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

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CONTENTS

	Page
The President's Proclamation on the Universal Copyright Convention	1
Notices from the Copyright Office	3
PART I. LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS.	
1. United States of America and Territories	6
2. Foreign Nations	12
PART II. CONVENTIONS, TREATIES AND PROCLAMATIONS	13
PART III. JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY.	
A. Decisions of U.S. Courts.	
1. Federal Court Decisions	14
2. State Court Decisions	16
PART IV. BIBLIOGRAPHY	
A. Books and Treatises.	
1. United States Publications	17
2. Foreign Publications	18
B. Law Review Articles.	
1. United States	20
2. Foreign	
(a) English	22
(b) French	23
(c) German	25
(d) Italian	28
(e) Spanish	31
C. Articles Pertaining to Copyright from Trade Magazines.	
1. United States	32
2. England	33
3. France	33

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**1. BY THE PRESIDENT OF THE UNITED STATES
OF AMERICA**

A PROCLAMATION

WHEREAS a universal copyright convention, together with three related protocols, was signed at Geneva under date of September 6, 1952 on behalf of the United States of America and certain other states;

WHEREAS the texts of the said convention and protocols, in the English, French, and Spanish languages, are word for word as follows:

* * * *

WHEREAS the Senate of the United States of America by their resolution of June 25, 1954, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said convention, together with the three related protocols;

WHEREAS the said convention and the three related protocols were duly ratified by the President of the United States of America on November 5, 1954, in pursuance of the aforesaid advice and consent of the Senate:

WHEREAS it is provided in paragraph 1 of Article IX of the said convention that it shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession, among which there shall be those of four states which are not members of the International Union for the Protection of Literary and Artistic Works;

WHEREAS instruments of ratification or accession were, by June 16, 1955, deposited by the following twelve states, including seven which are not members of the International Union for the Protection of Literary and Artistic Works: Andorra, Cambodia, Pakistan, Laos, Haiti, Spain, United States of America, Costa Rica, Chile, Israel, German Federal Republic and Monaco.

WHEREAS pursuant to the aforesaid provision of paragraph 1 of Article IX of the said convention, the convention will come into force on September 16, 1955, three months after June 16, 1955, the date of deposit of the twelfth instrument;

WHEREAS it is provided in paragraph 2 b) of protocol 1 annexed to the universal copyright convention, concerning the application of that convention to the works of stateless persons and refugees, and in paragraph 2 b) of protocol 2 annexed to the universal copyright convention, con-

cerning the application of that convention to the works of certain international organizations, that the respective protocols shall enter into force for each state on the date of deposit of the instrument of ratification, acceptance or accession of the state concerned or on the date of entry into force of the convention with respect to such state, whichever is the later;

WHEREAS instruments of ratifications or accession with respect to the said protocol 1 were deposited by the following states: Andorra, Cambodia, Pakistan, Laos, Haiti, United States of America, Costa Rica, Israel, German Federal Republic and Monaco;

WHEREAS instruments of ratification or accession with respect to the said protocol 2 were deposited by the following states: Andorra, Cambodia, Pakistan, Laos, Haiti, Spain, United States of America, Costa Rica, Chile, Israel, German Federal Republic and Monaco;

WHEREAS, pursuant to the aforesaid provision in paragraph 2 b) of the said protocol 1 and protocol 2, the protocols will enter into force on September 16, 1955, the date of entry into force of the convention;

WHEREAS it is provided in paragraph 6 b) of protocol 3 annexed to the universal copyright convention, concerning the effective date of instruments of ratification or acceptance of or accession to that convention, that the protocol shall enter into force on the date of deposit of not less than four instruments of ratification or acceptance or accession and that instruments deposited after such date shall take effect on the date of their deposit;

WHEREAS, pursuant to the aforesaid provision in paragraph 6 b) of the said protocol 3, the protocol entered into force on August 19, 1954, the date of deposit of the fourth instrument, and entered into force with respect to the United States of America on December 6, 1954, the date of deposit of its instrument;

NOW, THEREFORE, be it known that I, Dwight D. Eisenhower, President of the United States of America, do hereby proclaim and make public the said convention and the said protocols 1, 2 and 3, to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after September 16, 1955 with respect to the said convention and protocols 1 and 2, and on and after December 6, 1954 with respect to the said protocol 3, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this fifth day of August in the year of our Lord one thousand nine hundred fifty-five and of the Independence of the United States of America the one hundred eightieth.

/s/ DWIGHT D. EISENHOWER

By the President:

/s/ JOHN FOSTER DULLES
Secretary of State

2. NOTICES FROM THE COPYRIGHT OFFICE

New Notice Provisions of the U. S. Copyright Law

The provisions of the United States copyright law with respect to the form of copyright notice have been modified effective September 16, 1955, the date on which the Universal Copyright Convention and Public Law 743, 83d Congress, come into force in the United States. The amended law is of interest to United States authors and publishers since it will permit the use of the symbol © on all classes of copyright material, serving the same purpose as the word "Copyright" or the abbreviation "Copr." (See Section 19 of Title 17, U. S. Code as amended, below.) Note that the other requirements relating to the copyright notice, as contained in Sections 19 and 20 of the law, such as the required location, remain unchanged.

The Universal Copyright Convention provides in effect that the use of the symbol © with the name of the copyright owner and the year date of publication on all copies from the time of first publication, will satisfy

the formalities that the domestic law of any foreign country adhering to that Convention might otherwise require as a condition of copyright in that country. A notice such as "© by John Doe, 1955" or "© 1955 by John Doe" will, after the effective date mentioned above, serve this purpose and will also be an adequate copyright notice for all classes of works under the United States law. Protection in non-contracting states will continue to be based on existing copyright arrangements between those countries and the United States.

Copyright claimants for works in Classes F to K (i.e., maps, works of art, reproductions of works of art, scientific and technical models, and prints) may continue to use the short form of notice authorized by Section 19 of the law (i. e., "© Easy Publishing Co.") but should note that such notice does not meet the requirements of the Universal Copyright Convention, in that the year date is lacking. If Convention protection for such works is desired, the name (rather than the initials, monogram, mark or symbol) of the proprietor should be used and the year date of publication included in order to meet the requirements of both Title 17, U. S. Code, and the Universal Copyright Convention.

Until September 16, 1955, provisions of Title 17, U. S. Code, in effect prior to the amending law continue to remain in force. In the interim before the Convention come into force, a form of combined notice might be used in order to comply with the existing law and the new amendment; thus, "Copyright © 1955 by Easy Publishing Co."

Excerpt from Title 17, United States Code, as amended:

"§ 19. Notice; form

"The notice of copyright required by section 10 of this title shall consist either of the word 'Copyright', the abbreviation 'Copr.', or the symbol ©, accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section 5 of this title, the notice may consist of the letter C enclosed within a circle, thus ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright was subsisting on July 1, 1909, the notice of copyright may be either in one of the forms prescribed herein or may consist of the following words: 'Entered according to Act of Congress, in the year _____, by A. B., in the office of the Librarian of Congress, at Washington, D. C.,' or, at his option, the word 'Copyright', together with the year the copyright was entered and the name of the party by whom it was taken out; thus, 'Copyright, 19—, by A. B.' "

Publications of the Copyright Office

The Copyright Office announces that its current publications are now available for consultation in the following depositories:

Los Angeles County Bar Association Library
301 West First Street
Los Angeles, California

Chicago Bar Association Library
29 South La Salle Street
Chicago, Illinois

New York Public Library
Fifth Avenue and 42nd Street
New York City, N. Y.

The Copyright Office publications include in addition to the *Catalog of Copyright Entries*, the *Bulletins of Copyright Decisions*, and other material reflecting historical and current developments in domestic and foreign copyright.

COPYRIGHT OFFICE BULLETIN NO. 29

Sometime around the first of October the Copyright Office expects to have available for distribution the 13th in the series of Bulletins of Copyright Decisions. This will be Bulletin 29 entitled, *Decisions of the United States Courts involving Copyright 1953-1954*, 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 during the years 1953 and 1954 by either the Federal courts or the State courts of the United States.

A supplemental list of cases, which do not directly involve copyright, but which may be of related interest, also decided during 1953 and 1954, is included in the appendix to this bulletin as additional reference material. Certain features of each of these cases have been summarized.

INDEX IN PROCESS

A cumulated index to Bulletin Nos. 17-29 (1909-1954) is in preparation and is expected to be available sometime after the first of the year.

PART I.

**LEGISLATIVE AND ADMINISTRATIVE
DEVELOPMENTS**

1. UNITED STATES OF AMERICA AND TERRITORIES

3. *U. S. Congress. House.*

H. J. Res. 270. Joint Resolution to designate the musical composition by John Philip Sousa, known as "The Stars and Stripes Forever," as the official national march of the United States of America. (Introduced by Mr. Ray on March 29, 1955 and referred to the Committee on the Judiciary.)

2 p. (84th Cong., 1st Sess.)

As the official national march the composition would be played "as a musical salute to high Federal and State Government officials, other than the President of the United States, on public occasions."

4. *U. S. Congress. House.*

H. J. Res. 341. Joint resolution to adopt a specific version of The Star-Spangled Banner as the national anthem of the United States of America. (Introduced by Mr. Broyhill, June 14, 1955 and referred to the Committee on the Judiciary.)

3 p. (84th Cong. 1st Sess.)

The resolution would amend 36 U.S.C. sec. 170 so as to include the specific words and music of The Star-Spangled Banner to be recognized as the national anthem.

5. *U. S. Congress. House.*

H. J. Res. 385. Joint resolution authorizing the printing and binding of a revised edition of Cannon's Procedure in the House of Representatives and providing that the same shall be subject to copyright by the author. (Introduced by Mr. Burleson on July 13, 1955 and referred to the Committee on House Administration.)

1 p. (84th Cong., 1st Sess.)

Provides for the printing of 1,500 copies of Cannon's Procedure in the House of Representatives and "notwithstanding any provision of the copyright laws and regulations with respect to publications in the public domain, . . . (it) shall be subject to copyright by the author thereof." Reported out of committee (H. Rept. 1309) and passed by the House on July 21, 1955; approved by the Senate on July 25, 1955 without objection.

6. *U. S. Congress. House.*

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 and referred to the Committee on the Judiciary.)

3 p. (84th Cong., 1st Sess.)

See 2 Bull. CR. Soc. 160, Item 318 (1955).

The bill permitting the substitution of photographs for classes G, H, I or K was reported out of committee on May 26, 1955 (H. Rept. 684) and passed by the House on June 7, 1955.

7. *U. S. Congress. House.*

H. R. 6654. A bill relating to the rendition of musical compositions on coin-operated machines. (Introduced by Mr. Murray of Illinois on June 6, 1955 and referred to the Committee on the Judiciary.)

1 p. (84th Cong., 1st Sess.)

This bill would amend Section 1 (e) of the Copyright Act by striking out the so-called "jukebox" exemption clause, and would, if enacted become effective as of July 1, 1955.

8. *U. S. Congress. House.*

H. R. 6716. A bill to amend title 28 of the United States Code relating to actions for infringements of copyright by the United States. (Introduced by Mr. Crumpacker June 8, 1955 and referred to the Committee on the Judiciary.)

2 p. (84th Cong., 1st Sess.)

Designed to amend sec. 1498 of Title 28, the bill would permit a copyright owner to recover for an infringement by the United States government, a U. S. corporation or contract either by an action in the Court of Claims or in any district court. A six year statute of limitations would apply.

9. *U. S. Congress. House.*

H. R. 6730. A bill to amend the Trading With the Enemy Act, as amended, and the War Claims Act of 1948, as amended. (Introduced by Mr. Priest (by request) on June 8, 1955 and referred to the Committee on Interstate and Foreign Commerce.)

35 p. (84th Cong., 1st Sess.)

The amendment would permit the return of most of the copyrights or rights or licenses pertaining thereto which remain vested in the Attorney General as a result of World War II. In addition the Library of Congress would receive the prints of motion pictures vested in or transferred to the Alien Property Custodian or Attorney General, except those involved in pending litigation.

10. *U. S. Congress. House.*

H. R. 6855. A bill relating to the rendition of musical compositions on coin-operated machines. (Introduced by Mr Philbin, June 15, 1955 and referred to the Committee on the Judiciary.)

1 p. (84th Cong., 1st Sess.)

Identical to the Murray bill (H. R. 6654). Item 7, supra.

11. *U. S. Congress. House.*

H. R. 6890. A bill relating to the rendition of musical compositions on coin-operated machines. (Introduced by Mr. Delaney June 16, 1955 and referred to the Committee on the Judiciary.)

1 p. (84th Cong., 1st Sess.)

Identical to H. R. 6654 and 6855. Items 7, 10, supra.

12. *U. S. Congress. House.*

H. R. 6970. A bill to amend the Trading with the Enemy Act, as amended, and the War Claims Act of 1948, as amended. (Introduced by Mr. Bosch, June 22, 1955 and referred to the Committee on Interstate and Foreign Commerce.)

35 p. (84th Cong., 1st Sess.)

Similar to H. R. 6730. Item 9, supra.

13. *U. S. Congress. House.*

H. R. 7300. A bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of income received from patent infringement suits. (Introduced by Mr. Ikard July 13, 1955 and referred to the Committee on Ways and Means.)

2 p. (84th Cong., 1st Sess.)

Designed to add a new subsection to sec. 1302 (a), it provides that if income is received or accrued after the commencement of court proceedings by the owner of a patent or copyright for an infringement or unauthorized use thereof occurring over a part of a prior taxable year, then it could be spread proportionately over that period if it would result in a lesser tax than when the lump sum proceeds were included in the gross income for the present year. Reported out of the House Committee (H. Rept. No 1357) on July 23, 1955 and amended by the House on July 27, 1955 by striking out the references to copyright. The Senate Committee on Finance issued a favorable report on the amended version (S. Rept. 1249) on July 29, and the bill was passed by the Senate on July 30, 1955.

14. *U. S. Congress. House.*

H. R. 7643. A bill to amend the Internal Revenue Codes of 1939 and 1954 with respect to foreign tax credit for United Kingdom income tax paid with respect to royalties and other like amounts. (Introduced by Mr. Simpson of Pennsylvania July 27, 1955 and referred to the Committee on Ways and Means.)

3 p. (84th Cong., 1st Sess.)

This bill would amend sec. 131 (e) of the Internal Revenue Code of 1939 and sec. 905 (b) of the Internal Revenue Code of 1954 with respect to the taxation of royalties or amounts paid as consideration for the use of or for the privilege of using copyrights, patents, designs, secret processes and formulas, trademarks and other like property derived from sources within the United Kingdom of Great Britain and northern Ireland.

15. *U. S. Congress. House.*

Murray, James C.

A needed amendment to copyright law.

Congressional Record, vol. 101, no. 100 (June 15, 1955), pp. A-4256-57.

In his extension of remarks concerning H. R. 6654, Congressman Murray includes an article by James O'Neill, Jr. in the *Washington News*, which is in support of the bill and cites the proposed royalty fee of \$30 per machine to the composers of the recorded music played thereon.

16. *U. S. Congress. House.*

Philbin, Philip J.

Music Industry should act.

Congressional Record, vol. 101, no. 100 (June 15, 1955), pp. A-4310-11.

Congressman Philbin's extension of remarks includes a comment on the music industry and two articles, one by Harriet Van Horne and one from the *Rochester Democrat and Chronicle* entitled "What Has Happened to Popular Songs?" and "Sad Note on a Jukebox".

17. *U. S. Congress. House.*

Thompson, Frank, Jr.

Library of Congress makes first definitive study of major attempts to modernize copyright law of 1909; I. Introduction; II. The first attempt at a major revision, 1924; III. The Perkins Bill, 1925; IV. The attempt at agreement within the industry, 1925-26.

Congressional Record, vol. 101, no. 106 (June 23, 1955), pp. A-4586—A-4589.

In a series of extensions of remarks, Congressman Thompson gives excerpts from a report prepared by the Legislative Reference Service of the Library of Congress which reviews some of the attempts at a major revision of the copyright law during the past twenty years. Two further series of excerpts are to be found under the heading "Library of Congress requests authorization for 3-year study" and "Copyright Office given \$20,000 for the initiation of studies relating to the revision" in the *Congressional Record* for June 28 and July 12, 1955, respectively.

18. *U. S. Congress. Senate.*

S. 2213. A bill to require that any publication transported in interstate commerce shall contain the name and address of the publisher of such publication. (Introduced by Mr. Kefauver, June 14, 1955 and referred to the Committee on the Judiciary.)

2 p. (84th Cong., 1st Sess.)

Provides that whoever knowingly transports or causes to be transported in interstate commerce any publication which does not contain the names and addresses of the persons, associations, committees, or corporations publishing the work shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

19. *U. S. Congress. Senate.*

S. 2227. A bill to amend the Trading with the Enemy Act, as amended, and the War Claims Act of 1948, as amended. (Introduced by Mr. Kilgore, June 14, 1955 and referred to the Committee on the Judiciary.)

35 p. (84th Cong., 1st Sess.)

Identical to H. R. 6730 and 6970. Items 9, 12, supra.

20. *U. S. Congress. Senate.*

State of Illinois. Mr. O'Mahoney, from the Committee on the Judiciary, submitted the report to accompany S. 125. Washington, Govt. Print. Off., July 28, 1955.

5 p. (84th Cong., 1st Sess., S. Rept. No. 1202).

The report proposes that the original bill intended to secure copyright in an emblem containing an outline map of Illinois with a profile of Lincoln, and the words "Illinois—Land of Lincoln" (previously published without the statutory notice), be amended so as instead to confer upon the state the exclusive right in interstate commerce to use, manufacture and control the right to manufacture of the design. The bill in its new form was passed by the Senate on July 30 and by the House on August 1, 1955.

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

Part 598—Patents, Copyrights and technical data. Title 32—National Defense. Ch. V.—Department of the Army. Subchapter G.—Procurement.

Federal Register, vol. 20, no. 112 (Thursday, June 9, 1955), pp. 4017-4025.

Sec. 598.204 of the amended Army regulations deals with contracts for motion pictures, setting forth the type of contract to be used in procuring scripts, translations, sound tracks, musical compositions or existing motion pictures and prescribing the modifications of such contracts which shall be permissible.

2. FOREIGN NATIONS

22. *Egypt. Laws, statutes, etc.*

Loi sur le droit d'auteur. (Du 24 juin 1954.)

Le Droit d'Auteur, vol. 68, no. 5 (May 1955), pp. 61-63; no. 6 (June 1955), pp. 77-80.

A French version of the Egyptian copyright law of June 24, 1954.

23. *Germany. (Berlin, Western Sector.) Laws, statutes, etc.*

Dreizehntes Gesetz über die Anwendung von Bundesgesetzen über internationale Abkommen der Bundesrepublik Deutschland vom 19. März 1955.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, no. 5 (May 1955), pp. 240.

Paragraph 7 of Article 1 makes the German law on the Universal Copyright Convention of February 24, 1955 applicable to Berlin as of Mar. 2, 1955.

24. *Germany. Laws, statutes, etc.*

Gesetz über das am 6. September 1952 unterzeichnete Welturheberrechtsabkommen von 24 Februar 1955.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, no. 5 (May 1955), pp. 237.

The law providing for ratification of the Universal Copyright Convention by Germany.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

25. *U. S. Treaties, 1953- (Eisenhower)*

State treaty for the re-establishment of an independent and democratic Austria.

Congressional Record, vol. 101, no. 102 (Friday, June 17, 1955), pp. 7292-7325.

The U. S. Senate on June 17, 1955 ratified the Austrian State Treaty. Art. 25 thereof deals with property rights and interest therein. The word "property" is designed specifically to include literary and artistic rights. Austria undertakes to restore all legal rights and interest in Austria as they existed on the day hostilities commenced between that country and the allied powers. All property rights and interest are to be restored free of all encumbrances and the Austrian Government will invalidate all transfers of property rights and interest where the transfer was a result of force by Axis governments or their agents.

26. *U. S. Treaties, 1953- (Eisenhower)*

Copyright. Provisional arrangement between the United States of America and Japan, effected by exchange of notes signed at Tokyo November 10, 1953; entered into force November 10, 1953; operative retroactively April 28, 1952; and related exchanges of notes signed at Tokyo November 10, 1953. Washington, GPO, 1955.

18 p. (*Treaties and other international Acts series, 2906; U. S. Dept. of State Publication 5486*).

PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY
AND ARTISTIC PROPERTY**

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions*

27. *Edward B. Marks Music Corp. v. Continental Record Co., Inc.*, 105 U.S.P.Q. 350 (2d Cir. May 10, 1955).

In a Per Curiam opinion the court refused to grant attorneys fees as permitted under 17 U.S.C. 116 since "The litigation which it instituted was not vexatious but involved a novel question of statutory interpretation."

Petition for writ of certiorari filed July 7, 1955, 106 U.S.P.Q. No. 4 p. II. See also 2 BULL. CR. SOC. 169, Item 331 (1955).

28. *Miner v. Employers Mutual Liability Insurance Company of Wisconsin*, 105 U.S.P.Q. 357 (D.C. D. C. May 17, 1955).

"Upon consideration of defendant's motion for summary judgment and the opposition thereto, and of argument of counsel in open court, and it appearing that there is no genuine issue of material fact therein; that plaintiff's copyright registrations are on insurance policies; that there is no similarity in the arrangement of words of plaintiff's policies and the arrangement of words in defendant's policy and that defendant has not appropriated in the exact form or substantially so plaintiff's copyright material, the court concludes that assuming that plaintiff's copyrights are valid, there has been no infringement thereof by defendant. . . ." Motion for summary judgment granted defendant.

***Errata:**

- 2 BULL. CR. SOC. page 166, item 330 (1955) should read: *Capitol Records, Inc. v. Mercury Records Corp.*, 221 F.2d 657, 105 U.S.P.Q. 163 (2d Cir. Apr. 12, 1955).
- 2 BULL. CR. SOC. page 177, item 336 (1955) should read: *Republic Pictures Corp. et al. v. Rogers*, 105 U.S.P.Q. 470 (9th Cir. May 19, 1955).

29. *Republic Pictures Corp. v. Rogers*, 105 U.S.P.Q. 470 (9th Cir. May 19, 1955).

Appellee filed a petition seeking clarification of reversal and remand of prior judgement "so that the court below would be directed or authorized to enter a judgment which in addition to protecting 'the motion pictures rights' of the defendants as adjudicated in our opinion, would also protect 'the non-motion picture rights (i.e. the name, voice and likeness rights of petitioner')." ."

