol. 36, *no.* 6 (*June* 1954), *pp.* 391-405.

A discussion of the meaning of the term "printed publication" as used in patent legislation and applied by the courts.

28. Gershon, Harry L.

Contractual protection for literary or dramatic material: when, where and how much?

Southern California Law Review, vol. 27, *no.* 3 (*Apr.* 1954), *pp.* 290-310.

Reviewing the California cases dealing with the protection of an idea the author recommends that recovery be restricted to situations where an express contract or one implied-in-fact can actually be proved.

29. Herscher, Daniel M.

Copyrights—Infringement—Actions—Evidence.

Southern California Law Review, vol. 27, *no.* 3 (*Apr.* 1954), *pp.* 321-323.

In this article it is pointed out that in *Overman v. Loesser,* 98 U.S.P.Q. 177 (9th Cir. 1953), the plaintiff relied on a patent case to support his contention that the defense of prior composition prevails only where it is proven beyond a reasonable doubt. While plaintiff has the burden of proving copying, proof of prior composition is one way of showing independent creation and hence defendant should not have the burden of adducing the greater weight of evidence. See 1 BULL. CR. SOC. 34, Item 97; *ibid* at 96, Item 255.

30. Holler, Norbert P.

Copyrights—Infringement—Measure of Damages.

The George Washington Law Review, vol. 22, *no.* 6 (*June* 1954), *pp.* 761-764.

In a case note on *Ziegelheim v. Flohr,* 119 F. Supp. 324 (D.C. E.D.N.Y. 1954), the damages and profits provisions of Sec. 101 are discussed in the light of the patent provisions. It is observed that in the Patent Act of 1952 the relief is restricted to damages only. The author suggests that "only a provision of this type can validly be construed to the copyright opinions.
support and perpetuate the 'either-or' principle" developed in some of

31. Lark, James D.

Torts—A person has such a property right in his own idea as will enable him to recover damages in quasi-contracts for its appropriation and use by another if the idea is novel, concrete, and useful, and is disclosed in circumstances which reasonably indicate that compensation is contemplated, if the idea is accepted and used.

The Georgetown Law Journal, vol. 42, *no.* 3 (*Mar.* 1954), *pp.* 481-484.

A discussion of the appellate decision in *Hamilton National Bank v. Belt,* 99 U.S.P.Q. 388 (D.C. Cir. December 3, 1953). See 1 BULL. CR. SOC. 93, Item 252.

32. Ledbetter, Calvin R., Jr.

Property—recognition of rights in ideas, schemes, and plans.

Arkansas Law Review and Bar Association Journal, vol. 8, *no.* 2 (*Spring* 1954), *pp.* 186-188.

This case note evaluates the principles laid down in *Belt v. Hamliton National Bank* as steering "a middle course between the sanctioned thievery of the common law and the squabbling free-for-all which would result from a recognition of vague and general ideas as protectable property." See Item 31 above.

33. Rosenfeld, S. N.

Copyrights—Overlapping of copyright law and design patent law—Patentability not a bar to copyright protection.

The George Washington Law Review, vol. 22, *no.* 6 (*June* 1954), *pp.* 764-766.

In commenting on the Supreme Court decision in *Mazer v. Stein,* 98 Sup. Ct. 373 (1954), the author feels that it goes far towards relieving designers from the precarious position in which they were placed by rulings holding that copyright protection and design patents were mutually exclusive; and that to say a designer may not copyright his design merely because he incorporated it into an article susceptible of patent protection placed an unwarranted burden upon the designer—a theory properly rejected by the Court. See 1 BULL. CR. SOC. 120, Item 321.

34. Serino, Rosemarie

Copyrights—Constitutional Law.

The Catholic University of America Law Review, vol. 4, *no.* 2 (*May* 1954), *pp.* 130-133.

In tracing the judicial history of the *Stein* cases (see 1 BULL. CR. SOC. 8, Item 20; *ibid* 37, Item 101), climaxed by the Supreme Court decision; in *Mazer v. Stein* (see 1 BULL. CR. SOC. 120, Item 321), Miss Serino concludes that the latter decision together with Copyright Office practice gives a broad enough interpretation to the "writings" of an author as to authorize the protection of a work which represents the "intellectual conceptions" of an author at the time of registration notwithstanding its utilitarian potentiality.

35. Zallen, Joseph

Design protection expanding.

The Bar Bulletin (Boston), *vol.* 25, *no.* 6 (*June* 1954), *p.* 166.

A case note on the Supreme Court decision in *Mazer v. Stein,* in which it is pointed out that it is the first opinion to approve the recent practice of the Copyright Office to protect works of art and jewelry having utilitarian value, a trend which necessitates a change in thinking. See 1 BULL. CR. SOC. 120, Item 321.

2. FOREIGN

(a) In English

36. Gowling, E. Gordon

Industrial and intellectual property—copyright—Section 17 of the Copyright Act—Public Performance of musical work "in furtherance of a . . . charitable object."

The Canadian Bar Review, vol. 32, *no.* 1 (*Jan.* 1954), *pp.* 81-85.

In a comment on the Supreme Court of Canada's opinion in *CAPAC Ltd. v. Kiwanis Club of West Toronto,* the writer states that the exemption clause in Sec. 17 of the Canadian Copyright Act was intended to preserve a balance of public interest by assuring the author of a reason-

able reward without being able to levy tribute that would impose undue hardship on a community. According to the author the courts have been consistent in restricting these exemptions to the narrowest possible limits.

37. Ivamy, E. R. Hardy

The Modification of civil remedies for infringement of copyright.

The Solicitor, vol. 21, *no.* 3 (*Mar.* 1954), *pp.* 61-64.

In Great Britain it is possible to secure damages for infringement of copyright and damages for conversion. Damages may also be given for vulgarization by a reproduction tending to prevent sale of plaintiff's work by reason of the public's familiarity with a base form. The courts have held that the damages for conversion and infringement are cumulative. Mr. Ivamy recommends that any new copyright legislation provide expressly for cumulative damages; recoverable on a "qualitative" basis; with no liability for copies disposed of prior to notice of an adverse claim and that "copies" be defined to include gramaphone records.

38. Manning, H. E.

Performance of copyrighted musical works.

The Canadian Bar Review, vol. 32, *no.* 2 (*Feb.* 1954), *pp.* 236-239.

In an exchange of correspondence, Mr. Manning, attorney for CAPAC in the *Kiwanis Club* case comments on the previous article by Mr. E. Gordon Gowling. See *Item* 36 above. He points out that Canada is the only one of the Berne countries that provides for a schedule of exemptions—circumstances under which copyrighted music may be performed without liability to the proprietor, and gives additional facts concerning the case which does not appear in the report. Mr. Gowling's reply reiterates his contention that the legislative intent was to broaden the area of immunity, but the courts have limited it.

39. Treaty provisions for the avoidance of double taxation of copyright royalties.

UNESCO Copyright Bulletin, vol. 7, *no.* 1, 1954, *pp.* 19-26, 36, 40-108.

The present report summarizes the scope of the study which is being made and presents a list of treaties now in force with an excerpt of the more pertinent provisions; treaties whose present application is doubtful; treaties signed but not yet ratified; treaties under negotiation; excerpts from the Mexico and London model conventions, and concludes with chronological and alphabetical tables of the treaties so far included in this study.

(b) In French

40. Austria.

Remarques explicatives sur la loi fédérale du 8 juillet 1953 concernant le droit d'auteur (Urheberrechtsgesetznovelle 1953).

Le Droit d'Auteur, vol. 67, *no.* 6 (*June* 1954), *pp.* 101-105.

An explanation of the purposes and effect of the provisions of the new Austrian Copyright Law of 1953.

41. Bolla, Plinio

La Réglementation uniforme du droit d'auteur: succès et déboires, au cours de la période 1948-1952. The Uniform standard of copyright: its successes and failures during the period 1948-1952.

(Reprinted from the volume *Unification of Law,* a general survey of work for the unification of private law [Drafts and Conventions]). Rome, Editions "Unidroit," 1954, pp. 414-433.

42. Desbois, Henri

Memoire de l'Union européene de radiodiffusion sur la cinématographie et le droit d'auteur.

Le Droit d'Auteur, vol. 67, *no.* 5 (*May* 1954), *pp.* 81-95.

Report by the European Broadcasting Union on motion pictures and author's rights contains comments on the opinion recently submitted by Prof. Eugen Ulmer on motion picture rights, on the 1952 report of the British Copyright Committee, and on the enforcement of damages and penalties in copyright and related litigation under French law and in the French courts.

43. Goldbaum, Wenzel

La loi guatémaltèque, du 8 février 1954, concernant le droit d'auteur sur les oeuvres littéraires et artistiques.

Le Droit d'Auteur, vol. 67, *no.* 6 (*June,* 1954), *pp.* 114-116.

A commentary on the provisions contained in the new Guatemalan Copyright Law.

44. Michaélidès-Nouaros, Georges

La Question de l'inaliénabilite du droit moral de l'auteur en Droit Comparé.

Revue Hellénique de Droit International, vol. 6, *no.* 3 (*July-Sept.* 1953), *pp.* 239-252.

In a report prepared for the Third International Congress on Comparative Law, held at London in August, Prof. Michaélidès-Nouaros discusses the necessity of distinguishing between the moral and pecuniary rights in discussing the inalienability of moral rights, and restrictions with respect to (1) the integrity of the work; (2) the right of paternity; (3) in cases of collaboration and (4) the right to withdraw the work from circulation.

45. Plaisant, Robert

La Convention universelle du droit d'auteur (de l'Unesco). Par . . . et Marcel Saporta.

Auslands-und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, no. 2 (*May* 1954), *pp.* 49-61.

A discussion of the differences between the Universal Copyright Convention, the Bern Convention, the Pan American Conventions and other international agreements.

46. Saporta, Marcel

La Protection des auteurs étrangers en France.

La Vie Judiciaire, no. 426 (7-12 *June* 1954), *pp.* 1, 6-7.

A discussion of what protection should be granted in France to works by foreign authors first published abroad.

47. Ulmer, Eugen

Rapport complémentaire du Professeur Eugen Ulmer sur la cinématographie et le droit d'auteur.

Le Droit d'Auteur, vol. 67, *no.* 6 (*June* 1954), *pp.* 108-114.

A summary of papers filed subsequent to report by Prof. Ulmer on Copyright and Motion Pictures.

48. Vilbois, Jean

Le Protection internationale du droit d'auteur dans certains pays unionistes de l'Europe orientale.

Il Diritto di Autore, vol. 25, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 123-141.

A survey of the present status of copyright legislation in so-called Iron Curtain countries, members of the Bern Copyright Convention.

49. Weiss, Raymond

Le Droit d'auteur cinématographique dans le domaine international.

Il Diritto di Autore, vol. 25, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 111-123.

A report dealing with the problem of author's rights in moving pictures and the proposed amendment of Art. 14 of the Brussels revision of the Bern Convention with regard to producer's rights.

(c) In German

50. Troller, Alois

Das Welturheberrechtsabkommen. (The Universal Copyright Convention.)

Zeitschrift für auslandisches und internationales Privatrecht, vol. 19, *no.* 1 (1954), *pp.* 1-57.

One of the most comprehensive studies of the Universal Copyright Convention, its relationship to the Bern Convention and its meaning, scope and effect in general.

51. Benkard, Georg

Zu "Rechtsfragen betreffend die GEMA."

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 5 (*May* 1954), *pp.* 181-183.

Legal questions concerning the GEMA.

52. Schupp, Roland

Neuregelung der Bezahlung von Gebühren und Kosten für den Erwerb und die Aufrechterhaltung von gewerblichen Schutzrechten und von Urheberrechten im Ausland.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 5 (*May* 1954), *pp.* 190-192.

New regulation concerning the payment of fees and costs for the acquisition and maintenance of industrial property rights in copyrights in foreign countries.

53. Stellungnahmen der Regierungen von Frankreich, Monaco und Schweden zu dem Vorentwurf eines Internationalen Abkommens über den Schutz der darstellenden oder aufführenden Künstler, der Hersteller von Tonträgern und der Rundfunkorganisationen vom 17. November 1951.

Blatt für Patent—Muster—und Zeichenwesen, vol. 56, *no.* 5 (*May* 1954), *pp.* 195-199.

A German translation of the governmental replies of France, Monaco and Sweden to the Draft Convention on "Related Rights."

United Nations Educational, Scientific and Cultural Organization.

54. Entschliessungen des Sachverständigen-Ausschusses für das Recht der wissenschaftlichen Leistung (droit des savants; scientist's rights) auf der Tagung vom 7. bis 10. Dezember 1953 im Paris.

Blatt für Patent—Muster—und Zeichenwesen, vol. 56, *no.* 5 (*May* 1954), *p.* 195.

Recommendations of the Committee of Experts on Scientists Rights approved at the meeting held in Paris December 7-10, 1953.

(d) In Italian

55. Greco, Paolo

I Diritti esclusivi dell'autore e l'utilizzazione dei dischi del commercio.

Il Diritto di Autore, vol. 25, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 1-28.

A discussion of recent foreign court decisions concerning the use of commercial phonograph recordings and their effect on the right of reproduction, performance rights, publication, use, distribution, and the protection of the so-called "connected" rights.

56. Santamaria, Massimo Ferrara

La Pubblicazione nei titoli di testa del film delle pretese violazioni del diritto morale dell'autore.

Il Diritto di Autore, vol. 25, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 29-38.

An article on moral rights in the production of motion pictures.

57. Sparano, Vincenzo

Tutela della persona e della personalità nella divulgazione cinematografica.

Rassegna di Diritto Cinematografico, vol. 3, *no.* 1 (*Jan.-Feb.* 1954), *pp.* 10-11.

A discussion of the right of privacy arising from the delineation of a personality in a motion picture film.

(e) In Portuguese

58. Bobbio, Pedro Vicente

A Convencão universal sôbre o direito de autor.

(Separata da "Revista dos Tribunais," *vol.* 211 (*May* 1953), *pp.* 32-41). Sao Paulo, 1953 12*p.*

The article analyzes the provisions of the Universal Copyright Convention and relates some of the history of the Geneva Conference and the preliminary work of UNESCO.

(f) In Spanish

59. Mouchet, Carlos

Proteccion Penal de los Derechos Intelectuales Sobre las Obras Literarias y Artisticas, por . . . y Sigfrido A. Radaelli.

Madrid, Instituto Editorial Reus, 1954, *pp.* 41.

The criminal protection of intellectual rights in literary and artistic works. Another in the series by Prof. Mouchet of the University of Buenos Aires and his colleague, Prof. Radaelli, published first in *La Revista General de Legislacion y Jurisprudencia* (Feb. 1954) and now in pamphlet form.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

60. Burton, Robert J.

Advertising Copyrights.

Advertising Requirements, vol. 2, *no.* 6 (*July* 1954), *p.* 35; *no.* 7 (*August* 1954), *pp.* 21-23.

Mr. Burton discusses plagiarism and copyright infringement in the latest installments of his series for the advertising audience. The entire series will be reprinted in booklet form at the conclusion of its serial publication.

61. Feist, Leonard

In re: The use of copyright music for audio-visual education.

Music Educators Journal, vol. 40, *no.* 5 (*Apr.-May* 1954), *pp.* 22-23.

A brief discussion of the restrictions imposed in the use of musical compositions by copyright, and the responsibility of musical educators and publishers to authors of copyrighted musical compositions.

62. One more effort needed on behalf of copyright.

Publishers' Weekly, vol. 166, *no.* 3 (*July* 17, 1954), *p.* 180.

An editorial summarizing recent Congressional developments with regard to the ratification of the Universal Copyright Convention.

63. Publishers at Zurich endorse Universal Copyright Treaty.

Publishers' Weekly, vol. 166, *no.* 1 (*July* 3, 1954), *pp.* 22-23.

The International Congress of Publishers unanimously adopted a resolution favoring support for the Universal Copyright Convention.

64. Wattenberg & Wattenberg, *New York.*

Copyright protection applies to audio-visual reproduction of copyright music; a legal opinion.

Music Educators Journal, vol. 40, *no.* 5 (*Apr.-May,* 1954), *p.* 23.

In the authors opinion unauthorized reproduction of copyrighted musical compositions by means of an audio reproducer would be a violation of section 1(e); while reproduction by means of opaque or translucent projectors would violate section 1(a) of the Copyright Law.

65. U.S. *Dept. of Commerce. Small Business Administration.*

Summary of information on Copyrights and copyright office services.

Washington, May 1954. 7 *p.* (*Business Service Bulletin No.* 30).

The purpose of this summary is to acquaint business men with the procedure for acquiring copyright protection of their advertising and labels.

2. England

66. Filmed Show protected, but—"Live" Recast of TV Game no violation of Copyright.

The Gazette (*Montreal*) *Monday, May* 24, 1954, *p.* 13.

Mr. Justice Cameron, of the Exchequer Court of Canada, held in the case of *Canadian Admiral Corp. v. Rediffusion, Inc.,* that wired radio and

TV programs broadcast into homes and apartments are performances in private. Performances in a public hall would be found to be public performances and in violation of the copyright law. Rediffusion, Inc. was ordered to pay $300 damages for operating a television set in a sales room at the Show Mart.

67. International publishers' congress. Sir Stanley Unwin's presidential address.

The Bookseller, no. 2531 (*June* 26, 1954), *pp.* 1702-1704.

In his presidential address to the International Publishers' Congress, Sir Stanley Unwin discussed the adherence of Iceland and Turkey to the international copyright union; expressed regret that the United States had not yet joined the Bern Union; but praised Mr. Frederic Melcher for his work in behalf of the Universal Copyright Convention.

68. Publishers and Authors' Rights.

The Author, vol. 69, *no.* 4 (*Summer* 1954), *pp.* 76-78.

An editorial report on the current controversy between the British Publishers' Association and the Society of Authors over the former's resolution to require its members to make a bid in future contracts for participation in the earnings of authors from "subsidiary rights" (film, dramatic, broadcasting and television), including republication of a letter to *The Times* from the Society of Authors, setting forth its objections to such participation by publishers.

3. Italy

69. Duchemin, J. L.

Alcuni problemi sull'arte considerata come fonte della ricchezza nazionale.

Lo Spettacolo, vol. 4, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 29-35.

The author declares that collections of paintings, statuary and architecture form some of the best capital assets of a nation. He argues in support of a proposed National Art Fund in France which would grant social security to beginning artists as well as those who are aged or ill.

Disegno di legge per l'applicazione del "copyright" allo sfruttamento di apparecchi fonografici automatici.

Lo Spettacolo, vol. 4, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 80-81.

A note in Italian on the McCarran Jukebox bill and its purpose.

4. The Netherlands

70. Hirsch Ballin, E. D.

Nederlands-Amerikaanse auteursrechtverwarring.

Nieuwsblad voor de Boekhandel, vol. 121, *no.* 20 (*May* 20, 1954), *pp.* 421-422.

Answering an editorial in the *New York Times* to the effect that American authors do not enjoy effective copyright protection in the Netherlands, the author places the responsibility with the United States for not joining the Bern Copyright Convention and claims that the Universal Copyright Convention is not the solution to the problem. Protection should be given regardless of the authors' nationality, says the writer.

Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 CANAL STREET
New York 13, N. Y.

Return Postage Guaranteed

Sec. 34.66, P.L.&R.
U. S. POSTAGE
PAID
New York, N. Y.
Permit No. 5627

BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

Published at
NEW YORK UNIVERSITY LAW CENTER

VOL. 2, NO. 2 OCTOBER, 1954

Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

Published at New York University Law Center
40 Washington Sq. South, New York 11, N. Y.

Printed and distributed by Fred B. Rothman & Co.
200 Canal St., New York 13, N. Y.

CONTENTS

THE BULLETIN of The Copyright Society of the U.S.A. is published 6 times a year by The Society at the Law Center of New York University, 40 Washington Square South, New York 11, New York: Samuel W. Tannenbaum, *President;* Joseph A. McDonald, Louis E. Swarts, *Vice-Presidents;* Harry G. Henn, *Treasurer;* Theodore R. Kupferman, *Secretary;* Paul J. Sherman, *Assistant Treasurer;* Charles B. Seton, *Assistant Secretary.* Annual subscription: $10.

All communications concerning the contents of *The Bulletin* should be addressed to the Chairman of the Editorial Board, at the Law Center of New York University, 40 Washington Sq. So., New York 11, N. Y.

Business correspondence regarding subscriptions, bills, etc., should be addressed to the distributor, Fred B. Rothman & Co., 200 Canal Street, New York 13, N. Y.

CITE: 2 BULL. CR. SOC. page no., Item .....(1954).

SIR JOHN BLAKE

Sir John Blake, Comptroller General of the British Patent Office and head of the United Kingdom Delegation to the Universal Copyright Convention, died suddenly on May 18, 1954, in Paris, during the first session of the Interim Committee on Copyright created at the 1952 meeting. It will ever be a cause for regret to the delegates at the Geneva Conference and to all those concerned with international copyright that Sir John did not live to see the Convention come into force and that his tragic death occurred just as the Treaty was about to be ratified by the United States. The agreement on the terms of the Universal Copyright Convention after many years of effort was in no small measure due to his tireless and unselfish devotion to the task of establishing international harmony for the protection of intellectual property.

The prominent role which Sir John played at the Washington meeting of the Committee of Experts in 1950, and at the drafting session at Paris in 1951, made him a logical choice for Rapporteur General at the Geneva Conference. The wisdom of that choice was demonstrated by the clarity and precision with which he reported the proceedings at the 1952 meeting. He was eminently suited for the task having spent the greater part of his career in dealing with copyright and patent matters. Sir John entered the British Patent Office in 1920 and was appointed Comptroller General in 1949, an office held by him until his death. He was a notable figure at all of the meetings which led to the preparation of the Universal Copyright Convention, where he never lost confidence in the successful outcome of the deliberations and always proposed wise adjustments of controversial issues.

Sir John Blake has taken his place in the ranks of those men who over the years have sought to preserve the integrity of intellectual creations. His loss will be mourned as a colleague in this field of endeavor and even more as a stalwart personal friend of those who had the privilege of working with him.

—John Schulman

PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

A. UNITED STATES OF AMERICA AND TERRITORIES

71. P.L. 743; *Revision of Copyright Law.*

In order to avoid possible misunderstanding, the Copyright Office has issued the following bulletin: P. L. 743, 83rd Congress, 2d Session, approved by the President on August 31, 1954, is the most recent modification of the United States Copyright Law.

This law modifies the present copyright law in the several respects required by the terms of the Universal Copyright Convention which was ratified by the Senate on June 25, 1954.

It is to be especially noted that the Universal Copyright Convention does not come into force until three months after 12 countries (4 of which must be non-members of the Berne Convention) have deposited with UNESCO their ratifications. By the terms of Section 4 of P. L. 743, that law will also not become effective until such eventuality. IT IS THEREFORE IMPORTANT THAT PUBLISHERS AND COPYRIGHT PROPRIETORS REALIZE THAT THE PROVISIONS OF THE NEW LAW DO NOT BECOME EFFECTIVE UNTIL THREE MONTHS AFTER THE REQUIRED NUMBER OF RATIFICATIONS HAVE BEEN DEPOSITED. The Copyright Office has no information upon which to base any estimate as to when such action will be completed.

The Copyright Office will issue a general statement as soon as it learns when the Universal Copyright Convention will become operative, and the provisions of P. L. 743 come into effect. Until such date, the provisions of Title 17, United States Code, in effect prior to the enactment of P. L. 743, continue to remain in force.

NOTE, the next issue of the BULLETIN will include a group of brief, authoritative articles by outstanding experts on the scope and effect of P. L. 743.

72. *U.S. Laws, Statutes, etc.*

Copyright law—compliance with universal copyright convention. Chap. 1161—Public Law 743 (H.R. 6616) An Act to amend title 17, United States Code, entitled "Copyrights."

U.S. Code Congressional and Administrative News, no. 17 (*Sept.* 20, 1954), *pp.* 5818-5821.

Text of Public Law 743 (H.R. 6616), amending the Copyright Act.

73. *U.S. Laws, Statutes, etc.*

Copyright laws—compliance with universal copyright convention. Legislative history.

U.S. Code Congressional and Administrative News, no. 17 (*Sept.* 20, 1954), *pp.* 6287-6293.

This legislative history of Public Law 743 consists of the text of H. Rept. No. 2608 to accompany H.R. 6616.

74. *U.S. Laws, Statutes, etc.*

Loi modifiant le Titre 17 du Code des Etats-Unis intitulé "Copyrights," en ce qui concerne le dernier jour fixé pour accomplir un acte lorsque ce jour tombe un samedi, un dimanche ou un jour férie (du 13 avril 1954).

Le Droit d'Auteur, vol. 67, *no.* 7 (*July* 1954), *p.* 124.

A French translation of the recent amendment to the United States Copyright Act which fixes the day for taking action when the last day for taking such action falls on Saturday, Sunday, or a holiday.

75. *U.S. Treasury Dept., Commissioner of Internal Revenue.*

103 U.S.P.Q. *no.* 1, *pp.* V-VII (*Oct.* 4, 1954).

Regarding the division of copyright into separate properties, the Internal Revenue Bulletin of September 27, 1954, is quoted:

"Sections 117 (a).—Capital Gains and Losses: Definitions
Regulations 118, Section 39.117 (a)—1:
Meaning Rev. Rul. 54—409 of terms.

A grant of less than all of a copyright proprietor's rights may confer a license or constitute a transfer of property. A grant of the exclusive right to exploit a copyrighted work in a medium of publication throughout the life of the copyright transfers a property right; a grant of less confers a license. If the consideration received for a grant transferring a property interest is not measured by a percentage of the receipts from the sale, performance, or publication of the copyrighted work, is not measured by the number of copies sold, performances given, or exhibitions made of the copyrighted work, and is not payable periodically over a period generally coterminous with grantee's use of the copyrighted work, it is to be treated as proceeds from a sale of property and not as rentals or royalties.

I.T. 2735, C.B. XII-2 (1933), is modified insofar as it holds that copyrights are incapable of division into separate properties."

The item then proceeds to analyze the reasons for the change in I.T. 2735, C.B. XII-2 (1933) in view of the decision in *Herwig v. United States,* 105 F. Supp. 384 (1952), and concludes:

"To the extent that I.T. 2735, supra, holds copyrights to be indivisible, it is modified. * * *"

Note: The Editorial Board expects to have an authoritative analysis of this important change in an early issue.

76. *U.S. Dept. of Defense.*

Part 408. Patents and Copyrights. Title 32 National defense. Ch. IV Joint Regulations of the Armed Forces. Subchapter A—Armed Services Procurement Regulation.

Federal Register, vol. 19, *no.* 177 (*Sept.* 11, 1954), *p.* 5890.

Sec. 408.203 *Material in which no adverse copyright should be established* has been amended by the deletion of paragraph (c) and insertion of the following:

"(c) Surveys of Government establishments."

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

Part 598—Patents and Copyrights, Subpart B—Copyrights. Title 32 National Defense, Ch. V—Dept. of the Army, Subchapter G—Procurement.

Federal Register, vol. 19, *no.* 175 (*Sept.* 9, 1954), *p.* 5735.

Secs. 598.202, and 598.204 deal with specifications for writing contracts concerning the production of motion pictures and the preparation for use in connection with motion pictures of scripts, translations, sound tracks, musical compositions or any other copyrightable material.

78. *U.S. President.*

Proclamation du Président des Etats-Unis d'Amérique concernant l'application aux ressortissants japonais des dispositions du Titre 17 du Code des Etats-Unis intitulé "Copyrights" (du 10 novembre 1953).

Le Droit d'Auteur, vol. 67, *no.* 7 (*July* 1954), *pp.* 121-124.

A French translation of the Presidential Proclamation and Exchange of notes issued November 10, 1953, and dealing with reciprocal copyright protection between the United States and Japan.

B. FOREIGN NATIONS

79. *Australia. Laws, Statutes, etc.*

Statutory rules, 1953. No. 89, Regulations under the Patents, Trade Marks, Designs and Copyright Act 1939-1953. *Canberra, L. F. Johnston, Commonwealth Government Printer,* 1953. 6 *p.*

These regulations of 1953 repeal the wartime (1939, 1940) regulations of the Patents, Trade Marks, Designs and Copyright Act of 1939-1953, and substitute new provisions for filing (extension of time) applications.

80. *Egypt. Laws, Statutes, etc.*

Law no. 354, year 1954, on copyright protection. (*Cairo,* 1954), 16 *p.*

An English translation of Egypt's new copyright law (Law No. 354) of June 24, 1954. The law grants protection to written works, works

of art, works prepared for oral delivery, dramatic and dramatico-musical works, musical works, photographic and cinematographic works, geographic and topographic works and reliefs, choreographic works, works of applied arts, and works especially adapted to radio and television. Works by foreign authors are protected if first published in Egypt.

81. *Israel. Laws, Statutes, etc.*

Copyright ordinance. Order concerning the protection of works originating from the United States of America.

Jerusalem, Ministry of Justice (1953), 1 l. (typewritten).

An English translation of the Israeli order extending copyright protection to works first published in the U.S. See 1 BULL. CR. SOC. 117, Item 315.

82. *Israel. Laws, Statutes, etc.*

Copyright ordinance order relating to protection of foreign works under the Berne Convention. Published in *Kovetz Ha-Takkanot* No. 348 of the 3rd Nisan, 5713 (19th March, 1953), p. 818.

Jerusalem, Ministry of Justice (1953), 2 l. (typewritten).

An English translation of the Israeli order extending copyright protection to works first published in Berne Union countries. See 1 BULL. CR. SOC. 117, Item 314.

83. *Israel. Laws, Statutes, etc.*

Copyright ordinance (amendment) law, 5713-1953. Passed by the Knesset on the 17th Shevat, 5713 (2nd Feb., 1953).

Jerusalem, Ministry of Justice (1953), 3 l. (typewritten).

An English translation of the 1953 law amending the British Copyright Ordinance which is still in effect in Israel. See 1 BULL. CR. SOC. 117, Item 313.

84. *Japan. Ministry of Education.*

Notes exchanged concerning U.S.—Japan provisional copyright arrangement under Art. 12 of Treaty of Peace.

Tokyo (1954), 28 *p.,* 15 1. (English and Japanese).

This publication by the Japanese Ministry of Education gives the bilingual text of the notes exchanged between the United States and Japan, the U.S. Presidential Proclamation, the correspondence with respect to the exchange of notes; press release and the speeches of the two ambassadors given at the time of the exchange; the 1905 copyright convention between the two countries and pertinent articles from the Treaty of Peace signed in 1951.

85. *Germany. Bundesjustizministerium.*

Referentenentwürfe zur Urheberrechtsreform.

Köln, Verlag des Bundesanzeigers, 1954. 394 *p.*

The publication, authorized by the German Ministry of Justice, contains the proposed texts of three new laws: (1) concerning copyright, (2) dealing with collection societies, and (3) on ratification of the 1948 revision of the Berne Copyright Convention. Explanatory notes and comments are also included.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

86. *India. U.S. Department of State.*

Copyright Proclamation of October 21, 1954, signed by the President, affirming the continued existence of reciprocal copyright relations between the U.S. and India.

State Department Press Release, October 21, 1954. *no.* 600.

The release stated in part:

This copyright arrangement represents a strengthening of the basis for increasing cultural interchange between the two countries.

The diplomatic notes and the new proclamation clarify the right of Indian nationals to obtain copyright protection in this country subsequent to August 15, 1947, when the Indian Independence Act went into

effect, and formalize the protection accorded by India to United States citizens, which was not affected by the transfer of power.

After August 15, 1947, in the absence of a formal agreement between the two countries, the United States Copyright Office delayed the registration of books and other artistic and literary materials of Indian nationals. The Copyright Office may now issue certificates of registration covering works of citizens of India.

87. *Bolivia. Ministry of Foreign Affairs.*

Verbalnote des bolivianischen Aussenministeriums, gerichtet an die Gesandtschaft der Bundesrepublik Deutschland vom 31 März 1954.

Blatt für Patent, Muster—und Zeichenwesen, vol. 56, *nos.* 7/8 (*July-Aug.* 1954), *p.* 280.

An opinion by the Bolivian Minister of Foreign Affairs was delivered to the German Embassy at La Paz stating that the Washington Convention of 1946 does not abrogate the 1889 Montevideo treaty to which both Bolivia and Germany belong. In addition, it stated that World War II has not affected the cultural relations between the two countries.

88. *Germany. Treaties,* (1945-).

Abkommen zwischen der Bundesrepublik Deutschland und der Föderativen Volksrepublik Jugoslawien über gewisse Rechte auf dem Gebiet des gewerblichen Rechtsschutzes und des Urheberrechts vom 21 Juli 1954.

Blatt für Patent-, Muster- und Zeichenwesen, vol. 56, *nos.* 7/8 (*July-Aug.* 1954), *pp.* 256-258.

Article 8 of this Convention between the Federal Republic of Germany and the Federative People's Republic of Yugoslavia concerning certain rights relative to Industrial and Intellectual Property provides for the reinstatement in Yugoslavia of the copyrights owned by German natural and legal persons effective Aug. 1, 1951.

89. *Italy.*

Osservazioni del governo italiano sull 'avanprogetto di convenzione internazionale relativa alla protezione degli artisti interpreti o esecutori, dei fabbricanti di fonogrammi e degli organismi di radiodiffusione.

Rome (1954), 10 *p.* (photoprint, typ. ms.).

Observations of the Italian government on the Draft Convention for the protection of the rights of performing artists, manufacturers of phonograph records and radio broadcasting organizations.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions

90. *Mills Music Inc. v. Cromwell Music, Inc.,* 103 U.S.P.Q. 84 (S.D. N.Y. July 30, 1954).

Ed. Note: Judge Leibell's comprehensive decision in the above matter has caused a great deal of comment because of a dictum indicating that in the Court's opinion, the making of phonograph records may constitute a "publication" which may destroy common law rights. In the following brief digest, the Court's dictum in this respect is therefore quoted in full.

Action for Infringement of Copyright.

A musical composition entitled "Tzena, Tzena," consisting of two parts, was written by one Miron in 1941 while he was with the Jewish troops of the British Army in Israel. No sheet music was ever printed but handwritten and stencil copies were made available for the use of the troops. The song was widely sung by youth groups, choirs and the troops. A recording was made for use by the Israeli Broadcasting Service. The song was also incorporated in a musical comedy performed in Tel-Aviv in 1947. In 1945 Miron became a member of ACUM, the Israeli performing rights society, and the song was registered with it.

In 1947 Miron transferred recording rights to an Israeli corporation and a master was made in Israel. The contract was silent as to whether it could be assigned. The Israeli corporation transferred certain of its

assets, including the master of the Tzena recording, to a New York corporation. When Miron learned of this transfer he protested it to both parties. Nevertheless, a recording was pressed from the master and released in the United States. The record bore no copyright notice. The original contract between Miron and the Israeli corporation did not mention copyrights but Miron gave uncontradicted testimony that he was told that an application for copyright protection in the United States would be made and that all his rights would be protected.

A third part to the song was written in 1946 by one Grossman who lived in the United States. He testified that this was done to give the song an air of completeness. Grossman transcribed the first two parts after hearing them played by a friend. He was unaware that Miron had composed the song. The version with Grossman's third part was performed by choral groups in the United States and was published in various song books. There were additional publications in the United States without the third part but none of them were authorized by Miron.

Plaintiff, a music publisher, acquired its rights in June, 1952 by an assignment from Miron and it also obtained an assignment from Grossman of all his rights.

The Court held that the infringement by the defendant was deliberate. Among other things, however, the defendant contended that the work was in the public domain. In deciding that the work had not been abandoned; that it had not fallen into the public domain; and, that the author and his authorized representatives never waived any rights in the song, the Court held:

1. None of the activities in Israel constituted an abandonment by Miron of his copyright.

2. The release of the recording in the United States without copyright notice did not result in the loss of common law copyright because it was not authorized by Miron. His recording contract with the Israeli corporation was for a license limited in scope, involving a relationship of personal credit and confidence and therefore not assignable. The recordings made and released in the United States by the purported assignee were therefore unauthorized.

"The manufacture and sale of phonograph records in this country by a person or corporation duly authorized by Miron would have consti-

tuted a publication of his composition. I believe that it would be a publication, capable of destroying his common law copyright. If he had obtained a statutory copyright prior to the manufacture and sale of the phonograph records, the sale of the records would have no effect on Miron's rights, which then would be based on the statutory copyright. The weight of legal authority seems to support that view. *RCA Manufacturing Co. v. Whiteman,* 114 Fed. 2d 86; *Shapiro Bernstein & Co. v. Miracle Record Co.,* 91 F. Supp. 473."

3. Grossman's use of his own third part in choral performances and his distribution of stencil copies for his and other groups did not constitute a publication as would put his part of the composition in the public domain. Grossman however did authorize the publication of his third part of Tzena in a book published and copyrighted by an unincorporated association. The Court held that an unincorporated association was capable of being a copyright proprietor but in this case copyright related only to a compilation and as such protected only those component parts already copyrighted. The association obtained no copyright in any part of the Tzena composition because the work was not previously protected by statutory copyright. By authorizing the publication without appropriate notice of copyright, Grossman lost whatever rights he had in his third part of Tzena.