"Our opinion stated. . . 'All parties agree that pursuant to said contracts, appellee and only appellee has the right to use his name, picture or voice in advertisements (except for advertisements of motion pictures.)' Thus our opinion disclosed that the defendant was making no claim to such non-motion picture rights and the same were not in issue in the case."

"We observe no reason for modifying, clarifying or otherwise altering our judgment or the mandate and the petition is denied."

30. *Alexander v. Irving Trust Co.*, 106 U.S.P.Q. 74 (S.D.N.Y. June 28, 1955).

Rosé Alexander sued for infringement of copyright and unfair competition in the publication of a book, "The Psychiatric Novels of Oliver Wendell Holmes". Her work consisted of a two-page article for a defunct medical journal in which she presented the view that Holmes had anticipated Freud in his writings. The court conceded that the same subject was involved but held there could be no infringement based on similarity of subject matter. Plaintiff also failed to carry the burden of proving access. The author of the book had written an introduction and then examined the various Holmes novels to point out their psychological aspects in great detail. Finally, the court observed that plaintiff had failed to prove ownership of the copyright claimed to be infringed since there was no evidence of reservation of rights when the work was transferred to the publisher. Incidental aspects of unfair competition and copyright with respect to the name of the book were rejected as having no merit.

31. *Buckler v. Paramount Pictures, Inc.*, 106 U.S.P.Q. 256 (S.D.N.Y. Aug. 2, 1955).

Action for copyright infringement against defendants for their production of "Sunset Boulevard". Plaintiff was the author of an unpublished

play which had been performed three times in summer stock. The court, in deciding the motion for summary judgment, was faced with the issue of similarity.

After examining the plaintiff's play and the motion picture production the court concluded there could not possibly be any similarity on which to base an infringement action. One was set in Hollywood and involved a retired actress who deluded herself. The other was based on a Long Island locale and involved a brilliant woman who was performing real services for her country.

Accordingly, the court said: "It is my conclusion, therefore, that there is no genuine issue of fact with respect to the claim of similarity between the defendant's motion picture, 'Sunset Boulevard,' and the plaintiff's play, 'The Fifth Freedom,' and that judgment should be entered in favor of the defendant dismissing the complaint on both causes of action.

2. State Court Decisions

32. *Hill and Range Songs, Inc. v. London Records, Inc.*, 142 N.Y.S. 2d 311 (Sup. Ct. N.Y., May 4, 1955).

Plaintiff sought an injunction pendente lite to restrain defendant from pressing, recording, selling or dealing with plaintiff's musical composition, "Chee Chee-oo Chee", for which plaintiff obtained the rights to the lyrics under agreement with an English company. Just prior to that time, plaintiff had obtained the rights for United States and Canada to publish and copyright a song by an Italian songwriter, entitled, "Ci-Ciu-Ci." Both the music and the lyric to "Chee Chee-oo Chee" were previously published.

Held: Motion for injunction denied.

The Court said: "The plaintiff's application is directed to an English recording incorporating the published music and lyric. Under the circumstances, it would appear that whatever common-law rights the plaintiff might have had prior thereto terminated with the publication of the music and lyric, although the publication thereof occurred abroad. . . .

"The plaintiff has failed to establish any common law right upon which may be predicated the relief sought on this application. Whatever rights plaintiff may have under the federal copyright statute . . . must be vindicated in a federal court."

PART IV.

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The History of U.S.A. copyright law revision, 1901-1954. Prepared by . . . Principal Legal Advisor, Research Unit, Copyright Office.

Washington, Copyright Office, 1955, 20 p. (multilith).

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Washington, Copyright Office, 1955, 6 p. (multilith).

35. Philippine Republic. *Bureau of Public Libraries.*

Philippine copyright rules of practice.

Reproduced by U. S. Copyright Office, July 1955, 17 p.

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Summary of the German draft law on copyright and of the report of the drafting commission.

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Mr. Strauss summarizes the report which accompanied the recent German Draft Law on Copyright published by the German Ministry of Justice for the purpose of securing comments and criticism.

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Brief answers to common questions about copyrights.

Washington, G.P.O., 1955. 21. (Circular No. T 2, Brochure Insert).

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(a) In French

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Paris, Librairie Arthur Rousseau, 1955, 274 p.

This doctoral dissertation briefly traces the evolution of the concept of "copyright" in Anglo-American Law. It then discusses the type of material protected, the persons benefitted, the concepts of publication and formalities, the scope and duration of pecuniary benefits, restrictions upon such benefits, moral rights and the application of the international conventions to copyrighted works in the two countries.

(In French and English)

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Dept. of Cultural Activities, Copyright Division.

Copyright Bulletin, vol. VIII, No. 1, 1955. 132 p.

This issue of the *UNESCO COPYRIGHT BULLETIN* is devoted to the Universal Copyright Convention as of June 10, 1955. It includes articles by George D. Cary on the Convention and U. S. Public Law 743, Plinio Bolla on Article XIX, Germán Fernández del Castillo on the right of translation, Valerio de Sanctis on the clauses providing "Safeguards for the Berne Convention," and Marcel Boutet on the Convention and the "Universality of Copyright." A table of dates of ratifications and accessions as of June 10, 1955, with notes concerning some of the individual countries, is included on pages 3 and 4.

(b) In German

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Taschenbuch des Urheberrechts. Herausgegeben von . . . und Gerhard Schneider.

Köln-Berlin, Carl Heymanns Verlag AG, 1955, 634 p.

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(c) In Italian

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L'Opera dell'ingegno; interpretazione, riproduzione meccanica e diffusione sonora.

Milano, Editore Dott. A. Giuffrè, 1954, 280 p.

This book deals with the theories — juridical and economic — which underlie performing rights, including that of mechanical reproduction. Of special interest are indexes to basic legislation for Italy and a number of foreign countries, and a chronological listing of pertinent decisions, in addition to author and subject matter indexes.

(d) In Spanish

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Madrid, Ediciones Rialp, 1953, 131 p.

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The Federal Bar News, vol. 2, no. 7 (Apr. 1955), pp. 211-213, 232-233.

A survey of the copyright and patent laws recently adopted by Czechoslovakia.

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New York University Law Review, vol. 30, no. 2 (Feb. 1955), pp. 478-491.

A note on the effect the coming into force of the Universal Copyright Convention will have on copyright protection in the United States. The author touches upon such aspects as ad interim copyright, the notice requirements for both U. S. nationals and aliens, the manufacturing clause, mechanical reproductions, and renewals.

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Miami Law Quarterly, vol. 9, no. 2 (Winter, 1955), pp. 148-167.

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Missouri Law Review, vol. 20, no. 2 (Apr. 1955), pp. 187-199.

The writer draws upon the courts' interpretations of the 1939 Internal Revenue Code relative to copyright income in attempting to evaluate the treatment which will be given income from copyrights under the new law. The fact that new regulations on the subject have not yet been issued is noted as being a limiting factor in the evaluation.

51. Holy See and Luxemburg ratify Universal Copyright Convention.

UNESCO Newsletter, vol. II, no. 13 (August 5, 1955), p. 1.

The Holy See and Luxemburg became the 13th and 14th States to join the Convention.

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UNESCO Newsletter, vol. II, no. 16 (Sept. 16, 1955), p. 1.

The Philippines has become a party to the UNESCO-sponsored Convention.

2. FOREIGN

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Significance of recent amendment to U. S. copyright law.

The Australian Official Journal of Patents, Trade Marks and Designs, vol. 25, no. 12 (Apr. 7, 1955), pp. 588, 589.

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(b) In French

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The letter summarizes recent copyright developments in Great Britain and includes the text of the bill introduced in the House of Lords designed to modify present legislation so as to permit ratification of the Brussels Revision of the Bern Copyright Convention (1948), and the Universal Copyright Convention, and to create a television exhibition right. There are also references to recent court decisions and to the work of the Performing Right Society.

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La Ratification, par les Etats-Unis d'Amérique, de la convention universelle sur le droit d'auteur.

Le Droit d'Auteur, vol. 68, no. 5 (May 1955), pp. 63-70.

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Revue Internationale du Droit d'Auteur, no. 7 (Apr. 1955), pp. 97-115.

An historical account of the evolution of the dramatic authors' contractual arrangements with the Comedie-Francaise from the 17th century to the present day.

60. Saporta, Marcel.

Le producteur est-il titulaire des droits sur le film cinématographique?

La Vie Judiciaire, no. 469 (Apr. 9, 1955), pp. 1-3.

The author poses a series of questions such as "Should the motion picture be treated as a product of collaboration or a collective work?" "Is the producer a creator?" "Is compromise a solution?" His answers are based upon the laws and decisions of a number of countries.

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Les oeuvres d'art et al communaute conjugale.

Revue Internationale du Droit d'Auteur, no. 7 (Apr. 1955), pp. 117-131.

A discussion of the distribution of assets under community property laws of France upon the death of a spouse with special reference to the property rights in works of art and the moral rights of the artist.

62. Troller, Alois.

La Portée internationale des avant projets allemands sur le réforme du droit d'auteur.

Le Droit d'Auteur, vol. 68, no. 6 (June 1955) pp. 80-87; no. 7 (July 1955) pp. 93-99.

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A discussion of those sections of the draft copyright law of Germany which would be of interest to journalists and newspaper publishers.

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Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 3/4 (Jan., 1955), pp. 162-178.

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GEMA Nachrichten, no. 24 (Apr. 1955), pp. 9-15.

This is a commentary on the suggestions made by Dr. Erich Schulze in his book "Recht und Unrecht" concerning the proposed revision of the German copyright laws recently distributed by the Ministry of Justice in Germany for discussion.

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"Schutz von Briefen."

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 3/4 (Jan. 1955), pp. 129-142.

Dr. Hirsch Ballin suggests that the protection provided letters and personal manuscripts under the proposed German Copyright Law should be taken out of the draft law because personal rights of this type do not belong in copyright.

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Die Referentenentwürfe und das Verlagsrecht.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 3/4 (Jan. 1955), pp. 142-156.

A commentary on the proposed German Copyright Law from the viewpoint of publication, including not only the multiplication of copies, but dissemination, radio-broadcasting, and other means.

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Der Referentenentwurf eines Gesetzes über Verwertungsgesellschaften und Fragen der Vereinbarkeit mit der Revidierten Berner Übereinkunft in der Fassung von Brussel (RBU).

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 3/4 (Jan. 1955), pp. 156-161.

An analysis of the draft German Copyright Law from the point of view of the International Copyright Union operating under the Bern Copyright Convention as revised in 1948.

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Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, heft 1, 1955 pp. 37-53.

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(d) In Italian

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Rivista di Diritto Industriale, vol 3, no. 1, Parte II (Jan-Mar., 1954), pp. 4-30.

A case note on a judicial interpretation of articles 2, 4, and 12 of the Italian Copyright Law, with regard to the amount of transformation necessary on a creative work to secure protection as new work.

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A note on the relationship between the moral rights of the author and the determination of damages for moral injuries.

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Sul ritiro dell'opera dal commercio.

Il Diritto di Autore, vol. 26, no. 1 (Jan.-Mar. 1955), pp. 1-10.

Author's right to withdraw a work from commercial exploitation and the legal effect such withdrawal may have.

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Utilizzazione di insegne commerciale per il titolo di un film.

Rassegna di Diritto Cinematografico, vol. 4, no. 2 (Mar.-Apr. 1955), pp. 36-37.

An Italian note by a French jurist on a recent French decision involving unfair competition in the use of a commercial trade-name as the title of a motion picture.

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Alla ricerca di una definizione giuridica dei rapporti tra produttore e distributore di films.

Rassegna di Diritto Cinematografico, vol. 4, no. 2 (Mar.-Apr. 1955), pp. 38-39.

Case note concerning a recent Italian decision involving the interpretation of a contract providing for the distribution of certain motion picture films.

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Rivista di Diritto Industriale, vol. 3, no. 3 (July-Sept., 1954), Parte I, pp. 276-294.

Summary of the theories advanced by Italian jurists over a fifty-year period on the protection of designs and applied art, together with a chronological list of the articles and works referred to in review.

83. Sarraute, R.

Natura giuridica del contratto di coproduzione cinematografica; secondo il diritto francese per . . . e M. Garline.

Rassegna di Diritto Cinematografico, vol. 4, no. 2 (Mar.-Apr. 1955), pp. 40-42.

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Spunti sui diritti degli interpreti nel quadro dell'elaborazione dell'opera cinematografica.

Rivista di Diritto Industriale, vol. 3, no. 3, Parte II (July-Sept. 1954), pp. 260-276.

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85. Sordelli, Luigi.

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Il Diritto di Autore, vol. 26, no. 1 (Jan-Mar. 1955) pp. 11-34.

Some aspects in the evolution of the protection accorded the performing artists and record manufacturers of broadcast recorded music under various international conventions.

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Giurisprudenza italiana sui diritti degli artisti interpreti di opere cinematografiche negli ultimi trent'anni (1922-1952).

Rivista di Diritto Industriale, vol. 3, no. 1, Parte II, (Jan.-Mar. 1954), pp. 92-97.

A resumé of Italian court decisions for the period of 1922 to 1952 dealing with the rights of the performing artist in the field of motion picture production.

87. Sordelli, Luigi.

L'Utilizzazione meccanica e sonora dell'opera dell'ingegno.

Rivista di Diritto Industriale, vol. 3, no. 2, Parte I, (Apr.-June, 1954), pp. 120-140.

This study on the performing rights, mechanical reproduction rights and broadcasting rights of musical compositions is an abridged version of a chapter from the author's book entitled "L'opera dell'ingegno: interpretazione, riproduzione meccanica e diffusione sonora."

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Rivista di Diritto Industriale, vol. 3, no. 4, Parte II, (Oct.-Dec. 1954), pp. 363-370.

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Revue Internationale du Droit d'Auteur, no. 7 (Apr. 1955), pp. 69-95.

A presentation of some of the rights owing a scientist as a reward for his creative ability.

C. ARTICLES PERTAINING TO COPYRIGHT
FROM TRADE MAGAZINES

1. United States

90. Bill makes government liable for copyright infringement.

Publishers' Weekly, vol. 168, no. 1 (July 2, 1955), p. 26.

A note on the recent introduction of H. R. 6716 by Congressman Crumpacker. Item 8, *supra*.

91. Copyright Office outlines forms for universal convention.

Publishers' Weekly, vol. 168, no. 1 (July 2, 1955), pp. 25-26.

Discussion of the form of notice which will be valid after September 16, 1955 as a result of the entry into force of the Universal Copyright Convention and the coming into effect of Pub. Law 743 (83d Cong., 2d Sess.) on that date.

92. Philippines ratifies Universal Copyright Convention.

Publishers' Weekly, vol. 167, no. 23 (June 4, 1955), p. 2562.

Ratification of the Universal Copyright Convention by the Philippine Senate means that the controversial Gonzalez bill which would enact a manufacturing clause, will have to be redrafted in order to conform with the requirements of the convention. Ten ratifications have been deposited, and three countries have passed legislation ratifying the convention but have not yet made deposit.

93. Wallace, H. A.

Canadian Bookseller Association Convention held in Toronto.

Publishers' Weekly, vol. 167, no. 25 (June 18, 1955), p. 2760-2766.

The president of the association, in summarizing the events of the convention, mentions that the publishers had not yet been consulted by the Copyright Commission, and a recommendation was made that the directors present the bookseller's position to the Commission.

2. England

94. Greco, Paolo.

Assignments or concessions of rights in future works.

E.B.U. Bulletin, vol. 6, no. 31 (May-June, 1955), pp. 211-219.

A discussion of the validity and enforcement of a contractual obligation to create and the assignment or transfer of rights in the works to be so created. A comparison is made of the legislative provisions to be found in several of the European countries and in the draft laws of Germany.

95. Proposed copyright revision.

The Author, vol. 65, no. 4 (Summer, 1955), pp.79-80.

Discussion of British copyright law modifications which must be effected in order to permit that country to ratify the Brussels Revisions of the Bern Copyright Convention and the Universal Copyright Convention, together with the provisions providing for a television exhibiting right contained in the bill recently introduced in the British House of Lords.

3. France

96. Contrat-type d'édition approuvé par le Commissariat du Peuple à l'instruction publique de la R.S.F.S.R. et par le Commissariat du peuple au commerce de la R.S.F.S.R. ("Hebdomadaire du Commissariat du peuple à l'instruction publique de la R.S.F.S.R.", 19 avril 1929, no. 16-17).

Inter-Auteurs, no. 119 (2e trimestre, 1955) pp. 90.

French translation of a sample publishing contract from the Soviet Union.

97. Legislation soviétique sur le droit d'auteur.

Inter-Auteurs, no. 199 (2e trimestre, 1955) pp. 90.

A brief enumeration of pertinent Soviet legislation for the protection of literary works as embodied in a compilation on the subject published in Moscow in 1953.

98. Jouglet, Rene.

Les Auteurs en Union Soviétique.

Inter-Auteurs, no. 119 (2e trimestre, 1955), pp. 79-89.

The author of this article reports on a recent trip to Moscow during which he met and talked with representatives from both the Writers' Union and Musicians' Union. Sections of the report deal with book authors, dramatists, and choreographers, among other items of interest.

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CONTENTS

	Page
PART I. LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS.	
1. United States of America and Territories	35
2. Foreign Nations	36
PART II. CONVENTIONS, TREATIES AND PROCLAMATIONS	38
PART III. JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY.	
A. Decisions of U.S. Courts.	
1. Federal Court Decisions	38
2. State Court Decisions	46
PART IV. BIBLIOGRAPHY	
A. Books and Treatises.	
1. United States Publications	47
2. Foreign Publications	
(a) In German	50
B. Law Review Articles	
1. United States	51
2. Foreign	
(a) In English	52
(b) In Dutch	53
(c) In French	54
(d) In German	56
(e) In Italian	60
C. Articles Pertaining to Copyright From Trade Magazines.	
1. United States	62
2. England	64
3. Germany	65

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PART I.

**LEGISLATIVE AND ADMINISTRATIVE
DEVELOPMENTS**

1. UNITED STATES OF AMERICA AND TERRITORIES

99. *U. S. Copyright Office.*

Registration of claims to copyright. Miscellaneous amendments. Code of Federal Regulations, Title 37, Ch. II, Part 201-202.

Federal Register, vol. 20, no. 181 (Sept. 16, 1955), pp. 6931-6932.

The amended text of sections 201-202 of the Copyright Regulations to bring the regulations in accord with the legislative changes necessitated by the Universal Copyright Convention.

100. *U. S. Treasury Dept.*

General regulations under the income tax convention between the United States and Belgium. Notice of proposed rule making.

Federal Register, vol. 20, no. 190 (Sept. 29, 1955), pp. 7260-7268.

Sec. 504.110 of the proposed regulations [CFR, Title 26 (1954)] would provide that "Royalties representing consideration for the right to use copyrights, patents, secret processes and formulae, trade marks, and other analogous rights, including rentals in respect of motion picture films, which are derived from sources within the United States by a non-resident alien individual who is a resident of Belgium or by a Belgian corporation or other entity, are exempt from United States tax under the provisions of Article IX (2) of the convention if such alien, corporation, or other entity at no time during the taxable year in which such items of income were derived had a permanent establishment in the United States."

2. FOREIGN NATIONS

101. *Chile. Laws, statutes, etc.*

Decreto 74 de 16 febrero 1955, Ministerio de Relaciones Exteriores ordena cumplir y llevar a efecto como Ley de la Republica la Convención Interamericana sobre el Derecho de Autore in Obras Literarias, Cientificas y Artisticas de 1946.

Diario Oficial, no. 23202 (July 21, 1955), pp. 1505-1507.

Decree announcing the taking effect of Chile's adherence to the Inter-American Copyright Convention of 1946.

102. *Chile. Laws, statutes, etc.*

Decreto 200 de 9 mayo 1955, ordena cumplir y llevar efecto como Ley de la República la Convención sobre Propiedad Artística y Literaria, suscrita por Chile el 11 de agosto 1910, en ocasión de la Cuarta Conferencia Internacional Americana.

Diario Oficial, no. 23203 (July 22, 1955), pp. 1513-1514.

Decree concerning the deposit of Chile's ratification of the 1910 Inter-American Convention with the Ministry of Foreign Relations of Argentina on March 14, 1955.

103. *Columbia. Laws, statutes, etc.*

Decreto 2384 de 2 septiembre 1955, crea el Consejo Nacional de Television.

Diario Oficial, no. 28856 (Sept. 19, 1955), p. 1085.

Decree establishing a National Council for Television, to promote national culture and education and empowered to approve and disapprove programs or make contracts with authors and producers.

104. *Germany. Laws, statutes, etc.*

Gesetz über das am 6. September 1952 unterzeichnete Welturheberrechtsabkommen vom 24. Februar 1955; Denkschrift zum Welturheberrechtsabkommen; Stenographische Berichte der Verhandlungen des Deutschen Bundestags.

Blatt für Patent-, Muster- und Zeichenwesen, vol. 57, no. 6 (June, 1955), pp. 224-230.

Includes the text of the law providing for ratification of the Universal Copyright Convention, and the explanatory memorandum and stenographic record of the legislative proceedings during which the law was approved.

105. *Germany. (Democratic Republic)*

Déclaration du Gouvernement de la République Démocratique Allemande concernant l'application de la Convention de Berne révisée à Rome le 2 juin 1928 (du 11 mai 1955).

Le Droit d'Auteur, vol. 68, no. 10 (Oct. 1955), pp. 149-150.

A declaration received by the Swiss government from the German Democratic Republic notifying them that the Bern Copyright Convention as revised at Rome in 1928 is considered as being applicable to the East Zone of Germany.

106. *Germany.*

Entwurf eines Gesetzes betreffend die Darstellung lebender oder verstorbener Personen in Spielfilmen.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 20, nos. 3/4 (Aug. 1955), p. 191.

Text of 1953 draft law concerning representation of living or deceased persons in motion pictures.

107. *Luxembourg.*

Entwurf eines Abänderungsgesetzes über das Urheberrecht.

Archiv für Urheber- Film- Funk, und Theaterrecht, vol. 20, nos. 1/2 (June 30, 1955), pp. 104-110.

A brief explanatory statement precedes a German translation of the Luxembourg draft law designed to amend their copyright legislation of 1898.

108. *Norway.*

Prolongation de la durée du droit d'auteur.

Revue Internationale du Droit d'Auteur, no. 8 (July 1955), p. 120.

French translation of a draft law designed to extend the period of copyright protection for certain works for six years, equivalent to the duration of hostilities 1939-1945. The law, if enacted by the Norwegian legislature, would become effective as of July 1, 1955.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS109. *France. Ministry of Foreign Affairs.*

Protocole complémentaire à la convention franco-équatorienne du 9 mai 1898 et au protocole additionnel du 1er juillet 1905, pour la parantie réciproque de la propriété littéraire et artistique (du 12 décembre 1952).

Le Droit d'Auteur, vol. 68, no. 9 (Sept. 1955), pp. 129.

This complementary protocol grants reciprocal protection to musical works which have met the required formalities in either of the two countries. The protocol became effective upon the exchange of instruments of ratification (Feb. 19, 1955), and the original French text appears in the *Journal officiel* of June 19, 1955.

PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY
AND ARTISTIC PROPERTY**

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions

110. *Ballentine v. DeSylva*, 106 U.S.P.Q. 347 (9th Cir. Aug. 25, 1955).

Note: This is the first appellate court decision which determines the following two controversial questions: (a) Under the renewal section (Section 24) of the Copyright Act, are the widow and children considered to be members of the same class, or does the surviving widow exclude the children from exercising the renewal right? (b) If it be true that the widow and children are members of the same class, is an illegitimate child through its guardian entitled to exercise the renewal right under the Statute?

George DeSylva was a songwriter who authored many copyrighted musical compositions. He died in 1950 and his widow applied for and received renewals of certain of the copyrights. Plaintiff is the mother of Stephen William Ballentine, a minor, adjudged by the court below to be the illegitimate son of George DeSylva. The mother filed suit for declaratory relief against defendant widow. The trial court had construed Section 24 of the Copyright Act to mean that the surviving widow-defendant has a preferential right over the child. See 1 BULL. CR. SOC. 6, item 14 (1953).

Held: On appeal, reversed. The court first examined the language of Section 24: "That * * *, the author of such work, if still living, or the widow, * * * or children of the author, if the author be not living, or if such author, widow, * * * or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright * * *." Plaintiff asserts that the statutory language places the widow and child in the same class. The court adopted this reasoning after analyzing the language of the Act:

"But if we are to assume that the Congress meant to prefer one or the other, which one, the children or the spouse, is preferred? Can it be that the one who acts first gets the prize? We know of no language construction in English or in the law which confers a right over another merely because one is first named in a category of two or more, each of which is separated by a disjunctive. We think the right to the renewal is granted to the class through action by the surviving *spouse or children*."

"Here there is not a designation of one over the other, and the word 'or' is given its full disjunctive meaning. The Act does not say, as contended by the widow, that upon the author's death the widow may act and if the widow is dead the children may act; it plainly says that *either* may act if the author (husband-father) dies. And it would be entirely out of the beneficent purpose of the Act to construe it as providing that when either acts, the other is cut off. It would seem reasonable to say that if additional words must be added to construe the sentence so as to fit either contention made by the parties, words should be added which best place the Act in implementation of its purposes."

Therefore, the court concluded: ". . . that the word 'or' between the words 'widower,' 'children,' must be construed as expressing the alternative and means that either one or the other may act for the family which consists of the widow (or widower) and all of the children."

Posing the second question, the court continued: "Since we have determined that the right of renewal of the copyright of a deceased author is in the class designated in the Act as 'widow, widower, or children,' and such renewal is for the benefit of the surviving spouse and children together, we must determine whether in our case the son of the author, having been born outside of wedlock, qualifies as a 'child' under the meaning of the Copyright Act." The lower court had held the illegitimate child to qualify under the Act.

Before reviewing the common law attitude toward rights of illegitimate children, the court examined the nature of the renewal right under the Copyright Act and stated that it ". . . is not a renewal or extension of a property which descends in an estate but is a new, personal grant of a right. Such right is a newly granted and created one, without which or without action under it, the work of the author would enter the public domain." Examination of the cases led the court to conclude that the applicable English and early American cases were primarily concerned with interests in land and ". . . we see no necessity or legal propriety in holding that Congress intended, in enacting the Copyright Act, to exclude the illegitimate children of the author if the widow survived, and . . . such intention cannot be read from the text of the Act." Further, consideration of leading United States decisions in the field of insurance, immigration, and rights of illegitimate children (or their mothers) under other federal statutes and the applicable California cases, persuaded the court to hold:

" . . . since the federal statute providing for renewal of the copyright has nothing to do with inheritance or the succession in ownership of property, and actually provides for a new right of property, which right is excluded from entering into the status of an inheritance, . . . there is no reason in the claimed limitation of the meaning of the word 'child' or 'children' to legitimates in the Copyright Act. . . . these words in the Act should be given their ordinary *live-language* meaning in the instant case."

"It follows, therefore, that Stephen William Ballentine, although the illegitimate child of George G. DeSylva, the author, and of Marie Ballentine, the plaintiff-mother, and although never legitimated, [since under the California statute, the wife must consent to an adoption of the illegitimate child] is, along with the widow of George G. DeSylva, Marie DeSylva (defendant-widow), entitled to a share of the benefits derived and to derive from the copyright renewals made by the surviving spouse, or by the said child, and an accounting should be had for monies had and received."

111. *Edward B. Marks Music Corp. v. Continental Record Co.*, certiorari denied, 24 U.S.L. Wk. 3107 (Oct. 18, 1955). See also 2 BULL. CR. SOC. 169, item 331 (1955).
112. *The Rushton Company v. F. W. Woolworth Co.*, Civil 102-114 (D.C. S.D.N.Y. Oct. 10, 1955). Not yet reported.

In another case involving the chimpanzee doll known as "Zippy," [see *Rushton v. Vitale*, 218 F.2d 434 (2d Cir. 1955), 2 BULL. CR. SOC. 125, item 210 (1955)] a motion for preliminary injunction to restrain the defendants from infringing plaintiff's copyrighted doll was granted as to some defendants and denied as to others. The main factual dispute was: "Have the defendants copied Zippy's face?"

The court held that the prior litigation had clearly settled the question of the validity of plaintiff's copyright in plaintiff's favor. But it did proceed to a detailed examination of the evidence relating to the two dolls referred to as "Mambo No. 1" and "Mambo No. 2." It appeared that "Mambo No. 1" was not copied from Zippy but was the result of an independent artistic conception of a chimpanzee. The court took pains to compare the resemblance between the dolls and concluded that the ". . . evidence is sufficiently substantial as to present a genuine and vital conflict of proof that can be resolved only upon a full trial." As to "Mambo No. 2" the court felt that it was copied from Zippy, and concluded from the evidence that it had been made from a mold used to produce Zippy. However, the injunction was denied since it appeared that defendant had ceased production of the offending doll and was not likely to resume. As to other defendants, the court indicated their answers were insufficient or unconvincing and it granted a preliminary injunction.

113. *Trifari, Krussman & Fishel, Inc. v. Charel Co.*, 107 U.S.P.Q. 48 (D.C. S.D.N.Y. Sept. 28, 1955).

Preliminary injunction was sought by maker of copyrighted costume jewelry to restrain alleged infringement. Defendant answered denying the infringement and asserted three defenses: ". . . ineligibility of costume jewelry generally for copyright protection, lack of originality and inadequacy of notice of the copyright." Furthermore, defendant said that the articles copyrighted were "junk jewelry" and not a "work of art."

Held: Preliminary injunction granted. Citing the approach of the Supreme Court in *Mazer v. Stein*, 347 U.S. 201, 214 (1954), wherein that Court said: ". . . we can hardly do better than the words of the

present regulation, §202.8 . . ." the trial court held that since *artistic jewelry* is included within the regulation, it is copyrightable. Continuing its discussion of the terms "work of art" and "originality," the court said:

"So long as the material for which copyright is sought exhibits some degree of individuality so that the court is convinced that the author has created an original, tangible expression of an idea rather than a merely pleasing form dictated solely by functional considerations, copyright registration is available. It is this expression which the copyright statute is designed to protect. . . . In the case of costume jewelry, while the overall form is to some extent pre-determined by the use for which it is intended, the creator is free to express his idea of beauty in many ways. Unlike an automobile, a refrigerator or a gas range the design of a necklace or of a bracelet, may take as many forms as the ingenuity of the artist may conceive. There is neither basis in the Copyright Act nor judicial precedent for excluding costume jewelry from works of art to which copyright protection may attach. Simply because it is a commonplace fashion accessory, not an expression of 'pure' or 'fine' art does not preclude a finding that plaintiff's copyrighted article is a 'work of art' within the meaning and intendment of the Act." An examination of the jewelry by the court convinced it that the articles were an expression of the artist and constituted a substantial contribution over the prior art.

As to the "notice" defense asserted by the defendant, the court said that Section 19 of the Copyright Act was satisfied since, "Plaintiff's notice appears on the clasp of the copyrighted article and is in the form of a 'c' enclosed within a circle, together with the name of the copyright owner. It is located at the place where according to the custom and usage in the industry, the name of the maker of the article usually appears. The notice is clearly legible though it is true that it is in small letters and close examination is required to locate it. The nature of the copyrighted article is such that the area in which the notice may be placed is necessarily limited. It is so located, however, as to apprise anyone seeking to copy the article, of the existence of the copyright and is, therefore, sufficient to satisfy the statutory requirements."

114. *Curtis v. American Book Company*, 17 F.R.D. 504 (D.C.S.D.N.Y. May 25, 1955).

Plaintiff is co-author of nine music textbooks for school children. Defendant published and sold these textbooks under three agreements by which the co-authors were to receive jointly copyright royalties based on a percentage of their sales. A dispute as to the construction of "exchange"

sales—upon which no royalty was to be paid—is the basis for this suit. Publisher moves to dismiss the action for lack of an indispensable party, the co-author.

Held: Motion to dismiss denied but granted to the extent of joining the co-author as a third-party defendant. The co-author, while not an *indispensable* party, is held to be a necessary party since the court would be unable to give full relief to the present parties unless he was joined. The co-author is not an indispensable party “. . . because a final decree would not, as a matter of law, affect his interest; a determination adverse to plaintiff could not bar similar claim by the co-author if he were not a party. . . . Under the contract each co-author is entitled to a definite proportion of the royalties. Each could maintain an action to recover royalties withheld.” But, the court said, the co-author is a conditionally necessary party “. . . since he ought to be joined in order that complete relief may be accorded between the original parties. Otherwise, complete relief could not be accorded defendant, because it would be faced with the possibility of a subsequent suit on a similar claim by the co-author. The underlying purpose of the rule requiring joinder of conditionally necessary parties, the prevention of multiplicity of litigation, would thus be defeated.” While admitting the probability that joining the co-author as a third party defendant would mean dismissal of the action on jurisdictional grounds because he would probably be realigned as a party plaintiff, the court held, “Preservation of jurisdiction, alone, should not impel the court, in the exercise of its discretion, to continue the action here.”

115. *Affiliated Music Enterprises v. Sesac, Inc.*, 17 F.R.D. 509 (D.C.S.D.N.Y. May 23, 1955).

Action under the Sherman and Clayton Acts for injunction and treble damages. Plaintiff moved to dismiss an affirmative defense and counterclaim based on unfair competition. Defendant moved to join plaintiff's officer (defendant's former officer) as an individual defendant to the counterclaim. The action arises out of a charge that defendant unlawfully controls 95% of the field in “Gospel Music” by obtaining exclusive assignments of performance rights from publishers and copy-right owners, and by requiring that its licensees use its repertoire under blanket licenses. Plaintiff complains that defendant had forced the publishers and owners to cancel their contracts with plaintiff under which plaintiff was to take over part of defendant's business in licensing performances and collecting fees. This defendant denies, and asserts certain

acts of unfair competition on the part of plaintiff in making false representations based on confidential knowledge received by plaintiff from a former officer of defendant.

Held: "The motion to dismiss the counterclaim is denied because the counterclaim is a compulsory one arising out of the same transactions and course of dealing as plaintiff's complaint." The defendant's former officer was also joined. The court added: "Although plaintiff's unclean hands or illegal activity cannot justify defendant's restraint of trade to the detriment of the public, nevertheless, plaintiff's misconduct may be a factor to consider in appraising the purpose and scope of defendant's act."

116. *Royal v. Radio Corporation of America*, 107 U.S.P.Q. 173 (D.C.S.D.N.Y. Oct. 11, 1955).

Oral decision by Judge Weinfeld, holding that plaintiff composer's authorization to make recording was broad enough to include a license to distribute the records.

117. *Kashins v. Keystone Lamp Manufacturing Corp.*, 107 U.S.P.Q. 137 (D.C. S.D.N.Y. June 30, 1955).

Motion to dismiss granted with leave to plead anew where the complaint does not make clear whether suit is for infringement "of the copyrighted catalogues or of the alleged original design of lamps illustrated in the catalogues, or for infringement of copyrighted lamps."

118. *Warsbawsky v. Carter*, 132 F. Supp. 758, 107 U.S.P.Q. 80 (D.D.C. July 19, 1955).

Plaintiff, claiming infringement of his story, "Woman of Destiny," seeks injunctive relief and an accounting. In 1916 plaintiff wrote the story which received wide circulation over the years in play form, was serialized in magazines and produced in book form up until 1936. Defendant wrote a story "Madam President," published serially in 1948 in *Collier's Magazine*. Both stories were duly copyrighted and plaintiff won a prior damage action for infringement brought against the publisher of defendant's story. Both stories dealt with a woman vice president who becomes president through the disability of the president. In plaintiff's story the woman president averted an already declared war; defendant's heroine succeeded, against party opposition, in achieving certain social welfare legislation. Plaintiff had alleged that the defendant "knowingly followed the plot and the theme of plaintiff's work, intentionally adopted

leading characters therefrom and copied largely therefrom, paraphrasing plaintiff's material in many instances."

Held: Complaint dismissed. The court recognized that there was much similarity between the themes of the two stories but felt that "... substantially all of those similarities are those which would normally occur in two stories dealing with a woman becoming president of the United States. There is, of course, no infringement simply because one person writes and publishes a story upon the same theme previously used by another, even though copyrighted. To be infringement, there must be a copying, intentional or unintentional, of the work done by another, and this does not occur simply by writing on the same subject or theme. Similarity can, of course, occur from copying, but that may also occur by reason of the subject matter and setting with which both stories deal."

Moving then to the question of access, the court said: "It has been authoritatively stated that there can be no infringement without access and similarity. This is unquestionably true, but the converse does not follow—that, simply because there has been access and there are similarities, such are the results of copying. If by access is meant the opportunity of a person to have seen, to have read, and to know the work of another, there can be no question in this case that there was such access. . . . Again, access and similarities are but circumstances from which a logical inference of infringement may be reached, but like other circumstantial evidence, such conclusion cannot be reached if they are susceptible of any reasonable inference other than the guilty one of infringement, and here I am convinced that the circumstances do not justify the conclusion that the defendant's story was not an independent composition of his own." The circumstances referred to by the court were the wide circulation of plaintiff's story in its many forms, and the fact that the same literary agent had handled business transactions respecting the defendant's story. Over-balancing these factors was the fact that defendant was intimately connected with politics for many years and had done a good deal of writing in the field.

2. State Court Decisions

119. *Desny v. Wilder*, 107 U.S.P.Q. 17 (Cal. District Court of Appeal, 2d District, July 15, 1955).

Appeal from a summary judgment in an action in quasi-plagiarism "for the recovery of the price of a story drawn from the public domain of news and history and furnished to defendants upon an implied promise to pay the reasonable value in case of use by them in a motion picture." Plaintiff had contacted Wilder's secretary and after some discussion of a story he had written based on the life of Floyd Collins, who was trapped in a cave for two weeks, agreed to submit a synopsis for Wilder's consideration. He claims that his synopsis was the basis for a motion picture "Ace in the Hole."

Held: Reversed. "The record discloses triable issues of fact." The court considered the general problem of the rights in ideas and cited California decisions and statutes to the effect that ". . . California now accepts the traditional theory of protectible property under common law copyright," namely, that "ideas 'are as free as air.'" After discussing the facts, the court said: "In the field of protectible literary or musical or like property a limited or qualified publication does not destroy the private ownership. . . . There seems to be no good reason why the same rule should not apply to a manuscript which, though not original and protectible, may become the subject of a protecting contract. 'A limited publication of literary property is really not a publication, in the ordinary sense of the word, but a privileged disclosure. It is the communication of knowledge of the contents of literary property under conditions expressly or impliedly precluding its dedication to the public.' 'If it were held otherwise, the mere offer to sell would destroy the thing offered! . . . And *Moore v. Ford Motor Co.*, 2 Cir., 43 F.2d 685, 687, recognizes that limited submission may be made of nonprotectible material without destroying the subject of the offer. . . ."

The court continued: "While the contents of plaintiff's synopsis were within the public domain and defendants free to use all of the facts or incidents there set forth they had to go to original sources for their said facts and they could not, in the face of plaintiff's notice of an expectation of pay, take a short cut by using his compilation, not without incurring liability to him for such use."

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

120. Universal Copyright Convention Analyzed. Edited by Theodore R. Kupferman and Mathew Foner.

New York, Federal Legal Publications, Inc., 1955. 165 p. Appendix, 484 p., Index and Bibliography 15 p.

This is the most important publication thus far published in the English language on the Universal Copyright Convention. It includes sectional analyses of the Convention by leading copyright experts, several articles on the effects of the Convention on existing bi-lateral and multi-lateral treaties, and an extremely valuable appendix containing all important documentary material concerning the history of the Convention. Included also is the text of the Convention in English, French, and Spanish, and the texts of other international conventions.

121. Bureau of National Affairs, Inc.

Annual digest, volumes 100-103, of the United States Patents Quarterly; a cumulative digest of reported decisions relating to patents, trade marks and copyrights, January-December, 1954.

Washington, Bureau of National Affairs, 1955. 342 p.

122. Decisions of the United States Courts involving Copyright, 1953-1954. Compiled and edited by Wilma S. Davis.

Washington, Copyright Office, 1955. 529 p. (Copyright Office Bulletin No. 29).

This bulletin of copyright cases is the thirteenth 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 during the years 1953 and 1954. The volume is for sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. or by the Register of Copyrights, Library of Congress, Washington 25, D. C. for \$2.25.

123. Burton, Robert J.

Advertising copyrights. Reprinted from *Advertising Requirements*.
Chicago, 1955. 62 p.

Pamphlet reprint of ten articles on copyright protection for material used in advertising which originally appeared serially in the periodical, *Advertising Requirements*. The series covers the protection of works of art, plagiarism, and copyright problems encountered in radio and television, as well as instructions on how to secure copyright.

124. Dubin, Joseph S.

An exclusive Federal system for all works. Copyright Symposium, Philadelphia, August 20, 1955.

Universal City, California, 1955. 11 p., (*mimeo.*).

125. Finkelstein, Herman.

Duration of copyright:—Shall we consider a term measured from death, or otherwise, as in other systems, or retain our twenty-eight year term measured from publication, and our system of renewal? Copyright Symposium, Philadelphia, August 20, 1955.

New York, 1955. 12 p. (*mimeo.*).

126. Hackemann, Lutz.

Sound recordings in the draft of a new German copyright law. Published in 1954 *Gewerblicher Rechtsschutz und Urheberrecht* 516. Translated by Borge Varmer from the German.

Copyright Society of the U.S.A. Translation Service 1955, no. 3b. 15 p. (*multilith*).

127. Henn, Harry G.

Divisibility of copyright. Copyright Symposium, Philadelphia, August 20, 1955.

Ithaca, 1955. 14 p. 1 (*mimeo.*).

128. Hirsch-Ballin, Ernst D.

Related rights. Published in 1954 *Archiv für Urheber- Film- Funk- und Theaterrecht*, Vol. XVIII, p. 310, . . . Translated by Borge Varmer from the German.

Copyright Society of the U.S.A., Translation Service 1955, no. 4a. 15 p. (multilith).

129. International confederation of composers' and authors' societies. *Commission on Legislation*.

Opinion of the commission on legislation of CISAC concerning the draft law on copyright of the German Federal Republic. Translated by Borge Varmer from the French and German versions as published in Erich Schulze: *Recht und Unrecht* . . ., 1954, pp. 255.

Copyright Society of the U.S.A., Translation Service 1955, no. 3c. 11 p. (multilith).

130. Ringer, Barbara A.

Bibliography on Design Protection.

Washington, Copyright Office, June 1, 1955. 70 p. (multilith).

The bibliography, designed as a tool for the drafting of new legislation on the protection of designs, is organized so as to suggest the history and scope of the subject, and principal arguments advanced by interested groups.

131. Strauss, William.

Bibliography on Neighboring Rights (*Droits Voisins*).

Washington, Copyright Office, October 1955. 35 p. (multilith).

Compiled as a tool in tracing the international development of related rights, and as an aid in determining areas of agreement and disagreement and divided into two main sections: 1) documents of governments, of international inter-governmental organizations and nongovernmental organizations, and 2) books and articles.

132. Sargoy, Edward A., and John Schulman.

Reexamining some basic copyright concepts: A Fresh Look if the Statute is to be Generally Revised.

American Bar Association, Section of Patent, Trademark & Copyright Law, (1955). 14 p. and 11 p. (*mimeo.*)

Outlines of Mr. Schulman's and Mr. Sargoy's panel discussions on Statutory Remedies:—Should newer media of communication, or changes in basic concepts, affect our classic type of remedies?—as presented in the Copyright Symposium, Philadelphia, Aug. 20, 1955.

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Copyright Society of the U.S.A., Translation Service, 1955, no. 3a. 15 p. (*multilith*).

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(a) In German

134. Gebhardt, Armin.

Das Rechtsverhältnis zwischen Komponist und Librettist; eine urheberrechtliche Studie.

Berlin, Walter de Gruyter & Co., 1954. 71 p.

Interrelationship of the composer and the librettist of a dramatico-musical work and their rights in the composite work.

135. Troller, Alois.

Die internationalen Beziehungen in den Referentenentwürfen zur Urheberrechtsreform.

Berlin, Verlag Musik und Dichtung, 1955. 80 p.

In discussing the international aspects of the draft revision of the German Copyright Law, Dr. Troller, a Swiss attorney, touches upon the problems of controlling the use and reproduction of works created in various media.

136. Urheberrechtsreform ein Gebot der Gerechtigkeit. Beiträge von Prof. Heinrich Lehmann; Prof. Gustav Ermecke; Prof. Johannes Overath; Dr. Willy Richartz.

Berlin, Walter de Gruyter & Co., 1954. 69 p.

The pamphlet contains four articles dealing with the treatment of the composer of music under the proposed revision of the German copyright legislation: "Die Neuordnung der Güterwelt nach ihrem wahren Lebenswert" by Prof. Heinrich Lehmann of Köln; "Zum Schutz des geistigen Eigentums" by Prof. Gustav Ermecke of Paderborn; "Musik als geistiges Eigentum" by Prof. Johannes Overath of Bensberg; and "Forderungen an das neue Musik-Urheberrecht" by Dr. Willy Richartz of Munich.