4. All subsequent publications in the United States were unauthorized by Miron.

E. C.

91. *Stein v. Benadaret,* 214 F.2d 822 (6th Cir. Aug. 6, 1954).

In a sequel to the *Mazer v. Stein* decision, 347 U.S. 201 (1954), the court in a per curiam opinion, remanded this case, which had been stayed pending the Supreme Court decision, to the district court for the entry of a judgment for appellant in accordance with the form specified by this court. Appellants' copyright was declared valid and appellees were enjoined from infringing it. No damages were assessed since the parties had entered into an agreement of settlement. See 1 BULL. CR. SOC. 120, Item 321.

91a. *Autry v. Republic Productions,* 23 L. W. 3099 (Oct. 19, 1954), *certiorari denied.* See 2 BULL. CR. SOC. 7, Item 13.

91b. *Rogers v. Republic Pictures Corp.,* 23 L. W. 3099 (Oct. 19, 1954), *certiorari denied.* See 2 BULL. CR. SOC. 5, Item 12.

92. *American Visuals Corporation v. Holland et al.,* 103 U.S.P.Q. 139 (S.D. N.Y. Aug. 5, 1954).

Action for copyright infringement, unfair competition and breach of contract. On plaintiff's motion for preliminary injunction.

Held: Motion for preliminary injunction denied. Infringement was charged of plaintiff's book entitled "Killer in the Streets," which was alleged to have been infringed by defendant's pamphlet entitled "It Can't Happen to Us." Each of the books is composed of drawings and captions of the comic book type and illustrates episodes showing the results of reckless driving of automobiles. Each of the publications is designed for distribution by magazines interested in promoting careful driving.

The Court held that while the basic idea of both books was the same, the idea as such, of illustrating the dangers of reckless driving, was not copyrightable but the books were sufficiently different in all other respects to negate plaintiff's right to a preliminary injunction. "The fact that certain episodes are used which are typical of the dangers of careless or reckless driving is not, in and of itself, sufficient to indicate in a motion for preliminary injunction that the book in question was an infringement of the copyrighted book."

2. State Court Decisions

93. *April Productions, Inc. v. G. Schirmer, Inc.,* 102 U.S.P.Q. 137 (N.Y.S. Ct. App. Div., 1954).

Plaintiff's assignors recovered judgment on a written contract made in 1917, without a time limitation, providing for payment of royalties for publishing in sheet music form selections from the latter's musical play. Defendant, music publisher, appeals. For lower court decision see 1 BULL. CR. SOC. 9, Item 21.

Held: For plaintiff: (two justices *dissenting*). There was nothing in the agreement limiting the royalties to the term of copyright. "The word royalty is not so limited in definition. . . . Consequently to fix a term for the royalties in the 1917 agreement is to write into the agreement a term which the parties did not provide."

On the procedural issue the court decided that though the action should have been at law for breach of contract, the court of equity has ". . . the power to render the appropriate judgment, regardless of technical labels, so long as its jurisdiction was properly couched in the first instance and it is retained."

Callahan, J. (*dissenting*) said: "The principal, if not the only clue, furnished by the contract itself is found in the use of the word 'royalty.' We attribute an important significance to this term. We think that it indicates an understanding for payments by a licensee to a licensor, and thus conclude that the obligation to make such payments would end when the licensee's privileges terminated."

". . . It would seem to us to be an unreasonable construction that compelled defendant to pay 'royalties' after the licensor ceased to have any right in or authority over the property."

B. DECISIONS AND RULINGS FROM OTHER NATIONS

1. Canada

94. *Kilvington Bros. Ltd. v. McIntosh Granite Company, Ltd.* [1954] O. W. N. 463 (Ont. High Ct. of Justice, March 8, 1954).

Plaintiff sued for damages for infringement of his copyright in a monument design. Defendant alleges that it is the owner of another design and that plaintiff has infringed its copyright covering that design and filed a counterclaim. Plaintiff has moved for particulars of the defendant's basis of title, claiming that defendant may have acquired ownership of the design without intention of using it and merely for setting up a defense and counterclaim to plaintiff's action.

Held: Motion granted. If defendant obtained the design for the purpose mentioned, plaintiff should have an opportunity of pleading that the sale and acquisition of the copyright was champertous and done for the purpose of improperly maintaining an action against plaintiff.

2. Great Britain

95. *Robertson v. Aberdeen Journals Ltd. et al.* (Ch. Div., July 13, 1954). [1954] 2 All E. R. 767; [1954] 1 W. L. R. 1084.

Plaintiff, author and copyright owner of "Proposed Memorandum on Government Fish-selling Scheme," presented the paper to one of the

defendants in confidence by virtue of her position as a member of Parliament. Defendant turned the paper over to a reporter for defendant newspapers who subsequently reproduced the memorandum without the author's consent. Suit for infringement of copyright, breach of confidence, and damages for conversion against the newspapers and reporter. The newspapers and reporter have applied for permission to pay into court a single sum for all three defendants with respect to all causes of action.

Held: Though the causes of action are separable at law, they are inseparably bound together, and the matter rests with the discretion of the court in allowing one payment making sure that plaintiff would not be prejudiced.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

96. American Bar Association. *Section of Patent, Trade-Mark and Copyright Law.*

Summary of proceedings, Boston, Massachusetts, 1953. Officers, committees, 1953-1954 roster.

Chicago, American Bar Association, 1954. 53 p.

The summary includes speeches made during the section's meetings, and action taken on the recommendations or resolutions submitted by the copyright committees.

97. American Patent Law Association.

Annual reports 1952-1953. n.p.n.d. 56 p.

Of interest to persons active in the field of copyright are the reports by the Committees on Copyright and on Taxation as relating to Patents, Trade-Marks and Copyrights. The former summarizes current copyright bills submitted to Congress favoring enactment of many of them, and the latter committee recommends the establishment of a joint committee with the American Bar Association to study revisions of the tax law.

98. The United States Patents Quarterly.

Annual digest, volumes 96-99, of the United States Patents Quarterly. A cumulative digest of reported decisions relating to Patents, Trade-Marks and Copyrights, January-December, 1953. Washington, Bureau of National Affairs, Inc. 1954. 349 p.

2. Foreign Publications

99. Rothenberg, Stanley

Copyright and public performance of music.

The Hague, Martinus Nijhoff, 1954. 188 p.

A study prepared by a Fullbright scholar on the handling of copyrights and performing rights in music in the United States as compared with similar practices in Great Britain, the Netherlands and France. An appendix contains the texts of the ASCAP and BMI consent decrees, standard contracts for the two major American performing rights societies and a bibliography.

100. Tournier, Alphonse

Contribution a l'etude des problemes interessant la cinematographie et le droit d'auteur.

n.p., 1954. 14 p. (mimeo.).

In a report by Alphonse Tournier to the meeting of the Association Litteraire et Artistique Internationale held in Monte Carlo Sept. 10-14, 1954, the Special Committee on Cinematography and Copyright opposes giving a "connected right" to the motion picture producer and advocates rather a continuance of the practice of permitting the author to exercise the "right of exhibition" and other moral rights.

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

Copyright Bulletin, vol. VII, *No.* 1, 1954. 109 *p.*

Most of the issue is devoted to the problem: the Double Taxation of Copyright Royalties as Dealt with in International Agreements, pp.

19-109. A valuable collection of extracts from bilateral treaties dealing with this problem is included.

The address by the Director-General to the Committee of Experts on Scientists' Rights is included, pp. 4-5.

B. LAW REVIEW ARTICLES

1. United States

102. Blodgett, Norman S.

Protection of intellectual property.

Journal of the Patent Office Society, vol. 36, *no.* 8 (*Aug.* 1954), *pp.* 607-608.

A note on the apparent existence of a monopoly given for "a new trick or cunning device to induce almsgiving" granted to its author or inventor by the Brotherhood of Beggars in medieval times.

103. Ferguson, William D.

Common law copyright: Equity: Unfair Competition: Property Right in Sports Broadcast: *Loeb v. Turner,* 257 S.W.2d 800 (Tex. Civ. App. 1953).

Cornell Law Quarterly, vol. 39, *pp.* 511-517 (1954).

A case note which finds that *Loeb v. Turner* seems to be contrary to the accepted principles in that it failed to recognize a property right in an account of a news event. It held that broadcasting was a general publication capable of terminating a common law copyright, and that plaintiff was entitled to protection from competition in an area of potential expansion. See 1 BULL. CR. SOC. 69, Item 184.

104. Freeman, J. William

Corporate acquisition of literary property.

Journal of the Patent Office Society, vol. 36, *no.* 8 (*Aug.* 1954), *pp.* 568-576.

A discussion by a patent attorney of the ownership of unpatented literary property in the light of the "master-servant" and "shop right" doctrines currently being utilized in patent practice.

105. Gastel, Joseph P.

Copyrights—A statuette can be protected by copyright in the United States 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 these intentions into effect.

The Georgetown Law Journal, vol. 42, *no.* 4 (*May* 1954), *pp.* 548-552.

This case note on the Supreme Court decision in *Mazer v. Stein,* traces the legislative and judicial evolution in the United States whereby artistic works were included within the scope of copyright protection. See 1 BULL. CR. SOC. 120, Item 321.

106. Smith, Louis Charles

The copying of literary property in library collections, [Parts I & II].

(Reprinted from *Law Library Journal, vol.* 46, *no.* 3 (*Aug.* 1953), *pp.* 197-208, and *vol.* 47, *no.* 3 (*Aug.* 1954), *pp.* 204-208.)

In part two of this article, the author discusses the extent to which the photocopying of copyrighted material for research purposes may be deemed compatible with the interests of the authors and the public and sets forth standards under which photocopying such material without the consent of the copyright proprietor might be deemed "fair use."

107. MacCartney, Richard S.

The Universal Copyright Convention.

Library of Congress Information Bulletin, vol. 13, *no.* 36 (*Sept.* 7, 1954), *pp.* 11-14.

A discussion of the history of the Universal Copyright Convention and its passage by Congress. The author also discusses revisions in domestic law embodied in H.R. 6616 which were required before the United States could deposit its instrument of ratification.

108. Steinberg, R. Philip

Legal protection of an idea.

New York University School of Law Intramural Law Review, vol. 9, no. 4 (May 1954), pp. 315-328.

An analysis of the common law rule concerning the protection of an idea, and current decisions which are becoming increasingly cognizant of the need for certain criteria under which protection may be extended to commercially valuable ideas.

109. Stokes, Charles L.

"Gadgets" "to promote the progress of science and useful arts" (Constitution, Article 1, Section 8).

Journal of the Patent Office Society, vol. 36, no. 7 (July 1954), pp. 508-526.

In a commentary on the *Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.* decision, 340 U.S. 147 (1950), the author discusses criteria for the useful arts as evidenced by a number of court decisions.

2. FOREIGN

(a) In French

110. Abel, Paul

Lettre de Grande-Bretagne.

Le Droit d'Auteur, vol. 67, no. 7 (July 1954), pp. 124-127; no. 8 (Aug. 1954), pp. 138-141.

Dr. Abel, reviewing copyright developments in Great Britain during the past year mentions legislative reforms, British copyright relations with Burma and U.S.S.R., recent litigation, problems concerning taxation of authors, the work of the Performing Right Society, a discussion concerning fair use and new publications on copyright law.

111. Bolla, Plinio

Piste sonore et convention universelle.

Le Droit d'Auteur, vol. 67, no. 8 (Aug. 1954), pp. 136-138.

A discussion of the protection of motion pictures sound tracks under the Universal Copyright Convention and the problem of publication.

112. Boutet, Marcel

Réflexions.

Revue Internationale du Droit d'Auteur, vol. 4 (July 1954), pp. 3-13.

This is an historical study on the evolution of the legal concepts contained in the phrase "the right of the author."

113. Matthyssens, Jean

Les projets de loi sur le droit d'auteur en France au cours du siècle dernier.

Revue Internationale du Droit d'Auteur, vol. 4 (July 1954), pp. 15-57.

A presentation of the many attempts at legislative reform in France during the nineteenth century dealing with copyright and literary property.

114. Tournier, Alphonse

La Vertu des contrats-type.

Revue Internationale du Droit d'Auteur, vol. 4 (July 1954), pp. 59-79.

A discussion of the value of standard contracts between author and publisher, radio and television producers, theatre managers and impressarios.

(b) In German

115. Faltlhauser, W.

Kritische Bemerkungen zu dem Schallplatten-Urteil des BGH.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 7/8 (*July/Aug.* 1954), *pp.* 302-304.

Critical comments on the German Supreme Court decision re phonograph records.

116. Hirsch Ballin, E. D.

Ein Beitrag zum niederländischen Film-Urheberrecht.

Auslands- und Internationaler Teil Gewerblicher Rechtsschutz und Urheberrecht, no. 3/4 (*Aug./Sept.* 1954), *pp.* 81-84.

Further comments on the protection to be given to the author of a cinematographic work.

117. Schupp, Roland

Der Erweb und die Aufrechterhaltung von gewerblichen Schutzrechten und von Urheberrechten im Ausland im neuen deutschen Devisenrecht.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 7/8 (*July/Aug.* 1954), *pp.* 313-316.

The acquisition and maintenance of industrial property rights and of copyrights abroad under the new German currency laws.

118. Taeger, Albert

Urheberrechtlicher schutz der Fernsehsendung nach geltendem Recht?

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 7/8 (*July/Aug.* 1954), *pp.* 304-313.

Copyright protection of television broadcasts under the present law?

119. Troller, Alois

Rechtsgutachten über die Vervielfältigung urheberrechtlich geschützter Werke oder von Teilen derselben durch Mikrofilme und Photokopien.

Schweizerischer Buchhändler und Verlager Verein (n. d.), *pp.* 1-35.

Opinion re reproduction of copyrighted works or parts thereof by microfilm or photocopying.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

120. Burton, Robert J.

Advertising Copyrights.

Advertising Requirements, vol. 2, *no.* 9 (*Sept.* 1954), *pp.* 25-27, 51-52.

In the eighth installment of his series for the advertising audience the author continues his discussion of plagiarism.

121. Copyright legislation is pressed to final passage.

Publishers' Weekly, vol. 166, *no.* 9 (*Aug.* 28, 1954), *pp.* 748-752.

A tribute to the team work which culminated in approval of the Universal Copyright Convention and passage of the enabling legislation during the last hours of the 83d Congress.

122. 40th ASCAP Anniversary issue.

Variety, vol. 196, *no.* 7 (*Oct.* 20, 1954), *pp.* 40-118.

There are a number of legal articles written for this special issue by the following authors:

Finkelstein, Herman, Music in the Marketplace, p. 41.

Harrington, W. C., Music Heard But Not Seen, p. 41.

Douglas, Walter G., MPPA Helps Protect Copyright, p. 42.

Wattenberg, Sidney Wm., "Compulsory License" as Obsolete As the Penny Arcade, p. 46.

Leslie, Edgar, Some Top Herbert, Nevin, Sousa Copyrights P. D. in '54; More Reasons for Copyright Change, p. 47.

Schulman, John, How Long Should a Writer Be Protected by Copyright, p. 55.

123. German royalties deposited in American accounts.

Publishers' Weekly, vol. 166, *no.* 14 (*Oct.* 2, 1954), *pp.* 1467-1468.

American owners of literary rights leased under translation contracts with the U.S. Government for publication within Germany have been notified that all royalties due have been deposited to their accounts in German banks. The USIA program for the promotion of German translation of American books has resulted in the publication of nearly 500 translations of American books in 40 languages.

124. Haight, Gordan S.

George Eliot's royalties.

Publishers' Weekly, vol. 166, *no.* 6 (*Aug.* 7, 1954), *pp.* 522-523.

The author, a professor of English at Yale, has been editing "The George Eliot Letters" and in this article presents a few aspects of George Eliot's relations with her publishers relative to copyrights and royalties.

125. The Zurich Congress of book publishers.

Publishers' Weekly, vol. 166, *no.* 6 (*Aug.* 7, 1954), *pp.* 518-521.

A resume of the activities of the first post-war meeting of the International Publishers Association at which several aspects of copyright were discussed and a resolution commending the Universal Copyright Convention was passed unanimously.

126. NOTE ON RECENTLY INSTITUTED COPYRIGHT LITIGATION.

According to *Variety,* September 15, 1954, p. 46, Songwriter Franklin and Mrs. Helen Dubin, widow of Al Dubin, are seeking $100,000 damages from the producers of the play "The Anniversary Waltz," for using the song title without authorization. The producers of the play are sued in conjunction with the music publishing house which has published a tune, "Anniversary Waltz." The use of the title for the play is alleged to be unfair competition.

126a. *Variety,* on August 25, 1954, reported a suit instituted by Helen D. Miller, widow of the orchestra leader, Glenn Miller, against Joe Krug, raising the interesting question of musical reproduction rights to a series of Miller Propaganda Broadcasts made while he was with the Armed Forces. The defendant's position is that performance for the Armed Forces is outside the protection of the copyright law.

126b. According to *Billboard,* Sept. 18, 1954, four great grandchildren of the composer Robert Schumann filed a suit against Loew's, Inc. for $9,000,000 on the ground that the movie "Song of Life," a treatment of the composer's life, was libelous, misappropriated a property right and was an invasion of privacy. The New York *Times,* Oct. 22, 1954, reported that Judge Hecht had dismissed the suit, holding that no cause of action was stated in the complaint as filed but granted permission to the complainants to file a new complaint within 20 days.

TAX EXEMPT STATUS OF THE COPYRIGHT SOCIETY OF THE U.S.A.

Our subscribers will be interested to learn that the Treasury Department has recently acknowledged the tax exempt status of THE COPYRIGHT SOCIETY OF THE U.S.A. Contributions made to it will therefore be deductible. The following is an extract from the letter received by the President of the Society on September 27, 1954.

"Gentlemen:

It is the opinion of this office, based upon the evidence presented, that you are exempt from Federal income tax under the provisions of section 501 (c) (3) of the Internal Revenue Code of 1954, as it is shown that you are organized and operated exclusively for educational purposes. * * *

Contributions made to you are deductible by the donors in computing their taxable net income in the manner and to the extent provided by section 170 (b) (1) and (2) of the Code.

Bequests, legacies, devises, or transfers, to or for your use are deductible in computing the value of the net estate of a decedent for estate tax purposes in the manner and to the extent provided by sections 2055 (a) and 2106 (a) (2) of the Code. Gifts of property to you are deductible in computing net gifts for gift tax purposes in the manner and to the extent provided in section 2522 (a) and (b) of the Code. * * *

Dist. Director of Internal Revenue"

LAST MINUTE NEWS:

PRESIDENT SIGNS RATIFICATION OF UNIVERSAL COPYRIGHT CONVENTION

On November 5, 1954, President Eisenhower signed the instrument of ratification of the Universal Copyright Convention in the presence of more than 30 distinguished writers, publishers and American copyright law experts. Among those present were Herman Finkelstein, Sydney M. Kaye and John Schulman, all of whom had served as experts at the Geneva Convention of 1952. Also present at the ceremony was the President of the Copyright Society of the U.S.A., Samuel W. Tannenbaum, and Edward A. Sargoy, one of the observers at the Geneva Convention and a trustee of the Copyright Society of the U.S.A., as well as the Hon. Arthur Fisher, Register of Copyrights, and various representatives of the Department of State.

Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 CANAL STREET
New York 13, N. Y.

Return Postage Guaranteed

Sec. 34.66, P.L.&R.
U. S. POSTAGE
PAID
New York, N. Y.
Permit No. 5627

BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

Published at
NEW YORK UNIVERSITY LAW CENTER

VOL. 2, NO. 3 DECEMBER, 1954

Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

Published at New York University Law Center
40 Washington Sq. South, New York 11, N. Y.

Printed and distributed by Fred B. Rothman & Co.
200 Canal St., New York 13, N. Y.

CONTENTS

THE BULLETIN of The Copyright Society of the U.S.A. is published 6 times a year by The Society at the Law Center of New York University, 40 Washington Square South, New York 11, New York: Samuel W. Tannenbaum, *President;* Joseph A. McDonald, Louis E. Swarts, *Vice-Presidents;* Paul J. Sherman, *Treasurer;* Theodore R. Kupferman, *Secretary;* Theodore R. Jackson, *Assistant Treasurer;* Charles B. Seton, *Assistant Secretary.* Annual subscription: $10.

All communications concerning the contents of *The Bulletin* should be addressed to the Chairman of the Editorial Board, at the Law Center of New York University, 40 Washington Sq. So., New York 11, N. Y.

Business correspondence regarding subscriptions, bills, etc., should be addressed to the distributor, Fred B. Rothman & Co., 200 Canal Street, New York 13, N. Y.

CITE: 2 BULL. CR. Soc. page no. Item .....(1954) .

PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

A. UNITED STATES OF AMERICA AND TERRITORIES

127. *U. S. Laws, Statutes, etc.*

Loi modifiant le titre 17 du code des Etats-Unis intitulé "Copyrights" (No. 743, du 31 août 1954).

Le Droit d'Auteur, vol. 67, *no.* 11 (Nov. 1954), *pp.* 177-179.

A French translation of the implementing legislation enacted by the U. S. Congress to permit U. S. ratification of the Universal Copyright Convention.

128. *U. S. Post Office Department.*

Part 14—Nonmailable matter, Code of Federal Regulations, Title 37—Postal Service, Ch. I—Post Office Department, sec. 14.8 Copyright violations.

Federal Register, vol. 19, *no.* 232 (*Dec.* 1, 1954), *p.* 7773.

Sec. 14.8 lists as unmailable matter "Publications which violate copyrights granted by the United States."

129. *U. S. Post Office Department.*

Part 27—Franked, Penalty, and Free Mail, Code of Federal Regulations, Title 37—Postal Service, Ch. I—Post Office Department, sec. 27.2 Penalty Mail.

Federal Register, vol. 19, *no.* 232 (*Dec.* 1, 1954), *p.* 7789.

Subsection (6) under Sec. 27.2 *Penalty mail—(a) Description,* contains instructions to postmasters for handling copyright material sent to the Register of Copyrights with claim for registration, including the fee.

130. *U. S. Treasury Department. Internal Revenue Service.*

Part 501—Income Tax Withholding: Australia. Code of Federal Regulations, Title 26—Internal Revenue, 1954, Ch. I—Internal Revenue Service, Department of the Treasury, Subchapter G—Regulations under Tax Conventions [T. D. 6108].

Federal Register, vol. 19, *no.* 203 (*Oct.* 19, 1954), *pp.* 6689-6694.

Section 501.1 contains, in part, the text of the Tax Convention with Australia proclaimed by the President on December 22, 1953. Sec. 501.5 outlines the procedure to be followed in making application for exemption from withholding tax at source on copyright royalties derived by nonresident aliens residing in Australia. Royalties derived from motion picture films or the reproduction by any means of images or sound produced directly or indirectly from those films are not exempt.

131. *U. S. Treasury Department. Internal Revenue Service.*

Part 502—Income Tax Withholding: Greece. Code of Federal Regulations, Title 26—Internal Revenue, 1954, Ch. I—Internal Revenue Service, Department of the Treasury, Subchapter G—Regulations under Tax Conventions [T. D. 6109].

Federal Register, vol. 19, *no.* 203 (*Oct.* 19, 1954), *pp.* 6694-6698.

Sec. 502.1 contains, in part, the text of the Tax Convention with Greece proclaimed by the President on January 15, 1954. Sec. 502.5 provides for exemption from withholding taxes on royalties derived in the United States by a nonresident alien resident of Greece from the use of copyrights, patents, designs, secret processes and formulae, trade marks and other analogous property. The exemption does not apply to royalties or rents derived from motion picture films.

B. FOREIGN NATIONS

132. *Canada. Parliament. House of Commons.*

Votes and proceedings of the House of Commons of Canada, Friday, 11th June, 1954, p. 741.

Mr. Pickersgill, a Member of the Queen's Privy Council, laid before the House of Commons on June 11th, 1954 a copy of an Order in

Council, P. C. 1954-852, approved June 10, establishing a Commission of Inquiry under the authority of Part I of the Inquiries Act. The Commission is to inquire whether federal legislation relating in any way to patents of invention, industrial designs, copyright and trade marks affords reasonable incentives to invention and research, to the development of literary and artistic talent, and to creativeness.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

133. *Italy.*

Response du gouvernement italien à la consultation du Bureau de l'Union Internationale pour la protection des oeuvres litteraires et artistiques en ce qui concerne la protection des artistes interprètes ou exécutants des fabricants de phonogrammes et des organismes de radio-diffusion.

23 *p.* (*mimeo.*) *n.p.* [1954].

Response of the Italian government to an inquiry from the Office of the International Union for the Protection of Literary and Artistic Works concerning the protection of performers, manufacturers of phonograph records and radio broadcasting organizations.

134. *India. U. S. President,* 1953—

Copyright—India. Proclamation 3076 by the President of the United States of America.

Federal Register, vol 19, *no.* 211 (*Oct.* 29, 1954), *p.* 6967.

See 2 BULL. CR. SOC. 33, Item 86 (1954).

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions

135. *Miller, et al., v. Goody, et al.,* 125 F. Supp. 348, 103 U. S. P. Q. 292 (S. D. N. Y., Nov. 3, 1954).

Action for copyright infringement by a group of music publishers against certain record manufacturers, distributors, and retailers of phonograph records. A motion was made to enter default judgment in favor of the plaintiffs against one of the defendants doing business under the name A. F. N. Record Co., who had made recordings from certain wartime off-the-air propaganda broadcasts by Glenn Miller. The default on the part of the A. F. N. Record Co. being admitted, the application for judgment sought the following specific relief: (1) An injunction enjoining the defendant from infringing the musical copyrights of said plaintiffs and from manufacturing, distributing, vending, selling, marketing, or otherwise disposing of any parts of instruments serving to reproduce mechanically the copyrighted musical compositions which are the subject matter of this action. (2) Requiring the defendant to deliver up for destruction all parts serving to reproduce mechanically said copyrighted musical compositions and all matrices, plates, molds, stamps, discs, tapes, and other matter upon which the copyrighted musical compositions may be recorded or transcribed, or from which such parts serving to reproduce mechanically said copyrighted musical compositions may be made. (3) The appointment of a Special Master to ascertain the amount of damages to be awarded to plaintiffs against said defendant.

Defendant raised no objection to the entry of default judgment with regard to items 1 and 3, but urged that he should not be required to deliver up for destruction the mechanical means used to reproduce the

allegedly infringing copies. He argued that "Section 101, Tit. 17 U. S. C. A., provides for the remedies which shall be afforded to a plaintiff against an infringing defendant, and that this Section provides in subsection (e) for the compulsory licensing of copyrighted musical compositions when the copyright owner has used or permitted the use of the copyrighted work for mechanical reproduction." "This subsection," the defendant argued, "provides that such compulsory licensing must be granted upon compliance with the requirement that the person intending to use such copyrighted musical work send notice of such intention by registered mail to the copyright owner and a duplicate of such notice to the copyright office and by the payment of royalties, as provided in subsection (e) of Section 1, Tit. 17."

Held: Motion to compel destruction of the matrices denied.

In upholding the defendant's contention, the court emphasized that the copyright owner had, in fact, permitted the use of the copyrighted music for mechanical reproduction by others but that the defendant had not served a "notice of intention to use" under Section 1 (e). The court framed the novel issue before it as follows:

"Can the admitted infringer of musical copyrights be compelled to deliver up for destruction those devices now possessed by him which will enable him to reproduce the records which will infringe the copyright?"

In answering the question in the negative, the court, quoting G. Ricordi & Co. v. Columbia Graphophone Co., 2 Cir. 1920, 263 F. 354, observed that "since a party may at any time, even during an appeal, give notice that it intends to utilize a copyrighted musical composition in the making of records and to pay the royalties thereon, there would seem to be no reason for a court to require the *destruction* of the devices necessary for the making of those records." Then, however, the court continued to rule that as a matter of discretion it would grant an injunction to the effect that the matrices, plates, etc. which had been used should "be *impounded* until defendant shall have paid the royalties and damages provided in the final decree herein and shall have given notice to the copyright proprietor and to the Copyright Office of his intention to exercise the compulsory licensing provisions of the statute."

Treble damages were allowed and a master was appointed by the court to determine the amount of the actual damages.

136. *Warner Bros. Pictures, Inc. v. Columbia Broadcasting System, Inc., et al.,* 206 F. 2d. 945 (9th Cir. Nov. 9, 1954.)

Defendant Dashiell Hammett had sold the motion picture and certain other rights in his copyrighted book, "The Maltese Falcon," to the plaintiff. Subsequently defendant used the character Sam Spade again and granted rights to others, including the defendant, Columbia Broadcasting System, Inc., to use the character name in connection with the broadcast. Plaintiff alleged that its contract with defendant Hammett included, at least by implication, the exclusive right to the use of the individual characters and their names, including the name Sam Spade, in connection with motion pictures as well as radio and television. The defendants, on the contrary, alleged that such rights "are not customarily parted with by authors but that characters depicted in one detective story together with their names are customarily retained and used in the intricacies of subsequent but different tales." Plaintiff further alleged that defendants were guilty of unfair competition as the result of their use of the character name and also alleged infringement of "the whole of the writing" (of "The Maltese Falcon") inclusive of characters and their names. Defendant Hammett counterclaimed for a declaratory judgment. The trial court dismissed the complaint with costs and rendered a declaratory judgment on the counterclaim with regard to the defendant's rights. Upon plaintiff's appeal,

Held: Reversed as to declaration of Hammett's rights and affirmed as to dismissal of plaintiff's suit.

"The instruments under which Warner claims were prepared by Warner Bros. Corporation which is a large, experienced moving picture producer. It would seem proper, therefore, to construe the instruments under the assumption that the claimant knew what it wanted and that in defining the items in the instruments which it desired and intended to take, it included all of the items it was contracting to take. We are of the opinion that since the use of characters and character names are nowhere specifically mentioned in the agreements, but that other items, including the title, 'The Maltese Falcon', and their use are specifically mentioned as being granted, that the character rights with the names cannot be held to be within the grants, and that under the doctrine of ejusdem generis, general language cannot be held to include them."

The court added: ". . . historically and presently detective fiction writers have and do carry the leading characters with their names and individualisms from one story into succeeding stories . . . The conclusion we have come to, as to the intention of the parties, would seem to be in harmony with the fact that the purchase price paid by Warner was $8,500.00 which would seem inadequate compensation for the complete surrender of the characters made famous by the popular reception of the book, 'The Maltese Falcon,' and that the intention of the parties, inclusive of the 'Assignment', was not that Hammett should be deprived of using the Falcon characters in subsequently written stories, and that the contract, properly construed, does not deprive Hammett of their use."

Regarding the question "whether it was ever intended by the copyright statute that characters with their names should be under its protection," the court observed that although "the practice of writers to compose sequels to stories is old, and the copyright statute, though amended several times, has never specifically mentioned the point, . . . if Congress had intended that the sale of the right to publish a copyrighted story would foreclose the author's use of its characters in subsequent works for the life of the copyright, it would seem Congress would have made specific provision therefor." The court concluded "that even if the owners assigned their complete rights in the copyright to the Falcon, such assignment did not prevent the author from using the characters used therein, in other stories. The characters were vehicles for the story told, and the vehicles did not go with the sale of the story."

Accordingly, the court affirmed the district court's order dismissing the complaint but reversed with regard to defendant's prayer for declaratory judgment, stating: "It follows that no useful purpose could be served by considering Hammett's prayer for a declaration of his rights and his counterclaim for a declaratory judgment is therefore dismissed."

(The Editor has been informed that petition for certiorari will be filed in this case.)

137. *United Artists Corp. v. Strand Productions, Inc.*, 216 F. 2d 305 (9th Cir. Oct. 15, 1954).

Appeal and cross appeal from judgment of the district court in a reorganization proceeding permitting the marketing of four motion pictures governed by a contract between producer and distributor. Under the terms of the contract, marketing of the motion pictures for television use was governed by a clause tying this distribution to the "majors", and providing that if the distributor failed to acquire proper facilities to market pictures for the sale of television rights, when television should become a commercial practice, then producer would have the right to sell these rights.

Held: Reversed in part. The court, in determining that producer may not sell television rights in the films, said: "United is to follow the policy of the majors as to releasing films of one character and not releasing films of another character, as well as other distribution policies, and the words are not to be restricted to such details as how films are shipped about the country or how collections or charges to the exhibitors are made."

The court continued: "The third sentence concerning 'commercial practice' and the setting up of a marketing organization is dependent upon there being a duty of United (as determined by the policy of the major distributors) under the first two sentences of the television clause to market the four pictures. In other words, the interpretation is: 'If and when television shall become a commercial practice [*and United has a duty to market the films*] and United shall not then acquire the necessary facilities with which to market the motion pictures in the television field in a manner favorably comparable to its present-day standards of distribution, then Producer shall be privileged to dispose of its television rights in the motion pictures to any other party.'"

In justifying its conclusion the court said that the purpose of the parties was to follow the practice of the major producers (who are also the major distributors), and to make United's duties toward the producer the same as the producer owed to United. United would not be permitted to market the film for television so as to hurt the producer, and the producer should not be permitted to market the motion pictures for television to the injury of United. Furthermore, under the warranty clause producer had an affirmative duty to refrain from any action which might injure United's rights.

The court rejected producer's contention that to follow the "majors" was a violation of the antitrust laws, holding that there was no understanding or agreement between actual competitors.

137.(a) *Morse v. Fields, et al.,* 104 U.S.P.Q. 54 (S.D.N.Y. Dec. 16, 1954).

Action for damages for copyright infringement. The parties by stipulation had waived a jury and agreed to limit damages, if any, to statutory limits of no less than $250. and no more than $5,000.

Plaintiff was the author of an article entitled "Hopalong Abramowitz," which was published in 1950 in *Collier's* Magazine. Defendant Fields published a column, entitled "H. Hopalong Abramowitz: Cowboy in the Bronx," in 1951 in the newspaper, *The Daily Mirror,* published by defendant, Hearst Corporation. Both articles were concerned with the life of one Abramowitz, described by the court as "a very colorful individual who owns a stable in the Bronx which houses a vast array of horses and every conceivable type of carriage and stage coach," all of which are available for advertising and similar purposes. The defendants raised numerous defenses with regard to the validity of the copyright notice; they also alleged that plaintiff was "estopped" from charging infringement on the ground that he, himself, had asserted that the allegedly infringed materials were direct quotations from statements made by Abramowitz to him. Moreover, the defendant, Fields, alleged that he had never seen the *Collier's* article but that his own article was based entirely on notes made by him while he had personally interviewed Abramowitz.

Held: Complaint dismissed.

With regard to the sufficiency of the copyright notice (i.e., the general copyright notice covering the entire issue of *Collier's* Magazine), it was held that this notice covered the story since plaintiff had proven that the magazine had become the proprietor of the copyright and was not a mere licensee. The court also rejected defendant's contention that plaintiff's work was not "original" since plaintiff had "implanted his own writing style and form of expression" upon the material even though the incidents themselves which were described may have been published before.

However, the court found that plaintiff had failed to prove "copying" and that, on the contrary, the defendant had proved to the court's satisfaction that Fields' story was not based on plaintiff's but rather

on a special interview which Fields had had with Abramowitz. The court said: "The complete availability of plaintiff's work is merely some circumstantial evidence of access, and access is merely circumstantial evidence of copying. Against this double circumstantial evidence, defendant Fields' testimony specifically denying that he ever saw plaintiff's article must be weighed." * * * "Fields has been writing for the Mirror for over 14 years. He has had vast experience in writing 'interview columns' based upon adequate notes recorded during the interview which are then expanded into draft form and later condensed and edited into a final copy of approximately 750 words. Indeed, his specialty is profile or interview columns, and, he is widely known for these columns." * * * "I conclude from this dissective analysis that from the 'wealth' of incidents in Abramowitz' life, Fields' selection and emphasis is not so substantially similar to that of plaintiff's when both final articles are compared with each other and when what Fields knew of Abramowitz' life, as evidenced by his interview notes, is compared with Fields' final article, that we are led to the conclusion that there was copying."

Judgment was accordingly awarded to the defendants, dismissing the complaint, but the court in exercising its discretion denied the defendants counsel fees on the ground that plaintiff's claim was not "capricious or unreasonable."

138. *E. H. Tate Company v. Jiffy Enterprises, Inc.*, 103 U. S. P. Q. 178 (E. D. Pa. Oct. 5, 1954).

Action for declaratory judgment of patent invalidity and noninfringement of an allegedly patented picture hanger. Defendant filed counterclaim alleging, *inter alia*, copyright infringement by plaintiff's directions and sketches enclosed with the product at the time of sale.