B. LAW REVIEW ARTICLES

1. United States

137. Choka, Allen O.

Drafting the book publishing contract.

The Practical Lawyer, vol. 1, no. 5 (May 1955), pp. 64-78.

First in a series of articles on special types of contracts discusses considerations to be taken into account and provisions to be included in drafting a book publishing contract.

138. Collins, Warren Thomas.

Re: Manuscript theses and the Hershberger Case.

Journal of the Patent Office Society, vol. 37, no. 7 (July 1955), p. 535.

A brief note on a recent Maryland decision in a patent case on the question of whether deposit of a manuscript in a public library constitutes "publication" in the United States.

139. Seidel, Arthur H.

The Trademark and the copyright.

The Practical Lawyer, vol. 1, no. 4 (Apr. 1955), pp. 20-32.

A note on the information to be secured and steps to be taken by a practicing lawyer in applying for a trademark or copyright in behalf of a client.

2. FOREIGN

(a) In English

140. Bolla, Plinio.

Article XIX of the Universal Copyright Convention.

UNESCO, Copyright Bulletin, vol. 8, no. 1 (1955), pp. 20-33.

A commentary on Dr. Bogsch's article on Article XIX of the Universal Copyright Convention in which Dr. Bolla takes exception to some of Dr. Bogsch's statements concerning the application of this article whenever there is a conflict between the U.C.C. and pre-existing copyright conventions or treaties.

141. Boutet, Marcel.

The Geneva Convention and the universality of copyright.

UNESCO, Copyright Bulletin, vol. 8, no. 1 (1955), pp. 61-66.

An article on the universality of copyright concluding that the Universal Copyright Convention provides a basis for further advancement into the realms of universality.

142. Cary, George D.

Copyright—The Universal Copyright Convention—Coming into force—Effects in the United States for foreign nationals—Possible implementation by Canada.

The Canadian Bar Review, vol. 33, no. 6 (June-July 1955), pp. 716-721.

143. Cary, George D.

The Universal Copyright Convention and United States Public Law 743.

UNESCO, Copyright Bulletin, vol. 8, no. 1 (1955), pp. 5-19.

A discussion of the amendments to the United States copyright law which permitted ratification of the Universal Copyright Convention and some of the problems which will arise under the new law. The text of P.L. 743 is contained in an appendix.

144. Fernandez del Castillo, Germán.

The Right of translation in the Universal Copyright Convention.

UNESCO, Copyright Bulletin, vol. 8, no. 1 (1955), pp. 34-49.

Right of translation provided for in the Universal Copyright Convention together with its compulsory license provision and its effect upon the moral rights of the author is discussed. The author points out that the Convention makes no reference to the rights of the translator or to retranslations.

145. Sanctis, Valerio de.

The Clauses providing "Safeguards for the Berne Convention," contained in the Universal Copyright Convention.

UNESCO, Copyright Bulletin, vol. 8, no. 1 (1955), pp. 50-60.

An analysis of the clauses inserted in article XVII and the Appendix Declaration of the Universal Copyright Convention.

(b) In Dutch

146. Hirsch Ballin, E. D.

Het uitsluitend recht tot openbaarmaking van een werk.

Nederlands Juristenblad, no. 32 (Sept. 24, 1955), pp. 713-720.

A commentary on two Dutch High Court decisions of 1952 and 1954 respectively, which deal with the exclusive right to publish a work.

147. Thijssen, E. H.

Internationale bescherming van aan het auteursrecht grenzende rechten (droits voisins).

Nederlands Juristenblad, 1955, no. 22 (May 28, 1955), pp. 473-480.

A Dutch commentary on the draft international convention for the protection of the rights of performing artists, phonograph record manufacturers and radio broadcasting organizations.

(c) In French

148. Bogsch, Arpad L. and Arthur Fisher.

Le droit d'auteur sera-t-il un tissu sans coutures ou un rapiécage?
par . . . et Arthur Fisher.

Le Droit d'Auteur, vol. 68, no. 8 (Aug. 15, 1955), pp. 109-112;

Droit d'auteur et droits voisins quelques questions fondamentales.

Le Droit d'Auteur, vol. 68, no. 9 (Sept. 1955), pp. 134-140.

Some observations with regard to the problems of "neighboring rights."

149. Dommange, René.

La Doctrine française en matière de droits dits "voisins."

Revue Internationale du Droit d'Auteur, vol. 8 (July 1955), pp. 23-57.

A commentary on France's position on related rights as gleaned from the report of the committee which is engaged in drafting the revision of the French copyright law.

150. Derenberg, Walter.

Lettre des Etats-Unis d'Amerique.

Le Droit d'Auteur, vol. 68, no. 10 (Oct. 1955), pp. 160-166.

Resumé of recent court decisions concerning copyright.

151. Desbois, Henri.

Le projet de loi français relatif aux droits d'auteur.

Archiv für Urheber- Film- Funk and Theaterrecht, vol. 20, nos. 1/2 (June 30, 1955), pp. 1-22.

Heralding the French Draft Copyright Law of 1954 as one filling a regrettable gap in French legislation generally, the author explains the scope of each of the four titles or chapters contained in the bill: (1) the rights of authors (2) the exploitation of patrimonial rights (3) contracts dealing with performance or publication (4) remedies.

152. Hepp, Francois.

La Réglementation conventionnelle du droit de traduction dans les relations internationales.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 5/6 (May 1955), pp. 275-290.

The author discusses controlling the right of translation on the international level.

153. Le droit d'auteur . . . au XVIIe siècle. Privilège accordé par le Roy Louis XIV au graveur Nanteuil en 1661.

Revue Internationale du Droit d'Auteur, vol. 8 (July 1955), pp. 102-103.

Reproduction of a privilege granted the artist, Robert Nanteuil, by Louis XIV in 1661. It is believed to be the first such privilege granted in France in the field of the graphic arts.

154. Lid, Olav.

Classiques au crépuscule.

Revue Internationale du Droit d'Auteur, vol. 8 (July 1955), pp. 85-101.

Presentation of some of the aspects to be considered in revising the Norwegian copyright law, such as duration; domain public payant; extension during war periods; reasonable authors' compensation and moral rights.

155. Plaisant, Robert.

Lettre de France. Le projet de loi français sur le droit d'auteur.

Le Droit d'Auteur, vol. 68, no. 7 (July 15, 1955), pp. 99-104; no. 8 (Aug. 15, 1955), pp. 117-124.

Commentary on the draft revision of the French copyright law.

156. Roger-Ferdinand.

L'affaire "Carmen Jones."

Revue Internationale du Droit d'Auteur, vol. 8 (July 1955), pp. 3-21.

Presentation of the moral rights aspects of the French criticism of the American motion picture "Carmen Jones."

157. Sanctis, Valerio de.

Lettre d'Italie.

Le Droit d'Auteur, vol. 68, no. 7 (July 15, 1955), pp. 104-106; no. 8 (Aug. 15, 1955), pp. 124-128.

In his review of recent developments in the field of copyright in Italy, Dr. de Sanctis touches upon the question of double taxation; litigation concerning works of art; motion picture adaptations; periodical titles; and Italy's ratification of the Universal Copyright Convention.

158. Troller, Alois.

La Portée internationale des avant-projets allemands sur la réforme du droit d'auteur.

Le Droit d'Auteur, vol. 68, no. 6 (June 1955), pp. 80-87; no. 7 (July 1955), pp. 93-99; no. 8 (Aug. 1955), pp. 112-117; no. 9 (Sept. 1955), pp. 140-146.

In an opinion on the international aspects of various German proposals concerning copyright legislation, the author discusses certain aspects of the public performance of dramatico-musical and musical works; reservations for religious, charitable and governmental use as compared with their treatment under the Bern Copyright Convention; restrictions on the right of performance and recordings for private use; and conflicts between the proposed legislation and the existing international conventions.

(d) In German

159. Beier, Friedrich-Karl.

Der Schutz von Modeschöpfungen in Deutschland und Frankreich.

Auslands- und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht (Aug.-Sept. 1955), pp. 337-350.

The protection of fashion designs in Germany and France.

160. Frieberger, Kurt.

Zur Frage der Ratifizierung des Welturheberrechtsabkommens.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 5/6 (May 1955), pp. 257-266.

The question concerning ratification of the Universal Copyright Convention involves in part the problem of translating and interpreting the technical terminology covered by the convention itself, brought about through the differing concepts and idioms which abound in the legislation and procedures of the member nations.

161. Froschmaier, Franz.

Zum urheberrechtlichen Schutz nach Common Law und Statute Law in amerikanischen Recht.

Auslands- und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, no. 1 (Jan. 1955), pp. 8-10; no. 5 (May 1955), pp. 210-212.

Explanation of American common-law copyright and statutory copyright.

162. Goldbaum, Wenzel.

Gilt das Welturheberrechtsabkommen in den Vereinigten Staaten von Amerika?

Auslands- und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, no. 7 (July 1955), pp. 285-288.

The validity of the United States' adherence to the Universal Copyright Convention is questioned by the writer.

163. Hartlieb, Horst von.

Das Grundrecht der Filmfreiheit.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 20, nos. 3/4 (Aug. 1955), pp. 129-169.

Commentary on the motion picture code as practiced in Germany.

164. Heyn, Karl.

Der Rechtsschutz der Rundfunkreportage und des Rundfunkinterviews.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 20, nos. 1/2 (June 30, 1955), pp. 58-75.

Legal aspects involved in the radio broadcasting by reporters and interviewers.

165. Hirsch-Ballin, Ernst D.

Schutz von Bildnissen.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 5/6 (May 1955), pp. 290-300.

The protection of portraits under the draft German Copyright Law.

166. Hirsch-Ballin, E. D.

Zum Entwurf eines französischen Urheberrechtsgesetzes.

Revue Internationale du Droit d'Auteur, vol. 8 (July 1955), pp. 59-83.

A comparative analysis of the draft French copyright law.

167. Metzler, Wolfram von.

Fragen des Titelschutzes beim Film.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 20, nos. 3/4 (Aug. 1955), pp. 169-190.

A discussion of the question whether motion picture titles need protection and the manner in which such protection has been treated in the various draft revisions of the German copyright law.

168. Metzler, Wolfram von.

Namensverwendung und Darstellung des Lebensbildes im Film und in literarischen Werken.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 20, nos. 1/2 (June 30, 1955), pp. 38-58.

Legal responsibilities involved in the use of person's names and the representation of well-known persons in the production of motion pictures.

169. Sanctis, Valerio de.

Die "Benachbarten Rechte."

Archiv für Urheber- Film- Funk und Theaterrecht, vol. 20, nos. 1/2 (June 30, 1955), pp. 22-38.

Comparative study of the national legislation of several countries and appropriate international agreements to determine the manner in which related rights are currently being handled.

170. Strauss, William.

Das Welturheberrechtsabkommen und das Ausführungsgesetz in den Vereinigten Staaten von Amerika.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 5/6 (May 1955), pp. 266-274.

Presentation of the legislation which was necessary to amend the United States Copyright law for the purpose of ratification of the Universal Copyright Convention.

171. Waldkirch, Ed. von.

Urheberrechtliche Massnahmen der Schweiz.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 19, nos. 5/6 (May 1955), pp. 300-308.

On Oct. 12, 1954, the Swiss Federal Council received draft legislation (1) for the partial amendment of their domestic copyright law, (2) for accession to the 1948 Revision of Bern, and (3) ratification of the Universal Copyright Convention. The present article is an evaluation of this proposed copyright legislation.

172. Wolff, Hans-Joachim.

Zur Frage der rechtlichen Beachtlichkeit der Qualitätsmangel des Tonfilms.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, no. 8/9 (Aug./Sept. 1955), pp. 377-385.

Effect which the quality of a musical recording may have on the legal rights of the motion picture producer and others.

173. Zedek, Gustav.

Rundfunk und Schallplatte sowie Leistungsschutz bei Werken der Tonkunst im österreichischen Urheberrecht.

Auslands- und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, no. 7 (July 1955), pp. 289-292.

Protection given radio broadcasts and phonograph recordings under the Austrian Copyright Law.

(e) In Italian

174. Fabiani, Mario.

La Nozione di uso personale nel diritto di autore nei confronti delle possibilita' offerte dalla tecnica moderna di utilizzazione delle opere dell'ingegno.

Il Diritto di Autore, vol. 26, no. 2 (Apr.-June, 1955), pp. 161-193.

A discussion of the principles of fair use, and the making of copies for personal use, in the light of modern technical advances. The author makes the point that the distinction of copies for public or private use has become irrelevant.

175. Giannini, Amedeo.

Questioni di diritto d'autore, serie V.

Rivista di Diritto Industriale, vol. IV, Parte I, no. 1 (Jan.-Mar. 1955), pp. 11-38.

The copyright questions considered in this fifth of a series of articles include those concerning the protection given titles of work under the Italian copyright law; the consequences of illicit publication; whether directories and catalogs should be entitled to protection; the effect the loaning of books (both by individuals and libraries) may have on an author's copyright; monetary awards for compulsory licensing; and moral rights.

176. Ioannoufi Tassos.

Un Progetto di legge greco in materia di diritto di traduzione.

Il Diritto di Autore, vol. 26, no. 2 (Apr.-June, 1955), pp. 267-271.

One of the co-authors of the proposed amendment to the Greek Copyright Law presents an Italian text of the draft law which will modify the provisions concerning translations so as to bring the Greek domestic legislation into line with the provisions of the Universal Copyright Convention.

177. Janssens Casteels, Willy.

Il Progetto di legge lussemburghese sul diritto di autore.

Il Diritto di Autore, vol. 26, no. 2 (Apr.-June, 1955), pp. 256-266.

In an analysis of the new draft copyright law of Luxembourg, the author briefly recites the legislative progress the bill has made to date and discusses provisions dealing with duration of the period of protection; the organization of a royalty collecting society; compulsory licensing; and broadcasting rights.

178. La Prossima entrata in vigore della convenzione universale del diritto di autore.

Il Diritto di Autore, vol. 26, no. 2 (Apr.-June, 1955), p. 212.

Announcement of the coming into force of the Universal Copyright Convention.

179. Ondeï, Emilio.

Esiste un diritto alla riservatezza? (A proposito di "indiscrezioni" letterarie e cinematografiche.)

Rassegna di Diritto Cinematografico, vol. 4, nos. 3-4 (May-Aug., 1955), pp. 66-68.

Right of privacy given in the use of one's name by the Italian Civil Code, in articles 7 to 9, as compared to the right of privacy in the use of one's picture, found in article 97 of Italy's Copyright law.

180. Podaliri, Guido.

Tuetela del diritto alla riservatezza ed applicabilita del Art. 700 C.P.C.

Rassegna di Diritto Cinematografico, vol. 4, nos. 3-4 (May-Aug., 1955), pp. 72-73.

Commentary on a recent court decision which involved an application of Articles 10 of the Civil Code and 96 of the Copyright Law and 700 of the Code of Civil Procedure. The former two articles deal with the right to control publication of one's picture and the latter with the use of emergency court procedures.

181. Sordelli, Luigi.

Diritto morale d'autore e pregiudizio all'onore e reputazione.

Rivista di Diritto Industriale, vol. IV, Parte II, no. 1 (Jan.-Mar. 1955), pp. 6-13.

Commentary on an opinion by the Milan Court of Appeals which involves an interpretation of Art. 20 of the Italian copyright law. The article grants the author a moral right against having his original text modified, mutilated or suppressed if such action would prejudice his honor or reputation. In this case the editors of a publication refused to return an only copy of a manuscript.

182. Sparano, Vincenzo.

Diritto all'immagine e pubblicità cinematografica.

Rassegna di Diritto Cinematografico, vol. 4, nos. 3-4 (May-Aug., 1955), pp. 78-80.

Comments on the right of privacy in the use of one's picture in motion picture exhibitions, primarily from the point of view of documentaries and public interest.

C. ARTICLES PERTAINING TO COPYRIGHT
FROM TRADE MAGAZINES

1. United States

183. Author claims "Garbo" infringes on a 1931 Copyright.

Publishers' Weekly, vol. 168, no. 8 (Aug. 20, 1955), p. 711.

A note concerning an action to enjoin Doubleday from making any further sales of the work "Garbo" by John Bainbridge, which the plaintiff alleges infringed the copyright in her book entitled "The Private Life of Greta Garbo."

184. Banker, Robert E.

Asia can be a new market for American books: Part I.

Publishers' Weekly, vol. 168, no. 8 (Aug. 20, 1955), pp. 700-705.

Of particular interest is the discussion of copyright royalties on American books in Japan to be found under the sub-heading "Japan: U. S. Books and Rights Cost Too Much."

185. Congress authorizes funds for study of copyright.

Publishers' Weekly, vol. 168, no. 8 (Aug. 20, 1955), pp. 709.

A note on the fact that Congress has earmarked a part of the Copyright Office appropriation for a three-year study on revising the Copyright Act.

186. Dekker reports details of Japan piracy settlement.

Publishers' Weekly, vol. 168, no. 6 (Aug. 6, 1955), pp. 531-532.

A settlement has been worked out by the Japanese Ministry of Education, the publishing firm of Bunkensha, the Japan Book Importers Association and a representative of American publishers, designed to end the extensive pirating operations of the publishing firm. During the negotiations, the inadequacy of Japanese penalties was discussed with a view of possibly revising the copyright law, including the types of remedies or penalties recoverable by the damaged publishers.

187. Evans, Luther H.

Lessons learned from developing the Universal Copyright Convention.

Publishers' Weekly, vol. 168, no. 15 (Oct. 8, 1955), pp. 1637-1639.

An explanation of the techniques used by UNESCO and the United States National Commission for UNESCO in gathering data and reconciling conflicting interests.

188. USIA Seminar in Europe to discuss translation program.

Publishers' Weekly, vol. 168, no. 15 (Oct. 8, 1955), p. 1645.

A note on a seminar for USIA cultural affairs officers attached to U. S. embassies in Europe. The purpose of the seminar will be to explain and discuss the many phases of the USIA translation program and to promote and stimulate translations of American books abroad. During the past fiscal year, USIA assisted foreign publishers in bringing out 590 translations.

189. U.S.S.R. reported ready to pay royalties to U. S. authors.

Publishers Weekly, vol. 168, no. 13 (Sept. 24, 1955), pp. 1463-1464.

2. England

190. Copyright in Canada; two important judgments.

Performing Right, no. 26 (Sept. 1955), pp. 25-27.

A note on the most recent judicial developments in the two Canadian cases, *CAPAC, Ltd. v. Associated Broadcasting Co.*, and *CAPAC, Ltd. v. Maple Leaf Broadcasting Co. Ltd.* See 2 BULL. CR. SOC. 133, Items 216, 217 (1955).

191. Hepp, Francois.

A new copyright convention is now in force.

The Bookseller, no. 2595 (Sept. 17, 1955), pp. 996-998.

M. Hepp concludes that the convention contains the basis for the principle that "the rights of authors can be assimilated to the rights which all legislations grant to foreigners as well as to their nationals concerning personal property and respect for the individuals."

192. Performing Right Society, Ltd.

The Forty-first annual general meeting of the Society.

Performing Right, no. 26 (Sept. 1955), pp. 6-9.

The report of the Performing Rights Society includes a discussion of the increasing need to have formal contracts governing the relationships of composer and producer of radio and television programs in view of the recommendations of the Copyright Committee of 1951, and the proposed revision of the British Copyright Act to be introduced in Parliament during the coming session.

193. Whale, R. F.

The Universal copyright convention; its effect on Anglo-American relations in the sphere of performing rights.

Performing Right, no. 26 (Sept. 1955), pp. 20-23.

In this abridgment of a longer article on Anglo-American copyright relations, the author points out that though adherence to the Universal

Copyright Convention will facilitate securing copyright protection in the United States for British composers, British compositions will continue to be performed by means of jukeboxes, sound tracks, and on "non-commercial" radio and television programs without the authority of the copyright owners and without payment of royalties and license fees.

3. Germany

194. Bappert, Walter.

Zum Rechtsstreit über die Tagebücher der Cosima Wagner.

Börsenblatt für den Deutschen Buchhandel, Frankfurter Ausgabe, vol. 11, no. 37 (May 10, 1955), pp. 295-297.

An account of the litigation involved in the dispute over publication of the diary of Cosima Wagner.

195. Freyer, M.

Der gegenwärtige Stand des internationalen Urheberrechts.

Börsenblatt für den Deutschen Buchhandel, Ausgabe Leipzig, vol. 122, no. 29 (July 16, 1955), pp. 516-520; no. 30 (July 23, 1955), pp. 532-533.

Resumé of the present status of international copyright conventions, treaties and agreements presented from the East German point of view.

196. Friedrich, Wolfgang.

Buchhändler und Schriftsteller im Kampf gegen den Nachdruck.

Börsenblatt für den deutschen Buchhandel, Ausgabe Leipzig, vol. 122, no. 29 (July 16, 1955), pp. 520-521.

Historical account of the German publishing trade's struggle against unauthorized reprints and piratical publishers.

197. Kaemmel.

Zum Urheberrechtsentwurf der Bundesrepublik.

Börsenblatt für den Deutschen Buchhandel, Ausgabe Leipzig, vol. 122, no. 28 (July 9, 1955), pp. 498-500.

An East German commentary on the West German draft law on copyright.

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CONTENTS

	Page
Notes from the Copyright Office	67
PART I. LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS.	
1. Foreign Nations	69
PART III. JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY.	
A. Decisions of U.S. Courts.	
1. Federal Court Decisions	71
PART IV. BIBLIOGRAPHY	
A. Books and Treatises.	
1. United States Publications	74
2. Foreign Publications	
(a) In English	74
(b) In French	75
B. Law Review Articles	
1. United States	76
2. Foreign	
(a) In English	77
(b) In French	77
(c) In German	80
(d) In Italian	82
C. Articles Pertaining to Copyright From Trade Magazines.	
1. United States	83
2. England	86
<i>Last Minute News:</i>	
Philippines withdraw from U. C. C.	88

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NOTES FROM THE COPYRIGHT OFFICE

198. The Universal Copyright Convention.

France. The Copyright Office has received official word that France has deposited ratification of the Convention and that it will go into effect with regard to that country January 14, 1956. (Copyright Office Circular No. 37, Annex A.)

Mexico. The Mexican Senate has approved ratification of the Convention. (Diario Oficial, vol 213, no. 45 (Dec. 22, 1955), pp. 1-2.)

Switzerland. The Copyright Office has also received official word that Switzerland has ratified the Universal Copyright Convention, becoming the 17th nation to deposit its ratification. The Convention will come into force for Switzerland on March 30, 1956, three months after deposit of the instruments in Paris. (Unesco Newsletter, Jan. 20, 1956.)

Japan. The Diet completed legislative action looking toward ratification of the Convention on Dec. 15, 1955.

India. A new bill to amend and consolidate the law relative to copyright has been introduced in the Rajya Sabha at the request of the Minister for Education. It appears from the explanatory notes that one purpose of the bill is to permit India to consider ratification of the Convention.

199. *Cumulative Index of Copyright Cases, 1909-1954.* The Copyright Office announces that a volume consolidating the table of cases, the lists of works in litigation, and the subject indexes found in C. O. Bulletins Nos. 17-29, with additional reporter citations to the cases, and other useful information, is expected to be available about February 1956.

200. *The Neighboring Rights Panel* met in New York on October 6, 1955 to discuss primarily the forthcoming international meetings in France and Switzerland. The meeting was chaired by the Register of Copyrights. A further meeting of the panel was held in Washington, D. C. on December 21, 1955 to consider the results of the preceding European meetings on these matters.

201. *The Interim Copyright Committee (Second Session) of Unesco* met in Paris, from October 17 to 21, 1955. Its members, chosen by the Director-General of Unesco, were Plinio Bolla (Switzerland), Arthur Fisher, Rapporteur General (U.S.A.), Germán Fernández del Castillo (Mexico), H. C. Girling (U.K.), Antonio Pennetta (Italy), and Henri Puget, chairman (France). The meeting discussed problems concerning the Universal Copyright Convention and the neighboring rights. As to the latter it recommended to Unesco fully to participate in the movement for the recognition, by an international agreement, of neighboring rights.
202. *The Working Party for Neighboring Rights* held in Berne, Switzerland, from October 31 to November 5, consisted of 10 members: 5 chosen by the International Labor Organization, 5 by the Berne Union and Unesco (Plinio Bolla, Arthur Fisher, Germán Fernández del Castillo, Antonio Pennetta, and Henri Puget). It discussed some of the substantive questions regulated by the so-called Rome Draft Convention of 1952, and the procedure to be followed in connection with a meeting of experts on rights of performers, record manufacturers, and broadcasters.
203. *The International Labor Organization* in its 130th session, held in Geneva from November 15 to 18, 1955, discussed procedural questions regarding the "connected rights," and decided to invite its Director-General to negotiate with the Director of the Bureau of the Berne Copyright Union with a view to reaching an agreement on procedural matters.

PART I.

**LEGISLATURE AND ADMINISTRATIVE
DEVELOPMENTS**

1. Foreign Nations

204. *Canada. Copyright Appeal Board.*

Report of the Copyright Appeal Board to the Secretary of State of Canada.

Canadian Patent Reporter, vol. 23, Part I, (Sept. 1955), pp. 120-121.

In a report of a private meeting with representatives of CAPAC and B.M.I. Canada, Ltd., to approve the license rates to be charged during 1955, the Copyright Appeal Board approved the schedules as submitted except for the items referring to television.

205. *Canada. Custodian of Enemy Property.*

Custodian of Enemy Property—Release of trade marks and copyrights.

Canadian Patent Reporter, vol. 23, Part I, (Oct. 1955), p. 151.

Instructions for filing applications for the release of trademarks and copyrights formerly owned by German nationals, which have been vested in the Custodian of Enemy Property in Canada.

206. *Cuba. Laws, statutes, etc.*

[Announcement of the signing and approval of the] Convención Interamericana sobre el Derecho de Autor en Obras Literarias, Científicas y Artísticas.

Gaceta Oficial no. 266, Sec. I, (Nov. 14, 1955), pp. 20097-20101.

207. *Germany (Democratic Republic). Laws, statutes, etc.*

Erste Durchführungsbestimmung zur Verordnung über die Wahrung der Aufführungs- und Vervielfältigungsrechte auf dem Gebiete der Musik (Richtlinien für die Einziehung von Gebühren vom 27. April 1955.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, no. 10 (Oct. 1955), p. 464.

Regulation No. 1 enforcing the decree concerning the requirements for the performance and reproduction of musical compositions, dated April 27, 1955.

208. *Germany (Democratic Republic). Laws, statutes, etc.*

Verordnung über die Wahrung der Aufführungs- und Vervielfältigungsrechte auf dem Gebiete der Musik vom 17. März 1955.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, no. 10 (Oct. 1955), pp. 462-464.

Decree concerning the requirements for the performance and reproduction of musical compositions, dated March 17, 1955.

209. *Great Britain. Parliament. House of Lords.*

A Bill entitled An Act to make new provision in respect of copyright and related matters, in substitution for the provisions of the Copyright Act, 1911, and other enactments relating thereto; to amend the Registered Designs Act, 1949, with respect to designs related to artistic works in which copyright subsists, and to amend the Dramatic and Musical Performers' Protection Act, 1925; and for purposes connected with the matters aforesaid.

London. Her Majesty's Stationery Office, 1955. 68 p.

The bill proposes to implement most of the recommendations contained in the report of the Copyright Committee and to enable the United Kingdom to ratify the Universal Copyright Convention. Among some of the new features included in the bill are provisions dealing with the right to copy copyrighted material by libraries; a new copyright in motion picture films; and the setting up of a performing right tribunal.

PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY
AND ARTISTIC PROPERTY**

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions

210. *Columbia Pictures Corp. v. National Broadcasting Co., Inc.*, 107 U.S.P.Q. 344 (9th Cir. Dec. 9, 1955).

In another case involving the question of the extent to which copyrighted material may be used and still allow the defendant to interpose the defense of "burlesque" (*see Loew's Inc. v. Columbia Broadcasting System*, 2 BULL. CR. SOC. 177, item 337 [1955]), the court held for the defendant television broadcaster. A television showing of "From Here to Obscurity" was held to be only a sufficient taking of the original copyrighted material ". . . to cause the viewer to recall and conjure up the original."

Though unable to prepare a complete opinion, Judge Carter, with some hesitation, set forth some principles to guide the parties:

"(a) When the alleged infringing work is of the same character as the copyrighted work, viz, a serious work with a taking from another serious copyrighted work, then the line is drawn more strictly than when a farce or comedy or burlesque takes from a serious copyrighted work or vice versa.

(b) In historical burlesque a part of the content is used to conjure up, at least the general image, of the original. Some limited taking should be permitted under the doctrine of fair use, in the case of burlesque, to bring about this recalling or conjuring up of the original.

(c) Burlesque may ordinarily take the locale, the theme, the setting, situation and even bare basic plots without infringement, since such matters are ordinarily not protectable.

(d) The doctrine of fair use permits burlesque to go somewhat farther so long as the taking is not substantial. It may take an incident of the copyrighted story, a developed character (subject to the limited right of an author in certain situations, *Lowe's Inc. v. C.B.S.*)*, a title (subject to right of protection under unfair competition, ***some small part of the development of the story, possibly some small amount of the dialogue.

(e) The defense, 'I only burlesqued' the copyrighted material is not per se a defense. To hold otherwise would seriously jeopardize rights of property in copyrights and investments in such works, and would ultimately seriously damage the prices to be paid to authors for their literary works.

A studio with no assurance it could protect an investment in a copyrighted work from infringement by unlimited use through burlesque of the work, would tend to pay less and less for an author's work. Unlimited and unrestrained taking by burlesque could destroy the Copyright Act, undermine the motion picture industry, the legitimate stage, and reduce the author to his status of 300 years ago, dependent on the largess of the Prince or Patron."

211. *Alexander v. Irving Trust Co., et al.*, 108 U.S.P.Q. 24 (2d Cir. Dec. 20, 1955).

In a Per Curiam opinion the district court's opinion was affirmed. The court said:

"Judge Bicks' reasoned and complete opinion, D.C.S.D.N.Y. 132 F. Supp. 364, 106 USPQ 74 (See 3 BULL. CR. SOC. 14, Item 30 (1955)), demonstrates that there really is no basis for the plaintiff's claim of plagiarism and unfair competition. We are content to affirm upon that opinion."

212. *De Sylva v. Ballentine*, certiorari granted, 21 U.S.L. Wk. 3181 (Jan. 10, 1956). See also 3 BULL. CR. SOC. 38, item 110 (1955).

213. *Hollywood Jewelry Mfg. Co., Inc. v. Dushkin*, 107 U.S.P.Q. 354 (D.C. S.D. N.Y. Nov. 29, 1955). This is the second case in which a federal court has recently sustained the validity of copyrights on costume jewelry, earrings, etc., and in so doing closely followed the precedent in *Trifari, Krussman & Fishel, Inc. v. Charel Co.*, 107 U.S.P.Q. 48 (D.C. S.D. N.Y. Sept. 28, 1955), 3 BULL. CR. SOC. 41, item 113 (1955).

The holder of copyrights on 14 items of costume jewelry sued for injunction, statutory damages, costs and counsel fee to enjoin the manufacture or sale by defendant of costume jewelry claimed to be copies of plaintiff's jewelry.

Held, for the plaintiff.

First, the court considered the question of similarity. It found that the 14 items were copies—except for minor differences based on manufacturing procedure—including a special bar used on plaintiff's necklaces and bracelets for the sole purpose of bearing the copyright notice.

Defendant asserted that there was no proof of access or copying. But the court ruled: "The similarities between 14 of the plaintiff's items and 14 of the defendant's pass the bounds of accident and are beyond explanation by coincidence. The burden of proving copying is on the plaintiff, but when he has made a strong prima facie case by pointing out a convincing number of similarities, the burden of going forward with evidence explaining such similarities is on the defendant. ***The defendant has made no attempt to meet that burden."

Further, defendant asserted that plaintiff's copyright notice was legally defective, and even if the notice was proper, the copyrights were invalid since they involved matter within the public domain. The court held that though the copyright notice referred only to the trade name "Hollycraft" and the corporate name was omitted, the trade name was sufficient. A number of expired design patents were introduced to prove defendant's claim that the work was in the public domain. However, Judge Edelstein held:

"I do not find that the plaintiff copied from materials in the public domain. In my opinion, the plaintiff's articles of costume jewelry involve distinguishable variations that are more than merely trivial *** and the copyrights are free of the alleged defect."

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

214. United States Copyright Office.

Annual report of the Register of Copyrights for the year ending June 30, 1955.

Washington, Govt. Print. Office, 1955. 15 p.

This report covers developments in the administration of the Copyright Office, in international copyright, domestic legislation, and the more important copyright decisions, as well as information on the number of registrations and fees handled during the fiscal year ending June 30, 1955.

2. Foreign Publications

(a) In English

215. Great Britain. Royal Commission on the Taxation of profits and income.

Final report. Presented to Parliament by Command of Her Majesty, June 1955.

Her Majesty's Stationery Office, 1955. 12, 487 p. (Papers by Command, Cmd. 9474).

The chapter on fluctuating incomes concludes with a recommendation that the recent amendment to the British tax law, permitting authors or artists to spread income received from their work over a period of several years, be abrogated in favor of the Commission's proposal to average income for a two-year period when income during one year is less than 50 per cent of the other.

216. International Copyright Union.

Working Group entrusted with the "Preparatory work for a committee of experts" to be appointed with a view to drafting an international convention for the protection of the rights of interpretative and performing artists, record manufacturers and broadcasting organizations. Berne, 31st Oct.-5th Nov. 1955. Record of the meeting (as finally amended).

Berne, 1955, 22 p. (mimeo.)

The record of the meeting includes an agenda, the persons attending, the proposals submitted by M. Puget, Mr. Arthur Fisher and Sr. Fernández del Castillo and observations and recommendations made. The same document is also available in French.

217. Plaisant, Robert

Letter from France. Published in the July and August 1955 issues of *Le Droit d'Auteur*, pp. 99 & 117. [Translated from the French by Borge Varmer].

New York, Copyright Society of the U.S.A., 1955. 31 p. (photo offset). Copyright Society of the U.S.A., Translation Service 1955, no. 5a.

(b) In French

218. International Confederation of Authors' and Composers' Societies. 18th Congress, Bergen, 1954.

Compte rendu du dix-huitième congrès de la confédération internationale des sociétés d'auteurs et compositeurs, tenu à Bergen du 31 Mai au 5 juin 1954.

Paris, [1955]. 400 p.

A record of proceedings of the 18th international congress held by C.I.S.A.C. at Bergen May 31-June 5, 1954, during which papers were contributed on the property rights in motion pictures, ideas, the draft convention dealing with related rights and reproductions for private usage.

B. LAW REVIEW ARTICLES

1. United States

218a. Bricker, Seymour M.

Renewal and Extension of Copyright.

Southern California Law Review, vol. 29, no. 1 (Dec. 1955), pp. 23-46.

The most thorough and scholarly discussion of renewal right problems published in recent years.

218b. Kaplan, Benjamin.

Performer's Right and Copyright: The Capitol Records Case.

Harvard Law Review, vol. 69, no. 3 (Jan. 1956), pp. 409-439.

A searching inquiry into the many problems raised by the decision in the *Capitol Records* case (2 BULL. CR. SOC. p. 166, item 330 (1955)).

219. Sherman, Paul J.

The Universal Copyright Convention: Its Effect on United States Law.

Columbia Law Review, vol. 55 (Dec. 1955), pp. 1137-1175.

A thorough analytical discussion of the Universal Copyright Convention and Public Law 743.

220. Walden, Kenneth E.

Common law rights in literary property.

Journal of the Patent Office Society, vol. 37, no. 9 (Sept. 1955), pp. 642-659.

The writer concludes that literary property is an intangible property which includes the right to enjoy the first public use or to make the first dissemination to an unlimited, unselected group.

2. FOREIGN

(a) In English

221. Jackson, Roy V.

Proposals for new industrial design legislation.

Canadian Patent Reporter, vol. 23, Part I (Oct. 1955), pp. 137-144.

Although "the most popular approach to the question of new design legislation" in Canada has been to rely on the British Registered Designs Act of 1949, the writer suggests that the distinction made, namely that patent protection applies to the core, while design protection is applicable to the "outer layer," is misleading. He proposes instead that design protection be based on copyright principles and that a shorter term be given on the basis of compulsory registration.

222. James, F. E. Skone

Some proposed changes in the copyright law of the United Kingdom.

The Canadian Bar Review, vol. 33, no. 8, (Oct. 1955), pp. 877-897.

Discussion of several of the major principles considered by the Copyright Committee of 1951 and the factors which underlie the revisions proposed by the committee in their report of 1952.

(b) In French

223. Boor, Hans Otto de

Lettre d'Allemagne.

Le Droit d'Auteur, vol. 68, no. 10 (Oct. 1955), pp. 154-160; no. 11 (Nov. 1955) pp. 179-183.

Survey of recent developments in the field of German copyright law, including commentaries on the draft revisions of the law, views on the problem of related rights and court decisions.

224. Desbois, Henri

Un anachronisme: le droit d'adaptation de l'industrie du phonographe selon la loi allemande du 22 mai 1910.

Revue Internationale du Droit d'Auteur, no. 9 (Oct. 1955), pp. 5-39.

A discussion of the conflict of interest between the authors and composers on one hand, and the phonograph record manufacturer on the other, under the German law of May 22, 1910, regarding the right to grant broadcasting licenses for the performance of musical compositions. An English and German translation is published parallel to the original French text.

225. Desbois, Henri

La Convention universelle de Genève et la Convention de Berne.

Le Droit d'Auteur, vol. 68 no. 9 (Sept. 1955), pp. 130-134; no. 10 (Oct. 1955), pp. 150-154; no. 11 (Nov. 1955), pp. 169-173.

A comparative study of the two multilateral copyright conventions, in which the concept of publication; protection of published and non-published works; formalities; duration of protection; the right of translation and the safeguarding provisions assuring the International Copyright Union of continued co-existence with the Universal Copyright Convention are discussed.

226. La nouvelle loi des États-Unis pour la mise à exécution de la Convention Universelle sur le droit d'auteur.

Inter-Auteurs, no. 120 (3e trimestre, 1955), pp. 140-141.

A French translation of a U.S. Copyright Office circular summarizing the changes in the U.S. Copyright Law brought into effect by the entry into force of the Universal Copyright Convention.

227. Straschnov, Georges

La Télévision et la convention de Berne.

Revue Internationale du Droit d'Auteur, no. 9 (Oct. 1955), pp. 41-59.

The General Counsel for the European Broadcasting Union points out that though it appears from the general language used in Art. 11-bis of the 1948 Revision of the Bern Copyright Union television is protected, ambiguities become apparent in interpreting the articles which have been carried over from earlier revisions. He feels that the problems relative to television should be recognized in time to be included in the next proposed revision of the convention. English and Spanish translations of the article are also provided.

228. Strauss, William

Le Droit moral et la protection des droits personnels de l'auteur.

Le Droit d'Auteur, vol. 68, no. 11 (Nov. 1955), pp. 173-179.

A thorough study of protection of the moral rights of authors.

229. Tournier, Alphonse

L'Exécution mécanique.

Revue Internationale du Droit d'Auteur, no. 9 (Oct. 1955), pp. 61-81.

Rights of the author or composer as contrasted with those of the phonograph record manufacturer and the radio broadcast of recorded performances.

230. Weiss, Raymond

L'Offensive des lois contre les libertés de l'auteur.

Inter-Auteurs, no. 120 (3e trimestre, 1955), pp. 136-139.

Warning that recent innovations incorporated in draft revisions of copyright legislation are infringing upon the rights of authors as conceived by present legislation and international convention—particularly the Bern Copyright Convention as revised.

231. Willemetz, Albert

L'Auteur et le fisc.

Inter-Auteurs, no. 120 (3e trimestre, 1955), pp. 131-135.

An introductory article and a questionnaire on an author's income, and the manner in which it is taxed, both in France and abroad.

232. U.S.S.R.

Des honoraires d'auteurs pour les oeuvres littéraires. Ordonnance du conseil des ministres de la R.S.F.S.R., no. 521, du 15 juillet 1947.

Inter-Auteurs, no. 120 (3e trimestre, 1955), pp. 142-145.

French translation of the schedule of fees to be paid to authors of various types of works in the Soviet Union. The schedule was authorized by the Council of Ministers on July 15, 1947.

(c) In German

233. Bandorf, Robert

Der Urheberrechtsstreit über die Tagebücher von Cosima Wagner.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 20, nos. 5/6 (Oct. 1955), pp. 265-274.

The author discusses recent litigation involving the property rights in Cosima Wagner's diary and the right to reproduce it.

234. Benkard, Georg

Zur neuesten Rechtsprechung des Bundesgerichtshofs.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 20, nos. 5/6 (Oct. 1955), pp. 257-265.

Resumé of recent court decisions involving copyright in Germany.

235. Gerstenberg, Ekkehard.

Bildberichterstattung und Persönlichkeitsrecht.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 20, nos. 5/5 (Oct. 1955), pp. 295-300.

The manner in which the problem of film reporting and the right of privacy is handled under the draft copyright law in Germany is discussed.

236. Hirsch Ballin, Ernst D.

Zur Zwangslizenz im Urheberrecht.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 20, nos. 5/6 (Oct. 1955), pp. 274-283.

The "phenomenon" of compulsory license in copyright legislation both on the domestic and international level.

237. Hüttl, Adolf.

Die geschichtliche Entwicklung des musikalischen Urheberrechts.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 20, nos. 5/6 (Oct. 1955), pp. 300-305.

In a brief report on the historical evolution of copyright in music, the author traces the privilege of printing musical works back to a grant by the Bishop of Bamberg in 1490 for a missal, and surveys the German legislative provisions from that date to the present time.

238. Kopsch, Julius.

Urheber, Interpret, Verwerter und Publikum.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 20, nos. 5/6 (Oct. 1955), pp. 283-295.

Entitled: "The Author, the Interpreter, the User and the Public," this article bears a subtitle "an undogmatic consideration of the protection due creative artists."

239. Troller, Alois.

Das Recht des Dirigenten und Solisten an der Interpretation des Musikwerkes.

Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, vol. 2 no. 2 (Nov. 1955), pp. 137-165.

A critical inquiry into the legal position of a conductor and a soloist in connection with interpretation of musical works.

240. Ulmer, Eugen.

Grundfragen des Filmrechts.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 57, no. 11 (Nov. 1955), pp. 518-526.

Authorship of motion picture films and the question of protection together with a redraft of sections 91 and 99 of the proposed revision of the German Copyright Law.

(d) In Italian

241. Candian, Aurelio.

Direttori, editori, autori di riviste e periodici, per . . . e Pietro Cattaneo.

Rivista di Diritto Industriale, vol. 4, no. 2, (Apr.-June, 1955), part 2, pp. 105-116.

A case note based on two recent court decisions—one, by the Court of Cassation (Feb. 18, 1955) and the other by the Milan Court of Appeals (Aug. 8, 1952). The decisions involved interpretation of Article 38 of the Italian Copyright Law of 1941 which gave the right of economic exploitation to the publisher of the periodical and a similar right to the contributing author, providing the latter's license or grant does not conflict with the former's agreements.

242. Franceschelli, Remo.

Direttori, editori, autori di riviste e periodici.

Rivista di Diritto Industriale, vol. 4, no. 2, (Apr.-June, 1955), part 2, pp. 117-138.

Case note on the rights of the publisher as contrasted with the rights of the contributing author in periodicals and newspapers provided for in Article 38 of the Italian Copyright Law of 1941.

243. Guglielmetti, G. Antonio.

Imitazione di cartina planimetrica e responsabilità del tipografo.

Rivista di Diritto Industriale, vol. 4, no. 2, (Apr.-June, 1955), part 2, pp. 164-172.

A case note based on a Milan court decision involving unfair competition and copyright protection in a map of the grounds of the 30th International Fair in Milan.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

244. Bill for Universal Copyright introduced in Britain.

Publishers' Weekly, vol. 168, no. 22 (Nov. 26, 1955), p. 2203.

Note on the copyright bill introduced in the House of Lords on October 25th, together with some of the major revisions contained therein.

245. Book Battle Abating.

America, vol. 94, no. 1 (Whole No. 2420), pp. 3-4.

In noting the coming into force of the Universal Copyright Convention, this brief article refers to the difficulties of Margaret Mitchell in challenging the pirating of her *Gone With the Wind* in The Netherlands, Bulgaria, Yugoslavia, China, Turkey, Egypt and Japan, and asks whether the U.S.S.R. will simplify the problems of authors by signing the convention.

246. Chopnick, Max.

International Copyright—At Last.

Variety, Jan. 4, 1956, p. 157.

247. Chopnick, Max.

How to secure foreign protection.

Variety, Jan. 4, 1956 p. 157.

Two articles on the Universal Copyright Convention.

248. Claughton, Richard.

The Copyright Tyranny.