Held: Counterclaim for copyright infringement dismissed. The court said:

"The only feature of the copyrighted material which the defendant alleges to have been copied by the plaintiff consists of three small sketches each about half the size of one's fingernail on a card approximately five inches square. These sketches are purely functional in the

sense that their purpose on the card is to instruct purchasers of the article how to use it. The plaintiff's sketches are not even copies of the defendant's. If the plaintiff has the right to sell and advertise its hanger, it certainly has the right to supply purchasers and prospective purchasers with sketches for its use. If the plaintiff has the right to use a sketch, I do not see how it could very well do so without showing some sort of similarity to that of the defendant. The same considerations apply to the legend. Both cards use the words 'Apply hook to wall' under the first sketch and both explain in connection with the third sketch in similar though not exactly the same terms, how to use the hook as an eyelet on the back of the picture. It seems to me that it is little short of absurd to apply the copyright law to the words 'Apply hook to wall' in a perfectly natural explanation on how to use an article."

139. *Plotkin v. National Comics Publications, Inc.,* 103 U. S. P. Q. 336 (2d Cir. Nov. 26, 1954).

Appeal from dismissal of plaintiff's suit for infringement of his copyrighted comic character, Atoman, and for misuse of confidential information relating thereto.

Held: Affirmed. The trial court's finding that plaintiff's conception, Atoman, "was neither original nor infringed by defendant's independently produced movie, Atom Man v. Superman, is supported by substantial evidence. . . ."

140. *Weir v. Gordon,* 216 F. 2d 508 (6th Cir. Oct. 6, 1954).

In a Per Curiam affirmance the Court said:

"In this action for copyright infringement the district court . . . found that the appellant made copies of the principal features of the appellee's copyrighted advertising material, and caused the same to be published for his own profit. We find the district court's controlling findings of fact are not clearly erroneous and that the court correctly applied the law. . . ."

See 1 BULL. CR Soc. 7, Item 17 (1953).

141. *Litvak v. Commissioner of Internal Revenue,* 103 U. S. P. Q. 416 (Tax Court Dec. 7, 1954).

Petitioner, Anatole Litvak, is a motion picture director who purchased screen rights to "Sorry, Wrong Number." He intended to use this material in connection with his work as a director and entered into negotiations with Enterprise Productions, Inc. with regard to directing this picture and two other pictures. However, negotiations fell through and Petitioner sold the motion picture rights at a handsome profit, which he reported on his 1947 tax return as a long-term capital gain. The Commissioner filed a notice of deficiency asserting that the gain realized by petitioner on the sale of the literary property constituted ordinary income.

Held: For Petitioner. "The literary property 'Sorry, Wrong Number' was held by petitioner for more than six months. It was not held by petitioner primarily for sale to customers in the ordinary course of his trade or business." It was held that it is therefore taxable as a long-term capital gain.

The Commissioner relied on Section 117(a) (1) (A) of the Internal Revenue Code of 1939 which defines capital assets as "property held by the taxpayer (whether or not connected with his trade or business)", but not including ". . . property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." Although the Court conceded that the property was held by Petitioner in connection with his business of being a director *"it was not held by him primarily for sale to customers* in the ordinary course of trade or business." (Emphasis added.) Respondent tried to limit the quoted statutory section to trading in securities but this was rejected by the Court as a distortion of the statute as actually written.

2. State Court Decisions

142. *Schumann v. Loew's Incorporated,* 135 N. Y. S. 2d 361 (Sup. Ct. Oct. 20, 1954).

Some of the grandchildren of the composer, Robert Schumann, sued for damages resulting from the exhibition of a motion picture about the composer's life which depicted him as being insane and finally dying of mental illness. Furthermore, Schumann's sister was similarly depicted in the picture. The complaint was based on the following grounds: "(1) an unlawful invasion of their right of privacy, and of the right to privacy of Robert Schumann; (2) an injury to the property rights of themselves and Schumann; and (3) a libel upon the memory of Schumann." The complaint also alleged that "defendant has been 'unjustly enriched' by the profits it had made from the exhibition of the motion picture and that (plaintiffs,) as heirs and kinsmen of Robert Schumann, are entitled to recover from defendant the gross proceeds derived from the exhibition of the picture." The complaint then alleged 61 causes of action for each state of the United States, the territories, and most of the countries of the world.

Held: Complaint dismissed. Under the laws of New York there is no common law right of privacy. It is statutory and restricted to a "living person." Laws of other states are either not conclusive as to the right of privacy or have not been proved. As to the common law of other countries, New York courts will assume that their common law is the same, in the absence of a showing to the contrary. Since truth is a defense to a libel action in most jurisdictions, and plaintiffs admitted the truth of the portrayal, that cause of action was likewise dismissed. Plaintiffs had also failed to show any property right in the name of Robert Schumann. Therefore, the claim that his name was "misappropriated" was rejected. No "unjust enrichment" was found.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. Foreign Publications

143. Association Litteraire et Artistique Internationale. *Congrès de Monte-Carlo, Sept.* 1954.

L'Avant-project de convention internationale relative à la protection des artistes, interpretes & executants, des fabricants de phonogrammes & des organismes de radio-diffusion. Rapport de la Commission Spéciale.

18 *p.* (*mimeo.*)

This Special Committee of the Association Litteraire & Artistique Internationale was established in April 1952, and met under the chairmanship of M. Raymond Weiss for the purpose of studying and analyzing the Draft Convention submitted at Rome in November 1951. A sub-committee consisting of Roger Fernay, Prof. Robert Plaisant, Marcel Saporta and Jean Vilbois prepared and edited the present report in two part: the first summarizing the work of the committee, the second analyzing the convention, article by article.

144. Association Litteraire & Artistique Internationale. *Congrès de Monte-Carlo, Sept.* 1954.

L'Avant-Project de convention internationale relative à la protection des artistes, interprètes et executants, de fabricants de phonogrammes et des organismes de radiodiffusion. Rapport complementaire sur l'exercise et la gestion des droits reconnus par la convention présenté au nom de la Commission Spéciale.

6 *p.* (*mimeo.*)

A supplementary report containing a review of previous proposals for protecting the so-called "related rights" and a brief summary of some of the governmental replies to the Rome draft.

145. Association Litteraire et Artistique Internationale. *Congrès de Monte-Carlo, Sept.* 1954.

Avant-Projet de Convention internationale relative à la protection des artistes interprètes ou exécutants, des fabricants de phonogrammes et des organismes de radio-diffusion.

12 *p.* (*mimeo.*)

The text of the draft convention as submitted at Rome on November 17, 1951, appears with the text presented by the Committee of ALAI in a parallel column.

146. Desbois, Henri.

Observations on the preliminary draft convention on the protection of performers, manufacturers of phonographic records and broadcasting organizations (Rome, 17th November, 1951). By . . . and V. de Sanctis.

31 *p.* (*mimeo.*) n.p. [International Copyright Union, 1954].

An English translation of the observations by Professor Desbois and Dr. de Sanctis as published in the September 1954 issue of Le Droit d'Auteur. It appears in the form of an appendix to Point 5 (II) of the Agenda presented at a meeting of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works held in London, May 24-29, 1954.

147. International Publishers' Congress. 13*th Zurich,* 1954.

Rapports. Zurich, Schweizerischer Buchhändler- und Verleger-Verein, 1954.

230 *p.*

The reports of the 13th International Publishers' Congress include "Le Domaine Public Payant" by Jacques Rodolphe-Rousseau; "Le Télevision et l'Edition" by Joseph Marks; "Photocopie, microfilm et droit d'auteur" by Arthur Georgi; and "Les Droits de Traduction et les Agences Litteraires" by Santiago Salvat.

148. Mendilaharzu, Eduardo F.

La convención universal de Ginebra de 1952 sobre derecho de autor.

Buenos Aires 1954. 16 *p.*

Originally published in a supplement to *La Ley* on July 16, 1953, and also in the *Boletin del Ministerio de Relaciones Exteriores,* (4° trimestre, 1953), the report contains a summary of the work of the conference at Geneva, and an analysis of the text of the Universal Copyright Convention as signed Sept. 6, 1952, from the Argentine point of view. A copy of this report was sent to the SOCIETY by the author.

149. Ulmer, Bussmann and Weber.

Das Recht der Verwertungsgesellschaften.

The Law of Musical Performing Right Societies.

Weinheim/Bergstrasse, Verlag Chemie GmbH, 1955. 94 *p.*

This is apparently the first comparative study of the laws of various countries dealing with musical performing right societies. The book consists of three parts; the first, an introduction by Professor Eugen Ulmer, the second, a thorough comparative study of the constitution of performing right societies and their relationships to government and their members by Professor Kurt Bussmann, and the third, a detailed summary of the law of each country with regard thereto, by the German attorney, Sibylle Weber. A fourth part, containing the text of all pertinent laws, is not included in the printed publication but is available for examination at the Institute of Foreign and International Patent, Trade-Mark and Copyright Law at the University of Munich. The present publication was sponsored by the Association for Comparative Law of the University of Tübingen. No similar study has been published in the past and this book should prove of invaluable assistance to those interested in performing right societies and their place in the overall problem of granting copyright protection to musical works.

B. LAW REVIEW ARTICLES

1. United States

150. Ellis, Ridsdale

Validity of doctrine that a full exclusive license is in fact an assignment.

Journal of the Patent Office Society, vol. 36, *no.* 9. (*Sept.* 1954), *pp.* 643-659.

A discussion of the doctrine that a full exclusive license is treated as an assignment. A study of the evolution of the doctrine, an analysis of the situations in which it is important to distinguish between an assignment and a license, and an examination of the ways in which the doctrine has been applied to patent cases are included. Many of the situations discussed may be analogous to copyright cases.

151. Fitch, Donald C. Jr.

Protection of literary property.

Texas Bar Journal, vol. 17, *no.* 10 (*Nov.* 22, 1954), *pp.* 641-642, 668-669.

A resumé of the statutory provisions and judicial decisions in Texas pertaining to copyright.

152. Hutchens, Harry

Equity—Unfair competition—Property right in news of sporting events. (*Loeb v. Turner,* 257 S. W. 2d 800, Tex. Civ. App. 1953).

South Texas Law Journal, vol. 1, *no.* 1 (*April* 1954), *pp.* 113-116.

A case note on *Loeb v. Turner* which distinguishes the case from previous decisions dealing with competitive broadcasting of sports events and news, by pointing out that the two stations were not overlapping or *coterminus* in their coverages.

See 1 BULL. CR. SOC. 69, Item 184 (1953).

153. The Protection Afforded Literary and Cartoon Characters Through Trademark, Unfair Competition, and Copyright.

Note, *Harvard Law Review, vol.* 68, *no.* 2, *pp.* 349-363 (*Dec.* 1954).

The note writer finds that the author seeking protection for the character he has created will discover confusion and uncertainty in the law. He concludes that protection is needed especially in the comic strip field to prevent re-use by another.

153(a). Drachsler, Leo M.

Spurious Works of Art and Forged Signatures on Paintings, With a Consideration of the "Moral Right" Doctrine . . . with Harry Torczyner.

New York Law Journal, vol. 133, *nos.* 7, 8, 9 (*Jan.* 11 to 13, 1955), *p.* 4 of each issue.

2. FOREIGN

(a) In English

154. Bolla, Plinio

Radio journalism and the Berne Convention for the protection of literary and artistic works.

E. B. U. Bulletin, vol. V, *no.* 27, (*Sept.-Oct.* 1954), *pp.* 547-556.

The author reviews the transition of Articles 9 and 10 of the Berne Copyright Convention through subsequent revisions and concludes that radio broadcasting organizations, like newspapers and periodicals, may reproduce articles on current economic, political or religious topics providing reproduction rights have not been expressly reserved. Furthermore, newspapers and periodicals may take short quotations from broadcasts as well as include them in press summaries. A brief reference is made to the possible effect of the Rome Draft on recorded news broadcasts.

155. Publishers and Authors' Rights.

The Author, vol. 64, *no.* 1 (*Autumn,* 1954), *p.* 17.

A commentary on the debate in Parliament on the Publishers' As-

sociation's proposed standard contract which would secure to the publisher a percentage royalty on the dramatization, radio and other exploitation rights of a new author's work.

(b) In French

156. Boor, Hans Otto de

Saisie et destruction d'oeuvres contrefaites.

Le Droit d'Auteur, vol. 67, *no.* 11 (*Nov.* 1954), *pp.* 184-188.

A comparative study of the provisions relating to seizure and destruction of infringing copies in French and German copyright law and the Bern Copyright Convention.

157. Cary, George D.

La nouvelle loi des Etats-Unis concernant la mise en application de la Convention universelle sur le droit d'auteur.

Le Droit d'Auteur, vol. 67, *no.* 11 (*Nov.* 1954), *pp.* 183-184.

Commentary on the effect which the new implementing legislation will have on U. S. copyright after the Universal Copyright Convention becomes effective.

158. Escarra, Jean

Le projet de loi français sur la propriété littéraire et artistique.

Revue Internationale du Droit d'Auteur, no. 5 (*Oct.* 1954), *pp.* 3-33.

An analysis of the draft law on copyright submitted to the French National Assembly on June 9, 1954.

159. Georgi, Arthur

Photocopie, microfilm et droit d'auteur.

Union Internationale des Éditeurs, Treizième Congrès Rapports, 1954, *pp.* 68-93.

Summarizing the various practices in each country concerning the making of photocopies or microcopies of copyrighted works for private use, the author suggests that the increasing importance of the problem necessitates the formulation of a uniform system of regulations for all countries.

160. Lançon, Raymond

Le Droit d'auteur en Egypte par . . . et Jean Vilbois.

Revue Internationale du Droit d'Auteur, no. V (*Oct.* 1954), *pp.* 91-123.

Commentary on the new Egyptian copyright law.

161. Marks, Joseph

La télévision et l'édition.

Union Internationale des Éditeurs, Treizième Congrès Rapports, 1954, *pp.* 59-67.

In a report of a study made in the United States, France and Great Britain on the effect which television has had on reading habits and publishing, the author points out that, while most of the literary material is being protected under the general copyright law, some discussion has arisen in England as to whether books, pictures and maps merely shown on the television screen should not be accorded the same protection as photographs.

162. Rodolphe-Rousseau, Jacques

Le Domaine Public Payant.

Union Internationale des Éditeurs, Treizième Congrès Rapports, 1954, *pp.* 31-58.

Report on "domaine public payant" legislation and the restrictive effect it has had on the book publishing trade and the free flow of books. The author recommends that publishers should seek to abolish such legislation. Summaries of this report are printed in English and German.

163. Salvat, Santiago

Les droits de traduction et les agences littéraires.

Union Internationale des Éditeurs, Treizième Congrès Rapports, 1954, *pp.* 131-163.

The author suggests that publishers set up an independent office of record as to proper channels through which negotiations for translation rights might be facilitated.

164. Sanctis, Valerio de

Lettre d'Italie.

Le Droit d'Auteur, vol. 67, *no.* 10 (*Oct.* 1954), *pp.* 173-176; *no.* 11 (*Nov.* 1954), *pp.* 193-196.

In summarizing recent highlights in the field of copyright law in Italy, the author mentions Italy's ratification of the Brussels Revision of the Bern Copyright Convention and its consequences; judicial opinions concerning transformation of a literary work into an artistic work; problems created by termination of the copyright in music used with a motion picture film; periodical titles; and radio broadcasts.

165. Saporta, Marcel

Les sujets du droit d'auteur.

Le Droit d'Auteur, vol. 67, *no.* 10 (*Oct.* 1954), *pp.* 168-173.

A comparative study of the protection granted various groups of authors, such as persons, legal entities, co-authors, contributors to collective works, and the like.

(c) In German

166. Boor, Hans Otto de

Vervielfältigung zum persönlichen Gebrauch.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 10 (*Oct.* 1954), *pp.* 440-447.

A report on the multiplication of copies for personal use given before the Copyright Committee of the German Patent and Copyright Association at a meeting on September 30th in Frankfurt-am-Main.

(d) In Italian

167. Ciampi, Antonio

Diritti degli Autori e degli Attori di fronte alla radio, cinema e televisione.

Rassegna di Dirritto Cinematografico, vol. 3, *no.* 3-4 (*May-Aug.,* 1954), *pp.* 68-71.

At a recent conference held in Palermo under the auspices of the International Institute of the Theatre, the author presented a study on copyright problems of authors as they are affected by performance of a work on radio, television, and the motion picture screen. This paper is part of that study.

168. Franceschelli, Remo

Costituisce di per sè violazione del diritto morale dell'autore l'utilizazione di musiche di un'opera lirica nella colonna sonora di un film?

Rassegna di Diritto Cinematografico, vol. 3, *no.* 3-4 (*May-Aug.* 1954), *pp.* 65-67.

This article is a commentary on a recent court decision on what constitutes a violation per se of the moral right of an author in the use of the music from a lyric opera in the soundtrack of a motion picture. It has been reproduced from the January-March, 1954 issue of the *Revista di Diritto Industriale.*

169. Sanctis, Valerio de

Considerazioni sulla durata del diritto di autore.

Revue Internationale du Droit d'Auteur, no. V, (*Oct.* 1954), *pp.* 35-51.

A comparative and philosophical study of duration of copyright. The original work is in Italian with translations into English and French published in parallel columns.

170. Vigorita, Alfonso

Facoltà del produttore di modificare l'opera cinematografica.

Rassegna di Diritto Cinematografico, vol. 3, *nos.* 3-4 (*May-Aug.* 1954), *pp.* 61-64.

Discussion of the extent to which a producer may change or modify a motion picture under the provisions of the Italian copyright law, and the effect such modifications may have on the rights of others.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

171. Blunt, Irene

Textile industry needs legal copyright protection.

America's Textile Reporter, vol. 68, (*Sept.* 9, 1954), *pp.* 45-46.

From a paper before the American Bar Association by Irene Blunt, suggesting the adoption of European-type legislation for legal protections of designs.

172. Copyright Office announces new policy.

American Patent Law Association Bulletin, (*July-Sept.,* 1954), *p.* 215.

It was revealed by the Chief of the Examining Division during a lecture at the Practising Law Institute in New York in July that the U. S. Copyright Office has decided to accept works of art embodied in a textile fabric.

173. Editorials on Copyright Legislation.

The Billboard, (*Dec.* 4, 1954), *p.* 1; (*Dec.* 11, 1954), *p.* 1; (*Dec.* 18, 1954), *p.* 1.

In this series of editorials The Billboard advocates the appointment of a fact-finding commission to explore changes in the Copyright Act of 1909.

174. Industry co-operation is keynote of 22nd annual BMI convention.

Publishers' Weekly, vol. 166, *no.* 19 (*Nov.* 6, 1954) *pp.* 1912-1916.

In reporting the highlights of the Book Manufacturers' Institute convention at Hershey, Pa., Oct. 18-20, this account refers to discussions on the effect ratification of the Universal Copyright Convention and modification of the manufacturing clause may have on U. S. book exports.

175. Kraus, Joseph H.

Copyrights, trade-marks and slogans.

Inventor's Handbook, N. Y. Fawcett Publications, Inc., 1954, *pp.* 54-61 (*Fawcett No.* 233).

A brief summary of the highlights of copyright protection written for the information of the commercial inventor, together with similar information concerning trademarks and slogans, illustrated with reproductions of familiar advertisements showing trade-marks and slogans.

176. Loomis, Noel M.

The Case for Income-Leveling Tax Provision.

Publishers' Weekly, vol. 166, *no.* 19 (*Nov.* 6, 1954), *pp.* 1876-1879.

A presentation of the income tax problem faced by professional writers under the new Income Tax Code of 1954, when annual gross incomes made on the sale of material during the current year or on reprint rights in works written years ago put the individual authors in widely varying tax brackets.

177. MacCarteney, Richard S.

American Publishers and the Universal Copyright Convention.

Publishers' Weekly, vol. 166, *no.* 19 (*Nov.* 6, 1954) *pp.* 1879-1881.

A summary of the major changes in the U. S. copyright law which will go into effect as soon as the Universal Copyright Convention becomes effective and the benefits United States authors and publishers will derive abroad by virtue of the convention.

178. Remington seeks cut royalty rate; sues, Fox, Victor et al. for $1,500,000.

Variety, vol. 196, *no.* 10 (*Nov.* 10, 1954), *pp.* 51.

A note on litigation over the compulsory license provision concerning phonograph records.

2. FOREIGN

(a) In English

179. Boosey, Leslie A.

The author and horse-racing.

Revue Internationale du Droit d'Auteur, no. V (*Oct.* 1954), *pp.* 79-89.

The rights of performers and organizers of sporting events in the televised performance with particular reference to the Draft International Convention for the Protection of Performing Artists, Phonograph Record Manufacturers and Radio Organizations.

180. Delay in ratifying UNESCO copyright pact; need to amend British law.

The Times (*London*), *Nov.* 9, 1954, *p.* 3.

An editorial pressing for action in amending the Copyright Act of 1911, so that Great Britain may adhere both to the Brussels Revision of the Bern Copyright Convention and to the Universal Copyright Convention.

181. Publication "in volume form"—*Jonathan Cape Ltd. v. Consolidated Press Ltd.*

The Bookseller, no. 2546 (*Oct.* 9, 1954), *pp.* 1182.

Anita Loos, or someone deriving title from her, appointed an American company, Jacques Chanbrun, Inc. to deal with her rights in the book "A Mouse is Born." Under an agreement with Jonathan Cape, Ltd. an "exclusive right to print and publish" the work "or any part or abridgment thereof of the book in volume form, during the legal term of unrestricted copyright in the English language throughout the British Commonwealth and Empire—but excluding Canada" was granted. Defendant, Consolidated Press Ltd., reproduced the text of the book in the July 2d, 1952 issue of *Australian Womens' Weekly.* Plaintiff, Jonathan Cape Ltd., instituted suit for copyright infringement without joining the author.

Held: Since plaintiff was assigned the exclusive right to print and publish, it was entitled to bring suit, and the publication in a single issue of the periodical is an infringement of the copyright and right to publish in volume form.

182. The Test of Obscenity, *Regina v. Martin Secker & Warburg Limited, Fredric John Warburg and the Camelot Press Limited.*

The Author, vol. 65, *no.* 1 (*Autumn,* 1954), *pp.* 1--5.

The text of Mr. Justice Stable's summing up in the most recent British case on obscenity involving Stanley Kauffmann's book, *The Philanderer.*

(b) In Spanish

183. Aprobo diputados las reformas a la ley sobre propiedad intelectual.

El Pueblo (*Buenos Aires, Aug.* 5, 1954) *p.* 2.

In giving a brief resume of the activities of the Argentine Chamber of Deputies, this account mentions the debate and passage of a draft law which would amend the Argentine Copyright Law (Ley No. 11.723) by extending the term of protection from life of the author plus 30 years to 50 years and would require the payment of royalties by publishers of works in the public domain, although restricting the claims of heirs in the publication of works in the public interest. The bill has been sent to the Senate for further action.

NOTICES FROM THE COPYRIGHT OFFICE

184. The Copyright Office has available a kit containing samples of all of the application forms and a majority of the informational circulars issued by the Office. The kit also contains other miscellaneous information of value to attorneys engaged in copyright practice.

The "Copyright Office Information Kit" will be sent free upon request addressed to: The Copyright Office, Library of Congress, Washington 25, D. C.

185. The Copyright Office has announced its intention of including in its next issue of the BULLETIN OF COPYRIGHT DECISIONS a selected group of unreported opinions involving copyright and related subjects in the field of literary property. Since the Office has no established means of obtaining information with regard to court decisions that do not appear in the Reporter Systems, it has solicited the aid of practising attorneys and judges in furnishing it with either copies of such unreported decisions or identifying information which will enable it to attempt to obtain copies. Such information should be addressed to Mrs. Wilma S. Davis, U. S. Copyright Office, Library of Congress, Washington 25, D. C.

Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 CANAL STREET
New York 13, N. Y.

Return Postage Guaranteed

Sec. 34.66, P.L.&R.
U. S. POSTAGE
PAID
New York, N. Y.
Permit No. 5627

BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

Published at
NEW YORK UNIVERSITY LAW CENTER

VOL. 2, NO. 4 FEBRUARY, 1955

Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

Published at New York University Law Center
40 Washington Sq. South, New York 11, N. Y.

Printed and distributed by Fred B. Rothman & Co.
200 Canal St., New York 13, N. Y.

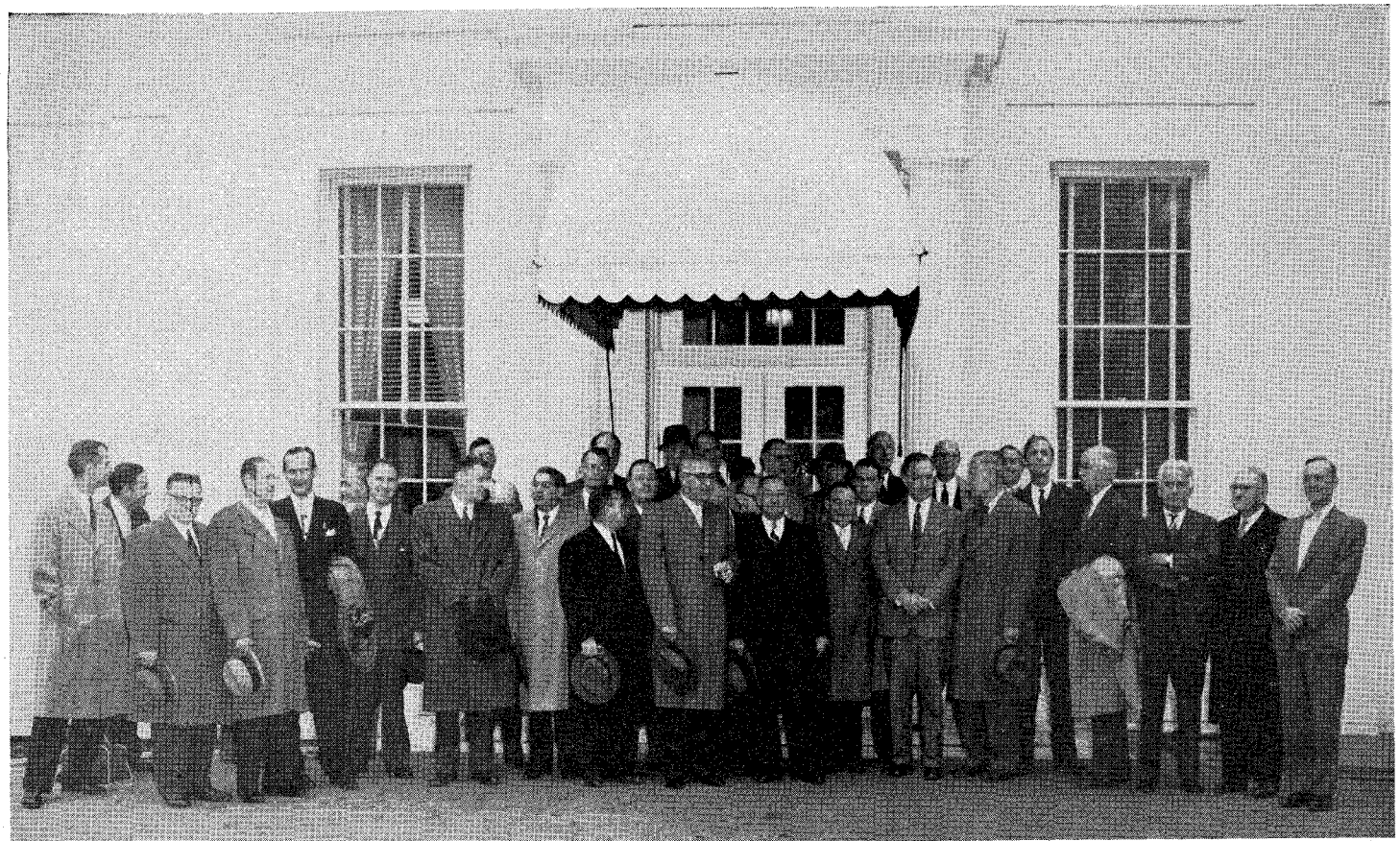
CONTENTS

THE BULLETIN of The Copyright Society of the U.S.A. is published 6 times a year by The Society at the Law Center of New York University, 40 Washington Square South, New York 11, New York: Samuel W. Tannenbaum, *President;* Joseph A. McDonald, Louis E. Swarts, *Vice-Presidents;* Paul J. Sherman, *Treasurer;* Theodore R. Kupferman, *Secretary;* Theodore R. Jackson, *Assistant Treasurer;* Charles B. Seton, *Assistant Secretary.* Annual subscription: $10.

All communications concerning the contents of *The Bulletin* should be addressed to the Chairman of the Editorial Board, at the Law Center of New York University, 40 Washington Sq. So., New York 11, N. Y.

Business correspondence regarding subscriptions, bills, etc., should be addressed to the distributor, Fred B. Rothman & Co., 200 Canal Street, New York 13, N. Y.

CITE: 2 BULL. CR. Soc. page no. .....(1955).



At the White House, Washington, D. C., November 5, 1954

Government Representatives and Copyright Experts leaving the White House after President Dwight D. Eisenhower signed the instrument of ratification of the Convention. From left to right: John Hersey; Herman Wouk; Edward A. Sargoy; Austin C. Keough, Paramount Pictures; Ben H. Brown, Jr., Acting Assistant Secretary of State; Rex Stout, president, Authors League; Alwyn V. Freeman, Consultant, Senate Foreign Relations Committee; Phillips Temple, ALA; Robert W. Frase, ABPC; Waldo Leland, director emeritus, American Council of Learned Societies; Sydney M. Kaye, Broadcast Music Inc.; Roger C. Dixon, Chief, Office of Economic Defense and Trade Policy, Department of State; Dan Lacy, managing director, ABPC; Herman Finkelstein, ASCAP; Charles Tobias, president, Songwriters Protective Association; Major Gen. Milton G. Baker, superintendent, Valley Forge Military Academy; Sidney Satenstein, past president, BMI; Max McCullough, UNESCO Relations, Dept. of State; Samuel W. Tannenbaum, president, Copyright Society of the U.S.A.; Deems Taylor; Howard Hanson, president, Eastman School of Music; Carl Haverlin, president, Broadcast Music; John Schulman; Vincent Wasilewski; Barclay Acheson; Thorsten V. Kalijarvi, Deputy Assistant Secretary of State; Carl F. Oeschle, Deputy Assistant Secretary for Domestic Affairs, Dept. of Commerce; Marshal M. Smith, Deputy Assistant Secretary for International Affairs, Dept. of Commerce; James Watt; Arthur Fisher, Register of Copyrights; Frederic G. Melcher; Representative Kenneth B. Keating, New York; Douglas M. Black, co-chairman, Natl. Committee for the UCC; Verner W. Clapp, Library of Congress.

PREFACE

The ratification on November 5, 1954 by President Eisenhower of the Universal Copyright Convention represents a milestone in the development of international copyright. Even though the Convention has not yet come into effect, copyright experts, both here and abroad, have lost no time in studying the manifold intricate legal problems which must soon arise in the international sphere as well as with regard to domestic copyright protection.

It therefore seems particularly appropriate to depart for the first time from the format and content of previous issues of THE BULLETIN and to present a special issue to its subscribers affording a "bird's-eye" view of the new Convention and its scope and effect in a series of brief articles contributed by outstanding experts in the field.

The articles hereinafter presented are condensed versions of a series of papers offered late last Fall before the Copyright Institute of the Federal Bar Association of New York, New Jersey and Connecticut, at a special symposium on the Universal Convention. The entire proceedings of this symposium, consisting of three panel discussions, will soon be published by Federal Legal Publications, Inc., under the joint sponsorship of the Federal Bar Association and the Copyright Society of the U.S.A. The book will include not only the various papers offered during the three panel discussions but will contain extended remarks by the speakers and invited guests in answer to specific questions raised, and will publish in an appendix various documents of particular importance, including the text of the Convention.

The proceedings of the Copyright Institute of the Federal Bar Association of New York, New Jersey and Connecticut last Fall were presided over by Charles B. Seton, Chairman of the Copyright Committee and Copyright Institute of the Federal Bar Association. During the first panel discussion, Joseph A. McDonald, Vice President of the Copyright Society of the U.S.A., acted as moderator; John Schulman, one of the four United States delegates to the Geneva Conference, who also acted as advisor to the Copyright Institute, was moderator during the second discussion, and Theodore R. Kupferman, President of the Federal Bar Association and Secretary of the Copyright Society of the U.S.A., presided over the third meeting.

The Editorial Board of THE BULLETIN takes this opportunity to express its thanks to all the participants in the symposium, to The Honorable Arthur Fisher, Register of Copyrights, United States Copyright Office, who has written an introduction for this special issue, and to Messrs. Earle Warren Zaidins and Mathew Foner, of Federal Legal Publications, Inc., for their assistance in assembling the material presented in this issue.

WALTER J. DERENBERG,
Chairman, EDITORIAL BOARD

INTRODUCTION

By THE HON. ARTHUR FISHER*

The signing by President Eisenhower on November 5, 1954, of the instrument of ratification of the Universal Copyright Convention marked the culmination of a seven years' effort by the United States to improve its copyright relations with the rest of the world.

The first meeting of international experts to consider this project was held in Paris in 1947. This was followed by meetings in Paris in 1949, in Washington in 1950, and again at Paris in 1951. At each stage of the development, questions were submitted to all interests concerned for comment and advice, including submission of basic principles and preliminary drafts of the Convention to various countries of the world. The Intergovernmental Conference at which the Convention was completed was held at Geneva from August 18 to September 6, 1952, at the invitation of Unesco and as guests of the Swiss Government. Fifty countries represented by some 97 delegates and a great number of observers attended the Conference. Thirty-six countries including the U. S. signed the Convention at that time and 4 more countries signed within the next four months.

Within the United States, a Copyright Panel of the U. S. National Commission for Unesco was created in 1948 to review and study all aspects of the project, including the reports and recommendations of the several international committees and the Unesco Copyright Division secretariat. This Panel, consisting of representatives of Government agencies and individuals selected from the various interests and groups particularly concerned with copyright, held some 15 meetings, under the original chairmanship of Dr. Waldo G. Leland and thereafter under Dr. Luther H. Evans.

The Universal Copyright Convention was submitted by President Eisenhower to the Senate on June 10, 1953, with an accompanying letter from Secretary of State John Foster Dulles. Substantially identical bills revising the copyright law to conform with the Treaty were subsequently introduced in the House by Congressmen Crumpacker and Reed, and in the Senate by Senator Langer. A National Committee for the Universal Copyright Convention was established by representatives of all supporting interests to arouse public opinion as to the need for the Treaty and the implementing legislation. After extensive hearings at which testimony was presented by representatives of major American interests, favorable action was taken by the Senate on the Treaty and in the closing days of the 83rd Congress by both Houses on the essential implementing legislation.

*Register of Copyrights, U. S. Copyright Office, and Member of the U. S. Delegation to the UNESCO Geneva Conference, 1952.

The success of this effort after many earlier disappointments was due not only to the soundness of the principles developed but to the procedures followed. From the start confidence was built on the basis of the gathering of facts and the assurance that recommendations would be made and decisions reached only after full consultation and exchange of views between all interests affected.

Ten countries, it is understood, have as of this date[1] taken action to ratify or accede to the Convention. Of these, nine[2] have been formally acknowledged to have deposited their ratifications or accessions with Unesco in Paris. Other important countries are known to have submitted or are in the process of submitting to their legislative assemblies recommendations for ratification together with such changes as may be required by their domestic laws. The Convention will go into effect three months after the necessary 12 adherences have been secured, and it may now be hoped that this condition will be fulfilled before the end of the year 1955.

The work required by this project has been arduous but satisfying, both in the results achieved, the friendships made, and in the sense of participation in a well-planned and wisely directed joint cooperative enterprise not only within this country but with diverse interests throughout the world.

The principles followed and methods used may not only be profitably applied in dealing with the important domestic and international copyright problems still ahead of us, but may also be of value in our dealings with other critical international problems.

1. Feb. 7, 1955.

2. Andorra, Dec. 31, 1952 (date of deposit of ratification by the Bishop of Urgel, Co-Prince of Andorra); Jan. 22, 1953 (date of deposit by the President of France as Co-Prince of Andorra); Cambodia, Aug. 3, 1953; Chile, Jan. 17, 1955; Costa Rica, Dec. 7, 1954; Haiti, Sept. 1, 1954; Laos, Aug. 19, 1954; Pakistan, April 28, 1954; Spain, Oct. 27, 1954; United States, Dec. 6, 1954. Parliamentary bodies of Germany, Switzerland, and France have received bills looking toward the ratification of the Convention, but as of today we have not been advised of any final action concerning them.

PART I

THE UNIVERSAL COPYRIGHT CONVENTION, ITS EFFECT AND SCOPE

Works Protected and the Principle of "National Treatment" under the Convention — Articles I and II

By SAMUEL W. TANNENBAUM*

Although the International Copyright Convention (Berne) has been operative since 1886, by reason of the formalities imposed by the United States upon its own authors and foreign authors in order to secure copyright protection, the United States was never able to join that convention. The only means available to a United States author to obtain protection under the Berne Convention was by the "back door" method, of first or simultaneous publication in a Berne Union country.