The American Journal of Economics and Sociology, vol. 14, no. 3 (Apr. 1955), pp. 263-269.

The author claims that politicians and public officials should not be allowed to keep for private use documents which belong to the taxpayers and when such documents are finally incorporated into memoirs and other publications, they should not be protected by copyright. He further claims that the "tyranny" exacted by publishers of such political treatises by requiring payment for quotations or notice that the work has been taken from a copyrighted volume, works a serious handicap upon the research student working his way through college.

249. Diaz Lewis, Juan O.

Notes on the Geneva convention.

UNESCO Chronicle, no. 3 (Sept. 1955), pp. 5-8.

The article traces the movement for international copyright from the Bern Copyright Convention of 1886 and the Montevideo Convention of 1889 through their various revisions down to the Geneva Conference of 1952 which resulted in the Universal Copyright Convention.

250. Evans, Luther H.

The Universal copyright convention.

UNESCO Chronicle, no. 3 (Sept. 1955), pp. 3-5.

After reviewing the work which went into the drafting, signing and ratification of the Universal Copyright Convention, the director of *Unesco* concludes that many more countries will have to accept the obligations of this new instrument before it will become a truly "universal" convention and though prospects seem good, there is still much work to be done.

251. France ratifies Universal Copyright Convention.

Publishers' Weekly, vol. 168, no. 21 (Nov. 19, 1955), p. 2123.

A note on France's ratification of the Universal Copyright Convention effective January 14, 1956, and the probability of England's ratification sometime during the next year.

252. Halperin, Daniel.

Paris designers checking "secrets"; world of fashion is swept by new fear of piracy.

Washington Daily News, (Nov. 3, 1955), p. 55.

A note on the recently instituted suit by Dior and several other French designers against an American clipping service informing designers on new French fashion designs.

253. Kaplan, Benjamin.

A Course in Copyright, Trademark and Unfair Competition.

Harvard Law School Bulletin, vol. 7, no. 3 (Dec. 1955), pp. 3-4.

In discussing the origin of his seminar on copyright, trademark and unfair competition and its development into a third-year elective course, Prof. Kaplan finds copyright a fast-changing subject which is rapidly losing the quality of self-containment and is increasingly inviting comparison with adjacent branches of law.

254. U.S. Author accuses Japanese publisher of piracy.

Publishers' Weekly, vol 168, no. 22 (Nov. 26, 1955), p. 2207.

James T. Farrell, author of the "Studs Lonigan Trilogy," has written a letter of protest, released by his publishers, requesting a Japanese publisher to cease publishing a pirated Japanese edition of "Young Lonigan," the first book of the trilogy, and to pay over all royalties due the author. Mr. Farrell had granted permission to publish a translation of his work to a Japanese friend.

255. Yeager, Phil.

Design piracy suits are difficult to prove. By . . . and John Stark.

The Sunday Star (Washington, D.C.), (Nov. 20, 1955), Section A. p. 38.

Another note on the case of *Dior v. Milton*. (See item 252.)

2. England

256. The Copyright Bill.

The Author, vol 66, no. 2 (Winter 1955) (loose leaf).

The proposed new British copyright bill is criticized as not giving adequate protection to authors in several respects. "The Author" is particularly critical of a clause in the proposed bill which provides that in the case of "a literary or dramatic work made by the author in pursuance of a contract with another person providing specifically for the making of that work for publication in a newspaper, magazine or similar periodical," that other person ("referred to as 'the employer'"), is, in the absence of any agreement to the contrary, to be the owner of the copyright.

257. The Copyright Bill.

The Bookseller, no. 2604 (Nov. 19, 1955), p. 1707.

A note on the British copyright Bill in the House of Lords.

257a. Government's new Copyright Bill is subjected to criticism.

The Bookseller, no. 2604 (Nov. 19, 1955), pp. 1714-16.

An analysis of some of the criticisms made of the new British Copyright Bill, particularly from the point of view of publishers.

258. International copyright.

The Star (Johannesburg), Sept. 15, 1955.

An editorial advising the South African composer or author that their benefits are limited insofar as copyright protection in the United States is concerned under the Universal Copyright Convention, and expressing the hope that the UCC will eventually raise its standards to the same level as the Bern Copyright Convention.

259. Lid, Olav.

The Public Use of Records under Norwegian Law.

E.B.U. Bulletin, vol. 6, no. 34 (Nov-Dec. 1955), pp. 613-618.

A commentary on a recent Norwegian Supreme Court decision brought by Electric Musical Industries of Hayes, Middlesex, the Decca Gramophone Co., Ltd. and a Norwegian company against another Norwegian company for playing commercial records on public address systems which the defendant rented out. The question involved concerned the problem of whether the defendant was bound by the restrictions attached to the records by the manufacturers. The court found that enforcement of such restrictions was a problem for the legislature.

260. Obscene Publications bill; fresh attempt to get it through Parliament.

The Bookseller, no. 2605 (Nov. 26, 1955), pp. 1760-1762.

Commentary and text of the Obscene publications bill recently introduced in the current British Parliament.

261. Orton, Peter K.

The Far-Eastern Pirating Problem.

The Bookseller, no. 2603 (Nov. 12, 1955), p. 1632.

Account of a raid upon the A.B.C. Book Company in Kowloon, Hong Kong, and the seizure of unauthorized reprints of books published by British, French, American and German publishers, and the methods by which original copies were obtained and reprinted.

LAST MINUTE NEWS

The Philippine Republic Withdraws from the Universal Copyright Convention.

262. We reproduce below the letter mailed by UNESCO on Jan. 11, 1956, to the Secretary of State, United States of America:

Sir,

Subject: Universal Copyright Convention and annexed Protocols 1, 2 and 3

In my circular letter No. CL/1071, dated 6 September 1955, I had the honour to inform you that the instrument of accession of the Republic of the Philippines to the Universal Copyright Convention and the annexed Protocols 1, 2 and 3 was deposited with me on 19 August 1955.

I have since received, on 16 November 1955, the following communication, addressed to me by the Minister of the Republic of the Philippines in Paris:

"Legation of the Philippines
Paris

"Excellency,

November 14, 1955

"On instructions of my Government, I have the honour to inform you that his Excellency the President of the Republic of the Philippines has directed the withdrawal of the instrument of accession of the Republic of the Philippines to the Universal Copyright Convention prior to the date of November 19, 1955, at which the Convention would become effective in respect of the Philippines.

(Signed) Salvador P. Lopez
Minister."

In a letter dated 28 November 1955, I informed the Government of the Republic of the Philippines that I proposed to submit their communication to the States concerned, upon whom it is incumbent to declare what legal inference they intend to draw from it.

I undertake to forward to the Government of the Republic of the Philippines and all other States concerned any observations which your Government may wish to make concerning the communication quoted above, and to inform your Government of the substance of any observations forwarded to me by the other Governments concerned.

This letter is addressed to States which have acceded to the Convention as well as to signatory States.

I have the honor to be, Sir,

Your obedient Servant,

/s/ LUTHER H. EVANS,
Director-General.

Copyright Society of the U.S.A.

c/o Fred B. Rothman & Co.

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South Hackensack, N. J.

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CONTENTS

	Page
PART I. LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS.	
1. United States of America and Territories	89
2. Foreign Nations	89
PART II. CONVENTIONS, TREATIES AND PROCLAMATIONS	90
PART III. JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY.	
A. Decisions of U. S. Courts.	
1. Federal Court Decisions	90
2. State Court Decisions	96
PART IV. BIBLIOGRAPHY.	
A. Books and Treatises	
1. United States Publications	97
2. Foreign Publications	
(a) In English	99
(b) In French	99
B. Law Review Articles.	
1. United States	100
2. Foreign.	
(a) In English	103
(b) In French	104
(c) In German	106
(d) In Italian	108
C. Articles Pertaining to Copyright from Trade Magazines.	
1. United States	109
2. England	112
3. France	113
4. Germany	113
News Briefs	114

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PART I.

LEGISLATIVE AND ADMINISTRATIVE
DEVELOPMENTS

1. UNITED STATES OF AMERICA AND TERRITORIES

263. *U. S. Congress. Senate.*

S. Rept. No. 1602 (Calendar No. 1626). Mr. O'Mahoney's report of Feb. 27, 1956 from the Committee on the Judiciary on H.R. 5876, which would 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, recommending that the bill be passed. The bill passed the Senate March 19, 1956. (See 3 BULL. CR. SOC. p. 7, item 6.)

4 p. (84th Cong., 2d Sess.)

2. FOREIGN NATIONS

264. *Cuba. Laws, statutes, etc.*

Decret-loi sur le droit d'auteur (du 18 janvier 1955).

Le Droit d'Auteur, vol. 69, no. 2 (Feb. 1956), pp. 17-21.

265. *Switzerland. Laws, statutes, etc.*

Loi fédérale modifiant celle qui concerne le droit d'auteur sur les oeuvres littéraires et artistiques, (du 24 juin 1955).

Le Droit d'Auteur, vol. 69, no. 1 (Jan. 1956), pp. 4-6.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS266. *U. S. Treaties, etc., 1953- (Eisenhower)*

Copyright. Agreement between the United States of America and India effected by exchange of notes signed at Washington October 21, 1954; entered into force October 21, 1954. Washington, U. S. Govt. Print. Off., 1955.

5 p. (*U. S. State Department Treaties and other international acts Series 3114, Publication 5758.*)

267. *U. S. Treaties, 1953- (Eisenhower)*

Copyright convention and protocols between the United States of America and other governments, dated at Geneva September 6, 1952. Washington, U. S. Govt. Print. Off., 1955.

98 p. (*U. S. State Department Treaties and other international acts Series 3324, Publication 6004.*)

The Department of State's TIAS publication of the Universal Copyright Convention, together with the President's proclamation of August 5, 1955.

PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY
AND ARTISTIC PROPERTY**

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions

268. *M. J. Golden & Co. v. Pittsburgh Brewing Co.*, 108 U.S.P.Q. 250 (D.C.W.D.Pa. Jan. 31, 1956).

Action for infringement of plaintiff's copyright in a three dimensional plaque. In 1948 the plaintiff was engaged by defendant to prepare "point of sale" material to further defendant's advertising program. A sketch was prepared and a plaster plaque produced to reflect the dress and character of the year 1861. Plaintiff was the supplier and de-

defendant the purchaser. Similarly, in 1951 a three dimensional four-figured plaque was prepared and accepted in connection with a radio and television promotion built around the "Gay Nineties" quartet theme. Like the prior plaque this material was also copyrighted by the plaintiff and bore notice of the copyright. However, instead of having plaintiff supply its needs in producing additional copies of the plaque, defendant had Timely Products make a sketch of the plaintiff's plaque in September, 1953. Defendant approved the sketches and ordered 7500 pieces from Timely "in accordance with the sketch made by Timely and which sketch was undoubtedly a two dimensional copy of plaintiff's three dimensional plaque." Delivery was not made until May, 1954. Then on January 15, 1954, the plaintiff sold the assets of its business including the copyright. Eventually the copyright was assigned to defendant.

Held: Judgment for plaintiff. The court said: "The question as we see it is whether there was any infringement of plaintiff's copyright at the time it owned same. It appears that even though there has been a sale of the copyright this does not prevent the owner at the time of the alleged infringement from suing for previous damages it alleges to have sustained while it was the owner."

The court then had to proceed to the question of the effect of the copying from sketches made of plaintiff's copyrighted material. "In order to sustain an action for infringement of a copyright, a substantial copy of the whole of a material part of copyrighted material must be reproduced . . . A copyright for an engraving can be infringed by reproducing a copy of it by photographic process . . . It also appears that if a photograph of a copyrighted piece of sculpture is made, same would be a copy of the copyrighted piece and if made without authority from the proprietor of the copyright it would be an infringement thereof . . . It has been held that there can be an infringement by making a three dimensional doll of a two dimensional copyrighted cartoon. . . ."

"In this case the sketch made by Timely Products at the request of the defendant and from which the defendant ordered Timely to make a plastic plaque infringed the plaintiff's copyright. While the actual sketch was not introduced into evidence it was not disputed that it was made and that it was a copy of plaintiff's copyrighted plaque. This infringed the plaintiff's copyright."

Since there was no showing of actual damages, the court awarded statutory damages of \$1000 and attorneys' fees of \$300, plus costs.

269. *Greenbie v. Noble*, 107 U.S.P.Q. 356 (D.C.S.D.N.Y. Dec. 7, 1955).

Plaintiff sought certain information from the defendants by interrogatories served in copyright infringement suit. Objection was raised on two grounds: "One, urged by both defendants [Doubleday & Company and Sears, Roebuck & Company], is that information relevant solely to the issue of damages is called for prematurely, before the establishment of liability. The other is raised only by Sears, which complains that portions of interrogatories are objectionable because they call for information concerning the internal business affairs of its subsidiaries, not parties to this action and related to it only through stock ownership."

Held: Objections overruled. The court said:

"In this district, the right of a plaintiff in a copyright infringement action to pursue inquiry before trial on the issue of damages has been upheld. . . . In any event, I find the plaintiff's position well taken that the interrogatories are material and necessary not alone to the amount of any recovery by her, but also the validity of the defense of laches interposed by both Doubleday and Sears."

"As to the interrogatories concerning Sears' wholly owned subsidiaries, Rule 33 of the Federal Rules of Civil Procedure requires, for a party corporation, that answers be given '*** by any officer or agent, who shall furnish such information as is available to the party.' Answer cannot be avoided by alleging ignorance, if the corporation can obtain the information from sources under its control. . . . Hence, all that remains is the factual question of whether or not Sears can obtain the information from sources under its control. If it cannot furnish the information sought, Sears should so state under oath."

270. *Miner v. Employers Mutual Liability Insurance Company of Wisconsin*, 108 U.S.P.Q. 100 (D. C. Cir. Jan. 12, 1956).

Appeal from summary judgment for defendant insurance company. The complaint rested on two grounds: (1) that the type of coverage included in the form of life insurance policy devised and copyrighted by plaintiff-appellant cannot be included in any other insurance policy without infringing his copyright; and (2) that the defendant's policy is so close in form and wording as to constitute appropriation of the copyrighted material.

Held: Affirmed. As to the first assertion the court said:

"The complaint rested in part at least on the theory that the substance of the coverage given by plaintiff's policy, namely, insurance against loss from failure to record chattel mortgages and like instruments, cannot be provided by other persons or companies without infringing his copyright. That theory must fail: others remain free to compete by offering similar coverages."

Upholding the district court on the second ground the appeals court quoted the trial court's language that "'there is no similarity in the arrangement of words of plaintiff's policies and the arrangement of words in defendant's policy and that defendant has not appropriated in the exact form or substantially so plaintiff's copyright material.' The [district] court was not in error in so holding. It did not pass, and we find it unnecessary to pass, upon the validity of plaintiff's copyrights. The court correctly concluded 'that assuming that plaintiff's copyrights are valid, there has been no infringement thereof by defendant.'"

271. *Ettore v. Philco Television Broadcasting Corp.*, 229 F. 2d 481 (3d Cir. Jan. 17, 1956).

Suit was brought alleging that the televising of fight films injured the plaintiff, boxer, "in his property rights, right of privacy, good name and reputation***." In 1936 Ettore fought a professional boxing contest with Joe Louis and plaintiff lost. Motion picture films were made at that time and plaintiff received a share of the amount paid to the promoter. It was not until 1949 and 1950 that two separate commercially sponsored telecasts were made of edited films of this fight. The lower court held that on the facts and the law plaintiff had no right to relief.

Held: On appeal, reversed. Before the court could proceed to the question of whether Ettore suffered any damages, it was necessary to determine in what states the damages may have occurred. As to the broadcast originating in Pennsylvania the court looked to the "points of impact" of the transmission and determined that Delaware and Pennsylvania law must be examined. For the New York telecast it was required to look to New York and New Jersey law to determine the damages. The problem was further complicated because conflict of law rules of both New York and Pennsylvania had to be applied in certain instances.

Regarding the question "[W]hat kind of injury or injuries has Ettore suffered?", the court said:

"There are, speaking very generally, two polar types of cases. One arises when some accidental occurrence rends the veil of obscurity surrounding an average person and makes him, arguably, newsworthy. The other type involves the appropriation of the performance or production of a professional performer or entrepreneur. Between the two extremes are many gradations, most involving strictly commercial exploitation of some aspect of an individual's personality, such as his name or picture." The first instance is described as the right to be let alone and not a property right. Discussing the second type the court continued:

"We think a distinction should be made—and, in fact, quite frequently has been made by courts—between the two types of cases. Where a professional performer is involved, there seems to be a recognition of a kind of property right in the performer to the product of his services. The theory may be summed up as follows: The performer, as a means of livelihood, contracts for his services with an entrepreneur. The finished product is, for example, a motion picture in which the performer's services are embodied. If the motion picture is employed for some use other than that for which it was intended by the performer and the entrepreneur, the motion picture is employed in such a way as to deprive the performer of his right to compensation for the new use of the product. It is usual today to provide specifically by contract between the performer and the entrepreneur as to what uses the product may be put; so, as to services performed and products made in the future, the issues presented by the case at bar will become largely academic."

Defendants claimed that Ettore waived his property rights by contracting to sell his motion picture rights to the fight and thus agreed in advance to any use, commercial or not, to which the films could be put. The court felt that the use of motion picture films for television broadcasting "is a new use of the film and one which was not in commercial existence at the time Ettore made his contract."

Judge Hastie, *dissenting*, observed that Ettore had not been deprived of any valuable property right. "It is clear," said the Judge, "and not disputed that the person who made the movies of the Louis-Ettore fight, having bargained and paid for that privilege, had legal title to that article of commerce which is the film recording of the spectacle. But as I understand the theory that has prevailed here, it is reasoned that there remained in each athlete whose professional performance gave the film its value a property right in the nature of a legal power to restrict the use of the recorded spectacle."

He continued: "In such fields as literature, music and the graphic and dramatic arts, our judge made law has long recognized and to some extent protected an economic interest of the artist in that composition or performance which is the embodiment or expression of his special ability. This interest is vindicated by empowering the performer to exercise some degree of control over the publication and use of the product in question. This conception inheres in such legal phrases as literary property and common law copyright. Whether this property analysis should be extended into the field of sport to afford a professional performer there a sort of athletic property in the spectacle produced by his exhibition of physical strength, stamina and skill I am by no means sure. And on this point I do not find the cases helpful. However, beyond this caveat, I take no issue now with the court's conclusion that the conception of an artist enjoying an incorporeal property in his performance should be extended to protect the professional athlete in relation to the sport spectacle he helps to produce."

"But the legal protection of common law copyright and literary property has rather consistently been limited by a closely related conception that the showing or rendition of a production or composition may and often does amount to a dedication to the public which is inconsistent with and destructive of any property the artist or performer might otherwise retain in the product of his talent and skill. If disclosure is to all who may be interested rather than to a limited audience on a special occasion, the publication is said to be general and the consequent dedication of the artist's creation or effort is unqualified. Applied to a professional athlete's possible property in his demonstration of skill and ability, this concept precludes him from both retaining property in a particular exhibition and at the same time consenting that the spectacle be seen and heard by all and sundry."

Judge Hastie then applied these principles to the instant case and said: "I find it difficult to conceive of a performance under circumstances which would more clearly show general publication and consequent dedication." However, he would not deny to the performer all legal rights in authorized commercial recordings of the performance when: ". . . if the performer shares in such protection it is not because he is a performer but rather because he has contracted for some interest in the recording or at least, in authorizing it, has imposed some restriction upon its use." The *Waring* decision was such a reservation of interest in the performance by a musical organization, according to the dissent. "In the present case the court recognizes this difficulty. In

consenting to the sale of motion picture rights for the fight Ettore made no effort to impose any restriction upon the use of the film. I think the court is mistaken in reasoning that, because television did not exist at that time, the law should treat 'the absence of the new and unknown media *** as about the equivalent of a reservation against the use of the work product***.' The error as I see it is in failing to take into account that at least some demonstration of purpose to hold something back is necessary to avoid the dedication which otherwise attends the general publication of the work product. In this case the fact that in 1936 motion picture projection was the only means available for public exhibition of fight films serves to emphasize the fact that Ettore published and dedicated the spectacle as completely as he knew how. This in my view is the very antithesis of the Waring situation."

2. State Court Decisions

272. *Cinerama Products Corp. v. Schwartz*, 108 U.S.P.Q. 184, 147 N. Y. S. 2d 484 (Sup. Ct. N. Y. Dec. 21, 1955).

Action was brought for breach of trust and unfair competition because Arthur Schwartz was alleged to have agreed to devote himself exclusively to composing music for a motion picture based on "Paint Your Wagon", but that instead of doing so he composed certain music which he failed to deliver to the plaintiff. The music was then used in the musical play "By the Beautiful Sea." By delivering the music to another, it was alleged, a breach of trust occurred and the performance of the play constituted unfair competition in derogation of plaintiff's rights. Schwartz moved to dismiss the complaint.

Held: Granted in part and denied in part. After examining the Supreme Court decision in *Manners v. Morosco*, 252 U. S. 317, and relating that to the fact that plaintiff was to be the owner of all the motion picture rights of the musical score Schwartz was to produce, the court held the allegation of breach of trust as being unfair competition well pleaded:

"In the last analysis those cases only apply the principle that in every contract there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the rights of the other party to receive the fruits of the contract, which means that in every contract there exists an implied covenant of good faith and fair dealing."

As to another cause of action the court continued:

"The third cause of action against all the defendants alleges that the contract declares Schwartz's services to be special and unique and that his services were to be exclusively rendered to the plaintiff during the contract period, whereas Schwartz did not devote his talents and efforts to plaintiff during that time but rather to the defendants and that his unique product was delivered to his codefendants for use in a musical play. The claim of unfair competition and violation of plaintiff's contractual rights are sufficiently stated."

However, as to the fifth cause of action alleging a right to an equitable lien on the motion picture rights and proceeds of "By the Beautiful Sea" the court said:

"There is no allegation that the defendant Schwartz has, or any of the defendants have, attempted to transfer or to assume the motion picture rights or in any manner violated the grant to plaintiff so that an equitable lien might attach. At the present time the facts as revealed by the complaint supply no res in the possession of the defendants which would be the subject of an equitable lien. Without such allegations the fifth cause of action is insufficient."

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

273. Nicholson, Margaret

A Manual of Copyright Practice. For writers, publishers, and agents. 2d Edition.

New York, Oxford University Press, 1956. 273 pp.