It was not until March 3, 1891, when the Chase Act became effective, that the United States was enabled to afford United States copyright protection to foreign authors. The first bilateral arrangements which the United States entered into were with England and France in 1891; then came Germany and Italy in 1892, with other nations following.

Article I

Article I of the Universal Copyright Convention provides:

> "Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture."

For some time, it had been felt that there was urgent need among the civilized countries of the world for the creators and users of intellectual properties to be assured "adequate and effective protection" on an international basis.

Although the United States has been and still is a party to a "complex system of bilateral arrangements" relating to the protection of literary properties with a number of foreign countries, as previously stated, we have been unable to become a party to the International Copyright Union (Berne), due to a number of important differences in concepts including particularly the formalities of our domestic copyright law.

*Member of the firm of Johnson & Tannenbaum, of New York, President, The Copyright Society of the U.S.A., and Vice-Chairman, National Committee for the Universal Copyright Convention.

The provisions of Article I are general. There is no definitive enumeration of works or rights to be protected. This was intentional, for in the admirable report of the late Sir John Blake, Rapporteur General of the Convention, read to the Conference on September 6, 1952, he states that the President of the Convention expressed the opinion that "enumeration was dangerous, because it might read limitatively." (Vol. V Copr. Bull. UNESCO Nos. 3-4, 1952, p. 477).

The fundamental object of the Convention is the establishment of a comparatively simple system, providing minimum requirements which will afford equal treatment to an author of one member state seeking protection in the other state.

Implicit in the Convention is the intent not to create a uniform copyright statute but to fuse the diverse domestic copyright systems into a simple workable international agreement, containing minimum formalities. As the Convention is not self executing, it expressly requires each state to "adopt, in accordance with its Constitution, such measures as are necessary," and that "each state must be in a position under its domestic law to give effect to this Convention." (Article X.)

It is affirmatively stated that existing international systems, including Berne, are not to be impaired. (Preamble; also Article XVII, sub. 1) and that the present and future inter-American multilateral or bilateral copyright conventions are not to be affected. (Article XVIII.)

Unlike Berne and the divers Pan-American Conventions which define the works and rights protected, this Convention, being an international statute, left to each state the specification of the works which are to be embraced within the general categories of literary, scientific and artistic works.

Some states grant protection under their domestic law to one class of works, while others are prohibited from doing so. Some states protect works of applied art, while others do not give protection to architectural or other useful works. Some states may determine whether all public performances may be protected, while others may limit protection to public performances for profit; others may impose compulsory licenses or exempt from protection certain uses of the work.

Apprehension was felt by some of the motion picture companies that "the motion picture industry would suffer serious prejudice from acceptance of the convention by the United States" and that inadequate protection was afforded under the provisions of the Convention to "the integrated sound portion of a motion picture." (Report Sen. Comm. on Judiciary 83d Cong. No. 1936, p. 10; Report Sen. Comm. Foreign Relations on Executive M, 83d Cong. No. 5, pp. 14-15.) This fear was allayed by the clearly expressed views "in the interpretive opinion" of the interim Inter-Governmental Copyright Committee, which comprised five foreign delegates and Hon. Arthur Fisher, the United States Register of Copyrights, "convened in pursuance of a resolution adopted by the Conference at Geneva, to which this precise problem was submitted during a meeting in

Paris May, 1954." (Report of Sen. Comm. on Foreign Relations on Executive M, supra p. 15; Report of Sen. Comm. on Judiciary, supra p. 11.)

The views of the Ad Interim Committee were not to be construed as "an official interpretation of the Convention," but rather a statement of their opinion "as individuals experienced in Copyright and participants in the development of the Universal Copyright Convention."

Before the submission of the foregoing Report of the Senate Committee on Executive M, representatives of the motion picture companies in question, in a letter dated June 8, 1954, not only withdrew their objections, but affirmatively stated that "the present United States Copyright law protects the sound and other parts of a motion picture as a unified whole." (Report of Sen. Comm. on Executive M, supra, p. 16; Hearings before sub-committees on Foreign Relations and Judiciary on Executive M, Universal Copyright Convention and Implementing Legislation, 1954, pp. 207-208.)

Article II

Article II consists of three subdivisions. Subdivision 1 reads:

> "Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory."

Equality of treatment, one of the fundamental and underlying objects of the Convention, is clearly enunciated. Subdivisions 1 and 2 endeavor to assimilate the United States principle of nationality of author or copyright proprietor with the Berne theory of nationality of the work (i.e., place of first publication). (Report of Sen. Comm. on Foreign Relations on Executive M, supra p. 5.) While subdivision 1 applies to published works, subdivision 2 applies the same national treatment to unpublished works.

However, subdivision 1 is subject to certain provisions relating to formalities, term of copyright and translation rights, which are set forth in Articles III, IV, and V.

One of the great compromises and concessions to the United States was the provision relating to copyright notice in published works, which is a fundamental requirement in the United States copyright law.

Under the Universal Copyright Convention, all formalities imposed as a condition of securing copyright in a published work are satisfied by the use of the symbol © accompanied by the name of the copyright proprietor and the date of first publication, "in such manner and location as to give reasonable notice of claim of copyright." (Article III.)

A Convention country may impose certain formalities solely for the institution of an infringement suit in its state, provided such formalities are also required of its own nationals and provided that they do not affect the validity of copyright already obtained.

Subdivision 2 of Article II affords protection to unpublished works:

> "Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals."

Unpublished works embrace two types: (1) dramas, dramatico-musical compositions, musical compositions, motion pictures, motion picture scenarios and scripts, etc. for which statutory copyright may be secured under our copyright law, Title 17 U.S.C. sec. 12 and (2) works which remain in manuscript form and are protected under common law.

In the first category, while many plays, operas, and musical compositions are actually published, yet in the case of unpublished works, statutory copyright under our copyright law may be obtained (Title 17, Sec. 12), as works "not reproduced for sale," by registration with deposit of one copy in the Copyright Office. Later, this identical work may acquire statutory copyright as a published work by publication with notice of copyright (which must be the date when it was originally registered as an unpublished work), accompanied by a registration of the published work with deposit of two copies thereof in the Copyright Office (Title 17 U.S.C. Sec. 10).

Irrespective of whether the sale or licensing of a motion picture constitutes a publication or exhibition under the domestic law of a country, the motion picture, as such, would have protection under the Convention.

The opinion of the Interim Inter-Governmental Copyright Committee supra, printed in extenso in the Report of the Senate Committee on Foreign Relations on Executive M, supra, footnote, p. 15, also in the Report of the Senate Committee on Judiciary, supra, footnote, p. 11, states that a sound film is deemed to be published "from the moment that copies of the film have been generally distributed to the public" and that the provisions of "Article VI of the Convention, by which the copies of the work must be read or otherwise visually perceived by the public, are solely directed to avoid that a phonograph record of a work be considered as a publication in the sense of the Universal Convention."

Subdivision 3 of Article II provides:

> "For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State."

This provision permits the United States to require nationals of other contracting states domiciled in the United States to comply with the same formalities as those imposed upon United States nationals. This embraces aliens or stateless persons domiciled in the United States.

This subdivision 3 was also an adoption of the United States view that "for the purpose of their domestic copyright law, domicile must be regarded as the equivalent of nationality, and for this reason they proposed an extension of the paragraph to include not only stateless persons but all persons who had adopted one of the Contracting States as their permanent home." (Sir John Blake's Report, UNESCO Bull. supra, p. 48.)

Subdivision 3 read in conjunction with Article II subdivision 2 permits the United States to require compliance with the manufacturing provisions of the United States Copyright Law, not only with respect to works first published in the ciliaries thereof, irrespective of the place of first publication, without interfering with the United States adherence to the Convention.

COPYRIGHT FORMALITIES — ARTICLE III

By ABRAHAM L. KAMINSTEIN*

One of the purposes of a convention is the simplification of procedures for securing the ends of the convention in each member country. At the present time, we have copyright relations with many countries but in each country the requirements for securing protection of American works may vary. Article III of the Universal Copyright Convention provides the tool which will make it unnecessary to discover or to comply with the individual laws relating to the initiation of copyright in each member country.

One of the main differences between the copyright systems of the United States and European countries is the matter of formalities. The United States and some other countries require formalities such as the use of a copyright notice on published works, registration and the manufacture of certain books within the country. European countries generally require no formalities for the creation of copyright although they may impose formalities which do not affect the existence of the copyright. The Europeans were opposed to the imposition of formalities; the United States wished to retain the best features of its system of notice and at the same time agreed with the necessity of preventing the imposition of further burdensome formalities. The British stated clearly that they could not

*Chief, Examining Division, U. S. Copyright Office.

agree to any provision which would permit continuation of the United States manufacturing clause requiring British authors to manufacture their books in the United States in order to secure the full term of American protection.

Out of these diverse viewpoints emerged one of the great compromises of the Convention, the provision calling for use of the symbol ©, now to be recognized as a universal symbol of copyright protection, accompanied by the name of the copyright proprietor and the year of first publication, as sufficient to satisfy all requirements as a condition to secure copyright protection in other Convention countries. To this extent the Europeans were willing to recognize the value of notice on copyrighted works. The United States, in turn, agreed to modify its manufacturing clause and its own notice and registration requirements for nationals of contracting countries. Countries which require notarial certifications in order to bring copyright into being will be required to abandon these requirements for works originating in other Convention countries.

Instead of researching the laws of individual countries with which we have copyright relations to determine what he must do to protect his work, an American publisher will now find these requirements in Article III, for countries joining the Universal Copyright Convention. In place of trying to meet the varying requirements in different countries, under Article III, a publisher should:

1. Place the symbol © on all copies from the time of first publication,
2. Accompany it by the name of the copyright proprietor, and the year of first publication,
3. Place the notice in a manner and location as to give reasonable notice of the claim of copyright.

The requirements of Article III are not onerous, but care must be taken to differentiate between compliance with the Convention and the United States law. After the Convention and Public Law 743 are in effect, an American using the notice, "© 1955 by Albert Toe," will have a good notice under either the Convention or the United States law. Use of the present domestic notice, "Copyright 1955 by Albert Toe," will be perfectly good under United States law after the Convention goes into effect but may be insufficient for Convention protection, despite the fact that "©" stands for "Copyright." If a publisher wishes to continue using the full word, "Copyright," he should add the symbol, ©, to the notice.

Prior to the coming into effect of the Convention, it may also be the better part of wisdom for U. S. publishers, who schedule their books months in advance, to add the symbol, "©" to the present notice, perhaps, "© Copyright 1955 by ABZ Books." The addition of the symbol, ©, can do no harm. However, omission of the full word, "Copyright," in those classes where it is now necessary, before Public Law 743 becomes effective, will result in loss of United States copyright.

Name and Year Date

The notice required by the Convention is similar to our own, requiring as it does that the symbol © be accompanied by the name of the copyright proprietor and the year of first publication. It should be noted that, at the present time, in certain classes of works the United States law does not require the year of first publication to appear in the notice. Thus, "© Albert Toe" would be a good notice under United States law for a work of art, but, lacking the year date, would be inadequate to secure Convention protection. Here again, a good United States notice may be inadequate under the Convention.

Position of Notice

The Convention specifies that the notice shall appear in "such manner and location as to give reasonable notice of claim of copyright." This provision is much more liberal than that of the United States law and will permit greater leeway in placement of the notice. For United States publishers, however, the notice should remain in the positions designated by United States law for the different classes; only in this fashion will they be able to use one notice to comply with both the Convention and our own law.

Formalities: Acquisition v. Protection

The Convention specifically permits a state to impose any formalities it sees fit for the maintenance of a suit for copyright in its jurisdiction, provided the same formalities are imposed upon its own nationals, and provided that these requirements do not affect the validity of the copyright. The Convention thus draws a distinction between formalities without which the copyright cannot come into being and those which, like the filing of suits for infringement, relate to its protection. Examples of the first type are given in Article III and include deposit, registration, notice, notarial certificate, payment of fees, manufacture or publication in the contracting state. The list is not exhaustive and Article III would prohibit similar formalities. There is no prohibition against the second type of formality and the national of a member state wishing to sue for copyright protection of a published work in the United States must, before bringing suit, comply with the same formalities required of an American, including the deposit of copies of his work and registration.

Domestic Formalities

The Convention, in Article III (2) permits member states to require formalities and other conditions for both acquisition and enjoyment of copyright with respect to all works first published in its own territory or for works of its own nationals wherever published. The United States will continue to require American nationals to comply with the manufacturing clause and its own law on notice, deposit and registration. This will be true whether the American is

living in the United States or not; it will also apply to anyone domiciled in the United States. A United States citizen resident in France and publishing his book in France, where both France and the United States are members of the Convention, may achieve Convention protection but will still be required to go further and comply with the United States law, if he wishes to secure United States protection. It will also be possible to have a situation in which an American publisher, publishing in the United States, inadvertently misplaces the notice, so that it is defective under the United States law, but is acceptable under the Convention.

Unpublished Works

Each contracting state agrees to protect without formalities unpublished works of nationals of other contracting states. Registration of some unpublished works under Title 17, United States Code, which requires the formality of registration will not be affected since the individual states provide protection for unpublished material.

Renewal Formalities

The last sentence of Article III makes special provision for the formalities attendant upon the renewal of works in the United States. Our domestic law requires the filing of an application in the last year of the first term in order to extend the life of the copyright from 28 to 56 years. The final sentence of Article III specifically permits imposition of this or other formalities with respect to any term longer than the term required by the Convention; thus, the United States which measures its term from publication must grant at least 25 years protection to works without any formalities other than those stated in the Convention, but it may impose any formalities it sees fit for renewal or the enjoyment of any term of years beyond the first 25 years. This provision permits imposition of these formalities on nationals of other states as well as on its own nationals.

There has been some indication that in certain categories of foreign material which is renewed regularly, e.g., music, works will continue to be submitted for original registration on a voluntary basis. Under present provisions, foreign material may be registered, if filed within six months of publication, without payment of the fee. This will avoid the difficulty of trying to establish a date of publication or securing copies as first published in order to determine the form and position of the notice, if one waits for the last year of the first 28-year term. Such original registration will, of course, be purely optional. Where it does occur, the renewal application will be in the usual form. Where, as is likely to be true in most cases, there is no original registration, a new application form will have to be devised.

DURATION OF COPYRIGHT AND THE CONCEPT OF "DEDICATION" — ARTICLES IV AND VI

By SYDNEY M. KAYE*

Article IV of the Universal Copyright Convention relates to the duration of the protection of a work. Since duration of protection is basically covered by national treatment, this would have been a very simple provision had it not been for the desire of many countries to establish a minimum copyright term for works protected by the Convention. The reason for this desire was the fear that some nation might establish an absurdly short copyright term and thus gain admission to the Convention without granting adequate protection to the nationals of other countries.

Fixing a minimum term required a dual system which would be operative both for (a) those countries which date copyright from creation, and grant protection for the life of the author plus a term of years and (b) those countries which, like the United States, compute the term of protection as a fixed period of years from the date of publication of the work or from registration prior to publication.

For countries which proceed under the life and term of years theory, the minimum term is the life of the author and twenty-five years after his death. Countries which have generally recognized the life and term of years concept, but which compute the protection of certain classes of works from the date of first publication may maintain and extend these exceptions, provided that the duration of copyright for such classes of works shall be not less than twenty-five years from date of first publication. Examples of classes of works which have been treated in this way in countries which generally recognize the Berne Convention concept are anonymous works, pseudonymous works, posthumous works, official publications and motion picture films.

A contracting state which, upon the effective date of the Universal Copyright Convention in that country, measures copyright from publication or prior registration may continue so to compute the term of protection, provided that the term shall not be less than twenty-five years from the date of first publication or from registration prior to publication. This provision is adapted to the system of copyright in effect in the United States. It is specifically provided that where there are successive terms of protection, the first term shall not be less than twenty-five years.

*Member of the firm, Rosenman, Goldmark, Colin & Kaye, and Member of the U. S. Delegation to the UNESCO Geneva Conference, 1952.

Special provision is made for photographic works and works of applied art insofar as they are protected as artistic works. These classes of works enjoy only short terms of protection in many countries. The minimum term for these classes of works under the Convention is, therefore, ten years.

The fourth paragraph of Article IV relates to what has generally been referred to as "comparison of terms." Many European countries reacted adversely to a requirement that they be compelled to protect a class of works for a term longer than that class of works was protectable in the country of origin. Article IV leaves the door open for any contracting state to limit the period of protection for any class of works to the period fixed for that class of works in the country of origin. In the case of unpublished works, the country of origin is deemed to be the law of the country of which the author is a national. In the case of published works, it is the law of the country in which the work was first published. To take care of the situation of the United States, it is provided that where the law grants two or more consecutive terms of protection, the period of protection shall be considered to be the aggregate of the terms; in our case, therefore, fifty-six years.

It will be noted that the general provisions with respect to comparison of terms relate, not to individual works, but to classes of works. The question is, therefore, not whether a particular work has fallen into the public domain in the country of origin. Rather, it is the duration of the term of protection in the country of origin of the general class of works to which the specific work belongs. There is one deviation from the foregoing rule. Where the country of origin has two or more successive copyright terms, comparison of terms may be applied to specific works which do not enjoy copyright protection in the country of origin during the renewal term. Therefore, protection of these works is not mandatory after the expiration of the original term.

The two final paragraphs of Article IV define country of origin for the purpose of comparison of terms. The work of a national of a country which is a party to the Convention which is first published in a country which is not a party to the Convention is treated as though first published in the country of which the author is a national. If therefore an American author first published his work in an Oriental country which was not a party to the Convention, for the purpose of comparison of terms the country of origin would be the United States. In the case of simultaneous publication in two or more contracting states, the work is treated as though first published in the state which grants the shortest term of protection. Simultaneous publication is defined as comprehending publication within thirty days of first publication. Thus an American author could not frustrate the provisions with respect to comparison of terms by causing his work first to be published in France (assuming that country to have adhered to the Convention) and, within a few days thereafter, causing it to be published in the United States.

The result of the foregoing complex compromises is, however, a very simple one. Basically, the duration of protection of a work is governed by national treatment. However, minimum copyright terms are established, and no country may adhere to the Convention without granting the citizens of other contracting countries protection for at least the minimum periods set forth. Provisions are also made whereby contracting states may limit protection to the period of protection of the class of works in question in the country of origin, and may omit protection for the renewal term if a specific work is not protected during its renewal term in the country of origin.

There is every reason to hope that no European country will take advantage of the provisions with respect to comparison of terms. Provisions for retaliation, capable of implementation against the United States, have been available in the Brussels revision of the Berne Convention and in other treaties. The prompt ratification by the United States of the Universal Copyright Convention may be deemed to have removed the grievance which many countries previously felt against the United States because of its non-adherence to a world copyright treaty. In this atmosphere, there is no reason to believe that the actual application of comparison of terms to the detriment of the United States is presently contemplated by any country. Similarly, there is no reason to believe that the Berne countries intend to abandon their general concept of protection for life and fifty years in order to take advantage of the minimums established by the Convention.

Article VI

Article IV, as has been noted, is complex and involved. By comparison, Article VI is extremely simple. It is the latter article, however, which has been most criticized in the United States. Article VI defines publication, as used in the Convention, as meaning the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

It should be made clear that publication is defined in Article VI only for the purposes of the Convention. The Convention refers both to published and to unpublished works. Some definition of publication was therefore necessary for Convention purposes. An effort was made to find a definition which was consistent with the United States law. Obviously, however, it is not possible to obtain full agreement among lawyers as to precisely what constitutes publication under the laws of the United States. It is difficult to reconcile and rationalize all of the decisions as to the difference between general and limited publication, the effect of unrestricted exhibition of works of art in public places, the legal effect of the projection of a motion picture on a screen, and the legal consequences attendant upon the manufacture of phonograph records, to select only a few samples. The definition contained in the Convention was felt to be gen-

erally consistent with the current prevailing opinion as to United States law, and it was, at least, comprehensible to the other countries involved.

Producers of motion pictures felt some distress because of the possibility that a Convention country might consider the visual part of a film to be a published work and the sound portion to be an unpublished work. This distress has been somewhat alleviated by the wholly informal opinion of the interim copyright committee set up temporarily to administer the affairs of the Convention. The interim committee stated, in response to an inquiry from the Director General of Unesco, that they regarded cinematographic works, a class of works specifically protected under Article I of the Convention, as forming a unified whole, so that the term "cinematographic works" should be regarded as covering both images and sound, and so that the distribution of copies of the film would be regarded as publication both of the visual and aural portions. While this informal opinion has no official force, it will probably have some persuasive effect.

What is necessary to emphasize, however, is that Article VI does not purport to modify the law of the United States or of any other country. It defines publication for Convention purposes only.

THE RIGHT OF TRANSLATION — ARTICLE V

By HERMAN FINKELSTEIN*

One of the most important provisions of the Universal Copyright Convention is that relating to the right of translation (Art. V). Inasmuch as a convention connotes a union of many nations of varied tongues, any international Copyright convention which failed to safeguard the right of the original author to make his own arrangements for the translation of his copyrighted work into other languages would be useless except as between countries having the same national language, such as Great Britain and the United States. This is particularly important in an era which seeks to promote an interchange of cultures, and in which the market for literary works—particularly those of American origin—is an ever-widening one.

Ever since the first Berne Convention of 1886, it was recognized that an author must have the exclusive right of translation at least for a limited period if there is to be any substance to an international Copyright Convention. The 1886 Convention prescribed a minimum exclusive period of ten years for translation rights. Countries newly adhering to the Berne Union at the present time, however, must accord exclusive translation rights for the life of the author and 50 years after his death.

*General Attorney, American Society of Composers, Authors and Publishers, and Member of the U. S. Delegation to the UNESCO Geneva Conference, 1952.

Japan adhered to the Berne Convention at a time when the ten-year period was applicable. At the 1952 Geneva Conference, it therefore objected to any provision for a longer period of protection in the Universal Copyright Convention. Actually it urged that the Convention should not contain any provision whatsoever safeguarding translation rights. After the translation clause of the Convention was adopted, certain countries insisted upon the right to reserve the subject of translation for their own domestic legislation. Only after bitter debate and a temporary defeat in the Assembly, was a provision inserted in the Universal Copyright Convention barring any reservations (Art. XX).

The pattern for the protection of translation rights under the Universal Copyright Convention contemplates an absolute grant of exclusive rights for a short period followed by a limited right for the remainder of the normal term of copyright protection.

Articles V and XX, as finally adopted, read as follows:

Article V

"1. Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this Convention.

"2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

"If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in the national language or languages, as the case may be, of the Contracting State, by the owner of the right of translation or with his authorization, any national of such Contracting State may obtain a non-exclusive license from the competent authority thereof to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

"If the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government

of that State. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

"Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

"The original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if one of the national languages of such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee.

"The license shall not be granted when the author has withdrawn from circulation all copies of the work.

Article XX

"Reservations to this Convention shall not be permitted."

It will be observed that Article V provides that copyright must include the exclusive right to make, publish and authorize the making and publication of translations of the work absolutely for a period of seven years. Thereafter the author's rights of translation must be protected for the full term of copyright (not less than 25 years) subject to certain compulsory license provisions. If, upon the expiration of seven years from the date of publication of a work in the category of "writings,"* the work has not been published in a national language or languages of a particular member country (or such translation is out of print), the appropriate authority in that country may grant a non-exclusive license to translate the work and publish copies of the work so translated upon the following conditions:

1. The applicant for a license must show either that he has requested the proprietor of the right to grant a license to translate and that such request has been denied, or that he has been unable to find the owner.

*The term "writings" in paragraph 2 of Article V must be read in the light of Article I which defines protected works as including "writings, musical, dramatic, and cinematographic works, and paintings, engravings, and sculpture." The deliberate use of the word "writings" in the second paragraph of Article V would seem to mean that there can be no restriction on the original author's right to control translations of musical, dramatic, cinematographic works, etc.

2. If the owner cannot be found, notice of the application must be given to the original publisher and the diplomatic or consular representative of the owner's country or to the organization which the owner's country has designated. No license may be issued until two months after the dispatch of copies of the application.
3. Due provision must be made by domestic legislation of the country where such license is issued, to assure to the owner of the translation right
   (a) a compensation which is just and conforms to international standards;
   (b) the actual transmittal of payment (mere deposit in the translating country is not sufficient);
   (c) a correct translation of the work.
4. The *original* title and the name of the author of the original work must appear on all copies of the translation.
5. The license is valid only for the territory whose tribunal has issued it; however, copies may be imported into and sold in other countries having the same national language as the country into whose language it has been translated under such license, (a) if such importation and sale is not forbidden by the importing country, and (b) if the law of the importing country makes provision for so-called compulsory licenses.

Under no circumstances may a compulsory license be granted if the author has withdrawn all copies of his work from circulation.

It is felt, in general, that this provision is more favorable to authors than the absolute ten-year exclusive right vouchsafed under the original Berne Convention. The right, of course, is not as broad as in the present Berne Convention, or the Buenos Aires Convention of 1910 which provides (Art. 4):

> "The copyright of a literary or artistic work, includes for its author or assigns the exclusive power of disposing of the same, of publishing, assigning, translating, or authorizing its translation and reproducing it in any form whether wholly or in part."

The mere fact that the Convention authorizes the adoption of provisions for the compulsory licensing of translation rights does not mean that such provisions will be generally invoked. The United States did not include such a provision in the legislation implementing the Universal Copyright Convention (P.L.743, approved August 31, 1954). There is no reason to suppose that any country of Western Europe will do so; nor is it likely to become a widespread practice in the Western Hemisphere. It is too early to predict what action may be taken in Japan.

One of the difficulties of including any translation provision in the present Convention was the emphasis of the Convention upon national treatment rather than minimal rights. The victory of those who insisted upon minimal provisions concerning translation rights, term of copyright and formalities indicates that in time a way may be found to reconcile the views of the champions of the Universal Copyright Convention with those of the adherents of the older Berne Convention.

The compulsory license provisions of the Universal Copyright Convention are not of major scope in view of the fact that (1) the original author's translation rights are absolute for a period of seven years; (2) the compulsory license extends only to writings; and (3) there is no provision for the performance of a translated version without the consent of the original owner.

SOME OBSERVATIONS ON ARTICLES VII, IX, X, XV AND XX OF THE UNIVERSAL COPYRIGHT CONVENTION

By ALFRED H. WASSERSTROM*

Article VII

The importance of Article VII lies in its non-retroactive application. I think that we can dramatize such operation by positing the following situation: Let us assume that a copyrightable work was first published in country A in 1933, and that copyright thereto was secured by such publication. Let us assume further that the period of protection in A is 20 years from initial publication and that the Universal Copyright Convention did not become effective in A until 1954. By that latter date the copyright to the work in question had run its full course. Would the Universal Copyright Convention dredge such work, so to speak, out of the public domain in A to which the laws of that state had definitively consigned it? I think the answer, manifestly, is "No."

Article VII speaks definitely on the point that the Convention shall not apply to works or to rights in works which are *permanently* in the public domain in the contracting states. Now, the critical concept here is indicated by the word "permanently." Whether a work occupies such public domain status will turn upon the laws of the forum state, that is, the state in which protection is claimed

*Member of the firm, McCauley & Henry; Member, Copyright Committee of the New York City Bar Association and Chairman of its Subcommittee on Litigation.

or sought. If by virtue of the laws of that state the work is so embedded in the public domain as to be considered permanently there, then the Universal Copyright Convention will not affect or change its condition—will not vitalize or revitalize it or any copyright to it.

The concept of permanence in this context is foreign, I submit, to our own American jurisprudential thinking. For us, a work is either in the public domain or it is not, and we do not qualify such condition by considerations of permanence or not.

However, there are certain other countries which, under their respective laws, approach this problem differently. In those states conditions precedent to copyright require not only publication but also subsequent registration within X number of years, and until the formalities of such registration are complied with the work is deemed in the public domain. Yet a work so in the public domain is not "permanently" there, and Article VII will not apply to it.

From the foregoing it will be noted that one must needs distinguish between those cases, on the one hand, which involve works impermanently or retrievably in the public domain, absent certain performable formalities, such as registration, and those cases, on the other hand, wherein the works are permanently or irretrievably in the public domain because the copyrights to the works have run out or because, as under a Copyright Act such as our own, the works have been authorizedly published with no notices of copyright thereon or only with fatally defective ones.

Article IX

The import of Article IX is shown by the asking and answering of the following critical question: even though the Convention has been ratified by several states, including our own, has it necessarily become effective in those states? Not necessarily. The instant article plainly provides that the Convention shall not come into force unless and until the instruments of ratification or acceptance by, or accession of, at least twelve states, including at least four non-Berne states, have been duly deposited and a further waiting period of three months has elapsed. Moreover, the instruments adverted to are to be deposited with the Director-General of UNESCO. The significance of the requirement that a minimum number (4) of the adherent states be those not parties to the Berne system is found, I believe, in the underlying purpose that the Universal Copyright Convention shall function as something of a bridge between the conflicting (and possibly competing) bodies of copyright law exemplified by Berne and by the so-called American, including our Domestic Act.

Article X

Article X is designed to show that the Convention is not self-executing. This article makes unmistakably clear that the draftsmen intended something more than mere ratification before the Convention would be considered efficacious in any ostensibly contracting state. The plus factor requires that the contracting state conform its domestic law so as to provide the minima of protection accorded by the Convention to so-called foreign works in that particular state. Although the principle of national treatment underlies the Convention, it provides for certain basic rights which each contracting state must grant to foreign works.

Article XV

Article XV means that no private disputant or aggrieved individual under the Convention may submit his dispute or grievance to the International Court of Justice. This article provides a juridic procedure for the resolution of disputes between two or more sovereigns—contracting states. However, it contemplates extra-judicial good faith negotiation first, and only if such negotiation fails of settlement "shall" the states, absent other agreement, take their controversy on the meaning or application of the Convention to said International Court.

Article XX

Article XX has the distinction, of dubious value to be sure, of being the shortest article of the Convention. The instant article states, with unequivocal directness, that reservations to the Convention are impermissible. The purpose of this article is clear: no contracting state may so qualify its adherence that less than the whole of the Convention shall be binding upon it. This article forestalls emasculation of the Convention by the expedient of reservations—an expedient which, I understand, has plagued the Berne system. By operation of the article in question, no contracting state may have the benefits of the Convention without assuming all of its burdens.

PART II

THE EFFECT OF THE UNIVERSAL COPYRIGHT CONVENTION ON EXISTING MULTILATERAL AND BILATERAL ARRANGEMENTS

The Relationship between the Universal Copyright Convention and U. S. Bilateral Copyright Arrangements with Other Countries

By ROGER C. DIXON*

The relationship of the new Universal Copyright Convention to the existing United States bilateral arrangements and the effects of the Convention upon them is governed by Article XIX of the Convention. With the exception of the Berne and Inter-American Conventions, which are treated separately in Articles XVII and XVIII respectively, this Article governs the relations of the Convention to all existing multilateral and bilateral arrangements between states parties to the new Convention. Thus for the United States, which is party to multilateral agreements only with other American republics, the effect of Article XIX is limited to our bilateral treaties and arrangements. Article XIX follows a standard and time-tested principle of international law governing the relationship between new and existing international agreements encompassing the same subject matter. It provides that the Universal Convention does not abrogate any existing multilateral or bilateral conventions or arrangements in force between the states parties to the Convention but prevails in respect of any difference between the Convention and the existing arrangements.

At the present time, the United States bilateral network of arrangements relating to about thirty-five countries consists of some fifty proclamations and (in most cases) accompanying exchanges of notes. The fact that there is a greater number of proclamations than countries to which they apply is accounted for by the separate issuance of 1(e) proclamations (relating to rights in mechanical reproductions of musical compositions) in a number of instances.

These so-called bilateral arrangements are authorized by Section 9(b) of the U.S. Copyright Law which specifies that the copyright protection accorded under the Act extends to the work of a foreign author or proprietor when the foreign country of which he is a national grants to United States citizens "the benefit of copyright on substantially the same basis as to its own citizens, or . . . substantially equal to the protection secured to such foreign author" under the

*Chief, International Business Practices, Division, International Trade and Resources, U.S. Department of State, and Member of the U.S. Delegation to the UNESCO Geneva Conference, 1952.

United States law. The existence of these conditions must be proclaimed by the President. In other words, when a finding is made that a foreign country is granting national (or substantially equal) treatment to our citizens, the nationals of that country are accorded the same treatment here.

It has for a number of years been the custom to exchange diplomatic notes with the foreign country concerned simultaneously with the issuance of a proclamation. The purpose is to exchange assurances with the foreign state that the protection specified in Section 9(b) (or 1(e)) is being granted. In some few cases, the law of the foreign country has been such that this exchange of assurances has resulted in the simultaneous commencement of protection in that country of United States works. In the more usual case, however, current protection of United States works is not affected by this action. The significance of the foreign government's note is then limited to a general assurance that national treatment is granted United States proprietors.

The United States also has in effect three bilateral treaties concerned in whole or in part with reciprocal copyright protection, with China, Hungary and Thailand. Since these treaties are also based upon national treatment, no special consideration of them is necessary and it can be assumed that the considerations discussed below apply to them as well as to the proclamation arrangements.

It follows from this description of our bilateral arrangements and the fact that the basic concept of the Universal Convention is national treatment, that in most or all cases there is no conflict between them and the Convention. The super-imposing of the Convention on the existing structure will therefore lead to no great difficulties of interpretation with respect to United States copyright protection abroad.

The great advantage from the standpoint of United States copyright proprietors of the Universal Convention over the existing structure is, first, that one uniform set of principles rather than a bewildering variety of national law standards will govern the basic acquisition of foreign protection, and second, that the minima and other provisions which supplement national treatment in the Convention will significantly increase the protection now obtainable under the bilaterals and render the task of obtaining the protection considerably easier.

These benefits of the Convention may be divided into four main categories. Perhaps the most important of these is that it will eliminate the necessity of meeting many burdensome formalities and other requirements of various national laws of countries which are expected to adopt the Convention. Under the purely national treatment formula, all the requirements of a foreign law which are imposed on the local national must of course be met by the American seeking copyright protection in that country. Involved are such matters as registration of the work and deposit of copies as a condition of the copyright grant, payment of fees, requirements for obtaining the services of local attorneys, notarization,

and so forth.Involved in meeting these requirements is the necessity of becoming familiar with the local laws, regulations and court decisions of each country in which protection is desired, keeping current on changes in these laws, proper timing of the fulfillment of the requirements in relation to the time of United States publication, and the payment in the aggregate of substantial fees. The burdens entailed are quite sufficient in many cases to outweigh the advantages of seeking copyright protection.

The Universal Convention largely eliminates these burdens by providing for automatic protection in all other contracting states of works first published in the United States provided the notice requirements of Article III are met. Of equal importance, however, is the vastly increased geographical scope of protection which the Convention may be expected to provide. Many of the countries, particularly in the underdeveloped areas of the world, with which we now have our least satisfactory copyright relations and in which protection must often be foregone, have indicated an interest in the Convention and may be expected to adhere to it.

The second of these advantages of the Convention relates to the protection accorded published works. The basic copyright laws of a number of countries, including the United Kingdom and member countries of the British Commonwealth, provide protection for published works only if they are first published within those countries. Under the purely national treatment formula of our bilateral arrangements, this requirement must be met to obtain protection in those countries. The Universal Convention will assure easier and more effective protection in this regard by solving this problem in a simple and effective manner through the provisions of Article III.

The third area in which the Universal Convention will supplement protection now obtainable under the bilaterals is in the guarantee of certain minimum standards of protection. Of principal concern in this connection is Article V pertaining to translations. The provisions of this article, permitting a limitation on the exclusive right of translation, are of significance with respect to those countries which wish to expedite the availability of foreign works in their own languages. These, again, are primarily the underdeveloped countries, with which our copyright relations are presently the least satisfactory. Article V will give in many of such countries, if they adhere to the Convention, not only an increased term of protection of exclusive translation rights but the additional protection features relating to just compensation and correct translation provided for beyond the seven-year exclusive period. This would, for example, be the case in Mexico which presently provides only a three-year period of protection. In other cases, it may result in a slight reduction of the exclusive period of protection (most commonly from ten to seven), but this loss will be much more than counterbalanced by the additional protective features of the Article.

The fourth principal area in which the Convention will supplement the protection of the bilaterals is in the provision of an assurance that the protection which it provides United States works in another country will be maintained so long as the Convention is in force between the United States and that country. This in in marked contrast to the uncertainties prevailing under the bilateral system, which contains no guarantees against changes at any time in foreign laws which, though prejudicial to effective protection of United States works abroad, may be wholly, or at least technically, consistent with the principle of national treatment.

Finally, the Convention will eliminate the need for the issuance of separate 1(e) proclamations concerning the reciprocal protection of copyright controlling mechanical reproductions of musical works with respect to the countries which join the Convention with us. This change will not in itself have any effect on the basis of protection abroad of this class of United States copyrights. Proprietors of such rights in this country will continue to receive protection abroad on a national treatment basis and will benefit from such of the advantages of the Convention described above as are applicable. The elimination of this requirement so far as Convention countries are concerned can be expected, however, to broaden the geographical scope of protection of these rights.

There is, to the writer's knowledge, only one type of situation in which the Universal Convention may operate to limit national treatment and to reduce rather than strengthen the protection obtained by the bilateral route. Article IV on duration provides that a contracting state may limit the term of protection of a work to that provided by the law of the state in which the work is first published. This could mean that the protection of a work first published in this country could be limited in another country to a period of 56 or even 28 years, even though such country would grant a period of life of the author plus fifty years under national treatment. It is doubtful, however, that many countries will employ this provision.

In summary, under the provisions of Article XIX, the Universal Copyright Convention will not displace the United States bilateral arrangements but will prevail over them to the extent of any differences between it and them. There is, however, little or no conflict between these arrangements and the Convention. The Convention rather supplements the bilaterals by providing greater protection in some areas than is attained under purely national treatment and by removing the applicability of certain conditions on, or requirements for, copyright protection under foreign laws which must be met under the bilaterals. Accordingly, the chief effect of the Convention is to broaden and strengthen the protection abroad of United States works and to render the task of obtaining such protection substantially simpler and easier.

THE UNIVERSAL COPYRIGHT CONVENTION AND THE BERNE CONVENTION

By ARPAD BOGSCH*

As is well known the Universal Copyright Convention signed September 6, 1952 in Geneva was needed, not because there were no international copyright conventions but mainly because none of those existing were adhered to by a sufficient number of countries so that they could be considered as global, or nearly so, in their geographical coverage.

In fact, there were in 1952—as there are to-day—quite a number of international treaties, both bilateral and multilateral, which regulate copyright. No attempt is made here to enumerate the bilateral treaties and other bilateral arrangements.

As to multilateral Conventions the situation is as follows: *First*, there is the Convention of the International Union for the Protection of Literary and Artistic Works, which, since its first text was adopted in Berne in 1886, has been amended on several occasions. The two texts now applied between most of the member countries of the Berne Union are those which issued from the revision conferences of 1928 (Rome) and 1948 (Brussels). There are two countries, however, which are still bound by the 1908 Berlin text; and there are several countries which, through reservations to the more recent texts, are still bound, on specific points, by the texts adopted in 1886, 1896 or 1914. The Berne Union, like the Universal Copyright Convention, is open to all countries of the world, if their national legislation is in harmony with the provisions of the convention. The United States of America is not a member of the Berne Union.

Second, there are the so-called American Conventions, to which only Republics of the Western Hemisphere can adhere. The best known of them are the Buenos Aires (1910), Havana (1928), and Washington (1948) Conventions. The United States is party to the Buenos Aires Convention (1910) and to one of the minor conventions, viz. the Mexico City Convention of 1902.

Third, there is the Montevideo Convention of 1889 which is a hybrid kind in the respect that, although adopted and originally signed only by certain American countries, non-American countries might also adhere to it, but such adherence has effect only in the relations with those countries which expressly approve it. The United States is not party to this Convention.

The great number of multilateral and bilateral treaties and arrangements results in a rather complicated web of international copyright relations. It was highly desirable, therefore, that, when a new convention was added to the already

*Attorney Advisor, U. S. Copyright Office, formerly of the staff of the Copyright Division, UNESCO, and Secretary of the Geneva Conference, 1952.

existing ones, it should not only avoid further complications but should simplify, at least to some extent, the existing picture.

It was for this purpose that the Geneva Conference adopted a series of provisions to cover all conceivable situations and enacted solutions for possible conflicts between the Universal Copyright Convention and other international instruments. Thus:

Article XVII and the Appendix Declaration relating thereto deal with the Berne Union;

Article XVIII provides for the relationship between the Universal Copyright Convention and multilateral or bilateral copyright conventions or arrangements — both present and future — between two or more American Republics.

Article XIX takes care of all multilateral or bilateral conventions or arrangements not covered by the two previous articles, i.e., it takes care of the Montevideo Convention of 1889 and of those bilateral arrangements in which one contracting party is, or both contracting parties are, countries other than American Republics.

We shall deal hereafter only with Article XVII and the Appendix Declaration, both relating, as indicated, to the Berne Union.

Article XVII, paragraph 1 of the Universal Copyright Convention stipulates that:

> "This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention."

Although slightly more than half of the countries which met in Geneva to draft the Universal Copyright Convention were members of the Berne Union, over 20 countries were non-members of said Union and had no right, and no intention of modifying the provisions of the Berne Convention, which could be done only by the members of said Union at a revision conference convened and held according to the rules stipulated to this effect by Article 24 of the Berne-Brussels Convention. Similar considerations apply to the question of membership in the Berne Union. The ways and means of becoming a member of the Union or leaving the same are regulated, *inter alia,* by Articles 25 and 29 of the Berne Convention. The Universal Convention does not replace these provisions.

Although the paragraph under consideration may not have been strictly necessary from a legal viewpoint and does not pronounce any new rule with respect to relations between Berne Union members, neither does it contain anything objectionable. Its presence in the Universal Copyright Convention merely shows that some Berne Countries felt the need to emphasize that the provisions of the Berne Convention and membership in the Berne Union is an internal affair of the Berne countries.

Although the Universal Copyright Convention cannot and does not purport to modify the provisions of the Berne Convention, it is perfectly possible that a given literary or artistic work can be authored or published under such conditions that, were it not for the Appendix Declaration, both Conventions would apply to it. Both Conventions obligate, for example, a contracting state to protect the unpublished works of the nationals of another contracting state. The question thus arises whether two contracting states which are party to both conventions may apply, to such unpublished works, the Berne Convention or the Universal Copyright Convention?

The answer is given in proviso (b) of the Appendix Declaration which stipulates that:

> "The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union insofar as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention."

It goes without saying — and follows from the context in which the above proviso appears in the Universal Copyright Convention — that it is the Berne Convention which will apply to the said works (i.e., to works which *do* have, within the meaning of the Berne Convention, as country of origin a Berne Country).

To see the full impact of this provision it is necessary to recall that works which "within the meaning of the Berne Convention" have a Berne Country as country of origin are those which:

if unpublished, were authored by a national of a Berne Country (cf. Berne Convention, article 4, paragraph 1);

if published, were either first published in a Berne Country, or were simultaneously published for the first time in two Berne countries or in a Berne and a non-Berne country (cf. Berne Convention, article 4, paragraph 3). Publication within thirty days of actual first publication is considered as simultaneous publication. (See Brussels revision of the Berne Convention.)

It follows, *a contrairie,* from proviso (b) of the Appendix Declaration that if, within the meaning of the Berne Convention, a work has no Berne country as country of origin, the Universal Copyright Convention is going to be applied even by a country which is also a member of the Berne Union. If, for example, a work is authorized by a United States citizen and is unpublished, or if published, was first published only in the United States (or any other non-Berne country party to the Universal Copyright Convention) it will be protected according to the Universal Copyright Convention and not the Berne Convention even in member countries of the Berne Union.

In addition to the above examined provision which essentially was conceived to avoid possible conflicts arising from the co-existence of the Berne Convention and the Universal Copyright Convention, there is another provision, of a different kind altogether, in the Appendix Declaration. Its purport is to prevent countries which are members of the Berne Union from abandoning the Union, should they feel that "by ratifying the . . . Universal Copyright Convention (they have) adequately fulfilled (their) international duties in the field of copyright protection." (See Swiss government's answer, III Copr. Bull., UNESCO no. 2, p. 47.)

In this respect proviso (a) of the Appendix Declaration stipulates that

> "Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union."

This provision is clearly intended to deter countries from leaving the Berne Union since it threatens to outlaw works originating in a country that has deserted the Berne Union: such works would be deprived not only of the protection of the Berne Convention — which is natural, since no country can invoke a convention which it denounced — but also of the protection of the Universal Copyright Convention.

This provision, however, will find no application, until a country party to both conventions withdraws from the Berne Convention. Since January 1, 1951, the cut-off date in proviso (b) of the Appendix Declaration, no country has as yet left the Berne Union.

INTERRELATION BETWEEN THE UNIVERSAL COPYRIGHT CONVENTION AND THE PAN-AMERICAN COPYRIGHT CONVENTIONS

By HARRY G. HENN*

Contemporaneously with the development of the Berne Union, six significant multipartite copyright conventions were drafted in the Western Hemisphere: (1) Montevideo Convention, 1889; (2) Mexico City Convention, 1902; (3) Rio de Janeiro Convention, 1906; (4) Buenos Aires Convention, 1910; (5) Havana Convention, 1928; and (6) Washington Convention, 1946.

*Assistant Professor of Law, Cornell Law School, and author of "The Quest for International Copyright Protection," 39 Cornell L. Q. No. 1, p. 43 (Fall 1953).

Except for the outdated Montevideo Convention, the Pan-American Copyright Conventions are open to adherence only by Western Hemisphere republics. Thus, the nations of the Eastern Hemisphere and Canada are excluded.

The most important of the Pan-American Conventions is the Buenos Aires Convention of 1910 which was the last multipartite copyright convention ratified by the United States until the recent ratification of the Universal Copyright Convention. The only other multipartite copyright convention ratified by the United States is the Mexico City Convention which still governs (although rather ineffectively) copyright relations between the United States and El Salvador.

The United States and all of the Latin American nations, except Bolivia, Chile, Cuba, El Salvador, and Venezuela, have ratified the Buenos Aires Convention. Mexico, while ratifying, has not yet deposited its instrument of ratification.

Of the sixteen articles comprising the Buenos Aires Convention, four of the more important are:

> "Article 3. The acknowledgment of a copyright obtained in one State, in conformity with its laws, shall produce its effect of full right, in all other States without the necessity of complying with any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right.
>
> "Article 4. The copyright of a literary or artistic work includes for its author or assigns the exclusive power of disposing of the same, of publishing, assigning, translating, or authorizing its translation and reproducing it in any form whether wholly or in part.
>
> "Article 6. The authors or their assigns, citizens or domiciled foreigners, shall enjoy in the signatory countries the rights that the respective laws accord, without those rights being allowed to exceed the term of protection granted in the country of origin.
>
> "Article 7. The country of origin of a work will be deemed that of its first publication in America, and if it shall have appeared simultaneously in several of the signatory countries, that which fixes the shortest period of protection."

These articles present substantial problems of construction, *viz.* (1) Whether conditions precedent to enforcing copyright or conditions subsequent to copyright, or special formalities for securing translation rights, may still be imposed; (2) For what period, if any, must translation rights be recognized; (3) What is the status of unpublished works. Commentators have suggested various interpretations. The only two reported cases in this country, *Todamerica Musica, Ltda.* v. *Radio Corporation of America,* 171 F.2d 369 (2d Cir. 1948) and

Portuondo v. *Columbia Phonograph Co.*, 81 F. Supp. 355 (S.D.N.Y. 1937), reflect the existing contrariety of opinion.

The Universal Copyright Convention, in accordance with its preamble statement against "impairing international systems already in force," includes Article XVIII, which was drafted at the 1952 meeting of Pan-American Union copyright experts. This article, providing that the Universal Convention shall not abrogate any copyright relations in effect exclusively between two or more American Republics and that in the event of any difference of provision the most recently formulated shall prevail, is intended to preserve existing advantages to authors and their assigns under the Buenos Aires Convention and other such copyright relations.

It is very doubtful that the Buenos Aires Convention contains any provisions (excepting possibly lighter formalities) more advantageous to authors and their assigns than the Universal Convention. On the contrary, the Universal Convention appears to offer such obvious advantages as protection for unpublished works, minimum translation rights, and minimum duration of copyright. The securing of protection under both conventions is recommended wherever possible. Concurrent protection under the two conventions is available. This is in contradistinction to the provisions of the Appendix Declaration relating to Article XVII of the Universal Copyright Convention, which provides that the Universal Copyright Convention should not apply to the relationships among Berne Union members with respect to works first or simultaneously published in a Berne Union nation. As to such works, presumably only Berne Union protection would be available in Berne Union nations.

If the American work is published and copyrighted under the United States Copyright Act (containing in the proper place the minimum copyright notice: "©" accompanied by the name of the copyright proprietor and the year of securing copyright — and out of a superabundance of caution — the phrase "All rights reserved"), protection under the Universal Convention and the Buenos Aires Convention should be achieved. So long as the same nations have not ratified both conventions, the advantages of such two-fold copyrighting are obvious. Once all Buenos Aires Convention adherents have ratified the Universal Convention, however, the Buenos Aires Convention would seem not to offer any benefits not available under the Universal Convention.

PART III

THE IMPACT OF THE CONVENTION ON UNITED STATES COPYRIGHT LAW

The Universal Copyright Convention and Public Law 743

By GEORGE D. CARY*

Article X of the Universal Copyright Convention provides that a contracting state at the time its instrument of ratification is deposited, must be in a position under its domestic law, to give effect to the provisions of the Convention. The United States was the first major power to make the necessary amendments to its copyright law pursuant to this Article, and these changes are embodied in P.L. 743 approved August 31, 1954.

At the outset it should be pointed out that the modifications were kept to a bare minimum, and no attempt was made to use the amendment as a vehicle for clarifying or revising the law in other respects. The scheme of the legislation was to provide exemptions from existing requirements only as regards works produced by nationals of contracting states or to works first published in those states. Thus, as to works produced by nationals of states which do not adhere to the Universal Copyright Convention and which are first published in such states, the provisions of the copyright law which have been in existence prior to the adoption of this new legislation will continue in effect.

A cautionary note should be mentioned, namely, that the legislation does not take effect until the Universal Copyright Convention comes into effect in the United States, which will be ninety days after twelve signatories have deposited their instruments of ratification with the Director General of UNESCO.

Public Law 743, by its terms, modifies only three sections of the existing Title 17, U. S. Code, namely sections 9, 16 and 19. Since the primary modifications required by the Universal Copyright Convention have been embodied in the revised Section 9, it might be well first to discuss briefly the minor revisions made in Sections 16 and 19. Taking the latter section first, the only modification made in Section 19 consisted of the addition of the words "or the symbol '©' " to the existing section. The purpose of this was to authorize U. S. authors, composers and publishers to utilize a single notice on their works which would be acceptable both under the domestic law and under the Universal Copyright Convention. This modification, although not required by the Convention, was added as a practical matter to assist U. S. authors, composers and publishers as regards the notice provisions.

*Principal Legal Advisor, U. S. Copyright Office.

The only modification of Section 16 was the substitution of the words "first published abroad" for the words "of foreign origin" in the first proviso. Since the phrase "of foreign origin" has always been understood to refer to foreign authorship as well as foreign publication, the effect of this change is to permit an American author who first publishes his book abroad in the English language to import into the United States up to 1,500 copies of that book after ad interim copyright has been obtained. This likewise was not a requirement of the Universal Copyright Convention but was embodied in the modification to assist those U. S. authors who could not obtain a publisher in the U. S. for their work due to the limited market for the particular type of book. Prior to this amendment, foreign authors were permitted to import this number of copies and, no doubt, the Congress felt that American authors should be granted an equal privilege.

The principal changes in the present law occur in Section 9, which was amended by adding a new sub-section (c) to the existing provisions of that section. Several provisions of existing law are rendered inapplicable to works by nationals of Universal Copyright Convention member states, and to works first published in those states, if the form of notice required by the Universal Copyright Convention appears on the works at the time of first publication. In short, if the symbol "©," accompanied by the name of the copyright proprietor and the year of first publication appears on the work in such manner and location as to give reasonable notice of claim to copyright, the formality requirements of the U. S. law are waived. If this notice does not appear, the formalities must be met.

The five exemptions listed in the new law are discussed seriatum. In this connection, however, it should be pointed out that these exemptions do not apply to works by U. S. authors, to those of a foreign national who is domiciled in the United States at the time of first publication, or to works first published in the United States.

1. Section 1 (e) of the existing law provides that mechanical reproduction rights are not extended to foreign nationals unless the country of which the national is a citizen grants similar right to U. S. authors, the finding of which fact requires a Presidential Proclamation. Since the basic concept of the Universal Copyright Convention is national treatment, it was necessary to remove this requirement for all member countries. Note, however, that the notice-of-use provision remains unaffected.

2. The second exemption, relating to Section 13, makes it unnecessary for foreign authors to deposit copies of their works in the U. S. Copyright Office for registration. Since registration is a formality which most Europeans consider to be related to the acquisition of copyright, the removal of this requirement was deemed necessary to meet the terms of Article III of the Universal Copyright Convention.

It should be noted, however, that this exemption relates only to the first sentence of Section 13. Thus, it will continue to be necessary for a foreign national to register his claim to copyright as a condition precedent to bringing an infringement action in U. S. courts.

3. This exemption relates primarily to the much-discussed manufacturing clause provisions of Section 16. No longer will it be necessary for a work in the English language, first published abroad, to be manufactured in the United States in order to achieve full-term copyright protection. The two enforcement provisions of the manufacturing clause, namely, the requirement of an affidavit of manufacture (Section 17) and the penalty for filing a false affidavit (Section 18) are also rendered inapplicable. In addition, the power of the Register of Copyrights to take action which may void a copyright is also waived (Section 14).

4. The removal of the manufacturing requirements naturally required a nullification of the import restrictions against books and periodicals not manufactured in the United States, and therefore, the provision of Section 107 relating to this prohibition is declared inapplicable. The significance of this exemption is that works first published in contracting countries in the English language may be imported into the United States in unlimited quantity and enjoy full-term copyright protection. In short, the ad interim route will no longer be necessary for such works.

5. The strict requirements of Section 19 and 20, relating to the manner and location of the copyright notice do not apply to Universal Copyright Convention works. However, as indicated above, the Universal Copyright Convention form of notice, which is considerably less stringent than the requirements of the U. S. law, is a condition precedent to the waiver of all the foregoing formalities.

The U. S. copyright law contains other formalities which are not specifically waived by the new amended Section 9(c), such as, for example, the requirement for filing notices of use in connection with mechanical reproductions, the recording of assignments in the Copyright Office, and the necessity for making renewal registrations. Therefore, these formalities, not being conditions of copyright and not being waived by law, continue in effect.

One final provision deserves brief mention. At the time the new law takes effect, any ad interim copyright of a Universal Copyright Convention national is automatically extended to the full 28-year term of protection without any further formalities, such as manufacture in the U. S. and registration of the U. S. edition.

The Copyright Society of the U.S.A.

TRANSLATION SERVICE

Dear Subscriber:

The Copyright Society of the U.S.A. is inaugurating a special service of supplying to subscribers English translations or summaries of articles, reports, etc., on copyright subjects of current interest published in foreign languages. Among the kinds of material that may be supplied are translations of articles from "Le Droit d'Auteur" (the official monthly publication of the Berne Union) on current developments in foreign countries and in the international field, translations of treatises from other foreign publications, translations of official reports and documents, and English summaries of lengthy articles and draft laws. The translations are furnished to us by the Copyright Office in Washington.

Translations of various material aggregating about 12,000 to 15,000 words (about 30 single-spaced typewritten pages) will be furnished to subscribers each month during the year 1955. The subscription rate for the first year is $100.00. It is hoped that if sufficient subscriptions are received this amount may be reduced in subsequent years.

This translation service should be of value to you as one interested in copyright, especially at this time, by reason of the fact that the United States and the principal countries of the world have already signed the Universal Copyright Convention.

In addition, the Rome Draft Convention on "Neighboring Rights" (Droits Voisins) involving performing rights, recordings, broadcasts, and possibly motion pictures is also under active consideration in other countries and you may wish to be kept informed in English translations of articles and comments currently appearing on these important subjects in foreign periodicals and documents.

We will be pleased to have you among our subscribers to this translation service. For your convenience you may sign and mail the subjoined subscription blank with remittance.

Very truly yours,

SAMUEL W. TANNENBAUM
President

The undersigned hereby subscribes to the English translation service on copyright subjects for one year.....$100.00

Check enclosed payable to:

THE COPYRIGHT SOCIETY OF THE U.S.A.
c/o PAUL J. SHERMAN, *Treas.*
575 Madison Avenue
New York, N. Y.

Name: .....

Address: .....

City:..... Zone:..... State:.....

Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 CANAL STREET
New York 13, N. Y.

Return Postage Guaranteed

Sec. 34.66, P.L.&R.
U. S. POSTAGE
PAID
New York, N. Y.
Permit No. 5627

BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

Published at
NEW YORK UNIVERSITY LAW CENTER

VOL. 2, NO. 5 APRIL, 1955

Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

Published at New York University Law Center
40 Washington Sq. South, New York 11, N. Y.

Printed and distributed by Fred B. Rothman & Co.
200 Canal St., New York 13, N. Y.

CONTENTS

THE BULLETIN of The Copyright Society of the U.S.A. is published 6 times a year by The Society at the Law Center of New York University, 40 Washington Square South, New York 11, New York: Samuel W. Tannenbaum, *President;* Joseph A. McDonald, Louis E. Swarts, *Vice-Presidents;* Paul J. Sherman, *Treasurer;* Theodore R. Kupferman, *Secretary;* Theodore R. Jackson, *Assistant Treasurer;* Charles B. Seton, *Assistant Secretary.* Annual subscription: $10.

All communications concerning the contents of *The Bulletin* should be addressed to the Chairman of the Editorial Board, at the Law Center of New York University, 40 Washington Sq. So., New York 11, N. Y.

Business correspondence regarding subscriptions, bills, etc., should be addressed to the distributor, Fred B. Rothman & Co., 200 Canal Street, New York 13, N. Y.

CITE: 2 BULL. CR. Soc. page no. .....(1955).

PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

1. UNITED STATES OF AMERICA AND TERRITORIES

187. *U. S. Congress. Senate.*

S. 125. A bill for the relief of the State of Illinois. Introduced by Mr. Dirksen in the Senate of the United States Jan. 6, 1955.

2 *p.* (*84th Cong., 1st Sess.*)

Bill to require the Register of Copyrights to register, in the name of the State of Illinois, an emblematic design consisting of a profile of the head of Abraham Lincoln superimposed upon an outline map of the the State of Illinois, surmounted by the word "Illinois" and overlaid by the caption, "Land of Lincoln."

188. *U. S. Congress. Senate.*

S. 1254. A bill creating a federal commission to study the copyright laws and to make recommendations for their revision. Introduced by Sen. Langer Mar. 2, 1955.

5 *p.* (*84th Cong., 1st Sess.*)

Companion bill to H. R. 2677 (Item 193, *infra*) introduced by Mr. Thompson of New Jersey on Jan. 20, 1955. On March 8, 1955 Senator Langer asked for and received unanimous consent that "further consideration of the bill be indefinitely postponed."

189. *U. S. Congress. Senate.*

S. 590. A bill relating to the rendition of musical compositions on coin-operated machines. Introduced by Sen. Kilgore (for himself, Sen. Kefauver, Sen. Morse, Sen. Langer, Sen. Barrett, Sen. Humphrey, Sen. O'Mahoney, Sen. Johnston of South Carolina, Sen. Payne, and Sen. Neely).

1 *p.* (*84th Cong., 1st Sess.*)

Proposal to amend section 1(e) of the Copyright Act by striking out the exemption providing that "the reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs."

190. *U. S. Congress. Senate.*

Kilgore, Harley M.

Rendition of musical compositions on coin-operated machines.

Congressional Record, vol. 101, *no.* 10 (*Jan.* 21, 1955), *pp.* 441-442.

Remarks made by Senator Kilgore upon introducing S. 590 which would eliminate the so-called "jukebox" exemption from sec. 1(e) of the Copyright Act. See Item 189, *supra.*

191. *U. S. Congress. House.*

H. R. 781. A bill to amend title 17 of the United States Code entitled "Copyrights" to provide for a statute of limitations with respect to civil actions. Introduced by Mr. Keating (by request) on Jan. 5, 1955.

2 *p.* (*84th Cong., 1st Sess.*)

Bill to amend Sec. 115 of the U. S. C., Title 17, by requiring a civil action to be commenced within three years after the claim accrued. This is a reintroduction of H. R. 6225 of the 83d Cong., 2d Sess. See 1 BULL. CR. SOC. 29 Item 87 (1953).

192. *U. S. Congress. House.*

H.R. 782. A bill to amend title 17 of the United States Code entitled "Copyrights" with respect to provisions governing notice of copyright. Introduced by Mr. Keating (by request) Jan. 5, 1955.

4 *p.* (*84th Cong., 1st Sess.*)

The bill would liberalize the statutory requirements as to contents and position of the copyright notice. Identical to H.R. 6608 of the 83d Cong., 2d Sess. See 1 BULL. CR. SOC. 30 Item 88 (1953).

193. *U. S. Congress. House.*

H.R. 2677. A bill creating a Federal commission to study the copyright laws and to make recommendations for their revision. Introduced by Mr. Thompson of New Jersey, Jan. 20, 1955.

5 *p.* (*84th Cong., 1st Sess.*)

The proposed Federal commission would be composed of thirteen members, seven appointed by the President and three each appointed from the Senate and the House of Representatives. The commission would be empowered to hold hearings and would be required to report on its findings and recommendations to the President and Congress "within thirty days after the commencement of the first regular session of Congress convened more than one year after the date of the enactment of this Act."

194. *U. S. Congress. House.*

Philbin, Philip J.

Injustice in the music business.

Congressional Record, vol. 101, *no.* 43 (*Mar.* 10, 1955), *pp.* 2239-2241.

During a speech on the House floor on the recently introduced copyright revision and jukebox bills, Congressman Philbin stated: "it is a paramount obligation of the Congress to move speedily along a broad front to correct and to extirpate the manifest evils that have crept into the music industry over a period of years and which are so obviously discouraging incentive, impeding creative impulses and working serious injustice upon a group of talented people, who . . . write the great songs that inspire, relax and entertain our people and that are heard around the world."

195. *U. S. Congress. House.*

Thompson, Frank, Jr.

Federal commission to study copyright laws proposed. Extension of remarks in the House of Representatives, Thursday, January 20, 1955.

Congressional Record, vol. 101, *no.* 9 (*Jan.* 20, 1955), *pp.* A-256-A-258.

In presenting a bill to provide for a Presidential Commission to study the copyright law and propose recommendations for revision, the Congressman sponsoring the bill states his purpose for introducing it and has read into the record three editorials from *The Billboard.* See Item, 193, *supra.*

196. *U. S. Congress. House.*

Thompson, Frank, Jr.

Short legislative history of attempts to amend the copyright laws. Extension of remarks in the House of Representatives, Thursday, January 20, 1955.

Congressional Record, vol. 101, *no.* 9 (*Jan.* 20, 1955), pp. A262-A263.

This extension of remarks contains a reproduction of an article by Ben Atlas entitled "Jukebox Legislative History—Attempts to End Copyright Exemptions date back to 1926" which appeared in the December 4, 1954 issue of *The Billboard.*

197. *U. S. Congress. House.*

Thompson, Frank, Jr.

Interest grows in copyright factfinding commission.

Congressional Record, vol. 101, *no.* 43 (*Mar.* 10, 1955), *pp.* A1652-1654.

Congressman Thompson has an editorial from the March 12, 1955 issue of *The Billboard* containing the text of a letter from Prof. Derenberg inserted in the Record together with a copy of his reply.

198. *U. S. Copyright Office.*

List of some code provisions other than Title 17 dealing with or related to copyright.

Washington, D.C., Copyright Office, Feb. 1955. 11 *p.* (*multilith.*) (*Circular No.* 86).

List of United States Code and Code of Federal Regulations sections other than those in U. S. C., Title 17 which deal either directly or indirectly with the subject of copyright.

199. *U. S. Dept. of State. Office of the Legal Adviser.*

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 January* 20, 1955).

10 *p.* (*Multilithed*).

A current list of multilateral and bilateral agreements in force in the United States dealing with copyright.

200. *U. S. President,* 1953- (*Eisenhower*).

Proclamation du Président des Etats-Unis d'Amérique concernant l'application aux citoyens de l'Inde des dispositions du Titre 17 du Code des Etats-Unis intitulé "Copyrights" (du 21 octobre 1954).

Le Droit d'Auteur, vol. 68, *no.* 2 (*Feb.* 1955), *pp.* 13-15.

A French translation of the proclamation and the exchange of notes with India, together with a listing in a footnote of several works which have been registered in the United States under the new accord.

2. FOREIGN NATIONS

201. *Berlin* (*Western Sector*). *Laws, statutes, etc.*

Bekanntmachung über die Errichtung von Sachverständigenkammern von 30 August 1954.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *p.* 525.

A special Chamber of Experts has been established to serve in an advisory capacity in the courts for literary works, musical works, pictorial art, photographs and designs.

202. *Czechoslovakia. Law, statutes, etc.*

Loi sur le droit d'auteur (du 22 décembre 1953).

Le Droit d'Auteur, vol. 67, *no.* 11 (*Nov.* 1954), *pp.* 179-183; *no.* 12 (Dec. 1954) *pp.* 198-203.

A French translation of the Czechoslovakian Copyright Law of Dec. 22, 1953.

203. *Great Britain. Parliament. House of Lords.*

A bill entitled "An act to effect amendments in the law relating to copyright necessitated by or arising out of certain International Conventions and agreements, and to create certain rights as to the public reception and reproduction of television broadcasts; and for purposes connected with the matters aforesaid."

3 & 4 Eliz. 2. *London, Her Majesty's Stationery Office, Feb.* 15, 1955. 7 *p.*

This bill is designed to make a number of changes in the existing British Copyright Law of 1911 in order to make it possible for the United Kingdom to ratify the 1948 Revision of the Bern Copyright Convention and the Universal Copyright Convention. The bill would also give the B.B.C. and I.T.A. a new television exhibiting right which would prohibit the public exhibition of visual images or sound without license for twenty-five years from the end of the year in which the broadcast was made.

204. *Monaco. Laws, statutes, etc.*

Loi portant modification de la loi no. 491, du 24 novembre 1948, sur la protection des oeuvres littéraires et artistiques (No. 512, du 17 novembre 1949).

Le Droit d'Auteur, vol. 67, *no.* 12 (*Dec.* 1954), *pp.* 197-198.

A French version of Monaco's Law of November 17, 1949 amending the Copyright Law of November 24, 1948.

205. *Monaco. Laws, statutes, etc.*

Ordonnance souveraine complétant l'article 5 de l'ordonnance souveraine no. 81, du 29 septembre 1949, relative à l'exploitation des droit d'auteur en radiodiffusion (No. 109, du 6 decembre 1949).

Le Droit d'Auteur, vol. 67, *no.* 12 (*Dec.* 1954), *p.* 198.

A French text of a Soverign order of December 6, 1949 amending article 5 of a previous order of September 1949 relative to financial settlements arising from the broadcasting of copyrighted works.

PART II.

CONVENTION, TREATIES AND PROCLAMATIONS

206. *International Copyright Union.*

Etat au *ler* janvier 1955.

Le Droit d'Auteur, vol. 68, *no.* 1 (*Jan.* 1955) *pp.* 1-4.

The annual report of the International Copyright Union listing member countries and showing the revisions of the convention ratified by each together with their reservations.

207. *Spain. Treaties.*

Convenio 27 enero, ratificado por Instrumento 1 julio 1953 (Jefatura del Estado). Santo Domingo. Convenio cultural.

Aranzadi's Repertorio Cronológico de Legislación, 1953, *item* 1589.

Article 4 of this convention between Spain and the Dominican Republic provides for a reciprocal copyright protection of Spanish authors in the Dominican Republic in accordance with domestic law and the Washington Copyright Convention of 1946, and of Dominican authors in Spain under domestic legislation and the Bern Copyright Convention as revised in 1948.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions

208. *Rogers* v. *Republic Pictures Corp.,* 99 L. ed. (Advance p. 81) Dec. 6, 1954, *rehearing denied.* See 2 BULL. CR. SOC. 7, Items 12 and 91b (1954).

209. *Warner Brother Pictures, Inc.* v. *Columbia Broadcasting System, Inc.,* N. Y. *Times,* March 29, 1955, p. 38, col. 3, *certiorari denied.* See 2 BULL. CR. SOC. 56, Item 136 (1954).

210. *Rushton* v. *Vitale,* 218 F. 2d 434 (2d Cir. Jan. 26, 1955).

Appeal from denial of a temporary injunction for infringement of copyright on a doll in the form of a chimpanzee named Zippy.

Held: Reversed and remanded for immediate entry of injunction. The trial court had held, in a memorandum opinion, that there was a triable issue of fact as to the validity of plaintiffs' copyright. After reviewing the pleadings and affidavits, Judge Clarke observed: ". . . there seems little doubt as to the validity of plaintiffs' copyright or as to its infringement. Copyright protection extends to any production of some originality and novelty, regardless of its commercial exploitation or lack of artistic merit . . . Here, moreover, mere judges can hardly risk condemning Zippy for lack of artistry and thus prove themselves false prophets to the far-flung faithful Howdy Doody audience, which seemingly adores his bizarre features and funny face. The mere fact that these were based on a live model does not deprive them of the necessary amount of originality."

Defendants' assertion that plaintiffs had waived their copyright by permitting photographs of the doll to appear in trade journals was rejected by the court. Defendants' copy not only visually resembled plaintiffs' product but also included plaintiffs' mold number and copyright notice which it could have secured only from a three-dimensional model.

The court concluded: "When a prima facie case for copyright infringement has been made, plaintiffs are entitled to a preliminary injunction without a detailed showing of danger of irreparable harm. . . . Plaintiffs' allegation that the market for their toy is seasonal and likely to be exhausted by Easter is nowhere controverted."

211. *American Visuals Corporation* v. *Holland,* 104 U. S. P. Q. 222 (2d Cir. Feb. 2, 1955).

Appeal from denial of temporary injunction for infringement of copyright, unfair competition and breach of contract.

Held: Per Curiam, affirmed. "The granting or refusing of an injunction pendente lite is ordinarily a discretionary matter for the district judge, whose decision will not be reversed unless an abuse of discretion is apparent . . . We see no such abuse in the case at bar."

Plaintiff's pamphlet, "Killer in the Streets" and defendant's pamphlet, "It Can't Happen To Us" deal with the same subject but ". . . the denial of a temporary injunction was proper, because the affidavits raise

a question as to the validity of plaintiff's copyright on the ground that its pamphlet, under a different title, had been dedicated to the public by prior publication."

The court indicated plaintiff had failed to allege irreparable injury or that money damages would not be an adequate remedy. See 2 BULL. CR. SOC. 38 Item 92 (1954).

212. *Biltmore Music Corporation and Herbert Brownell, Jr., Attorney General of the United States, as successor to the Alien Property Custodian,* v. *Robert W. Kittinger, unreported,* (S. D. Cal., Oct. 15, 1954).

Action for infringement of copyright. The composition "Du Kannst Nicht Treu Sein" was written in Germany by German nationals prior to 1935. The German copyright proprietor registered the work, which included music and lyrics, copyright in the United States in 1935. Some time between 1935 and 1938, the German proprietor authorized the manufacture and sale of phonograph records in Germany.

Beginning in 1938, RCA made and sold in the USA phonograph records pressed from a master made by the German recording company. RCA had no license to manufacture or sell the records in the USA but proceeded to do so believing the composition was free from mechanical reproduction restrictions in the USA.

A, a musician who had composed a "new arrangement" of "Du Kannst Nicht Treu Sein" was retained under a written employment agreement in 1947 by the defendant, acting as an officer of Corporation X, to make a master recording of said "new arrangement." A made a recording without lyrics as an organ solo. Commencing in October, 1947, defendant's corporation (Corporation X) distributed this recording under the title "You Can't Be True". No permission was sought or obtained, and no royalties were paid.

A few months after performing the above service for Corporation X, A made a new master recording of his "new arrangement" for Corporation Y, a competitor of Corporation X.

B, an officer of Corporation Y, and C, a lyricist, collaborated in writing English lyrics to A's "new arrangement". These lyrics were a rough translation of the original German. Thereafter A assigned to B, in writing, A's rights in his "new arrangement".

In Feburary 1948, the German proprietor's US copyright in his composition was seized by the USA and vested in the Alien Property Custodian and title was then transferred to the Attorney General of the United States.

In March 1948, the Office of the Alien Property Custodian granted Corporation Z (which was controlled by B) the right to publish sheet music and to make and issue recordings of the German composition in the form of A's "new arrangement" coupled with B and C's English lyrics. Thereafter, by mesne assignments, Corporation Z received plaintiff's right to make recordings and B orally assigned to plaintiff his rights obtained from A.

Plaintiff then filed a Notice of Use in the Copyright Office under Section 1 (e). [The facts at hand do not indicate for what composition the Notice of Use was filed but it was evidently filed for the work consisting of A's "new arrangement" and B and C's lyrics.] Shortly thereafter, in March 1948, plaintiff published sheet music of the composition consisting of A's "new arrangement" and B and C's English lyrics under the title "You Can't Be True, Dear". All subsequent statutory formalities were followed by plaintiff, and in April 1948 plaintiff received U. S. copyright registration for the above composition as a published work.