This is a revised and enlarged edition of this handbook on copyright which has already made a definite place for itself as a practical guide and which is now brought completely up-to-date. The second edition includes not only all forms presently in use in connection with copyright applications but is enlarged also by a chapter on the

Universal Copyright Convention, including its text. Of particular interest is that section of the book, Part 3, which is entitled "Questions on Copyright Practice," and in which the author seeks to answer some of the most frequently asked and most troublesome practical questions with regard to copyright protection of literary works. The chapter on international copyright relations has a useful and up-to-date table indicating our present copyright relations with other nations. The book is well annotated, well indexed and reliable.

274. Television Agreements. A Handbook edited by David M. Solinger.

Practising Law Institute, 20 Vesey Street, New York (1956). \$3.50.

This valuable handbook consists of transcripts of two panel discussions from the Institute's 1955 course on radio and television law. Topics covered include obligations of performer, producer and sponsor; ownership of title and material; rate and computation of payments; use of records, transcripts and kinescopes; sponsor's right to cancel or suspend; producer's right to terminate or reinstate; artist's failure to perform; advertising rights; sponsor's identification with program; ad lib risks; indemnification; "morals" clause; summer hiatus; radio and motion picture rights; union membership; arbitration; injunction against contract violation, and many others. The panel members whose comments are contained in the handbook include George A. Elber of Davis & Gilbert; W. Spencer Harrison, vice president in charge of legal and business affairs, CBS Television; Henry Jaffe of Jaffe & Jaffe; Jack Katz, counsel to General Amusement Corporation; Robert A. Dreyer, general counsel, DuMont Broadcasting Corporation; Michael Halperin of Wilzin & Halperin; James R. Schule of Tompkins, Boal & Tompkins, and Leonard H. Steibel of Smith & Steibel.

275. Summary of UNESCO study of connected rights in thirteen countries.

Washington, U. S. Copyright Office, 1955. 2 p. (*multilithed*).

276. Secretan, Jacques.

Commentary . . . on the meeting of the working group entrusted with the "preparatory work for a committee of experts" to be appointed with a view to drafting an international convention for the protection of the rights of interpretative and performing artists, record manufacturers and broadcasting organizations, Berne, Oct. 31-Nov. 5, 1955;

and on the resolution of the governing body of the International Labor Organization, Geneva, Nov. 15-18, 1955. Published in *Le Droit d'Auteur*, Dec. 1955, pp. 199-203. See also item 278, *infra*.

Washington, U. S. Copyright Office, 1955. 14 p. (multilithed).

277. United Nations Educational, Scientific and Cultural Organization. *Interim Copyright Committee*.

Report on the proceedings of the Interim Copyright Committee (Second session, Paris, 17-21 Oct. 1955). 16 p.

2. Foreign Publications

(a) In English

278. International copyright union.

Record of the meeting of the Working Group entrusted with the "preparatory work for a Committee of Experts" to be appointed with a view to drafting an international Convention for the protection of the rights of interpretative and performing artists, record manufacturers and broadcasting organizations (Berne, 31st Oct.-5th Nov., 1955); and Resolution of the Governing Body of the International Labour Office (Geneva, 15th-18th Nov., 1955) followed by a Commentary by Professor Jacques Secretan, Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

Berne, 1956. 12 p.

(b) In French

279. Recht, Pierre.

Le Droit d'auteur en Belgique; la législation belge mise en concordance avec la convention d'union de Berne et annotée d'après la doctrine et la jurisprudence.

Bruxelles, Larquier, 1955. 245 p.

Beginning with an "orientation" bibliography of works on Belgian copyright, the Bern Copyright Convention, foreign copyright and the Universal Copyright Convention, the author gives an article by article analysis and commentary of the basic Belgian legislation together with relative provisions from the Bern Copyright Convention.

B. LAW REVIEW ARTICLES

1. United States

280. Derenberg, Walter J.

Copyright Law.

New York University Law Review, vol. 31, no. 2, (Febr. 1956)
pp. 335-343.

A review of important decisions in the copyright field during 1955.

281. Evans, Luther H.

Coming into force of the Universal Copyright Convention.

UNESCO Copyright Bulletin, vol. 8, no. 2 (1955), pp. 139-141.

After stating briefly the methods available for accomplishing and enforcing an international convention, the director of UNESCO concludes that the "Universal Copyright Convention has resulted from the best practices and procedures yet developed in the short UNESCO experience for dealing with the particular type of problem involved. The potentialities for wider employment of the lessons of this experience might be investigated with profit by students of international affairs."

282. Foley, Patrick J.

Burlesque of literary property as infringement of copyright.

Notre Dame Lawyer, vol. 31, no. 1 (Dec. 1955), pp. 46-54.

Commenting on the decision in *Loew's v. CBS*, see 2 BULL. CR. SOC. 177, item 337 (1955), the author of this case note finds it increasingly evident that burlesque of serious dramas, novels, etc. has no extraordinary legal armor to defend itself against charges of infringement. Since "fair use" does not permit burlesque to appropriate substantial parts of a copyrighted work, he concludes that the decision may be welcomed as a spur to more original and ingenious entertainment.

283. Goren, Robert.

Publication: A New Meaning for the Modern Media.

Wayne Law Review, vol. 2, no. 1 (Winter 1955), p. 18.

An article on the meaning of the word "publication" since the advent of television, radio and motion pictures. A Nathan Burkan Memorial Competition first prize essay.

284. Nimmer, Melville B.

Copyright Publication.

Columbia Law Review, vol. 50, no. 2 (Febr. 1956), p. 185.

A scholarly discussion of the meaning of the term "publication" in connection with termination of common law copyright protection.

285. Nimmer, Melville B.

Copyright 1955.

California Law Review, vol. 43, no. 5, (1956) p. 791.

A review of important decisions in the copyright field during 1955.

286. Piper, Edwin E., Jr.

Copyright—Burlesque of a Substantial Portion of a Copyrighted Dramatic Work is not a Fair Use. *Loew's Incorporated v. Columbia Broadcasting System*, 131 F. Supp. 165 (S. D. Cal. 1955).

Rocky Mountain Law Review, vol. 28, no. 1 (Dec. 1955), pp. 134-138.

A discussion of the case noted in 2 BULL. CR. SOC. 177, item 337 (1955).

287. Sommerich, Otto C.

Treatment by United States of World War I and II Enemy-owned patents and copyrights.

The American Journal of Comparative Law, vol. 4, no. 4 (Autumn 1955), pp. 587-600.

The article is an expansion of a paper read at the Fifth International Conference of the Legal Profession held in Monte Carlo in July

1954, and contains a brief explanation of the policies adopted by the Office of Alien Property in the licensing and exploitation of vested copyrights.

288. Strauss, William.

The Moral right of the author.

The American Journal of Comparative Law, vol. 4, no. 4 (Autumn, 1955), pp. 506-538.

In analyzing the protection given European authors under the so-called "Moral Rights" doctrine, the writer points to the lack of uniformity in protection and finds that the United States courts arrive at much the same results as the European courts without using the "Moral Rights" label.

289. Taubman, Joseph

Motion Picture Co-Production Deals and Theatrical Business Organization.

Tax Law Review, vol. 11, no. 2, (Jan. 1956), pp. 113-136.

Current problems relating to the tax considerations which influence the forms of business organization, the joint venture in particular, in the motion picture and theatrical industries.

290. United Nations Educational, Cultural and Scientific Organization. *Interim Copyright Committee*.

Work of the interim copyright committee, second session, Paris, 17-21 Oct. 1955.

UNESCO Copyright Bulletin, vol. 8, no. 2, 1955, pp. 145-194.

This group of documents includes (1) a list of the participants, (2) the report by the rapporteur, Arthur Fisher, (3) the resolutions submitted, (4) the draft rules of procedure for the intergovernmental copyright committee and (5) the report on double taxation of the incomes of authors and artists, together with a copy of the questionnaire distributed by CISAC relative to the subject of the report.

2. Foreign

(a) In English

291. Yankwich, Leon R.

Parody and burlesque in the law of copyright.

The Canadian Bar Review, vol. 33, no. 10 (Dec. 1955), pp. 1130-1154.

Tracing the historical development of parodies and burlesques, Judge Yankwich discusses the British and American cases which deal with the parody of copyrighted works. He concludes that authors should be protected from unconscionable pilferers, but we should not destroy parodies and burlesques through judicial fiat by applying to them tests which fail to take into account historical evolution.

292. Dean, Joseph.

The Copyright Bill.

The Law Journal, vol. 105 n.s., no. 4689 (Dec. 9, 1955), pp. 772-773.

Deploring the lack of brevity in the British copyright bill, the author proposes reducing the definition of "copyright" from 258 words to 67 and asks why "work" and "subject-matter" are used when "work" is sufficient and why "exclusive" has been substituted for "sole" as used in the 1911 Act.

293. Ivamy, E. R. Hardy.

Remedies for infringement of copyright.

The Solicitor, vol. 22, no. 12 (Dec. 1955), pp. 301-303.

A discussion of the civil and summary remedies provided for infringement in Part III of the Copyright Bill now before Parliament. The writer also touches upon proof of facts in copyright actions and notes that no provision has been made for recovery of costs.

(b) In French

294. Castelain, Raoul.

La Protection des titres.

Revue Internationale du droit d'auteur, no. 10 (Jan. 1956), pp. 3-17.

A comparative study of the protection given titles of creative or literary works under the two general systems of law.

295. Hepp, Francois.

Les enregistrements "ephemères" de la radiodiffusion.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 2-17.

The former head of the Copyright Division of UNESCO analyzes articles 3, 11 and 13 of the Bern Copyright Convention as revised at Brussels in 1948, to determine their applicability to recordings made for broadcasting purposes.

296. Ilosvay, Thomas.

Double imposition des droits d'auteur.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 39-51.
1955), pp. 39-51.

A discussion of the problem of double-taxation on the income of authors, and possible solution by means of an international convention.

297. Matthyssens, Jean.

Metteurs en scène et droit d'auteur.

Revue internationale du droit d'auteur, no. 10 (Jan. 1956), pp. 47-69.

The role of producers of stage plays and motion-picture directors in the adaptation of the literary work to the dramatic form. The question is raised as to whether these should not be considered co-authors or collaborators.

298. Ronga, G.

Les colonies et l'Union de Berne.

Le Droit d'Auteur, vol. 69, no. 2 (Feb. 1956), pp. 21-26.

A paper on the peculiar situation Indonesia found itself in with regard to the Bern Copyright Union upon its becoming an autonomous republic.

299. Straschnov, Georges.

Réflexions sur les "enregistrements éphémères".

Le Droit d'Auteur, vol. 68, no. 12 (Dec. 1955), pp. 188-193.

Related rights in the light of Article 11 of the Brussels Revision of the Bern Copyright Convention.

300. Vander Haeghen, Alfred.

Démembrement de droits intellectuels. Restrictions imposées par le titulaire aux acquéreurs de produits protégés. Brevets, modèles, droit d'auteur, marques de fabrique.

Revue de Droit Intellectuel, L'Ingénieur-Conseil, vol. 45, nos. 9-10 (Sept.-Oct. 1955), pp. 155-64.

The article deals with the various types of restrictions which may be imposed upon the proprietor, and the producer, manufacturer or licensee of a patent, trademark or copyrighted work.

301. Vaunois, Louis.

Lettre de France.

Le Droit d'Auteur, vol. 69, no. 1 (Jan. 1956), pp. 9-15.

Summary of recent court decisions in France including litigation involving the publication of a Gounod manuscript; the publication of a series of three articles in a newspaper of the supposed life of Marlene Dietrich; the biography of Andre Citroen; and the omission of reference to a name and the scientific contribution by a writer.

(c) In German

302. Emringer, E.

Der luxemburgische Revisionsentwurf zum Urheberschutzgesetz.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 17-25.

Luxembourg is now considering the first revision of its copyright law since 1898. Some of the important features in the draft law discussed are those dealing with the duration of copyright protection, mediation of disputes, compulsory license, mechanical reproductions and performing rights.

303. Hirsch-Ballin, E. D.

Gegenüberstellung der Rechte des Urhebers mit denen der Allgemeinheit.

Revue Internationale du droit d'auteur, no. 10 (Jan. 1956), pp. 19-45.

Copyright and the public interest.

304. Kaye, Sydney.

Die Ratifizierung des Welturheberrechtsabkommens in den Vereinigten Staaten von Amerika ist in jeder Hinsicht voll wirksam.

Auslands- und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, no. 12 (Dec. 1955), pp. 539-541.

A reply by Sydney Kaye of New York to Dr. Goldbaum's allegations in the July issue of the same periodical that United States ratification of the Universal Copyright Convention will not be enforceable.

305. Riedel, H.

Der jugendliche Urheber.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 25-34.

Advice to the young author on the rights which accrue to him by virtue of his creation.

306. Riedel, H.

Urhebergesetz — ein Kulturgesetz.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 54-63.

While a copyright statute is not usually regarded as a law for the protection or promotion of the national culture, the writer evaluates the German draft law on copyright from that viewpoint.

307. Sahmer, Heinz.

Der Arbeitnehmer im Spiegel des Urheberrechts und der verwandtem Schutzrechte.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 34-39.

The role of the employee in the light of copyright and related rights.

308. Troller, Alois.

Das Recht des Dirigenten und Solisten an der Interpretation des Musikwerkes.

Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, 1955, heft 2 (Nov. 1955), pp. 137-165.

Resumé and summary of the many views which have been expressed with regard to the rights of performing artists and their protection as proposed in the Rome draft convention.

309. Wawretzko, Herbert.

Urlaubsanspruch von Filmschaffenden.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 1/2 (Dec. 1955), pp. 51-54.

Case note on a judicial decision dealing with the licensing of motion pictures.

(d) In Italian

310. Giannini, Amadeo.

Sui contratti di rappresentazione e di esecuzione.

Il Diritto di Autore, vol. 26, no. 3 (July-Sept., 1955), pp. 293-307.

Study of the laws of contract applicable to the obligations of authors and licensees in the reproduction or performance of a work.

311. Sanctis, Valerio de.

Tentativi di estensione del diritto di autore: i cosiddetti "droits voisins".

Rivista del Diritto commerciale e del diritto generale delle obbligazioni, vol. 53, no. 3-4 (Mar.-Apr. 1955), pp. 167-180.

In his consideration of the related rights problem, Dr. deSanctis gives a brief statement of the evolution of the legal concepts involved, the methods by which the rights have been treated on both the national and international levels and an analysis of their place in law.

312. Siegwart, Henry.

La Protezione delle opere scientifiche nel diritto di autore.

Il Diritto di Autore, vol. 26, no. 3 (July-Sept. 1955), pp. 308-314.

Entitled "The Protection of scientific works under copyright law", the article is an Italian translation of a manuscript written in French.

313. Straschnov, Georges.

Considerazioni sulle "Registrazioni effimere".

Il Diritto di Autore, vol. 26, no. 3 (July-Sept., 1955), pp. 315-329.

Italian translation of the item by the same author published in the December 1955 issue of *Le Droit d'Auteur*.

C. ARTICLES PERTAINING TO COPYRIGHT
FROM TRADE MAGAZINES

1. United States

314. Are dealers liable for label faults? Tax suit *vs.* Goody, Portem on AFN's copyright violation may find answer.

The Billboard, vol. 68, no. 5 (Feb. 4, 1956), p. 15.

315. France orders Urania to shell out \$50,000 for illegal air tapes.

Variety, vol. 201, no. 6 (Jan. 11, 1956), pp. 1, 78.

316. High Ct. to hear DeSilva case appeal; oks filing of briefs by Music Group.

Variety, vol. 201, no. 6 (Jan. 11, 1956), p. 53.

317. Highlights of 1955 news and trends in the book industry.

Publishers' Weekly, vol. 169, no. 3 (Jan. 21, 1956), pp. 213-222.

Among the highlights listed are the attempts to legislate on state and national levels on the subject of obscene literature, FTC decisions relative to fair trade practices among book publishers and clubs, and the entering into force of the Universal Copyright Convention.

318. Imports at issue between Marlboro and U. S. publishers.

Publishers' Weekly, vol. 169, no. 6 (Feb. 11, 1956), pp. 918-919.

A report on the recent advertising of British editions of works for which American publishers have copyrights in American editions. The British works were received as remainders from now defunct publishers and are being returned after the protest of the American copyright owner.

319. Japan ratifies Universal Copyright Convention.

Publisher's Weekly, vol. 169, no. 7 (Feb. 18, 1956), p. 1033.

With the ratification by Japan of the Universal Copyright Convention, effective April 28, 1956, it is hoped that the piracy of American books to the detriment of authorized booksellers and importers will soon be stopped.

320. Middleton, George.

How the Dramatists' Guild Came of Age.

Variety, vol. 201, no. 5 (Jan. 4, 1956), p. 464.

A fascinating memoir outlining the beginnings of the Dramatists' Guild, the conditions which brought about its birth through the efforts of a dramatic subcommittee of the Authors' League of America, consisting of Bayard Veiller, Harvey J. O'Higgins, Edwin Milton Royle, Edgar Selwyn, and the author (now, at 75, sole survivor of this group), and the growth in protection of the rights of dramatists since April, 1913.

321. New British copyright bill; others move to ratify U.C.C.

Publishers' Weekly, vol. 168, no. 25 (Dec. 17, 1955), p. 2411.

A note on the reaction to the new British copyright bill which is designed to bring about a comprehensive revision of the copyright act and permit ratification of the Universal Copyright Convention. The item concludes with information that while Dutch publishers are not in favor of ratification of the U.C.C., Denmark, Austria, Belgium, France and Switzerland have favorable legislation in process and Italian and Scandinavian publishers are hoping for favorable government action.

322. Seek uniformity on copyright suits; Screen, Broadcast and Music Society spokesmen urge end of litigation conflict between states.

Variety, vol. 201, no. 10 (Feb. 8, 1956), p. 15.

A note on the hearings held by a House Judiciary subcommittee on H.R. 781 which would provide a uniform statute of limitations for civil action arising under the federal copyright act.

323. Study uniform law on radio diskings.

Billboard, vol. 68, no. 6 (Feb. 11, 1956), p. 13.

Another note on the statute of limitation hearings before a House Judiciary Subcommittee.

324. Station sues for alleged tape piracy.

The Billboard, vol. 68, no. 5 (Feb. 4, 1956), p. 16.

Washington radio station alleges unfair competition by defendant who made unauthorized tape recordings of broadcast performance of "Carmina Burana" by the National Symphony and Howard University, and seeks to enjoin the sale of records made from the tape recording.

325. Tuttle reports sales of Japanese rights to U. S. books.

Publishers' Weekly, vol. 169, no. 4 (Jan. 28, 1956), p. 545.

The Charles E. Tuttle Co. of Tokio, Japan, reports the most successful year as far as arranging for translation rights are concerned. Of the 163 rights placed, 29 were for excerpts or summaries for Japanese magazines, while other large categories were cartoon books, scientific and technical books; and books on salesmanship and self-improvement.

326. Western writers support proposed tax-spread plan.

Publishers' Weekly, vol. 169, no. 4 (Jan. 28, 1956), p. 546.

The Western Writers of America have voted to support H.R. 7837 which would permit averaging the taxable income of individuals whose incomes fluctuate widely from year to year.

327. German Lawyers Dream Up Slant to Dispossess U. S. Alien Custodian.

Variety, vol 201, no. 10 (Feb. 8, 1956), pp. 7, 53.

In an effort to show that the United States Alien Property Custodian had no right to vest ownership in enemy property not covered by copyright, the export head of UFA submitted an affidavit stating that the motion picture "Muenchhausen" was exhibited in Germany in 1944 without notice of copyright. The purpose of this affidavit is to show that all German productions which lacked copyright protection are in the public domain.

2. England

328. Denny, Norman.

Publishers and translators.

The Author, vol. 66, no. 2 (Winter, 1955), pp. 36-37.

Although admitting that the publisher is not "without problems of his own, and it is no use expecting him to pay more than is commercially feasible" for translations, the writer discusses current practice and concludes that translators have always been badly paid and probably always will be. He doubts whether they have ever been so badly treated as they are at present, and that if a work is successful, the translator should receive a fair share of the profits which he has helped to create.

329. Lords urge greater protection for authors in copyright bill.

The Bookseller, no. 2606 (Dec. 3, 1955), pp. 1826-1827.

In the discussion in committee on the new British Copyright Bill, considerable time has been spent in objecting to the provision to be found in clause 4 which provides that copyright in a commissioned work shall vest in the employer in the absence of any agreement to the contrary. Such a provision is considered to be a reversal of previous practice in Great Britain.

330. Luddism on the record.

The Economist, vol. 177, no. 5857 (Nov. 26, 1955), pp. 723-724.

Discussing the phonograph record and television licensing provisions of the British Copyright Bill, the writer claims that if Parliament passes such a law it will be deliberately setting up a system which will allow a trade union to continue indulging in restrictive practices. "A close analogy would be if the drivers of horse-drawn carriages had been given the right to restrict the spread of motor taxicabs as a by-produce of a law for the prevention of cruelty to animals."

331. Wilson, Leslie.

Microfilms and copyright.

The Bookseller, no. 2610 (Dec. 31, 1955), p. 1968.

In a letter to the editor, the Director of ASLIB defines the librarian's attitude toward the microfilming of works where printed copies are not available.

3. France

332. Saporta, Marcel.

Le Droit d'auteur aux États-Unis.

Informations et Documents, no. 38, (Dec. 1, 1955), pp. 15-16, 21-22.

A brief statement on the basic concepts of the American copyright system, its historical evolution and the changes necessitated by the United States ratification of the Universal Copyright Convention.

4. Germany

333. Bureau International de l'Édition Mécanique.

Normalvertrag BIEM—Schallplatten-Industrie 1956 (Duetsch Übersetzung).

GEMA Nachrichten, no. 27 (Jan. 1956), pp. 36-44.

German translation of the standard phonograph record contract issued by BIEM.

334. Goldbaum, Wenzel.

Der Grundsatz *lex posterior derogat priori* und die multilateralen Konventionen zum Schutz der literarischen, wissenschaftlichen, künstlerischen und musikalischen Werke.

GEMA Nachrichten, no. 26 (Nov. 1955), pp. 13-16.

335. Hirsch Ballin, E. D.

Zur "universellen" Konventionsregelung des Übersetzungsrechtes; Kritik einer Apologie.

GEMA Nachrichten, no. 26 (Nov. 1955), pp. 16-20.

336. Schulze, Erich.

Geschäfte mit Musik.

GEMA Nachrichten, no. 27 (Jan. 1956), pp. 5-14.

Statistics on the manufacture of phonograph records in Germany during the past few years, particularly with regard to the speeds, royalties, and the relationship between the International Federation of the Phonograph Industry and BIEM.