Plaintiff licensed many firms to make recordings of "You Can't Be True, Dear". Defendant continued to make its recordings of A's "new arrangement" made and sold as an organ solo under the title "You Can't Be True". Plaintiff sued defendant for copyright infringement.

Held: Based upon the facts (certain of which, not being germane to the decision, have been omitted here), Judge Byrne held, without stating his reasons: (1) that the failure of plaintiff, Attorney General and his predecessors in title to the copyright of "Du Kannst Nicht Treu Sein" to comply with the provisions of Section 1(e), 17 USC, precluded recovery against defendant for his mechanical reproduction of said musical composition; (2) that defendant's manufacture and sale of phonograph records of a "new arrangement" of the musical composition entitled " Du Kannst Nicht Treu Sein" and named "You Can't Be True" had been under a valid license granted by the composer of said "new arrangement"; (3) that the failure of plaintiff, Biltmore Music Corporation's predecessor in title to the copyright on said "new arrangement" to comply with the provisions of Section 1(e), 17 USC, precluded plaintiff Biltmore Music Corporation from any recovery against defendant for the mechanical reproduction of said "new arrangement"; and (4) that there had been a publication of said "new arrangement" prior to plaintiff

Biltmore Music Corporation securing its copyright thereon in the form of A's "new arrangement" coupled with the lyrics of B and C, which composition had been registered for copyright by plaintiff as a published musical work so that said copyright was invalid.

A. S. K.

COMMENT: This decision has been the subject of considerable discussion among many copyright attorneys. The judgment does not cite any precedents, and does not make clear whether there was a main ground upon which the complaint was dismissed.

The judgment has provoked unresolved questions along the following lines:

1. Does it hold that failure of the German copyright proprietor to file a notice of user in the U. S. Copyright Office at the time that phonograph records were manufactured and sold only in Germany, constitutes a complete defense in this copyright infringement action?

2. If the Attorney General, in February, 1948 or subsequently, had filed a notice of user in the U. S. Copyright Office, would this have been timely filing to preclude the successful defense of non-compliance with Section 1(e)?

3. What right would plaintiff have had to file a notice of user with respect to the copyright of "Du Kannst Nicht Treu Sein?" Is it not true that plaintiff has never been proprietor of that copyright?

4. Is this not a direct holding that the manufacture and sale of phonograph records of a musical composition (viz: the "new arrangement") prior to the date that there had been any publication of a writing thereof with notice pursuant to the U. S. Copyright Law, and prior to the date that the musical composition had been registered for copyright as an unpublished composition, constitute publication sufficient to place such musical composition in the public domain?

CHARLES B. SETON

213. *Cliff May and Christian E. Choate, et al.* v. *William M. Bray, et al., unreported,* (S.D. Cal., Jan. 11, 1955).

Action for injunction, damages and other relief for infringement of copyright, unfair competition and quasi-contractual relief. Plaintiff M, a contractor enjoying a national reputation for designs of so-called Cliff May Ranch Houses, and co-plaintiff C, an architect who had prepared and copyrighted plans and drawings for small, low cost ranch

houses, had valid and subsisting U. S. copyrights in certain architectural drawings. Defendants' architectural drawings were substantially copies of plaintiffs' copyrighted works.

Held: Defendants were guilty of copyright infringement and unfair competition as a result of having erected houses so similar to plaintiffs' as to mislead the public into believing that defendants' houses were genuine Cliff May Ranch Houses.

Judge Byrne decreed that defendants were to be perpetually enjoined from (1) infringing plaintiffs' copyrighted architectural drawings by any unauthorized printing, reprinting, publishing, copying or vending of plaintiffs' architectural drawings; (2) infringing plaintiffs' architectural drawings by printing, etc. copies of plaintiffs' drawings prepared by defendant Bray; (3) using plaintiffs' drawings in the construction of houses, unless licensed by plaintiffs; (4) using defendant Bray's copies of plaintiffs' copyrighted drawings in the construction of houses; (5)constructing houses which substantially imitate plaintiffs' unique combination of designs, features, materials, methods and technique as said combination was set forth in plaintiff's architectural drawings which were attached as exhibits to the complaint; and (6) constructing any houses similar in appearance, style and character to those of genuine "Cliff May Ranch Houses".

Defendants were further ordered to deliver up to the court for cancellation and destruction all copies of the drawings, tracings, ozalid prints and blue prints prepared by defendant Bray.

A. S. K.

a. Tax Court

214. *Cory* v. *Commissioner of Internal Revenue,* 104 *U. S. P. Q.* 209 (U. S. Tax Ct., Jan. 31, 1955).

Suit upon determination of deficiency by the Commissioner for the year 1944, involving an amount derived from the sale of the book "Persons and Places". Questions presented were (1) when was gift of the manuscript made; and (2) whether the amount received should be classified as ordinary income or as a capital gain.

Petitioner Cory studied under and worked for George Santayana, who made Cory a gift of his autobiography in manuscript form. Petitioner arranged with Scribner's for publication in book form. He claims that this constituted a sale; respondent claims it is a license and the royalties received under the license are ordinary income.

The court pointed out that petitioner had adopted an inconsistent position by first alleging the gift had been completed in 1941 and later contending the gift was not completed until 1945. By thus setting up the gift in 1945, the income for 1944 would be Santayana's and the amount received by Cory would have been a gift.

Held (1): Petitioner had received the manuscript as a gift prior to November 1942. "The evidence, in our opinion, shows that Santayana intended to make a gift, and thought he had made a gift, of the work to petitioner, and further, that petitioner likewise so regarded the transaction . . . There was a donor competent to make the gift and a donee capable of taking the gift. And in spite of obstacles which were quite difficult to surmount, there was an effective delivery. Certainly no one would question the acceptance by petitioner."

Proceeding to the question as to whether there was a sale or license the court observed: "Exclusive of serial rights [which were exercised by petitioner], however, we still do not think there was a complete or outright disposition by petitioner to Scribner's of his entire remaining interest or interests in the United States and Canadian publishing rights, but rather that the grant was of the right to use or exercise those rights in the United States and Canada for the purpose of exploiting the literary work 'Persons and Places' for profit on behalf of both Scribner's and petitioner . . . (T)here was no personal obligation or liability ever on the part of Scribner's to pay any sum to petitioner if after its publishing of the work, it could make no sales and there was an absence of profits from its publication in other than book form. Scribner's could assign its rights under the contract, but such an assignment would necessarily carry with it the obligations to petitioner as well, and there was no provision whereby, as the result of the payments prescribed or otherwise, petitioner's retained interest or right to participate in the sales proceeds and profits would ever become the property of Scribner's or its assignee."

Held (2): ". . . In our opinion, essential elements of a sale were lacking, and we conclude and hold that the transaction between petitioner and Scribner's for the publication of 'Persons and Places' was a license, not a sale."

". . . Having concluded that the transaction between petitioner and Scribner's for the publication of the literary work 'Persons and Places' was a license, not a sale, it follows that the amounts received and realized by petitioner during the taxable year from such publication constituted ordinary income and not capital gains and we so hold."

The court noted that the problem would not arise in the current tax year due to the amendment of Section 117 (a) (1) (c) of the Internal Revenue Code of 1939 and section 1221(3) and 1235 of the Internal Revenue Code of 1954.

2. State Court Decisions

215. *Schisgall and Sices* v. *Fairchild Publications, Inc.* 137 N. Y. S. 2d 312, 104 U. S. P. Q. 153 (Sup. Ct. Jan. 13, 1955).

Motion by defendant attacking various phases of the complaint. In their complaint, plaintiffs allege as follows: They are authors of a book, "Seventh Avenue," which was to be published by defendant. Defendant printed and distributed 5,000 copies of the book; however, on the date of publication it notified the trade it was withdrawing the book and directed reviewers not to review it. Defendant had received orders for the books but refused to promote the sale of the book or to make copies available for sale. Plaintiffs have received no royalties or an accounting for any books sold and they have been prevented from other remuneration for reasonably anticipated sales of books and theatrical, screen and broadcasting rights.

A number of causes of action are alleged by plaintiffs including non-performance of the contract, quantum meruit, conversion of type-plates etc., destruction of plaintiffs' rights in the copyright and willfully and maliciously refusing to sell the book causing injury to plaintiffs' reputations.

The court considered in detail the motion to strike the fourth cause of action, which alleged the following: "Defendant has interfered with and destroyed plaintiffs' property interest in said copyright, plates or type, bound copies of said book, and said other property in literary and other form, and plaintiffs' interest in the exploitation thereof, and has prevented plaintiffs" from procuring publication of the manuscript and selling cinema, radio and other rights. With regard to this cause of action, the court said: "The determinative question is whether, on the face of the complaint, the plaintiffs are restricted to recovery for damage arising by reason of breach by the defendant as their contracting party, or whether, as pleaded, the acts of the defendant go beyond liability for mere breach of contract and give rise to tort liability as well."

After pointing out that generally an intentional breach of contract does not create a tort liability, the intentional infliction of injury with-

out just cause makes out a prima facie tort. It posed the problem: ". . . if there is a breach of duty distinct from the breach of contract — although the genesis of that duty was the contractual undertaking — tort liability may arise."

"The defendant argues that the plaintiffs have no legal interest or moral rights in their literary product, for the contract gave to the defendant the entire property — the copyright and the right to print, publish and sell. However, as I read the contract, even though there be an absolute assignment, there was such an assignment on the basis of the business to be done — such a transfer of rights and property to the defendant as did not denude the plaintiffs of a certain right and interest, and that that arrangement resulted in that kind of relationship that fair dealing was required between the parties. It is not the express contractual reservation of rights per se on which the plaintiffs rely, but upon the defendant's breach of the special relationship thus created — plus the defendant's intentional purpose to destroy."

The court then stated that, as a matter of law, there is an implied promise by the defendant that it would do its part to make the book and copyright productive and the allegations of defendant's purpose to completely frustrate the test of public acceptance is beyond mere breach of contract.

The court concluded: "As I read the fourth cause of action as pleaded, the acts complained of here have been alleged to have been done in pursuance of the single purpose to abort or destroy, and to the exclusion of legitimate purpose to advance the defendant's interests. If the defendant acted merely as a contracting party (at legal liberty perhaps to breach its agreement upon payment of damage), that is one thing. But if the defendant went further, and acted with intent to inflict injury beyond that contemplated as a result of the mere breach of contract, I would hold that the contract does not grant the defaulter immunity from tort liability. Even though the act would not be actionable in tort, if the defendant 'elected' to breach its contract in furtherance of its legitimate business interests, it is tortious (as well as a breach of contract) if there be no self-interest involved, but rather the sole purpose be that of injury to another."

"For such conduct, as alleged, I hold that the defendant should be put to denial or explanation. I can come to no other conclusion when I bear in mind the growing tendency of the law to enforce — as near as may be — proper business ethics and fair dealing in any number of

varying spheres of commercial activity . . . and when I recall the ancient policy of the law to find appropriate redress or to create a remedy when justice demands it."

215a. *Stone, Adm'x* v. *Hutchison,* 272 S. W. 2d 424 (Tex. Civ. App. Sept. 24, 1954).

Judgment for appellee was rendered in an action for conversion of his copyright interest in a song, "I Can't Help It." Appellee had written the words and hired a composer to write the music. He complied with the Copyright Act and thereafter sent a copy of the song to Hank Williams at the wrong address. Later Hank Williams recorded a song with the same title but different lyrics and music. The copyright in that song was in the name of Acuff-Rose Publications. Suit was brought against Hank Williams and his administratrix was substituted following his death.

Appellee's original petition claimed infringement of his statutory copyright. At the trial he claimed infringement of his common law copyright. Appellant filled a plea to the jurisdiction in the trial court but was overruled.

Held: Reversed and dismissed. "Title 28, Sec. 1338(a), U. S. C. A., expressly provides: 'The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to *** copyrights ***. Such jurisdiction shall be exclusive of the courts of the states in *** copyright cases.'"

There is no merit to the claim of appellee that his suit is based on common law copyright. At the trial he pleaded and proved his statutory copyright.

The court continued: "Moreover we think that by applying for and receiving a statutory copyright pursuant to the above cited Act of Congress appellee in effect elected to stand on his statutory copyright and may not now seek to assert his rights under a common law copyright."

B. DECISIONS AND RULINGS FROM OTHER NATIONS

Great Britain

216. *Associated Broadcasting Co. Ltd.* v. *Composers, Authors and Publishers Association of Canada, Ltd.,* 1954 All. Eng. Rep. 708 (Privy Council, Dec. 1, 1954).

Appellants provided music to subscribers by relaying music from records over telephone lines. Performance rights in the music were vested in respondents who alleged that appellants were infringing their copyrights. Under Sec. 10 (B) (6) (a) of the Copyright Amendment Act of 1931, fees for public performances by radio or gramophone in any place other than a theatre ordinarily or regularly used for entertainments may not be charged against the owner or user of the radio or gramophone, but are to be collected in advance from the broadcasting station or gramophone manufacturers at a rate fixed by the Copyright Appeal Board. If these fees, payable in advance, have been tendered or paid, a copyright infringement action by a performing right society is barred. The case comes up on an appeal by special leave from an order of the Court of Appeal for Ontario dated Mar. 5, 1952, reversing an order of the Supreme Court of Ontario, dated Jan. 29, 1951.

Held: The popular or commercial meaning of "gramophone" does not include an undefined length of electrical wiring laid by an independant authority under powers of Parliament. Consequently, public performance by means of a telephone line is not a public performance by means of a gramophone within the meaning of Section 10 B (6) (a) of the Canadian Copyright Act as amended.

Canada

217. *Maple Leaf Broadcasting Co. Ltd.* v. *Composers, Authors and Publishers Association of Canada Ltd.,* 21 C. P. R. 45 (Sup. Ct. of Can. Oct. 5, 1954).

Test case to determine the jurisdiction of the Canadian Copyright Appeal Board with respect to its right to fix a tariff based upon a percentage of revenue and granting a right to a performing right society to inspect the books of a music user.

Held: The power to inspect was reasonably necessary to ascertain and verify the revenue on which the percentage was based.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. Foreign Publications

(a) In English

218. H. L. Pinner.

World Copyright. The Protection of Intellectual and Industrial Property Throughout the World, a legal encyclopedia. Vol. II. Founded by H. L. Pinner and the late P. M. Dienstag.

Leyden, A. W. Sijthoff, 1954. 856 *p.*

This is the second volume of the encyclopedia. For a notice of Vol. I in this series see I BULL. CR. Soc. *item no.* 27. The first volume covered subjects A-Ci; the present one continues with C1-I. The second volume includes comparative studies of such important items as composite works, compulsory licensing, conflict of laws, principles of copyright, dramatic works, droit moral, idea protection and many others. It is expected that further volumes will become available in the near future.

(b) In Dutch

219. Douwes, J. M. A. M.

De Handhaving van de Auteurswet in Nederland met betrekking tot het uitvoeren van muziek in het openbaar.

Arnhem, S. Gouda Quint - D. Brouwer & Zoon, 1953. 117 *p.*

A short treatise by an official of the Bureau voor Muziekauteursrecht in the Netherlands on the enforcement of author's rights in that country. The writer emphasizes the right of public performance of music; the effect of each revision of the Dutch copyright law on this right together with an appendix which includes the text of pertinent provisions of law, administrative regulations, notes and the Bern Copyright Convention.

(c) In French

220. Saporta, Marcel

La Conférence intergouvernementale de Genève (18 Aôut-6 Septembre 1952) et la convention universelle du droit d'auteur de l'U.N. E.S.C.O. (6 Septembre 1952).

Paris, Les Éditions Inter-Nationales, 1952. 70 *p.*

Discussion of the history and development of the Intergovernmental Conference on Copyright which met in Geneva in 1952 under the sponsorship of UNESCO. Included is a reproduction of the French text of the Universal Copyright Convention signed on September 6, 1952.

(d) In German

221. Haensel, Carl

Leistungsschutz oder Normalvertrag. Bemerkungen zur Urheberrechtsreform.

Hamburg, Verlag Hans Bredow-Institut, 1954. 151 *p.* (*Wissenschaftliche Schriftenreihe für Rundfunk und Fernsehen. Band* 2).

A study of the evolution of the concept of "Leistungsschutz" (production rights) from the time of Josef Kohler, through the revisions of the Bern Copyright Convention down to the Draft International Convention for the Protection of Performing Artists, Phonograph Record Manufacturers and Radio Broadcasting Organizations.

222. Hubmann, Heinrich.

Das Recht des schöpferischen Geistes; eine philosophisch-juristische Betrachtung zur Urheberrechtsreform.

Berlin, W. De Gruyter, 1954. 189 *p.*

Study of the protection given authors in their creative works and in the performance or exhibition of such works.

223. Peter, Wilhelm

Das Österreichische Urheberrecht samt den Bestimmungen über die Verwertungsgesellschaften und die zwischenstaatlichen Urheberrechtsverhältnisse Österreichs.

Wien, Manzsche Verlags- und Universitätsbuchhandlung, 1954, 694 *p.*

An authoritative new commentary on the Austrian Copyright Law.

This is the most thorough and up-to-date treatise on the Austrian Copyright Law of 1936, as amended.

224. Plüss, Harald

Die Freien Werknutzungen im Urheberrecht der Schweiz und Deutschlands.

Zürich, Buchdruckerei A. Schildknecht, 1952. 61 *p.* (*dissertation.*)

Doctoral dissertation on the fair use of literary, musical, photographic and artistic works in both Germany and Switzerland.

225. Schramm, Carl

Grundlagenforschung auf dem Gebiete des Gewerblichen Rechtsschutzes und Urheberrechtes.

Berlin, Carl Heymanns Verlag, 1954. 431 *p.*

An analysis of the basic principles of industrial and intellectual property.

226. Schulze, Erich

Recht und Unrecht. Eine Studie zur Urheberrechtsreform mit einer vergleichenden Darstellung der Textentwürfe (einschliesslich des durch das Bundesjustizministerium veröffentlichten Referentenentwurfs) für ein neues deutsches Urheberrechtsgesetz, ergänzt durch eigene Vorschläge des Verfassers.

München, C. H. Beck'sche Verlagsbuchhandlung, 1954. 268 *p.*

The author, Director-General of GEMA, reproduces the text of each article of the draft revision of the German Copyright Law, with critical comments. In a series of appendices he arranges the provisions of previous draft bills together with existing legislation in parallel columns for comparison, and reproduces the texts of reports, opinions and replies submitted to the German legislature by GEMA and CISAC.

227. Schulze, Erich

Rechtsprechung zum Urheberrecht; Entscheidungssammlung, mit Anmerkungen.

München, C. H. Beck'sche Verlagsbuchhandlung, 1954. (*looseleaf.*)

A compilation containing German cases involving literary property arranged according to courts; decisions in other European countries; a table of abbreviations; a bibliography of books, treatises and periodicals on copyright and related material and a subject index.

228. Siegwart, Henry

Der urheberrechtliche Schutz der wissenschaftlichen Werke.

Bern, Stämpfli & Cie., 1954. 70 *p.*

A dissertation on copyright protection of scientific works in which the essential elements of protection are delineated and applied to the various forms of scientific works such as dictionaries, tables and charts, photographs and models, and geographic maps.

(e) In English and In French

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

Paris, Copyright Bulletin, Vol. VII, No. 2, 1954. 123 *p.*

The issue is devoted to the work of the Interim Copyright Committee which met in Paris May 17-22, 1954. Included are the Report of Mr. W. H. Clarke, Rapporteur, and the Resolutions and Minutes. Two annexes contain the report on the moral right of the author and report on the problem of domaine public payant.

B. LAW REVIEW ARTICLES

1. United States

230. Constitutional limitations on copyright protection.

Harvard Law Review, vol 68, *no.* 3 (*Jan.* 1955), *pp.* 517-526.

In answer to Mr. Justice Douglas' query in the *Mazer v. Stein* decision, this note analyzes the "writings" of an "author" clause of the constitution, its evolution and subsequent interpretations by the courts.

231. Henson, Ray D.

Copyright may be wrong.

Insurance Law Journal, (*Nov.* 1954), *pp.* 724-5, 752.

Pointing out that a copyright in an insurance plan or policy is usually an attempt to protect an idea, the author presents some of the difficulties of protecting and selling ideas.

232. Magarian, Nazareth

The Proof of Access in Copyright Infringement.

N. Y. U. *Intramural Law Review, vol.* 10, *no.* 1 (*Nov.* 1954), *pp.* 45-63.

An analysis of what constitutes "access".

233. Peck, Darrell L.

Copyright-infringement of literary works—an elemental analysis.

Marquette Law Review, vol. 38, *no.* 3 (*Winter* 1954-55), *pp.* 180-192.

Elements of copyright infringement analyzed are: previous work, literary property, similarity, access, appropriation, intent, damages and originality.

234. Schulman, John

The ratification and implementation of the Universal Copyright Convention by the United States.

Revue Internationale du Droit d'Auteur, no. 6 (*Jan.* 1955), *pp.* 101-111.

A brief summary of the implementing legislation recently enacted by the United States which will go into effect at the same time as the Universal Copyright Convention and will facilitate the protection of works originating in those countries which have likewise ratified the convention.

235. Whitman, Stewart L.

Preventing Design Piracy: A Copyright Law for Industrial Designs.

American Bar Association Journal, vol 41, *no.* 3 (*March* 1955), *pp.* 242-247.

A discussion of *Mazer* v. *Stein* and related cases, pointing out the difficulties of proving copying under our present law and advocating enactment of a statute to protect industrial designs from piracy.

236. Yankwich, Leon R.

What is fair use?

The University of Chicago Law Review, vol 22, *no.* 1 (*Autumn,* 1954), *pp* 203-215.

Judge Yankwich summarizes American and English court decisions regarding the "fair use" of excerpts and abridgments and concludes that the right of "fair use" is a judicial concept evolved by judges in interpreting modern copyright statutes; that the contents of certain writings are such as to call for use of portions by others; and that an arbitrary rule would prove too restrictive in the promotion of the arts and sciences.

237. Young, Helen E.

American copyright in the international picture.

Boston University Law Review, vol. 34, *no.* 4 (*Nov.* 1954), *pp.* 478-491.

Written before favorable Senate action, the article traces the history of United States domestic copyright legislation with regard to protection of foreign works and authors; the development of "nationality of author" and "nationality of work" theories in Europe; and the evolution of the Bern Copyright Union. The author also takes into account differences between our system of copyright and that recognized by Bern, our role in the Inter-American conferences and the Universal Copyright Convention.

2. FOREIGN

(a) In French

238. Boor, Hans Otto de

Lettre d'Allemagne, vers la réforme du droit d'auteur en Allemagne: l'avant-projet du Ministère fédéral de la Justice.

Le Droit d'Auteur, vol. 67, *no.* 12 (*Dec.* 1954), *pp.* 203-207; *vol.* 68, *no.* 1 (*Jan.* 1955), *pp.* 4-9.

In his analysis of the new German draft law on copyright, Prof. de Boor describes the major changes to be found.

239. Ciampi, Antonio

Les Auteurs et la Télévision en Italie.

Inter-Auteurs, no. 117 (4e *trimestre* 1954), *pp.* 129-132.

A report on the manner in which authors' rights are handled by television studios in Italy.

240. Desbois Henri

La Convention universelle sur le droit d'auteur.

Recueil Dalloz de Doctrine de Jurisprudence et de Legislation, 1954, *no.* 6 (*Feb.* 13, 1954), *pp.* 35-38.

A brief presentation of the major provisions of the Universal Copyright Convention and the relationship between it and the Bern Copyright Convention as well as other international copyright conventions.

241. Desbois, Henri

Le Projet de Loi Luxembourgeois sur le Droit d'Auteur.

Revue Internationale du Droit d'Auteur, no. 6 (*Jan.* 1955), *pp.* 17-45.

In a commentary on the draft law of Luxembourg, M. Desbois notes particularly the provisions on compulsory licensing, choreographic and cinematographic works, recordings, and the restrictions on performing right societies.

242. Finkelstein, Herman

La Télévision et les Auteurs aux Êtats-Unis.

Inter-Auteurs, no. 117 (4e *trimestre* 1954), *pp.* 112-116.

An explanation of the relationship between ASCAP and television studios.

243. Fondation de la Mechanical Rights Society

Inter-Auteurs, no. 117 (4e *trimestre* 1954), *pp.* 149.

On August 13, 1954, a new society was formed in London for the purpose of controlling the mechanical reproduction rights of its members. It is distinct from the Mechanical Copyrights Protection Society Ltd. (M.C.P.S.).

244. Henrion, Marcel

Appoint à l'étude des privilèges de librairie aux XVIe et XVIIe siècles.

Revue Internationale du Droit d'Auteur no. 6 (*Jan.* 1955), *pp.* 113-143.

This study of the privileges of the book trade in the 16th and 17th Centuries provides an historical background to the evolution of literary property in France.

245. Matthyssens, Jean

La Télévision et les Auteurs en France.

Inter-Auteurs, no. 117, (4e *trimestre,* 1954), *pp.* 126-128.

The relationship between the Society of Authors in France and Radio-Télévision Française is discussed.

246. Plaisant, Robert

Lettre de France.

Le Droit d'Auteur, vol. 68, *no.* 1 (*Jan.* 1955), *pp.* 9-11; *no.* 2 (*Feb.* 1955), *pp.* 15-18.

Summary of recent French copyright decisions on the right of reproduction, radio-broadcasting, motion pictures, photographs, the protection of titles and related rights.

247. Smolders. Th.

Les Extensions du droit d'Auteur en Belgique.

Revue de Droit International et de Droit Comparé, vol. 31, *Numéro Spécial,* 1954, *pp.* 209-219.

Review of the effect the Brussels revision of the Bern Copyright Convention has had on the application of Belgian copyright legislation on radio, television, motion pictures and sound recordings.

248. Taillan

La Télévision en France.

Inter-Auteurs, no. 117 (4e *trimestre,* 1954), *pp.* 117-125.

Evolution of television in France and the extent to which the medium is now being used in that country.

249. Tournier, Alphonse

Les avant-projets de loi allemands sur le droit d'auteur et sur les sociétés gérantes du droit d'auteur.

Revue Internationale du Droit d'Auteur, no. 5 (*Oct.* 1954), *pp.* 53-77; *no.* 6 (*Jan.* 1955), *pp.* 47-99.

An article by article analysis, by the director-general of B. I. E. M., of the two draft laws, the one on copyright and the other on the performing right society.

250. Vander Haeghen, G.

Partage des droits intellectuels en propriété industrielle et en droit d'auteur.

Revue de Droit Intellectuel, L'Ingenieur-Conseil, vol. 44, *no.* 11 (*Nov.* 1954), *pp.* 189-201; *no.* 12 (*Dec.* 1954), *pp.* 237-245.

Analysis of the differences between the treatment of industrial property under the Paris Convention and its revisions and under the Bern Copyright Convention and its revisions .

251. Whale, R. F.

La Télévision au Royaume-Uni.

Inter-Auteurs, no. 117 (4e *trimestre,* 1954), *pp.* 133-140.

Relationship between B. B. C., its television services, the government, and the Performing Rights Society, with regard to author's rights, licensing of station, overseas programming, color television, televising of sporting events, revenues and legal problems pertaining thereto.

(b) In German

252. Abel, Paul

Der Einfluss der internationalen Vertraege auf die nationale Gesetzgebung im Bereiche des Urheberrechtes.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 1/2 (*Apr.* 15, 1954), *pp.* 41-52.

Commentary on the changes that are being wrought in domestic legislation in order to bring them into line with the current international copyright conventions.

253. Abel, Paul

Gewerblicher Rechtsschutz und Urheberrecht in Grossbritannien.

Österreichische Blätter für Gewerblichen Rechtsschutz und Urheberrecht, vol. 3, *no.* 4 (*July-Aug.* 1954), *pp.* 37-39.

Recent English decisions on aspects of patents, copyrights, trade marks and unfair competition.

254. Bappert, Walter

Referentenentwurf und Revidierte Berner Übereinkunft von . . . und Wagner.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 328-343.

A comparative analysis of the new German draft law on copyright and the provisions contained in the Brussels revision of the Bern Copyright Convention.

255. Baum, Alfred

Das Verhältnis des § 22a LUG zu Art. 13 RBU (Rom-Fassung).

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 511-513.

Based on a recent decision by the highest court in Germany, the article presents a discussion of the mechanical reproduction rights of an author under domestic law and under Article 13 of the Rome Revision of the Bern Copyright Convention.

256. Benkard, Georg

Bearbeitungs-, Verwertungs- und Leistungsschutzrechte im Referentwurf zur Urheberrechtsreform.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 28-34.

The treatment of rights involved in the use, licensing, and production of copyrighted material under the proposed new German copyright law.

257. Benkard, Georg

Rechtsfragen der mechanischen Wiedergabe.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 3/4 (*May* 5, 1954), *pp.* 150-162.

Rights involved in the recording of a work on a phonograph record, tape-recording and motion-picture sound track.

258. Boor, Hans Otto de

Die Grundprobleme der Urheberrechtsreform.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 260-276.

A summary statement of some of the basic problems which were considered in the drafting of the proposed German copyright law.

259. Bussmann, Kurt

Hörfunk und Fernsehen im Urheberrechtsgesetzentwurf.

Archiv für Urheber- Film- Funk- und Theaterecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 1-14.

A discussion of the problems arising from the recording of programs for use on radio broadcasts.

260. Bussmann, Kurt

Urheberrechtsreform und Rundfunk.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 1/2 (*Apr.* 15, 1954), *pp.* 29-41.

The new draft of the German Copyright Law and its effect on radio broadcasting.

261. Chamrath, Gustav

Das Rechtsproblem der ephemeren Schallaufnahme für den Rundfunk.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 34-42.

A discussion of the problems arising from the recording of programs for use on radio broadcasts.

262. Engel, Eugene W.

Die Welturheberrechtskonvention.

Juristische Blätter, vol. 76, *no.* 3 (*Jan.* 30, 1954), *pp.* 64-67.

Work of UNESCO in the drafting of the Universal Copyright Convention summarized.

263. Englische Urheberrechtsreform (auszugsweise Übersetzung aus dem Bericht des englischen Urheberrechtsausschusses von 1951.)

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 477-493.

A German translation of parts of the report of the British Board of Trade's Copyright Committee of 1951. Among the excerpted sections are those dealing with the rights of the author, domain public payant, fair use, photographs and motion pictures, and the rights of performing artists.

264. Gerstenberg, Ekkehard

Spezialkammern und Sachverständigenkammern für Urheberrechtsstreitsachen.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 523-525.

Procedure for handling copyright litigation as outlined in the proposed German copyright law.

265. Goldbaum, Wenzel

Die Urheberrechtsreform der Deutschen Bundesrepublik und die Revidierte Berner Übereinkunft.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 513-516.

Analysis of provisions of the proposed German copyright law from the point of view of those contained in the Brussels Revision of the Bern Copyright Convention.

266. Goldbaum, Wenzel

Urheberrecht und private Sphäre.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 42-47,

An analysis of the treatment of the right of reproduction for private use in the new German draft law on copyright.

267. Hackemann, Lutz

Das Tonband im neuen Referentenentwurf.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 516-523.

Rights in tape-recordings by authors, performing artists, manufacturers and broadcasting organizations under the proposed new German copyright law are discussed.

268. Haensel, Carl

Die "Verwandten Schutzrechte" im Referenten-Entwurf.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 15-27.

"Related rights" under the proposed German copyright law.

269. Hébarre, J. L.

Vom Schutze der Nachrichten.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 3/4 (*May* 5, 1954), *pp.* 129-150.

Protection of news, news broadcasts and sporting events, under domestic legislation and international conventions.

270. Henssler, Eberhard

Urheberschutz beim Wiederaufbau zerstörter Bauwerke.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 3/4 (*May* 5, 1954), *pp.* 188-199.

Protecting the creator's rights while reconstructing bombed-out and otherwise destroyed buildings.

271. Hirsch Ballin, Ernst D.

Der Übersetzungsartikel (V) des Welturheberrechtsabkommens.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 1/2 (*Apr.* 15, 1954), *pp.* 52-63.

Article (V) on translation rights in the Universal Copyright Convention.

272. Hirsch Ballin, Ernst D.

Verwandte Schutzrechte.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 310-328.

A critical analysis of the so-called "related rights" proposals.

273. Hubmann, Heinrich

Die Beschränkungen des Urheberrechts nach dem Entwurf des Bundesjustizministeriums.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 52-82.

Limitations imposed upon an author's rights under the proposed German copyright law such as the recording of radio broadcasts, reproduction for personal use, use of material for educational programs, etc.

274. Lindenmaier, Fritz

Höchstinstanzliche Rechtsprechung der deutschen Nachkriegszeit auf dem Gebiete des Urheber-, Film- und Funkrechts.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 1/2 (*Apr.* 15, 1954), *pp.* 3-9.

A review of the cases on author's film and radio rights decided by the highest court in Germany since the previous issue of UFITA (last published during World War II).

275. Neumann-Duesberg

Der Persönlichkeitsrechtsschutz des Individuums im neuen Urheberrechtsgesetzentwurf.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 277-282.

The right of personality as treated by the new German draft law on copyright.

276. Peter, Wilhelm

Länderkritik des Romentwurfs (1951) zu einem internationalen Leistungsschutzabkommen.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 343-365.

Evaluation of some of the replies received from various countries relative to the draft international convention for protection of rights of performing artists, phonograph record manufacturers and radio-broadcasting organizations presented at Rome in 1951.

277. Riedel, Hermann

Das photographische Urheberrecht in den Referentenentwürfen des Bundesjustizministeriums zur Urheberrechtsreform.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 500-510.

Copyright in photographs under the proposed draft revision of the German Copyright Law.

278. Roeber, Georg

Der Film als Aufgabe und Gegenstand der Urheberrechtsreform.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 283-310.

Motion pictures under the draft German law on copyright.

279. Roeber, Georg

Urheberrecht und Leistungsschutz beim Film.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 1/2 (*Apr.* 15, 1954), *pp.* 9-28.

Author's rights and the protection of production rights (Leistungsschutz) in motion picture films.

280. Runge, Kurt

Was nicht im Entwurf zur Urheberrechtsreform steht.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 47-58.

Copyright aspects not specifically provided for in the proposed German copyright law. Among these are "droit de suite" and "domaine public payant."

281. Schramm, Carl

Rechtssystematische Stellungnahme zum Referentenentwurf.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 82-103.

Systematic organization of the material contained in the new German draft law.

282. Schulze, Erich

Apollo und die Musen waren abwesend. (Stellungnahme zu den Referentenentwürfen des deutschen Bundesjustizministeriums).

Revue Internationale du Droit d'Auteur, no. 6 (*Jan.* 1955), *pp.* 3-15.

The director-general of G.E.M.A., the German performing right society, takes exception to the manner in which the German Department of Justice drew up the draft legislation on copyright.

283. Spengler, Albrecht

Erzwingung der Auslieferung oder der Vorführung eines Films durch einstweilige Verfügung? Zugleich ein Beitrag zum Recht des Filmleihvertrages.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 3/4 (*May* 5, 1954), *pp.* 163-173.

Motion picture contracts in Germany and their enforcement.

284. Steiger, Fritz von

Zur Frage des Titelschutzes von Zeitungen und Zeitschriften.

Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, 1954, *Heft* 2, *pp.* 86-100.

The need for protecting the titles of newspapers and periodicals against unfair competition.

285. Ulmer, Eugen

Ergänzender Bericht über Kinematographie und Urheberrecht.

Auslands- und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, nos. 5/6 (*Dec.* 1954) *pp.* 206-213.

German text of Professor Ulmer's supplementary report which had been previously published in *Le Droit d'Auteur, vol.* 67, *no.* 6 (*June* 1954), *pp.* 108-114. See 2 BULL. CR. SOC. 20 item 47. (1954).

286. Ulmer, Eugen

Zum Filmrecht des Entwurfs.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 11 (*Nov.* 1954), *pp.* 493-500.

Motion picture rights as treated in the draft laws which have recently been proposed in Germany.

287. Wawretzko, Herbert

Zur Frage der Schriftform bei Verträgen mit Filmschaffenden.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 5/6 (*Oct.* 1, 1954), *pp.* 365-370.

Contractual rights of motion picture actors as contrasted with the rights of motion picture producers.

288. Werhahan, Jürgen W.

Der Filmurheber im ausländischen Recht.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 18, *nos.* 3/4 (*May* 5, 1954), *pp.* 173-188.

A summary of the provisions to be found in foreign legislation concerning the "author" of a motion picture.

289. Wilde, Walter

Schadenberechnung und Gerichtsstand bei Urheberrechtsverletzungen; ein Diskussionsbeitrag zum Urheberrechtsentwurf.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, *nos.* 1/2 (*Nov.* 1, 1954), *pp.* 104-113.

Damage provisions under the proposed German copyright legislation.

(c) In Italian

290. Cinque pareri sul punto se costituisca di per sè violazione del diritto morale dell'autore l'utilizzazione di musiche di un'opera lirica nella colonna sonora di un film.

Rivista di Diritto Industriale, vol. 3, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 37-79.

Each of these five opinions on what constitutes a violation per se of an author's moral rights in the recording of music from a lyric opera on the sound track of a motion picture film has been prepared by a professor from an Italian University, namely: Prof. Cesare Grassetti of Milan, Prof. Paolo Greco of Turin, Prof. Fulvio Maroi, of Rome, Prof. Francesco Santoro-Passarelli, of Rome, and Prof. Remo Franceschelli of Milan.

291. Galtieri, Gino

La Riproduzione antologica di opere protette.

Il Diritto di Autore, vol. 25, *no.* 3 (*July-Sept.* 1954), *pp.* 291-308.

An examination of Art. 70 of the Italian copyright law dealing with rights in the compilation of anthological works, and the protection granted such works under international conventions and foreign legislation.

292. Giannini, Amedeo

La Convenzione Panamericana (1946) sul Diritto d'Autore.

Rivista di Diritto Industriale, vol. 3, *no.* 2 (*Apr.-June* 1954), *pp.* 141-149.

Review of the Inter-American conventions on copyright and comments on the Washington Copyright Convention of 1946.

293. Giannini, Amedeo

Questioni di Diritto d'Autore, Serie IV.

Rivista di Diritto Industriale, vol. 3, *no.* 3 (*July-Sept.* 1954), *pp.* 208-233.

In the fourth of a series of articles, Prof. Giannini considers the following aspects of copyright law among others: the double-ownership of letters and personal papers; the relationship of the author, the performer and the producer; parodies of creative works; and the ownership of official publications.

294. Sanctis, Valerio de

La Protezione delle opere cinematografiche nella Convenzione Universale del diritto d'autore.

Rassegna di Diritto Cinematografico, Teatrale e della Radiotelevisione, vol. 3, *no.* 5 (*Sept.-Oct.* 1954), *pp.* 118-119.

A reproduction of the author's observations relative to the protection of the motion picture under the Universal Copyright Convention which are to be found in his larger work entitled "La Convenzione Universale del diritto d'autore".

295. Saporta, Marcel

Il Film Cinematografico; opera in collaborazione ed opera collettiva.

Il Diritto di Autore, vol. 25, *no.* 3 (*July-Sept.* 1954), *pp.* 309-321.

Should authors collaborating on the production of a motion picture film be treated individually with regard to their rights or should a motion picture be regarded as an indivisible work, with the authors sharing jointly in their rights?

296. Sordelli, Luigi

L'autore dell'opera cinematografica.

Rivista di Diritto Industriale, vol. 3, *no.* 3 (*July-Sept.* 1954), *pp.* 234-249.

Question of who qualifies as author of a cinematographic work under international conventions and the laws of other countries. The writer observes the differences between the rights of the author and of the producer with respect to the work itself.

297. Sordelli, Luigi

L'utilizzazione meccanica e sonora dell'opera dell'ingegno.

Rivista di Diritto Industriale, vol. 3, *no.* 2 (*Apr.-June* 1954), *pp.* 120-140.

Analysis of the creative forces that go into the making of a recording of a musical work and the rights which arise therefrom.

298. Venturini, Giancarlo

Le opere dell'ingegno nel diritto internazionale privato.

Rivista di Diritto Industriale, vol. 3, *no.* 1 (*Jan.-Mar.* 1954), *pp.* 5-36.

Conflicts between Italian legislation and international conventions with respect to the protection and enforcement of author's rights in creative works and their uses.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

299. Joe Krug's Arrest Marks Precedent in Drive Vs. Piracy by Major Pubs.

Variety, vol. 198, *no.* 2 (*March* 9, 1955), *p.* 51.

The article comments upon recent developments in the case of *Miller et al.* v. *Goody, et al.,* 125 F.Supp. 348, 103 U.S.P.Q. 292 (S.D. N.Y., Nov. 3, 1954. See 2 BULL. CR. SOC. page no. 54, item 135. After the issuance of the court's order, requiring impounding of matrices, plates, etc. until defendant will have paid the royalties and damages provided in the final decree and given notice to the copyright proprietor and to the Copyright Office of his intention to exercise the compulsory licensing provisions of the statute, defendant failed to comply with the court's order. For the first time in a civil copyright litigation, plaintiff's attorney obtained an order of arrest of the principal offender. As a result of the arrest, the defendant delivered up all the material covered by the court's injunction order.

300. Now We Stand and Wait.

Publishers' Weekly, vol. 166, *no.* 24 (*Dec.* 11, 1954), *p.* 2278.

Editorial stating that nine countries have deposited ratification of the Universal Copyright Convention, and though there has been active prodding by British publishers and authors, Britain's parliamentary spokesmen are showing little interest in the legislative reform necessary to implement ratification.

301. Philippine Senate to vote on manufacturing clause.

Publishers' Weekly, vol. 166, *no.* 24 (*Dec.* 11, 1954), *p.* 2274.

A bill requiring Philippine manufacture for books seeking copyright protection was slated for action in the Philippine Senate some time after the session began the third week in January, 1955. The Philippine Republic is one of the largest importers of American books and a special committee of American publishers is working with U.S. government agencies on problems raised by this bill.

302. Pilpel, Harriet F.

Pens into ploughshares? The case of the 1954 tax law vs. the author.

Variety, vol. 197, *no.* 5 (*Jan.* 5, 1955), *p.* 6.

An opinion that the new income tax law is more discriminatory against the author than against the inventor.

303. Piracy of U. S. Books increasing in Japan.

Publishers' Weekly, vol. 167, *no.* 1 (*Jan.* 1, 1955), *pp.* 38-39.

Despite a bilateral copyright agreement between the U. S. and Japan, the pirating of U. S. books in Japan has been increasing. It is the opinion of one American publisher that suit for civil damages or prosecution under the Unfair Competition Prevention Law may not be effective, although criminal prosecution has met with some success. If Japan ratifies the Universal Copyright Convention, American books may receive more adequate protection.

304. Smith, Louis Charles

Copying of literary property.

Library Journal, vol. 80, *no.* 1 (*Jan.* 1955), *pp.* 23-27.

A condensation of an article which appeared in the Law Library Journal in August 1953, and August 1954. See 1 BULL. CR. SOC. 76 Item 201 (1953).

305. Temple, Philips

Copyright achievement.

The Catholic Library World, vol. 26, *no.* 2 (*Nov.* 1954), *pp.* 39-42.

A resumé of the legislative hearings on H. R. 6616 which ultimately resulted in passage of the bill, thereby enabling the United States to ratify the Universal Copyright Convention.

306. U. S. Books Involved in South Africa Copyright Action.

Publishers' Weekly, vol. 167, *no.* 5 (*Jan.* 29, 1955), *p.* 689.

A report, taken from *The Bookseller,* regarding a recent action against a South African bookseller for infringing U. K. copyright by importing American editions of the same works. See Item 313, *infra.*

307. Copyright Revise Sought in Canada.

Variety, vol. 198, *no.* 2 (*March* 9, 1955), *p.* 51.

A report on current efforts by the Canadian Association of Radio & Television Broadcasters, CARTB, for a complete overhaul of the Canadian Copyright law. The request was made in a brief presented to the Royal Commission investigating the copyright, patents, trade-marks and industrial designs laws of Canada.

2. Canada

308. MacCarteney, Richard S.

The Universal Copyright Convention and the new United States copyright law.

Canadian Patent Reporter, vol. 21, *pt.* 4, *sec.* I (*Jan.* 1955), *pp.* 132-140.

After giving a brief historical resumé of previous attempts to work out a truly universal copyright system, the author summarizes the major provisions of the Universal Copyright Convention and the new amendatory legislation enacted by the United States, and points to the effect ratification by Canada would have on U. S.-Canadian copyright relations.

3. England

309. Bogsch, Arpad

Amendments of the copyright law in the United States in relation to the Universal Copyright Convention.

E.B.U. Bulletin, vol. 6, no. 29 (Jan.-Feb. 1955), pp. 1-3.

Dr. Bogsch explains the changes in the copyright notice and mechanical reproduction rights which will be made in United States copyright law by virtue of the coming into force of the Universal Copyright Convention.

310. Britons and the amended US copyright law.

Anglo-American News, vol. 22, no. 1 (Jan. 1955), pp. 19-20.

A note on the changes in the United States copyright law which, if and when they come into force with the Universal Copyright Convention, will affect British authors and publishers with regard to copyright protection of their works in the United States.

311. Frase, Robert W.

An American view of the Universal Copyright Convention.

The Bookseller, no. 2559 (Jan. 8, 1955), pp. 48-50.

After presenting an historical summary of the struggle in the U. S. to secure adherence to the Bern Copyright Convention, Mr. Frase then indicates the effect the changes in the American copyright law will have on both American and British books so far as formalities and protection are concerned once the Universal Copyright Convention goes into effect.

312. Importing books from the U. S.; P. A.'s "friendly warning" to booksellers.

The Bookseller, no. 2559 (Jan. 8, 1955), p. 56.

Relaxation by the Board of Trade of licensing restrictions on printed, non-fiction books may result in some booksellers unwittingly ordering from the United States books the British market for which is controlled by British publishers, thereby causing the importing bookseller to infringe the British copyright. Booksellers are warned that the type of order which is most likely to create this difficulty is one consisting of "assorted titles".

313. South African copyright action; books of 47 publishers affected.

The Bookseller, no. 2556 (*Dec.* 18, 1954), *p.* 1924.

The Witwatersrand Division of the Supreme Court of South Africa on December 7, 1954 approved a settlement between a group of British publishers and a bookseller located in Johannesburg. The latter was charged, *inter alia,* with importing American editions of British books, thereby infringing British copyrights. According to the terms of settlement, the bookseller was permitted to re-export unsold copies of American editions, and pay over to the publishers the profits realized from the copies that were sold.

314. Universal copyright.

The Author, vol. LXV, *no.* 2 (*Winter,* 1954), *pp.* 24-25.

After summarizing recent developments concerning the Universal Copyright Convention and the delay in revising the British Copyright Act so that they may adhere both to the U.C.C. and the Brussels Revision of the Bern Convention, the editorial urges that "early ratification of the Convention by the United Kingdom is certainly of major importance, not only in the interests of better copyright protection throughout the world for the works of British authors, but as a means of giving concrete form to this country's appreciation of the distance America has gone to 'be joined with other civilised nations in an international convention of the broadest sort.'"

4. The Netherlands

315. Jordans, A. W. M.

Fotocopie en auteursrecht.

Bibliotheekleven, vol. 39, *no.* 2 (*Feb.* 1954), *pp.* 53-60; *no.* 3 (*Mar.* 1954), *pp.* 74-87.

A comparative resumé of provisions and practices governing the photocopying of protected works under international conventions and domestic legislation in the Netherlands, England, Germany, Austria, France, the United States and Switzerland.

316. Meulen, J. D. van der

De bescherming van de Nederlandse auteursrechtbelangen in Indonesië.

Nieuwsblad voor de Boekhandel, vol. 121, *no.* 34 (*Aug.* 26, 1954), *pp.* 685-686.

Copyright protection in Indonesia and the possible effect of the Bern Copyright Convention and the Universal Copyright Convention.

Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 CANAL STREET
New York 13, N. Y.

Return Postage Guaranteed

BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

Published at

NEW YORK UNIVERSITY LAW CENTER

VOL. 2, NO 6 JUNE, 1955

Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

THE BULLETIN of The Copyright Society of the U.S.A. is published 6 times a year by The Society at the Law Center of New York University, 40 Washington Square South, New York 11, New York. Annual subscription: $10.

All communications concerning the contents of *The Bulletin* should be addressed to the Chairman of the Editorial Board, at the Law Center of New York University, 40 Washington Sq. So., New York 11, N. Y.

Business correspondence regarding subscriptions, bills, etc., should be addressed to the distributor, Fred B. Rothman & Co., 200 Canal Street, New York 13, N. Y.

RENEWAL NOTICE

MEMBERSHIP APPLICATION

This issue of The Bulletin completes volume 2. A title-page and index to the volume is included herein in order to facilitate its use.

To insure the prompt receipt of further issues please complete and return the form on the next page.

Bound copies of The Bulletin may be readily obtained. Volume 1 and 2 soundly bound in cloth, with title and volume stamped thereon are offered:

To members or subscribers returning the 6 issues . . . . ea. vol. $3.00 postpaid

To members or subscribers who wish to keep their unbound issues; the complete vol. bound . . . . . ea. vol. $9.50 postpaid

To new members and subscribers, Vol. 1 and 2 bound . . ea. $13.00 postpaid

Single back number (except v. 2 no. 4 at $4.00) $2.00

The Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 Canal Street
New York 13, N. Y.

Enclosed please find check in the amount of $_____

in payment of the following:

Membership (or subscription) for one year beginning vol. 3 no. 1 August, 1955.

☐ Sustaining membership (including subscription) $25.00

☐ Annual membership (including subscription) 10.00

☐ Annual subscription 10.00

New ☐ Renewal ☐

Bound copy of vol. 1 ☐ $.....

vol. 2 ☐ $.....

Ship to: Name _____

Address _____

City _____ Zone ____ State ____

Make remittances payable to Copyright Society of the U. S. A.

BULLETIN

OF THE

COPYRIGHT

●

SOCIETY

●

OF THE U. S. A.

VOLUME 2

AUGUST 1954 - JUNE 1955

Published at

NEW YORK UNIVERSITY LAW CENTER

Notice to Members and Subscribers

A.B.A. COPYRIGHT SYMPOSIUM

In connection with the Convention of the American Bar Association at Philadelphia, a copyright symposium will be held in the Ballroom of the Warwick Hotel, Philadelphia, on Saturday, August 20, 1955, at 2 p.m. The subject matter of the symposium will be "Reexamination of Some Basic Copyright Concepts: A Fresh Look Toward Revision of the Copyright Act of 1909". Among the participants will be the following copyright experts: John Schulman, "Problems Concerning Formalities;" Harry G. Henn, "Divisibility of Copyright;" Herman Finkelstein, "Duration of Copyright;" Joseph S. Dubin, "Uniform Federal System for All Copyrighted Works;" and Edward A. Sargoy, "Statutory Remedies". The Honorable Arthur Fisher, Register of Copyrights, will offer a summary and outline the views of the Copyright Office on some aspects of the proposed revision of the copyright law.

ANNUAL LUNCHEON OF THE COPYRIGHT SOCIETY

Prior to the symposium, commencing at noon in the William Penn Room of the Warwick Hotel, the Copyright Society of the U.S.A. will hold its annual luncheon. Members, subscribers and other guests will be welcome.

It will be appreciated if those planning to attend will advise Paul Sherman, Treasurer, 575 Madison Avenue, New York 22, New York, and remit $5.00 for each reservation.

CONTENTS

317. UNIVERSAL COPYRIGHT CONVENTION BECOMES EFFECTIVE

Word has been received by the Department of State from the Director General of UNESCO that the Universal Copyright Convention comes into force on September 16, 1955, by virtue of the deposit of the ratifications of the required twelve countries. The Principality of Monaco deposited the twelfth ratification on June 16, 1955, and by the terms of the Convention, it comes into force three months thereafter.

Public Law 743, approved August 31, 1954, the recent amendment of the copyright law which implemented the U.S. ratification of the Treaty, also becomes effective on September 16, 1955. Accordingly, on and after that date works by nationals of, or first published in, the following countries will receive the benefits of the new law:

Andorra,
Cambodia,
Chile,
Costa Rica,
German Federal Republic,
Haiti,
Israel,
Laos,
Monaco,
Pakistan and Spain.

317a. Copyright Act Revision Authorized

The House Appropriations Committee on June 30, 1955 included in a legislative appropriation a fund to initiate a three-year study looking toward a complete revision of the Copyright Act.

The Copyright Office was voted $1,140,000, an increase of $40,000 over the current budget, with $20,000 for starting work on the Copyright Act revision. The agency had sought $38,950 to hire ten new employees to replace those to be shifted to copyright revision study.

PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

1. UNITED STATES OF AMERICA AND TERRITORIES

318. *U.S. Congress. Senate.*

H.R. 5876. A bill to amend the copyright law to permit, in certain classes of works, the deposit of photographs or other identifying reproductions in lieu of copies of published works. Introduced by Mr. Celler, Apr. 27, 1955.

3 *p.* (*84th Cong., 1st Sess.*)

The bill would amend Section 13 of the Copyright Act to permit the substitution of photographs in Classes G, H, I, or K wherever it is impractical to deposit copies because of size, weight, fragility or monetary value. A subcommittee of the House Judiciary Committee reported the bill favorably on May 13, 1955.

319. *New York. Legislature. Senate.*

Int. 935. An act to amend the penal law, in relation to the unauthorized copying of phonograph records for sale or for use for gain or profit. Introduced by Mr. Condon, January 25, 1955.

New York, 1955. 2 *p.*

The above bill was reported out of the Senate Committee on Codes on February 16th. On March 2d and 14th it was read and amended and finally passed by the Senate on March 21st. On March 23d, the Assembly struck the companion bill (Int. No. 1208) from the record and passed the Senate bill. Int. No. 935 was sent as a 30-day bill on the last day of the session, Apr. 2, 1955, for the Governor's signature. Governor Harriman failed to sign the bill.

320. *U.S. Register of Copyrights.*

Fifty-Seventh Annual Report of the Register of Copyrights for the Fiscal Year ending June 30, 1954.

Copyright Office, The Library of Congress, Washington, 1955, 13 p.

2. FOREIGN NATIONS

321. *Germany.*

Echange des lettres entre les représentants du gouvernement de la République fédérale d'Allemagne et ceux du gouvernement du Royaume de Grèce.

Le Droit d'Auteur, vol. 68, *no.* 4 (*Apr.* 1955), *p.* 46.

French version of pertinent excerpts from an exchange of letters dated February 12, 1951, between the representatives of the governments of Germany and Greece, relative to the protection of copyrights and patents in the two countries.

322. *Great Britain. Laws, statutes, etc.*

Loi modifiant la législation sur la diffamation écrite ou verbale et sur les autres assertions mensongères de caractère malveillant (du 30 octubre 1952).

Le Droit d'Auteur, vol. 68, *no.* 3 (*Mar.* 1955), *pp.* 29-34.

French translation of the 1952 British law concerning written and oral defamation.

323. *Supreme Headquarters, Allied Powers, Europe.*

Technisch Studiecentrum voor de luchtverdediging.

Bijblad Industriële Eigendom, vol. 23, *no.* 4 (15 *Apr.* 1955), *pp.* 55-58.

The English text of a cost-reimbursement contract negotiated on December 14, 1954 by the United States Government and The Netherlands is included. Paragraphs 18-20 of the contract as presented here pertain to the regulation of copyrights and royalties on copyrighted material to be used by contractors, sub-contractors and licensees under this contract.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

324. *Bolivia and Chile.*

The following letter was received by the Editor:

Organization of American States: Pan American Union

My dear Professor Derenberg:

In order to clarify its records regarding the participation by Bolivia in inter-American copyright conventions, the Pan American Union requested the Bolivian Embassy to ascertain certain information from the Ministry of Foreign Affairs. In a reply dated April 21, 1955, the Embassy informs the Pan American Union as follows:

> "By notes of May 14 and 19, 1914, exchanged between the Minister Plenipotentiary of Bolivia in Buenos Aires and the Minister of Foreign Relations of Argentina, respectively, Bolivia adhered to the Conventions and Resolutions signed at the Fourth International Conference of American States, held at Buenos Aires in 1910, among which is the Convention on Literary and Artistic Copyright, and the said agreements are considered to be in force from that time, between Bolivia and the other countries that have ratified and deposited the respective instruments.
>
> With regard to the conventions signed at the Bolivarian Congress held at Caracas in 1911, these agreements were approved by Bolivia by Law of October 24, 1912, and are considered to be in force, the formal requirements having been fulfilled.
>
> The Treaty on Literary and Artistic Property signed by Bolivia and other countries at the First South American Congress of Private International Law, held at Montevideo in 1889, was ratified by a Law of 1904. It is in force by virtue of notes of December 22, 1903, sent by the Chargé d'Affaires of Bolivia in Buenos Aires to the Minister of Foreign Affairs of Uruguay, and December 24, 1903, sent by the Minister of Foreign Affairs of that country (Uruguay) to the Chargé d'Affaires of Bolivia in Buenos Aires."

As you know, Bolivia is also a party to the Inter-American Convention on the Rights of the Author in Literary, Scientific, and Artistic Works, signed at Washington in 1946, having deposited its instruments of ratification with the Pan American Union on August 18, 1947.

I take this opportunity to inform you also that the Government of Chile has ratified, in addition to the Universal Copyright Convention, the Convention on Literary and Artistic Copyright, signed at Buenos Aires in 1910, and the Inter-American Convention on the Rights of the Author in Literary, Scientific, and Artistic Works, signed at Washington in 1946. The instrument of ratification by Chile of the 1910 Convention was deposited with the Ministry of Foreign Affairs of Argentina on March 14, 1955, and the instrument of ratification by Chile of the Washington Convention, 1946, was deposited with the Pan American Union on January 14, 1955.

Very sincerely yours,

/s/ MANUEL CANYES
Chief Division of Law and Treaties

May 4, 1955

325. *Germany. Treaties.*

Accord relatif au traitement de la nation la plus favorisée entre la République fédérale d'Allemagne et la République du Liban (du 16 novembre 1951); Avis concernant l'entrée en viguer de l'accord sur le traitement de la nation la plus favorisée conclu entre le République fédérale d'Allemagne et la République du Liban (du 6 avril 1954).

Le Droit d'Auteur, vol. 68, *no.* 4 (*Apr.* 1955), *p.* 46.

An accord providing for the most favored nation treatment for the citizens of Germany and Lebanon, which deals with the protection of patents, trademarks and copyrights among other commercial matters; together with a notice of the effective date for the enforcement of this commercial accord.

326. *Germany. Treaties.*

Accord commercial entre le gouvernement de la République fédérale d'Allemagne et le gouvernement du royaume d'Egypte. (du 21 avril 1951).

Le Droit d'Auteur, vol. 68, *no.* 4 (*Apr.* 1955), *pp.* 45-46.

French translation of excerpts from the commercial accord between Germany and Egypt dealing with the protection of patents, trade-marks and copyrights in the two signatory countries.

327. *Germany. Treaties.*

Vertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Mexikanischen Staaten über den Schutz der Urheberrechte ihrer Staatsangehörigen an Werken der Tonkunst vom 4. November 1945.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 4 (*Apr.* 1955), *pp.* 196-197.

Treaty signed by Germany and Mexico on November 4, 1954 provides reciprocal copyright protection for authors and composers of musical works and citizens of the two countries, including those German nationals residing in West Berlin.

328. *Philippine Republic. President* (*Magsaysay*)

Proclamation No. 137, making public the accession of the republic of the Philippines to the Berne Convention for the protection of literary and artistic works, revised at Brussels on June 26, 1948.

Manila, 1955. 1 *p.* (*autoprint*).

As the result of a concurrence by the Philippine Senate on May 16, 1950 (Res. No. 21) and formal accession to the Bern Copyright Convention as revised in 1948, effective Aug. 1, 1951, President Magsaysay proclaimed and made public the above-mentioned accession on Mar. 15, 1955.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions

329. *United Artists Corp. v. Masterpiece Productions, Inc.* 221 F.2d 213, 105 U.S.P.Q. 52 (2d Cir. Mar. 25, 1955).

Defendant, Masterpiece, charged with copyright infringement and unfair competition for licensing television performances of copyrighted motion pictures of the plaintiff, brought a counterclaim against the controlling officers of plaintiff corporation charging them with unfair trade practices and conspirational activities. The district court held that the counterclaim was permissive and not compulsory and dismissed it.

Held: Reversed. Judge Clark said:

"The crucial question on this appeal is whether the counterclaim here pleaded is properly to be viewed as compulsory or as merely permissive. A counterclaim is compulsory under F.R. 13 (a) 'if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.' In practice this criterion has been broadly interpreted to require not an absolute identity of factual backgrounds for the two claims, but only a logical relationship between them."

". . . Here, the television rights at stake depended upon a number of considerations, of which interpretations of a prior contract—stressed by the district court—was only one. Defendants interposed a number of affirmative defenses, including that of estoppel. The plea of estoppel alleged that the additional defendants . . . now in control of the plaintiff corporation, had at one time acted as counsel for defendants in the acquisition of the very rights here at issue. The counterclaim is related to this estoppel argument, since it charges that [the additional defendants] conspired to deprive defendants of their rights in order to cement their own position in control of the plaintiff corporation. This lawsuit was alleged to be one of a series of harassing maneuvers designed to interfere with defendants' proper exploitation of rights acquired on the advice of the

additional defendants. We think that these pleadings disclose a sufficient logical relationship so that, in the interest of avoiding circuity and multiplicity of action, the counterclaim should be considered compulsory under the authorities cited above."

330. *Capitol Records, Inc. v. Mercury Records Corp.*, 221 F. 2d 657, 105 U.S.P.Q. 163 (7th Cir. Apr. 12, 1955).

The court stated the facts as follows:

"Plaintiff obtained an injunction against manufacture and distribution of phonograph records by defendant. The phonograph records bear recordings of performances by highly gifted artists of certain musical compositions. Since each party by stipulation disclaims ownership in any of the compositions by virtue of copyright, we treat them as in the public domain for the purposes of the case. Plaintiff derives its title, such as it is, from Telefunkenplatte, G.m.b.H., hereinafter called 'Telefunken', in Berlin, Germany, which purported to sell to plaintiff matrix records and to grant to plaintiff the right to manufacture and distribute copy records in the United States. Defendant derives its title, such as it is, from an alien property administration in Czechoslovakia which purported to grant to defendant's predecessor in title the right to use identical matrix records and the right to manufacture therefrom, and distribute, copy records in the United States. Telefunken was the original owner of these matrix records which came from Czechoslovakia and had furnished them to an organization in that country giving it the right to reproduce and sell copies in a limited territory which did not include the United States."

Held: Affirmed. Under New York law plaintiff had not lost its rights by publication through the sale of these records. The majority opinion stated:

"The records have not been copyrighted. If they are subject to copyright we are clear that the rights of the parties to make and sell copies are to be determined under federal law. We must first determine, therefore, whether or not phonograph records of compositions in the public domain recorded by musical artists are susceptible of copyright.

"There can be no doubt that, under the Constitution, Congress could give to one who performs a public-domain musical composition the exclusive right to make and vend phonograph records to that rendition. The question is whether Congress has done so."

Having posed this question the court reviewed the legislative history and concluded:

"From the foregoing it appears, first, that Congress, before the 1909 amendment, intended that one who performed a public-domain musical composition should not be able to obtain copyright protection for a phonographic record thereof, and second, that nothing in the 1909 amendment indicated any change in that intention."

Next the opinion considered the applicable state law:

"Since the Copyright Act does not deal with the protection of phonograph records of the performances of public-domain compositions by virtuosos, we have no basis for applying federal law. We must apply the law which would have been applied in the courts of the state embracing the district of the court below . . . To decide the case before us we must resolve the competing claims of a plaintiff which derives its rights from a grant from Telefunken in Germany and a defendant, which derives its rights from a grant from an alien property administration in Czechoslovakia. We must determine what law the New York State courts would apply to ascertain the extent of the respective rights of plaintiff and defendant. We find a complete dearth of authority on the question in New York and consequently must make the decision upon principle. We believe that where the extent of literary property within a given jurisdiction is in question and that extent depends upon acts which have taken place outside of that jurisdiction, the determination should be made according to the law of that jurisdiction as though the acts had taken place within its borders. Literary property is in essence a right to exclude, to a greater or lesser extent, others from making some or all use of the expressed thoughts of an author. The number of the conceivable grades of the extent of the exclusion and the number of the conceivable kinds of uses of the thoughts of authors are almost limitless. If we leave those questions of the scope of the right to any law other than that of the place where the right is sought to be exercised, we may be faced with dealing with property interests unknown to our law."

". . . We shall therefore determine the respective rights of plaintiff and defendant as though they had been created by the law of the State of New York."

The court then reviewed the New York law in detail and decided that *RCA Mfg. Co. v. Whiteman,* 114 F.2d 86, no longer stated the current law of common-law property in the performances of musical artists which had been recorded.

"Since its decision the New York courts have had close contact with the question in *Metropolitan Opera v. Wagner-Nichols R. Corp.*. . . . We believe that the inescapable result of that case is that, where the originator, or the assignee of the originator, of records of performances by musical artists puts those records on public sale, his act does not constitute a dedication of the right to copy and sell records."

". . . We thus conclude that plaintiff has not lost the exclusive right to make and sell the records in the United States."

Judge Learned Hand dissented. He agreed with the majority that Congress had not by statute protected the common-law property in a virtuoso's performance, although it had the constitutional power to do so. But he disagreed as to the effect of the public sale and as to the applicability of state law.

"It would then follow that they [the states] could grant to an author a perpetual monopoly, although he exploited the 'work' with all the freedom he would have enjoyed, had it been copyrighted. I cannot believe that the failure of Congress to include within the Act all that the [Commerce] Clause covers should give the states so wide a power. To do so would pro tanto defeat the overriding purpose of the Clause, which was to grant only for 'limited Times' the untrammelled exploitation of an author's 'Writings.' Either he must be content with such circumscribed exploitation as does not constitute 'publication,' or he must eventually dedicate his 'work' to the public."

". . . Moreover, there is another reason for this conclusion. Uniformity was one of the principal interests to be gained by developing (sic) upon the Nation the regulation of this subject. . . . If, for example in the case at bar, the defendant is forbidden to make and sell these records in New York, that will not prevent it from making and selling them in any other state which may regard the plaintiff's sales as a 'publication'; and it will be practically impossible to prevent their importation into New York. That is exactly the kind of evil at which the clause is directed. I recognize that under the view I take the plaintiff can have only a very limited use of its records, if it hopes to keep its monopoly. That is indeed a harsh limitation, since it cannot copyright them; but I am not satisfied that the result is unjust, when the alternative is a monopoly unlimited both in time and in user."

". . . Therefore, I would reverse the judgment as to all records that the plaintiff has sold in this country and dismiss the complaint, so

far. As to any records that it has not sold here, if there be such, their status does not appear on this record with enough certainty to dispose of the appeal. I cannot find out whether Telefunken had any 'common-law property' in them in Germany, or, if it had, whether it was lost by sale in that country. We do not know what is the German law; nor has the question been argued whether the same conduct occurring in another country that would constitute a 'publication' in the United States, would bring the 'work' into the public demesne here if it did not forfeit the right by the law of the country where it took place. Since my view is not to prevail, I need not consider any of these questions, and I express no opinion on them."

331. *Edward B. Marks Music Corp. v. Continental Record Co.,* 105 U.S.P.Q. 171 (2d Cir. Apr. 13, 1955). See also 1 BULL. CR. SOC. 123, Item 323, and 149, Item 388 (1954).

Appeal from dismissal of the complaint. Appellant, plaintiff in the lower court, is the assignee of the renewal copyright in the musical composition entitled, "In the Good Old Summertime." The song was first published and copyrighted in 1902 and the copyright was properly renewed since that time. Defendant was charged with infringement by the unauthorized mechanical reproduction of the composition on phonograph records.

Held: Affirmed. The court said:

"Prior to 1909, mechanical reproduction of compositions even if copyrighted was in the public domain and hence unauthorized mechanical reproduction on phonograph records was permissible . . . In 1909 Congress so amended the copyright law . . . as to extend to the holder of a copyright protection against unauthorized mechanical reproductions which, under the rule of the cases . . . had theretofore been lacking. But this extended protection was limited by Section 1 (e) of the 1909 Act, . . . The words with which we are most concerned are those which specify that the protection afforded against the mechanical reproduction of compositions 'shall include only compositions published and copyrighted after July 1, 1909.' It is undisputed that the composition here involved was first published and copyrighted before 1909, and it is abundantly clear that, under the *White, Smith* and *Shilkret* cases, the composition, prior to July 1, 1909, was not protected against mechanical reproduction. Nevertheless, the plaintiff contends that by virtue of its

renewal copyrights in 1929-1930 it is now entitled under the Amendatory Act of 1909 to protection against mechanical reproductions. Plaintiff argues that the renewal of the copyright created a new estate, i.e., a new grant of copyright separate and independent from the first copyright and that, since the renewal was obtained after 1909, the composition is protected under Section 1 (e)."

". . . We think the words above quoted from the proviso to Section 1(e) are clearly destructive of the plaintiff's contention that Congress intended that the mechanical reproduction of a song, which for years had been in the 'public domain,' may, by renewal, be fenced into a monopolistic field. Nor do we find anything in Section 24 of the Copyright Act, . . . providing for the renewal of copyrights, which lends support to the plaintiff's position. The phrasing utilized in Section 24, particularly when read in conjunction with Section 1 (e), suggests a contrary conclusion. For Section 24 does not state that a renewal operates as the grant of a new monopoly having a larger field than the original copyright. It states simply that 'subsisting' copyrights may 'be renewed and extended' and that in certain instances such renewal and extension may be had 'for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period.' Section 24 requires that application for renewal or extension is to be made 'one year prior to the expiration of the existing term.' Such language militates against the interpretation of Section 1 (e) for which the plaintiff contends."

". . . All things considered, we hold that under the Amendatory Act of 1909 the plaintiff by a renewal did not acquire a right, theretofore lacking, to protection from mechanical reproduction on phonograph records."

332. *April Productions, Inc. v. Strand Enterprises, Inc.* 221 F.2d 292, 105 U.S.P.Q. 83 (2d Cir. Mar. 28, 1955).

April Productions, Inc., appellant, is the proprietor of the copyright in the musical "The Student Prince." Appellee, Strand, is a licensee under an ASCAP "small rights" license issued to cover its nightclub "The Harem." The other appellee is Ben Yost, the leader of a choral group, "Ben Yost and His Royal Guardsmen." Both parties agreed that (1) "The Student Prince" is in ASCAP'S repertoire and limited by the scope of the ASCAP grant under the license. The trial court, sitting without a jury, found

that there had not been an infringement of appellant's copyright. At issue on appeal was the scope and interpretation of the terms of the license.

Held: Affirmed (and modified with regard to an award of counsel fees).

As part of the nightclub show, "The One Thousand and Second Night", presented twice nightly at "The Harem", Ben Yost and his group appeared in uniform and sang certain songs, including a medley of songs from "The Student Prince." Appellant claimed that the scope of the license was exceeded "in that (1) they presented songs from 'The Student Prince' in a 'dramatic' presentation, (2) they presented the songs in a medley despite the description of the licensed material as 'separate compositions' and (3) they used the songs in violation of that part of paragraph 3 (a) of the license which follows the semicolon therein and qualifies the use of fragments of instrumental selections."

Whether the compositions were used in a "dramatic" presentation or not was the principal issue. However, the complexities of the contract and the relationship created by its terms caused the court to attempt clarification.

The Court said: "We start with the fundamental proposition agreed to on all hands that the license permitted the performance of the songs with orchestral accompaniment and with the original lyrics rendered vocally. It may seem strange that such a fundamental question should require agreement of the parties but the form of the license is such that almost nothing is sure."

". . . The license granted is described . . . as a license to publicly perform 'non-dramatic renditions of the separate musical compositions copyrighted by members of the Society.' That grant can best be construed in the light of the other provisions of the license which in paragraph 3 describe what is not included in the license. The first non-included class is described as 'oratorios, choral, operatic or dramatic-musical works (including plays with music revues and ballets) in their entirety'. That is a clear indication of the intention of the parties that permission to play and sing all the songs included in some work of another character does not give the right to perform the over-all work. Such a performance would, indeed, be the type form of a dramatic, as opposed to a 'non-dramatic', rendition of the compositions licensed."

"The next class of compositions which are declared to be outside of the terms of the grant are 'songs or other excerpts from operas or musical

plays accompanied either by words, pantomine, dance, or visual representation of the work from which the music is taken . . . Again the purpose is clear to class as 'dramatic' any of the author's material except the words and music of the song."

"The final class of compositions expressly excluded from the grant is thus described: 'but fragments of instrumental selections from such works may be instrumentally rendered without words, dialogue, costume accompanying dramatic action or scenic accessory, and unaccompanied by any stage, action or visual representation (by motion picture or otherwise) of the work of which such music forms a part.' While cast in the form of permission, the real force of these words is their prohibition. The works that are referred to are the over-all works that have just been discussed of which the licensed compositions form a part. It is significant that, while this case deals only with 'instrumental' selections, the words impliedly prohibit the rendition of those instrumental selections with words, with dialogue, with costume accompanying dramatic action, or with scenic accessory. These limitations are not confined to any particular 'words, dialogue, costume accompanying dramatic action or scenic accessory' but prohibit the addition to the instrumental rendition of these instrumental selections *any* words, dialogue, etc. The class of instrumental selections which may be instrumentally rendered is finally further qualified by the requirement that they must be 'unaccompanied by any stage action or visual representation (by motion picture or otherwise) of the work of which such music forms a part.' "

"It is important to note that, while instrumental selections may not be accompanied by any words, dialogue, etc., other excerpts have accompaniment forbidden only where it consists of words, pantomime, etc. 'of the work from which the music is taken'. Thus, so far as the express exclusory language of the grant is concerned, a song excerpted from a work such as 'The Student Prince' may be rendered with 'words, dialogue, costume accompanying dramatic action or scenic accessory'."

"The language of paragraph 3(a) of the license refers to the two classes of selections, non-instrumental and instrumental. It enumerates prohibitions of the use of each but omits in the case of non-instrumental selections and includes in the case of instrumental selections prohibition of 'words, dialogue, costume accompanying dramatic action or scenic accessory'. The omission of that prohibition in one case and its inclusion in the other is very close to an express statement that words, dialogue, etc. may accompany any non-instrumental selections. We thus have here

an instrument which, on the one hand, describes the performance rights granted as 'non-dramatic' but, on the other, in substance authorizes their exercise with 'words, dialogue, costume accompanying dramatic action or scenic accessory'. The scope of the license is not so narrow as if the 'non-dramatic' limitation stood alone, or so broad as if the permission for 'words, dialogue,' etc. stood alone. Our problem is to determine whether the use here made of 'The Student Prince' selections comes within the scope as thus defined. That will require a close examination of the facts."

Held: The rendition by appellees was a "non-dramatic" performance within the meaning of the license. In its examination of the facts the court found that the chorus appeared in several scenes only as stage scenery and that the medley complained of took place "in scene 9, and only as a small part of scene 9 . . ."

"Even if The Harem put on a dramatic performance, the selections from the 'Student Prince' were not part of it. The worst that could be said would be that they were sung in an intermission between the acts of a dramatic performance. Such a rendition is 'non-dramatic' within the meaning of the license. The word 'dramatic' as there used cannot be stretched to cover it. The license, as concluded above, permits the rendition of non-instrumental compositions, such as were performed here, with 'words, dialogue, costume accompanying dramatic action or scenic accessory' without their getting into the 'dramatic' class. Those concomitants of the rendition would give it a much more dramatic tinge than its mere interjection as an entr'acte. From the use in this broad license of the bare word 'non-dramatic' we cannot glean an intention to forbid such an interjection. There was no departure from the license."

The court summarily disposed of appellant's contentions regarding the use of a medley and "fragments of instrumental selections" as follows:

"The first of these contentions is that the use of the selections from 'The Student Prince', in a medley, violated a limitation implicit in the granting clause where the subject of the grant is described as a license to publicly perform renditions of the 'separate' musical compositions copyrighted by members of the society. Whatever function, if any, the word 'separate' may have in the license, it does not limit the permitted renditions to separate renditions. It is clear that the word 'separate' modifies 'compositions' and not 'renditions'. No rendition is outside of the license merely because it is a part of a medley."

"The second of these points founded upon particular provisions in the contract is that the presentation of these compositions violated the

limitations placed by the license upon 'fragments of instrumental selections'. The short answer is that the license in dealing with 'instrumental' selections referred only to such selections as in the original work were not accompanied by lyrics. No such selections are here involved."

333. *Shapiro, Bernstein & Co., Inc. v. Jerry Vogel Music Co., Inc.* 221 F.2d 569, 105 U.S.P.Q. 178 (2d Cir. Apr. 18, 1955).

Appellee, plaintiff in the court below, sued for infringement of its copyright on the instrumental music in the musical composition, "12th Street Rag." In 1914 Euday L. Bowman composed an instrumental piano solo and assigned all his rights, including renewal rights, to Jenkins Music Company in 1916. In 1918 Jenkins employed Sumner to write the lyrics to the song, and in 1919 Jenkins copyrighted the song. Appellee derived its rights by assignment from Jenkins and appellant was the assignee of the lyricist, Sumner, including his renewal rights. Appellant published the song with Bowman's music and Sumner's lyric. The trial court had held that the work was a composite and not a joint work, that the copyright on the new work protected only the lyric and that appellant had to secure permission from appellee, holder of the copyright in the music.

Held: Reversed and remanded. The court distinguished *Edward Marks* v. *Jerry Vogel,* 140 F.2d 266, 2d Cir., and *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.,* 161 F.2d 406, D.C.S.D.N.Y.; (1 BULL. CR. SOC. 65, 97, Items 180, 256 (1954).

"In neither the Marks nor Shapiro case, however, was the collaboration after the original author had assigned all his rights that he could assign. We feel that the rule of these cases, as extended to the facts of the case at bar, should make the test the consent, by the one who holds the copyright on the product of the first author, at the time of the collaboration, to the collaboration by the second author. That is to say that ordinarily we look to the consent of the first author to see whether or not we have a joint work; when the first author has assigned away all his rights which he can assign, we look to the intent of the assignee. In the case at bar, when the assignee Jenkins procured the writing of the lyrics, Jenkins' intent was that lyrics and music be performed together as a single work, a song. That intent should govern. Since that intent was to merge the two contributions into a single work to be performed

as a unit for the pleasure of the hearers we should consider the result 'joint' rather than 'composite'. The result reached in the district court would leave one of the authors of the 'new work' with but a barren right in the words of a worthless poem, never intended to be used alone. Such a result is not to be favored."

The trial court's finding that Sumner had written the lyrics as a special job assignment, and, therefore, had rights of an author, was not attacked on appeal.

The Court concluded:

"Defendant-appellant Vogel Company therefore should be held to have rights in the renewal copyright of the joint work, which provides it a good defense to plaintiff's action. This holding also destroys plaintiff's defense to the defendant's counterclaim. When Sumner in 1947 filed a timely claim for renewal of the copyright on the song and, also in 1947, assigned all his renewal rights in the song to defendant appellant Vogel Company, Vogel Company acquired an interest in the renewal rights on the song. It is entitled to an accounting from the plaintiff-appellee, which obtained a renewal thereof in its sole name, of the proceeds received from the exploitation of the copyright for the renewal term and to a decree for the amount found by the district court to be its equitable share of such proceeds."

"The judgment must be reversed and remanded for judgment for defendant dismissing the complaint, and for judgment on the counterclaim for an accounting."

Note: On June 8, 1955, the Court of Appeals handed down a supplementary opinion per curiam, reported at 105 USPQ 460, in which it held that having found the composer and the lyric writer to have been joint owners of the song, there should be a "reciprocal accounting" between these parties. The Court said: "It is clear that each holder of the renewal copyright on the joint work should account to the other for his exploitation thereof,—not as an infringer, but as a trustee."

334. *Markham v. A. E. Borden Co., Inc.*, 221 F.2d 586, 105 U.S.P.Q. 199 (1st Cir. Apr. 27, 1955).

Appeal from a final judgment awarding damages of $2250 for nine infringements of copyright of plaintiff's catalogs. The prior litigation

established that copyrightable component parts of plaintiff's catalogs were entitled to protection of Section 3 of the Copyright Act. See 1 BULL. CR. SOC. 33, Item 96 (1953). The case was remanded to the trial court for the assessment of damages.

Held: Affirmed. Damage assessment is a highly discretionary function best performed by the trial court. The court said:

". . . The district court, following a hearing on the question of damages, awarded the plaintiff $2250, the memorandum and order of judgment not expressly stating whether the award was based on actual damages to the plaintiff and profits to the infringer, or was statutory damages in lieu of actual damages and profits under 17 U.S.C. §. 101(b). It is clear to us that the judgment was one for statutory damages. We expressly held in our previous opinion . . . that '***there is no showing on the amount of damages arising from these infringements***' and as the Borden Co., a wholesaler and manufacturer representative dealing in refrigeration and air conditioning equipment, apparently distributed its catalogs to its customers gratuitously, no showing was made of any profits accruing to it, through such distribution. Moreover, the trial court used the words 'fair award' in its memorandum opinion. These words strongly suggest that the court, rather than awarding actual damages and profits, applied the statutory damages provision . . . which states that damages 'in lieu of actual damages and profits' shall be in an amount 'as to the court shall appear to be just.'"

The court then reviewed the record and determined that since there were nine infringements, the statutory award had properly been made.

335. *Wexley v. KTTV, Inc.*, 105 U.S.P.Q. 86 (9th Cir. Mar. 30, 1955).

"PER CURIAM.

This appeal involves the construction of a contract concerning assigned and reserved radio, television, publication, live production, and other rights in and to a dramatic composition entitled 'The Last Mile'. The District Court, Honorable William M. Byrne presiding, decided the issues in favor of the defendant and wrote an excellent analysis of the contract upon which it based its judgment. We are in agreement with the opinion and upon its reasoning we affirm the judgment. 108 F. Supp. 558, 95 USPQ 308.

Affirmed."

336. *Republic Pictures Corp. et al. v. Rogers,* 105 U.S.P.Q. 470 (2d Cir. May 19, 1955).

In a per curiam opinion of May 19, 1955, the court refused to modify or otherwise limit its previous judgment. See 2 BULL. CR. SOC. 7, Items 12 and 91b (1954) and 123, Item 208 (1955).

337. *Loew's Incorporated v. Columbia Broadcasting System, Inc.,* 105 U.S.P.Q. 302 (D.C.S.D. Calif. May 6, 1955).

Defendants, Columbia Broadcasting System and Jack Benny, were charged with infringement of plaintiff's copyright in the motion picture "Gaslight" by past radio and television presentations of parodies on the motion picture. This action for an injunction was brought because a third presentation was threatened by the filming for television broadcasting of a new version by Benny of the same motion picture.

Held: Injunction granted. The issues were succinctly framed by Judge Carter:

"The case presents novel questions in the law of literary property and is a case of first impression. It presents a major issue—Is a charge of copyright infringement, where the defendant has taken a substantial part of the copyrighted work, defeated by the fact that the appropriated material was used in or as part of a burlesque or parody of the copyrighted work, rather than in or as part of a serious or independent work? Stated in another way, is a burlesque, which takes a substantial part of a copyrighted motion picture, a fair use?"

No challenge was offered to plaintiff's copyright since the parties obviously considered the matter in the nature of a "test case."

Having concluded that there was an actual taking, the court considered the application of the doctrine of fair use as defensive matter. "The right of fair use clearly exists," said the court, "but the general statements of the text writers must be reduced to specifics in order to understand and define the extent and application of this right." What are the specifics primarily to be considered? The effect of the parody on commercial gain or profit ranks high. Though the statute makes no reference to profit in connection with the subdivisions dealing with dramatic works, ". . . the factor to use for commercial gain has been con-

sidered by the courts in connection with most, if not all, infringements of copyrighted material, regardless of the particular subdivision of Sec. 1, U.S.C.A. Title 7 which is invoked." Judge Carter then reviewed the cases and authorities and said: "We would conclude that the purpose for which the use was made is of major importance, in consideration with various other factors, in arriving at a sound determination of the extent of fair use; that broader scope will be permitted the doctrine where the field of learning is concerned and a much narrower scope where the taking is solely for commercial gain."

The attempt by defendants to establish a custom of burlesquing copyrighted works was rejected by the court.

Judge Carter concluded:

"From the discussion heretofore and the authorities collected, we conclude that plaintiffs have a property right in 'Gaslight' which defendant may not legally appropriate under the pretense that burlesque as fair use justifies a substantial taking; that parodized or burlesque taking is to be treated no differently from any other appropriation; that, as in all other cases of alleged taking, the issue becomes first one of fact, i.e., what was taken and how substantial was the taking; and if it is determined that there was a substantial taking, infringement exists."

"On the other hand, there is no dispute as to the right of the stranger to the copyright to take an incident, a character, a theme, or even a bare plot and then . . . 'take off into the blue' and create a new work by burlesque, or to make an even more extensive use of the copyrighted material so long as a substantial part is not taken."

"That this line between the permissible and the forbidden may be hard to draw does not prevent its application . . . The taker or user acts at his peril as does anyone who under our system of laws, makes use of another's property."

Finally, in its consideration of the defenses offered, the court said:

"We conclude that it is not incumbent on the copyright holder to show either damage, or a diminuting of the value of his property or a lessening of the demand for the copyrighted work. On the other hand, the fact that the infringing work competes with the copyrighted one or has been issued for commercial gain, rather than in the interests of advancement of learning, is a factor to be considered in determining the extent of fair use, and in determining whether the taking was substantial."

338. *Franklin v. Hart,* 129 F. Supp. 222, 105 U.S.P.Q. 37 (S.D.N.Y. Mar. 16, 1955).

Action for unfair competition brought by owners of the song "Anniversary Waltz" against defendants, producers of the play by the same name. Plaintiffs sought an injunction pendente lite against defendants' selling or licensing of the play as a motion picture.

Held: Motion for injunction pendente lite denied. Defendants are merely producers of the play and have no right to sell or license the play for motion picture production. The right to sell or license was retained by the authors of the play. The court said: "While under the contract the defendants may participate in the proceeds of the sale of the motion picture rights it is clear that they have 'no right, title or interest, legal or equitable' in such rights. A suit to enjoin threatened injury will not lie where those who are said to threaten the injury admittedly have not the power or ability to carry their threat into effect."

339. *Caldwell-Clements, Inc. v. Cowan Publishing Corp.,* 130 F. Supp. 326, 105 U.S.P.Q. 116 (D.C.S.D.N.Y. Mar. 29, 1955).

Defendants move to dismiss the complaint involving three claims: treble damage under the Sherman Act, copyright infringement and libel.

Held: Motion denied. Plaintiff and defendant both publish trade magazines in the radio and television field. After holding that the allegations of antitrust violations stated a cause of action, the court considered the copyright count:

"The second count (copyright infringement and unfair competition) is sought to be dismissed for failure to state a claim. Plaintiff corporation alleges that the defendant corporation copied one or more of its copyrighted advertising directories. Defendants' contention is that since some of the names listed in the directories were also listed in other directories distributed by other publishers the plaintiff's directory cannot be *infringed.* This theory is completely without merit. The availability to a defendant of other 'common sources' for obtaining these names is not a defense to an action for copyright infringement if the defendant actually copied the names from plaintiff's directory. The ultimate probandum is *copying*—the existence of 'common sources' is merely *evidence* negating copying."

The court went on to discuss the distinction between "copying" and "fair use" as follows:

"While I am limited to the face of the complaint in determining this motion to dismiss under F.R.C.P. 12(b)(6), the case being inappropriate for treatment as a motion converted into one under F.R.C.P. 56 for summary judgment, I take this occasion to note obiter that the gravamen of this claim, as it appears from the affidavits and briefs in conjunction with the complaint, appears to be that the corporate defendant used, rather than copied, plaintiff's extensively published directory to solicit by mail customers listed in it without plaintiff's permission. This is alleged to constitute an 'infringement' of the copyright (Par.8). Although actual copying in the sense of physical reproduction of the form, arrangement and content of the original directory is given copyright protection, the *use* absent *copying,* of another's directory solely for mail solicitation purposes is not within the protection of the copyright laws (though it may possibly be sufficient for the purposes of an unfair competition claim). Certainly one who copyrights a compilation or directory of names cannot be said to gain a monopoly, under the copyright statute, over business dealings with those listed. . . ."

340. *Siewek Tool Company v. Morton,* 128 F. Supp. 71 (E.D. Mich. Dec. 31, 1954).

In an action for copyright infringement defendant filed motion for summary judgment on two grounds: (1) as to plaintiff's 1948 catalog there was a defective notice of copyright since the notice did not appear until the fifth sheet, numbered Page 423; and, (2) certain illustrations from the 1933 catalog which were included in the 1948 catalog lost the protection of the copyright on the 1933 catalog.

Held: For defendant as to copyright on 1948 catalog and for plaintiff as to illustrations from 1933 catalog. As to the 1948 catalog, the court considered that plaintiff failed to place the copyright notice on the title page. Plaintiff had asserted that Page 423, the page on which the copyright notice appeared, was the title page. The court rejected this, saying: "Page 423 . . . contains nothing by way of general categorical classification of the contents of the catalog. By any standard of title page, the first or cover page of plaintiff's exhibit 9 [the 1948 catalog] must be found to be the title page." The court looked at plaintiff's use of the

following language on the cover page as proof of what he considered to be the title page: "'***and completed a book comprising a revised set of template sheets *entitled* 'This is a Complete Set of Full Size Template Tracing Sheets-Siewek-Clamps, Details and Fixture Locks,'***'" (Emphasis supplied by the court.)

As a result the court concluded: "The title of this catalog appears on the first, or cover page, and nowhere else, in the opinion of this Court. And there is no notice of copyright in accordance with 17 U.S.C.A. §20, thereby rendering the copyright on plaintiff's 1948 catalog defective and invalid."

The latter part of the motion dealing with illustrations "carried over" from the 1933 catalog was decided in favor of the plaintiff. In the first place, the illustrations had a copyright notice on the page on on which they appeared. Secondly, since plaintiff claimed to have made some changes in the illustrations the court applied Section 7 of the Copyright Act which provides that the republication of works with new matter "shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof. . . ."

2. State Court Decisions

341. *April Productions, Inc. v. G. Schirmer, Inc.* 126 N.E. 2d 283, 105 U.S.P.Q. 286 (N.Y. Ct. of Appeals, Apr. 14, 1955).

Appeal from the three-to-two decision of the Appellate Division (102 U.S.P.Q. 137; see 2 BULL. CR. SOC. 38, item 93, 1954) affirming trial court's ruling that a 1917 agreement between plaintiff's assignor, Shubert, producer of "Maytime," and defendant for the publishing of certain musical compositions on a royalty basis without any reference to either the duration of the contract or copyright was valid and continued in effect after expiration of the copyright.

Held: Reversed and complaint dismissed. Desmond, Judge, dissenting with opinion in which Conway, Chief Judge, and Dye, Judge, concur. Judge Fuld, speaking for the court, examined the terms of the original contract and said that though there was no reference to copyright the intention of the parties must have been that royalties were to be paid only so long as the publisher defendant had the right to publish the musical compositions by virtue of the copyright he had secured. Upon

renewal of the copyright in the authors, Romberg and Young, and the expiration of the original copyright, the obligation to pay royalties ceased. The court said:

"Hence, although the present contract does not mention copyrights or, in so many words, grant a license under preexisting copyrights, it was necessarily made in contemplation of Schirmer securing copyrights either in Shubert's name or in its own name. As both parties well knew, since no property rights in literary or musical works survive an authorized publication without due compliance with copyright formalities . . ., Schirmer's publication of the music without first copyrighting it would have caused it to fall into the public domain, destroying, not only the rights granted to Schirmer, but also those reserved to Shubert . . . Copyrighting by Schirmer was, therefore—contrary to the basic premise of Judge Desmond's opinion—a necessarily implied covenant of the agreement, and the publisher was under a duty to take whatever steps were necessary to safeguard the rights which were the subject of the bargain."

The court concluded:

"In sum, then, Schirmer's obligation to pay royalties under the 1917 agreement was measured by the duration of the rights thereby conferred. That obligation, accordingly, came to an end in 1945. To the soft impeachment—that by so holding we are 'construing' this contract 'to make [it] mean' what we believe it 'should have said in the first place' (Opinion of Desmond, J.)—we cannot resist observing—what, perhaps, has been overlooked that there 'is no more likely way to misapprehend the meaning of language—be it in a constitution, a statute, a will or a contract—than to read the words literally, forgetting the object which the document as a whole is meant to secure.'"

342. *Smith v. Berlin,* 141 N. Y. Supp. 2d 110, 105 U.S.P.Q. 296 (N.Y. Sup. Ct. Special Term, Apr. 27, 1955).

Suit charging tortious appropriation of an unpublished musical composition allegedly pirated by defendant and published under the name, "You're Just in Love."

Held: Judgment for defendant. Plaintiff attempted to prove access, but his testimony and his failure to produce witnesses to corroborate his testimony fell far short of the proof required. Plaintiff also attempted to

rely on the identity between the two musical compositions to show an inference of access. The court rejected this as basing an inference on an inference.

The court examined the alleged history of both compositions and indicated that Berlin's testimony and that of his supporting witnesses were much more reliable than Smith's.

Summing, up, the court concluded with this tribute to the defendant:

"The charge made against the defendant herein was serious indeed. Only one living in such a void as to be utterly ignorant of the tastes and customs, the joys and sorrows of the American people, could be unaware of Irving Berlin's enriching contributions to Music Americana for almost half a century. The record reveals that more than eight hundred songs composed by him have been copyrighted. Of these many have been woven into our national mores.

"The proof in this case does not justify, nor common sense permit, the inference that Mr. Berlin would jeopardize the singular place he has earned from the extraordinary achievements of a lifetime, by the tortious appropriation of this song."

343. *Hirsch v. Twentieth Century-Fox Film Corporation,* 105 U.S.P.Q. 253 (N.Y. Sup. Ct. Special Term Apr. 18, 1955).

Defendant moved for summary judgment dismissing plaintiff's complaint charging plagiarism of a literary work. Defendant claimed abandonment of common law rights and dedication to the public.

Held: Motion for summary judgment granted. The story which was the basis for the complaint was published in a Toronto, Canada paper in 1914 and republished in a Brooklyn, New York paper in both Yiddish and English in 1923. Dealing with the questions of abandonment of common law rights and the claim of limited publication, the court said:

"While intent to abandon in such degree as to afford protection against a charge of plagiarism is a question of fact, plaintiff intimates no fact or circumstance other than those recited and a statement of lack of such intent as basis for creation of a fact issue."

"The admitted facts here demonstrate an unqualified act of publication by printing and offering for sale. There is no intimation or any fact or circumstance presented to raise a triable question whether the act of dedication was in fact limited, thereby reserving that which was not dedicated. There is no question of intent where the dedication is made under the circumstance here and unqualifiedly. The facts adduced by defendant by documentary proof support a finding of dedication and there is a complete absence of proof by plaintiff of any fact or circumstance which would render such finding inconclusive, requiring trial of the issue of intent."

". . . Plaintiff's argument is actually to the effect that intent is subjective and therefore summary judgment is not in order. The uncontroverted objective proof of intent has been presented and the conclusion follows as a matter of fact and of law."

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

344. American Society of Composers, Authors and Publishers.

Copyright Law Symposium: No. 6. Nathan Burkan Memorial Competition sponsored by the American Society of Composers, Authors and Publishers. Foreword by Chief Judge Driver of the Federal District Court, Eastern District of the State of Washington, and Dean Emeritus Wesley A. Sturges of Yale Law School; Preface by Stanley Adams, President of ASCAP, and Herman Finkelstein, ASCAP's General Attorney.

Columbia University Press, New York. 186 p.

The sixth symposium contains the following essays: Pogue, *Borderland—Where Copyright and Design Patent Meet;* Cohen, *Fair Use in the Law of Copyright;* Seither, *Unesco: New Hope for International Copyright?;* Stevenson, Jr., *Moral Right and the Common Law: A Proposal;* DeMarines, *State Regulation of Musical Copyright;* and Bixby, *Hurn v. Oursler After Twenty Years.*

2. Foreign Publications

(a) In English and in French

345. Intergovernmental Conference on Copyright, *Geneva,* 1952.

Records of the Intergovernmental Copyright Conference, Geneva, 18 August-6 September 1952.

Paris, UNESCO, 1955, 415 *p.*

English text of the Universal Copyright Convention together with lists of the signatory countries, participants, the report of the General Rapporteur, recommendations, minutes and working documents, with indexes.

345a. International copyright union.

Preliminary draft international convention concerning the protection of performing artists, record manufacturers and broadcasting organizations. Paris meeting 30 October-4 November 1954. Analytical report.

Bern, 1955, 78 *p.,* 24 *unnumb.* 1 (*mimeo.*)

The document summarizes the discussion had at the Paris, 1954 meeting, and then in a series of appendices analyzes the proposals article by article and in parallel columns.

(b) In French

346. Intergovernmental Conference on Copyright, *Geneva,* 1952.

Actes de la conférence intergouvernemental du droit d'auteur. Genève, 18 aout-septembre 1952.

Zurich, UNESCO, 1954. 427 *p.*

French text of the Universial Copyright Convention together with lists of the signatory countries, participants, the report of the Rapporteur-General, resolutions, minutes of the conference, and indexes.

(c) In German

347. Troller, Alois

Die internationalen Beziehungen in den Referentenentwürfen zur Urheberrechtsreform.

Berlin, Verlag Musik und Dichtung, 1955. 80 p.

This is one of the first comprehensive studies of the pending German copyright reform proposals, with particular reference to international copyright.

(d) In Italian

348. Scheggi, Roberto

Concorrenza Trusts—Crisi, diritto industriale e d'autore.

Napoli, Case Editrice Dott. Eugenio Jovene, 1954. 433 *p.*

Treatise on the rights involved in the commercial utilization of patents and inventions as distinguished from the use of copyrighted material, industrial and ornamental designs, and trade-marks, and as affected by trusts, cartels, and other forms of concerted action.

(e) In Portuguese

349. Brazil. Laws, statutes, etc.

Direito autoral de execução pública e radio difusão; coletanea da legislação nacional vigente e dos tratados e convenções internacionais em vigor, com notas jurisprudenciais e comentários. Organizada pela consultoria jurídica da Sociedade Brasileira de Autores, Compositores e Editores de Musica (SBACEM).

São Paulo, 1954. 154 *p.*

Compilation prepared by SBACEM includes the provisions of the

Brazilian Constitution, civil and criminal codes and other domestic legislation pertinent to public performance and radio broadcasting rights in musical compositions in Brazil. Court opinions which interpret or apply the legislative and administrative provisions are also included.

(f) In Spanish

350. Mexico. Laws, statutes, etc.

La Ley federal mexicana sobre el derecho de autor, de 1947. Comentarios por Wenzel Goldbaum.

Mexico, Secretaría de Educación Publica, 1952. 94 *p.*

Pamphlet containing the text of the Mexican Copyright Law of 1947, including a prefatory note and an article-by-article commentary by Dr. Wenzel Goldbaum.

B. LAW REVIEW ARTICLES

1. United States

351. Kaplan, Benjamin

Publication in copyright law: the question of phonograph records.

University of Pennsylvania Law Review, vol. 103, *no.* 4 (*Jan.* 1955), *pp.* 469-490.

Analyzing the concept of publication under the copyright laws and its application to phonograph records, the writer finds that publication as now conceived has outlived its usefulness and suggests that a complete study and legislative revision be made of the concept.

352. Dubin, Joseph

Motion Picture Rights: United States and International.

Southern California Law Review, vol. 28, *no.* 3 (*April* 1955), *pp.* 205-239.

A comprehensive and scholarly study of copyright problems in the motion picture industry, both in the domestic and in the international spheres.

353. Netterville, Victor S.

California Law of Unfair Competition: Unprivileged Imitation.

Southern California Law Review, vol. 28, *no.* 3 (*April* 1955), *pp.* 240-279.

A thorough review not only of the California law but of the entire law of misappropriation and unfair competition.

354. Orth, Paul W.

Use of Expert Witnesses in Musical Infringement Cases.

University of Pittsburgh Law Review, vol. 16, *no.* 3 (*Spring* 1955), *pp.* 232-261.

A valuable study of one of the most difficult problems in copyright litigation.

355. Derenberg, Walter J.

Annual Survey of American Law. Copyright Law.

New York University Law Review, vol. 30, *no.* 2 (*February,* 1955), *pp.* 460-472.

A discussion of developments in copyright during 1954.

356. Copyright—In General—Unauthorized rediffusion of live and film telecasts of sports events to home viewers held nonactionable.

Harvard Law Review, vol. 68, *no.* 4 (*Feb.* 1955), *pp.* 712-714.

A note on a recent Canadian case, which held that live telecasts are not susceptible of copyright since they lack the requisite of originality

and are not "artistic works", "dramatic works", or "cinematograph productions or photographs". The author contrasts applicable U.S. copyright provisions, judicial opinions in the field of unfair competition and FCC regulations with those cited in the Canadian case.

357. De Boor, Hans Otto

Excerpt from "Letter From Germany" . . . published in 1954 Le Droit d'Auteur pp. 71 and 95. Private use of tape recorders. Translated from the French. See 1 BULL. CR. SOC. 158, Item 400 (1954).

New York Copyright Society of U.S.A., 1955. 11 *p.* (*Copyright Society of U.S.A., Translation Service* 1955, *no.* 1b.)

358. International copyright union.

International (Berne) Union for the Protection of literary and artistic works. State as of January 1, 1955 published in Le Droit d'Auteur. Translated from the French. See 2 BULL. CR. SOC. 123, Item 206 (1955).

New York, Copyright Society of U.S.A., 1955. 12 *p.* (*Copyright Society of U.S.A., Translation Service* 1955, *no.* 1a.)

359. Sanctis, Valerio de

Excerpt from "Letter from Italy" . . . published in 1954 Le Droit d'Auteur p. 193. Composer's rights against film distributors. Translated from the French. See 2 BULL. CR. SOC. 71, Item 164 (1955).

New York, Copyright Society of U.S.A., 1955. 2 *p.* (*Copyright Society of U.S.A., Translation Service* 1955, *no.* 1d.)

360. Vaunois, Louis

Excerpt from "Letter from France" . . . published in 1954 Le Droit d'Auteur p. 188. Sculptor's and painter's moral rights. Translated from the French.

New York, Copyright Society of U.S.A., 1955. 8 *p.* (*Copyright Society of U.S.A., Translation Service* 1955, *no.* 1c.)

2. FOREIGN

(a) In German

361. Benkard, Georg

Bearbeitung, Verfilmung und Wiedergabe im Urheberrecht.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 4 (*Apr.* 1955), *pp.* 161-171.

A survey of the types of copyright protection given motion picture productions under the laws of Austria, Switzerland, Belgium, France and Great Britain, as compared with the protection to be secured under the draft revision of the German Copyright Law.

362. Deutsche Vereinigung für Gewerblichen Rechtsschutz und Urheberrecht.

Urheberrechtliche Arbeitssitzung am 30. September 1954 in Frankfurt a.M.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 2 (*Feb.* 1955), *pp.* 79-81.

At a meeting of the Copyright Section of the German Patent and Copyright Law Association held in Frankfurt on September 30, 1954 the problems of making recordings and photocopies of protected material for private use were discussed at some length. The present account is a summary of the views expressed on these subjects by the members of the association who attended.

363. Haensel, Carl.

Das Orchester im Urheberrecht.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 4 (*Apr.* 1955), *pp.* 186-190.

The role of the orchestra and its performers under German copyright law.

364. Joseph, Otto

Gedanken zur Reform des Filmurheberrechts. Von . . . und Dr. Hermann Riedel.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 4 (*Apr.* 1955), *pp.* 171-185.

Discussion of some of the many aspects which have to be considered in granting protection to a motion picture production, such as authorship, production, titles, adaptation rights, costs, licensing, advertising, censorship, claims of plagiarism and invasions of the right of privacy.

365. Leinveber, Gerhard

Filmisches Urheberrecht, eine kritische Stellungnahme zur Urheberrechtsreform.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 4 (*Apr.* 1955), *pp.* 194-196.

Critical analysis of the position given motion pictures under the proposed new German Copyright Law.

366. Ludi, Verena

Einige internationale Aspekte des Urheberrechts in den Vereinigten Staaten an Werken der Literatur und das Welt-Urheberrechtsabkommen.

Schweizerische Juristen-Zeitung, vol. 51, *no.* 6 (15 *Mar.* 1955), *pp.* 85-87.

A brief summary of the legislative sources for copyright protection of foreign literary works in the United States since 1891, and the changes which will be effected by the Universal Copyright Convention upon its becoming effective.

367. Scheu, Giselheid

Das Magnetophon—ein neuer urheberrechtlicher Konflikt.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 4 (*Apr.* 1955), *pp.* 190-193.

Discussion of the new problems being created by the recording of radio broadcast performances on tape for private use.

368. Troller, Alois

Der Begriff "gewerbliche, literarische und kunstlerische Eigentumsrechte" im Gesetz Nr. 8 der Alliierten Hohen Kommission.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, *no.* 3 (*Mar.* 1955), *pp.* 124-126.

The conception of "industrial, literary and artistic property rights" in Statute No. 8 of the Allied High Commission.

(b) In Italian

369. Finkelstein, Herman

La Televisione e gli autori negli Stati Uniti.

Rassegna di Diritto Cinematografio, vol. 4, *no.* 1 (*Jan.-Feb.* 1955), *pp.* 6-8.

An Italian translation of a French article which appeared in *Inter-Auteurs,* in 1954, written by the General Attorney of ASCAP.

370. Giannini, Amedeo

Per una legislazione organica sulla cinematografiz.

Rassegna di Diritto Cinematografico, vol. 4, *no.* 1 (*Jan.-Feb.* 1955), *pp.* 2-4.

Prof. Giannini discusses a proposal that there be a single organic law concerning motion pictures.

371. Greco, Paolo

Il Diritto esclusivo di elaborazione e la possibilita' della trasformazione tra opere letterarie ed opere figurative.

Il Diritto di Autore, vol. 25, *no.* 4 (*Oct.-Dec.* 1954), *pp.* 472-483.

This article was prepared as one of a series of studies to be published in honor of Prof. Giuseppe Valeri, and deals with the legal problems arising from the transformation of a literary work into an artistic work or one involving designs.

372. Napolitano, Gaetano

Giornalismo e televisione.

Il Diritto di Autore, vol. 25, *no.* 4 (*Oct.-Dec.* 1954), *pp.* 484-500.

Presentation of some of the problems arising from the increasing use of news items on radio and television in competition with newspapers and periodicals.

373. Semo, Giorgio de

Lo Pseudonimo o "Nome d'Arte" con riguardo anche al diritto cambiario.

Il Diritto di Autore, vol. 25, *no.* 4 (*Oct.-Dec.*, 1954), *pp.* 447-471.

In a study on the use of nom de plumes and other forms of fictitious names and nicknames, and provisions concerning their use in Italian law, the author discusses the manner in which use of such names may affect an author's rights under the Italian copyright law.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

374. Philippine Senate defers manufacturing clause.

Publishers' Weekly, vol. 167, *no.* 14 (*Apr.* 2, 1955), *p.* 1722.

The bill would require Philippine manufacture for books seeking copyright protection in the Philippines. It was referred back to the Senate Foreign Affairs Committee on Mar. 21, 1955.

375. Pilpel, Harriet

But Can You Do That?

Publishers' Weekly, vol. 167, *no.* 13 (*Mar.* 26, 1955), *pp.* 1636-1639.

A resumé of recent cases in state and federal courts dealing with literary property, including those concerning obscenity and the right of privacy.

376. Service to publishers started in Mexico.

Publishers' Weekly, vol. 167, *no.* 14 (*Apr.* 2, 1955), *p.* 1720.

For an average fee of $10 a title on a quantity basis, a newly organized service in Mexico City will register American published books with the Mexican copyright office and arrangements will be made to send royalty payments to American firms.

377. Music Biz in Lap of Courts.

Variety (*Apr.* 27, 1955), *pp.* 47-48.

The article discusses recent decisions in the copyright field including *Shapiro-Bernstein v. Vogel* (*see Item* 333, *supra*); and *Marks Music v. Remington Records.*

378. Chile deposits ratification of Buenos Aires Copyright Convention of 1910.

Library of Congress Information Bulletin, vol. 14, *no.* 18 (*May* 2, 1955), *p.* 8.

The Copyright Office has been informed by the Division of Legal Affairs of the Pan American Union that on March 14, 1955, Chile deposited its instrument of ratification of the Buenos Aires Copyright Convention of 1910. This brings to 16 the number of American republics, including the United States, that have adhered to this Convention. See Letter of Manuel Canyes, chief, Division of Law and Treaties, Pan American Union, Item 317, supra.

2. England

379. New Copyright Bill will ratify Brussels and Universal conventions.

The Bookseller, no. 2566 (*Feb.* 26, 1955), *p.* 862.

An explanatory note concerning the amendments proposed by the bill recently introduced in the House of Lords for the purpose of amending the British Copyright Act of 1911 in order to facilitate ratification of both the Brussels Revision of the Bern Copyright Convention and the Universal Copyright Convention.

380. House of Lords Copyright Bill now reaches Committee stage.

The Bookseller (*Mar.* 26, 1955), *p.* 1062-1063.

Report of the consideration by the House of Lords of the new copyright bill.

INDEX

Volume 2—August 1954 - June 1955

LEGISLATION, CONVENTIONS, TREATIES AND PROCLAMATIONS

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

DECISIONS

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

TREATISES, ARTICLES AND EDITORIALS

Authors

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

Subject Matter

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

*All references are to item number, except where page numbers are given.

Copyright Society of the U.S.A.
c/o Fred B. Rothman & Co.
200 CANAL STREET
New York 13, N. Y.

Return Postage Guaranteed

Bulk Rate
U. S. POSTAGE
PAID
New York, N. Y.
Permit No. 5627