NEWS BRIEFS

337. Statute of Limitations on Copyright Litigation—Hearings on H. R. 781.

Library of Congress Information Bulletin, vol. 15, no. 8 (Feb. 20, 1956), p. 92.

On Monday, January 30, hearings were held before Sub-Committee 3 of the House Judiciary Committee on the Keating Bill, H.R.781 to provide for a statute of limitations with respect to civil actions under copyright law. Mr. Cary, accompanied by Mr. Goldman, testified on behalf of the Copyright Office. Others testifying were Herman Finkelstein, Vincent Wasilewski, and Fulton Brylawski. Testimony produced a suggested amendment which had been worked out by a committee of the American Bar Association. In this revised version, the bill would provide for a period of limitation of four years with provision for suspending the running of that period in certain circumstances. All of those testifying favored a statute of limitations in the copyright law but there were some differences of opinion as to the specific conditions under which the running of the period should be suspended.

338. UNESCO has advised the United States Government that on November 14, 1955, a letter was received from the Philippine Minister in Paris stating that the Philippine President had directed the withdrawal of the instrument of accession to the Universal Copyright Convention prior to November 19, 1955, the date on which the Convention would have become effective in respect of the Philippines.

No determination has been made as to the legal effect of this communication.

-
339. *SWITZERLAND* announces adherence to the Universal Copyright Convention effective March 30, 1956.
340. *JAPAN* joins the list of adherents effective April 28, 1956. The present list of accessions and ratifications now totals 18 countries, including the Philippines.
341. *The Cumulative Index of Copyright Office Bulletins Nos. 17-29* is now available at \$1.75 per copy. Reprints are now being made by the Office of some of the Bulletins which were out of print.

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CONTENTS

	<i>Page</i>
PART I. LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS.	
1. United States of America and Territories	119
2. Foreign Nations	120
PART III. JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY.	
A. Decisions of U. S. Courts.	
1. Federal Court Decisions	120
B. Decisions and Rulings from Other Nations	
1. Canada	127
PART IV. BIBLIOGRAPHY.	
A. Books and Treatises.	
1. United States Publications	128
2. Foreign Publications	
(a) In English	129
(b) In German	130
(c) In Italian	131
(d) In Spanish	131
B. Law Review Articles.	
1. United States	131
2. Foreign	
(a) In English	133
(b) In French	134
(c) In German	135
(d) In Italian	137
C. Articles Pertaining to Copyright From Trade Magazines.	
1. United States	139
2. England	140
3. Germany	141

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PART I.

**LEGISLATIVE AND ADMINISTRATIVE
DEVELOPMENTS**

1. UNITED STATES OF AMERICA AND TERRITORIES

342. *U. S. Customs Bureau.*

Packing and stamping; marking; trademarks and trade names; copyrights—miscellaneous amendments. Title 19—Customs duties, Ch. I—Bureau of Customs.

Federal Register, vol. 21, no. 75 (Apr. 18, 1956), pp. 2516-2517. (T. D. 54065).

Sections 11.19 and 11.21, Title 19, Code of Federal Regulations, are amended so as to reflect the changes necessitated by ratification of the Universal Copyright Convention. The two sections deal with the recordation of copyrighted works and the United States manufacturing requirements.

343. *U. S. Laws, statutes, etc.*

An Act 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.

1 p. (84th Cong., 2d Sess., P.L. 452).

An amendment to section 13 of the U. S. Code, Title 17 authorizes the Register of Copyrights to promulgate regulations which will permit, in specified instances, the deposit of photographs in lieu of the actual copies of a work classified in subsection (g), (h), (i) or (k) of section 5.

344. *U. S. Congress. House.*

H. R. 10263. A bill to amend sections 6 and 215 of the Copyright Code by reducing the fee for registering a claim of copyright for a print or label from \$6 to \$4 and increasing from \$2 to \$4 the fee for recording the renewal of copyright.

109 U.S.P.Q. no. 2, p. II (*April 9, 1956*).

2. FOREIGN NATIONS

345. *Israel, Laws, statutes, etc.*

Arrêté concernant la protection des oeuvres étrangères en vertu de la Convention universelle sur le droit d'auteur (du 21 août 1955).

Le Droit d'Auteur, vol. 69, no. 3 (*Mar. 1956*), p. 30.

This order extends protection to the works of authors who are citizens of countries adhering to the Universal Copyright Convention, prescribes the length of the copyright term for published and unpublished works and the method for determining "country of first publication." The order is effective as of Sept. 16, 1955.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISION OF U. S. COURTS

1. Federal Court Decisions

347. *Cory v. Commissioner of Internal Revenue*, 109 U.S.P.Q. 1 (2d Cir. Mar. 9, 1956).

Petition by Daniel M. Cory to review decision of Tax Court which had held that petitioner (1) had received a valid gift of a Santayana manuscript, but (2) the income derived from publication by Scribner's was based on a license agreement and not from the sale of a capital asset and was, therefore, subject to tax as ordinary income. See 2 BULL. CR. SOC. 130, item 214 (1955).

Held: Affirmed. Circuit Judge Frank said: "The sole issue is whether the amount of income reported in 1944, as derived from Santayana's 'Persons and Places,' constituted ordinary income or a long term capital gain. In answering, we must decide whether the transaction between Cory and Scribner's constituted a 'sale' or merely the granting of a license."

Reviewing the Tax Court decision, Judge Frank observed that that court "based its decision in part, on the fact that a part only of the 'bundle of rights' inhering in the copyright were transferred to Scribner's, since Cory assigned neither foreign publishing rights (other than Canadian) nor movie or dramatic rights." Another ground for the holding of the Tax Court was that there was no sale because no definite price was fixed for the transfer since Cory's payments were to be measured by future sales of the book.

Whether the owner of a copyright could make a sale of some interest in the copyright had not been answered before by the Supreme Court. Said Judge Frank, "But here we must consider such 'fine questions.'" He then discusses the views of Judge Learned Hand in the case of *Goldsmith v. Commissioner*, 143 F.2d 466 (2d Cir.) where it had been held "that the transfer of part of the bundle of rights (making up the copyright) for a definite sum, yielded a sale." Hand's views were adopted by Justice Frankfurter in the famed *Wodehouse* case (337 U.S. 369) where the dissenters maintained that the "crucial test of sale was not whether the transfer included the entire bundle of rights but whether there had been a transfer 'absolutely' of a 'distinct right *** conferred by the Copyright Law' under 'terms of payment which do not depend on the future use by the transferee.'" The majority had grounded their decision in *Wodehouse* on a different section of the Internal Revenue Code, aimed solely at nonresident aliens.

Said Judge Frank, "If we adopt the reasoning of Judge Hand and Mr. Justice Frankfurter, it follows that the mere fact that Cory transferred less than his entire bundle of rights does not automatically brand this transaction as but a license."

"However, it does not necessarily follow that, therefore, the transaction was a sale. For here the transaction lacked an element implicitly considered in Judge Hand's opinion in *Goldsmith*, supra, and explicitly stressed by Mr. Justice Frankfurter in *Wodehouse*: At the time of the transfer, the amount of payments to the transferor remained indeterminate, dependent wholly on the sales of the book by the transferee."

In conclusion, the Court held: "We do not now decide that a transfer by a citizen of but a part of the bundle for a definite sum, or a transfer of the whole for an indeterminate sum is a sale for purposes of Section 117 (Internal Revenue Code). We do hold that when, as here, the transfer is both (1) a transfer of a part of the cluster of rights and (2) for an amount wholly indeterminable at the time of the transfer, no such sale occurs."

348. *Miller v. Goody*, 139 F. Supp. 176, 108 U.S.P.Q. 409 (D.C.S.D.N.Y. Mar. 16, 1956).

In a sequel to the settlement of claims against an infringing manufacturer of Glenn Miller records, the plaintiffs, publishers, seek to prosecute their actions against two of the defendants, retailers. Helen D. Miller, the widow, whose action is based on unfair trade practices and unfair competition, is not a party to the publishers' motion for summary judgment. See 2 BULL. CR. SOC. 54, item 135 (1954).

The dealer defendants admit that the sale of an unauthorized copy of a copyrighted article is an infringement. But "They contend, however, that upon the law the judgment must be in their favor because a record is not a copy of a musical composition within the meaning of the copyright law, and the sale of that which is not an infringing copy is not a violation of the Copyright Law under Section 101(b) or any other section. They urge that Congress specifically refused to label a recording as a copy and thereby give the musical copyright proprietor complete protection from mechanical reproduction of his music; instead, Congress made specific limited provisions to ensure that record manufacturers pay some price for the use of a composer's work. The dealers contend that those limited provisions, Sections 1(e) and 101(e) are the only rights given to the copyright proprietor when dealing with mechanical reproductions, and they provide for recovery solely against the manufacturer, and then only in certain specified amounts dependent on the number of records manufactured, there being no minimum penalty provision as there is for unauthorized copying. *In sum, the defendants argue that under the law the non-manufacturing seller, no matter what the state of his knowledge, is not accountable to the proprietor or to anyone for his sale of infringing records.*" (emphasis supplied).

Held: "A painstaking analysis of the legislative history of the Copyright Act of 1909 and the contemporary comment about it, and a thorough study of the history of the recording industry since that Act went

into effect, have led me to conclude regretfully that the defendant's contentions must be sustained."

Basis for this conclusion was found in the legislative history of the copyright law:

"The reasons for not defining a recording as a copy were spelled out in the House Report accompanying the proposed bill. Congress feared the creation of a giant music monopoly in which the big publishing houses, which owned most musical copyrights, would negotiate with the great recording companies for exclusive recording contracts—and such negotiations had actually been started in anticipation of a more favorable Supreme Court decision in the Apollo case. To avoid a music trust injurious to the public and composer alike, and to still protect the composer in his work was the problem Congress faced. Its solution was to provide that the musical copyright proprietor could forbid all mechanical reproduction of his music, but once he licensed one company to record it, then all other manufacturers could so record provided they filed a notice of intent and paid a royalty of 2 cents per record. *** Again and again, during debate references were made to the manufacturer's rights and duties, and it was clear that the committee considered that the 2 cents (per record) plus treble damages was all the relief it was providing, and that this was to be payable by the manufacturer."

Discussing the grounds for plaintiffs' motion the court continued:

"Despite this background of comment adverse to the claims made herein by the publisher plaintiffs, and despite the fact that except for one lawsuit brought in 1952 ***, the musical industry has operated under the assumption that the \$250 minimum penalty does not apply to mechanical reproduction, and that the sole remedies for such recording are against the manufacturer as set forth in Sections 1(e) and 101(e), the publishers urge here that the copyright law can be and should be construed in favor of their contentions. They base their argument on the language in Section 101(e) which speaks of 'infringement of such copyright by the unauthorized *manufacture, use or sale*' of recordings and other mechanical sound reproducing devices *** This subsection then states that the plaintiff is entitled to recover for such infringement and it does not specifically limit that right to recovery from the manufacturer. The publishers contend that there is a distinction between recordings made by a manufacturer who files notice of compulsory license but then fails to pay the royalties, and recordings made by a manufacturer who does not even file notice. The former they agree are covered exclusively by the royalty-treble royalty provisions.

They urge, however, that the latter are records whose manufacture is unauthorized within the meaning of Section 101(e) and whose use or sale is an infringement of the Act. They contend that Section 101(e) with its limited treble damage provisions is the sole provision applicable only in situations where there has been a compulsory license agreement. Where there is no such arrangement, as was the case here, then there is regular copyright infringement and the other infringement sections notably the minimum damages section [101(b)] are applicable. Since Krug did not even file the requisite notice, it is urged that his recordings fall into this latter category. The plaintiffs argue that if Section 101(e) is construed as applying only to the initial manufacture of such records, and as providing recovery only against such an unauthorized manufacturer, then the phrase 'manufacture, use or sale' become meaningless, and this, they say, would be improper construction."

To these claims the court replied:

"Although their argument has surface merit, particularly the contention that an adverse ruling will deprive the phrase 'manufacture, use or sale' of any meaning, I find that plaintiffs' position can not be sustained: for to uphold them here would be to discard the entire statutory royalty and treble royalty scheme so painstakingly worked out by Congress in its attempt to resolve conflicting interests. Further, such a ruling would create practical enforcement difficulties incapable of being handled by judicial decision."

"*** Indeed, by the terms of plaintiffs' own argument, had Krug filed notice and not paid the royalties, the records would still have lost infringing status at least to the extent that the only protection against them would then be that accorded under the mechanical reproduction sections and limited to recovery from the manufacturer. It is difficult to believe that Congress intended to hinge such huge differences in consequence on a paper distinction; moreover, Congress could hardly have intended to create a seller's liability totally dependent on the manufacturer's surface intent. It would be illogical to rule that a seller may at any time be sued as an infringer when he has no control over the status of the records involved. The copyright law must be read to have general application, and if it had been intended ever to apply to a non-manufacturing seller it would provide, as a matter of good drafting, for a set point in time when the seller does become liable, and set conditions for suit would be prescribed which would not rest wholly upon the actions of others. Clearly, the type of liability formula necessary is one which would have to be devised by the legislature, not imposed on an

ad hoc basis by the judiciary, and to impose liability against sellers generally without some such formula would be contrary to Congress' clear purpose to impose primary [if not sole] liability upon the manufacturer of infringing records."

Concluding, the court said:

"I have reached my decision in this matter with reluctance, but the conclusion is one from which I cannot escape. The inequities and inadequacies of the present law cry out for correction. It is scant comfort to the publisher plaintiffs herein to be told that although their plight is distressing, there are others in the industry, notably recording companies and talented performers who at present receive even less protection from record pirates and those who distribute their wares. It is equally harsh to tell them that their remedy lies in the legislatures when the problems of the recording industry have been before various legislative bodies over the years, and the conflicting interests involved have prevented any solution. But I cannot innovate at pleasure in the name of justice nor is it proper for me to roam at will in the face of legislative restraint in pursuit of what I consider to be the ideal. Where the legislative mandate is clear, as is the case here, judges are bound to follow the law scrupulously regardless of personal preference, and the rule of strict adherence to the statute is never so necessary as where the legislature has established what it considered to be a comprehensive regulatory scheme as it did in the case of mechanical reproduction of music. For a judge to attempt to qualify or amplify the rights Congress delineated in such detail would be both imprudent and improper."

Further, defendants' cross-motion for summary judgment against the publishers was granted despite the additional allegation of unfair trade practices and unfair competition since, said Judge Kaufman, "The musical selections involved have been published; such publication was a dedication to the public and put an end to common law copyright protection. In the absence of the copyright law, therefore, all persons would be free to copy the compositions in question. This being so, in the absence of statute, it would not be unfair competition either to copy the compositions or to reproduce them in sound; any other conclusion would deprive the theory of dedication to the public of any meaning. Thus the copyright law become the sole measure of protection available to a composer of a published work, and this protection depends on the terms of the statute itself."

349. *Boucher v. DuBoyes, Inc.*, 109 U.S.P.Q. 10 (D.C.S.D.N.Y. Dec. 21, 1955).

In a procedural decision, Judge Herlands granted defendants' motion to transfer to the non-jury trial calendar the trial of a copyright infringement action involving costume jewelry since: "The prayed for damages appear clearly to be incidental to the equitable relief requested. The mere request for damages does not alter the primary or dominant nature of the action as being one in equity for an injunction and an accounting." In addition, one defendant's request for a severance was denied.

350. *Wihol. v. Wells*, 109 U.S.P.Q. 200 (7th Cir., April 12, 1956).

Infringement of copyrighted song "My God and I" was charged by song entitled "My God and I" by defendant. The District Court held that the defendant had memorized and used the melody of plaintiff's song but found that the tune was in the public domain since based on an old Latvian, Italian or Russian folksong and, therefore, was not protected by copyright.

Held: On appeal, reversed and remanded with directions to enter judgment for the plaintiff. Although the tune was based on an old folk song plaintiff had heard in his youth in Latvia many years ago, the court said:

"But it was original work on plaintiff's part when, some thirty years later, he devised a calculated melody score thus putting it in shape for all to read. It was quite natural that plaintiff employed similar successions of sound in his writing of the melodic element of his 'My God and I.' In his application for copyright plaintiff correctly filed 'only for new music now first published.'"

The court also cited *Italian Book Company v. Rossi*, 27 F.2d 1014, in which it was held that an Italian sailor who "improvised" on Sicilian folk tunes of his childhood had created something new "though the theme was the same and the music quite similar."

Continuing, the court concluded:

"Section 7 of the Copyright Act specifically provides for protection of the work of a composer growing out of creations of those who came before. We hold plaintiff's writing of the exact and complete melodic element of 'My God and I' was an original work subject to copyright.

The writing of the other three parts, alto, tenor and bass, was further original work of the plaintiff. We hold plaintiff's copyright is valid."

Earlier in its opinion the court had concluded that defendant had infringed plaintiff's copyright because (1) the words were very similar in a number of stanzas; (2) there was prior access so that the song was memorized and one may copy from memory; (3) there was a high degree of similarity in the tune when taken note for note.

DECISIONS AND RULINGS FROM OTHER NATIONS

1. Canada

351. *Composers, Authors and Publishers Association of Canada, Ltd. v. Elmwood Hotel Ltd.*, 24 C.P.R. 77 (Exchequer Ct. of Can., Dec. 6, 1955).

On defendant's motion to set down two questions of law for determination before trial. The first question related to the jurisdiction of the Exchequer Court to deal with license fees requested by a performing rights society, and the second with the constitutionality of sec. 21 of the Exchequer Court Act and sec. 20(6) of the Copyright Act.

Held: In seeking an order to set down points of law, the defendant should show a strong probability that the issue will dispose of the appeal. He must show a *prima facie* case and that it is more convenient to have the legal issues decided before trial. The plaintiff has a right to sue in the Exchequer Court for fees fixed by the Copyright Appeal Board and sections of the two acts are within the competence of the Canadian parliament, being matters relating to copyright. Motion dismissed with costs.

352. *Composers, Authors and Publishers Association of Canada, Ltd., v. Sandholm Holdings, Ltd.*, 24 C.P.R. 58 (Exchequer Ct. of Can., Aug. 23, 1955).

Defendant, cabaret-owner, secured a license to perform music from plaintiff, the fees to be based on a percentage of the cost of musical entertainment for the previous year. Defendant paid fees in 1952, but refused, during 1953, to pay fees or furnish a statement as to the cost of musical entertainment in 1952. Plaintiff attempted to suspend the license by giving written notice in April, 1953. When defendant continued to perform plaintiff's selections, plaintiff sued for unpaid license fees, damages and injunction.

Held: Plaintiff is entitled to recover the unpaid license fees for 1952 and 1953, in accordance with the rate fixed by the Copyright Appeal Board in Tariff Item 6. However, since the right to use and recover the license fees is a statutory remedy, and is not based upon a contractual agreement to be performed within a year, the remedies of damages and injunction are inconsistent and are denied.

353. *Standard Industries Ltd. v. Rosen*, 24 C.P.R. 41 (Ont. High Ct., Dec. 9, 1954).

Plaintiff sought damages and an injunction for infringement of copyright in a catalog and unfair competition. Defendant sought to invoke the defense of unclean hands on the grounds that plaintiff inserted "patent pending" on sales material of items for which no patent application had been filed.

Held: An innocent and unimportant error in claiming "patent pending" does not bar recovery for copyright infringement. Inability to show exact damages is not a bar to recovery and an award of \$2,000 general damages is allowed. Exemplary damages of \$5,000 are also granted because of defendant's flouting of an injunction and judgment in a prior action.

PART IV.

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A. BOOKS AND TREATISES

1. United States Publications

354. Derenberg, Walter J.

Summary of address [on] the effect of the Universal Copyright Convention on the protection of literary and artistic property in the United States at luncheon meeting of American Foreign Law Association held Mar. 31, 1956.

[*New York, 1956*]. 8 p. (*multilith*).

355. Erstad, Tennes I.

Design patents:—How to obtain valid and enforceable design patents.

Lecture at . . . New York Patent Law Association [*New York, Feb. 23, 1956*]. 8 p. (*multilib*).

A description of some of the difficulties which have resulted in an increase in design patent fatalities, and a recommendation that Rule 153 be changed so as to permit specific descriptions and claims in conformance with the requirement that an applicant for design patent set forth his claim to the art in claim form.

356. Werhahn, Jurgen W.

The Film Author [Filmurheber] in foreign law. Published in 1954 *Archiv für Urheber-, Film- und Theaterrecht*, 173. [Translated from the German by Borge Varmer].

[*New York, Copyright Society of the U.S.A., 1956*].

2. Foreign Publications

(a) In English

357. Logdberg, Ake.

The Title to Copyright in moving pictures; general report at the International Academy of Comparative Law, 4th International Congress, Paris, 1954.

Lund, Gleerupska Universitetsbokhandeln [1955]. 15 p.

A comparative examination of the laws and theories developed in various European countries concerning the authorship and copyright-ownership of motion pictures, both photoplays and documentaries.

358. United International Bureaux for the Protection of Industrial, Literary and Artistic Property.

The Performing Artiste, The Record Manufacturer, The Broadcaster.

Berne, April 1956, 22p., printed.

Foreword by Jacques Secretan concerning the preparation of an international draft convention for the protection of interpretative or per-

forming artists, record manufacturers and broadcasting organizations. Also there is an article on "Intermediate Rights" by Stelios Castanos and a copy of the Draft Convention proposed by five international organizations directly interested.

(b) In German

359. Bergström, Svante.

"Uteslutande ratt att förfoga över verket"; studier över upphovsmannarättens föremål och innehåll enligt det s. k. nordiska förslaget.

Uppsala, A.-B. Lundequistska Bokhandeln, 1954. 183 p.

Pages 158 to 176 contain a summary in German of the main work which consists of a discussion of the objectives and contents of the Norwegian draft legislation for the revision of Norway's copyright law.

360. Lemhoefer, Dieter.

Der Schutz der gestalteten Werbeidee; eine Grundlegung des Rechtsschutzes der Wirtschaftswerbung.

Düsseldorf, Tritsch, 1954.

Treatise on the protection of ideas in art, literature, music, inventions and trade marks.

361. Rambour, Heinz.

Die Lizenz Ausgabe.

Munich, R. Oldenbourg, 1954. 91. p.

Monograph on the problems of assigning, transferring and licensing copyrighted works both in Germany and in other countries. The work contains sample copies of contracts and a bibliography.

362. Troller, Alois.

Internationale Zwangsverwertung und Expropriation von Immaterialgütern.

Basel, Verlag für Recht und Gesellschaft, A.G., 1955. 158 p.

Treatise on the international licensing and use of intangible property rights such as patents, trademarks and copyrights.

(c) In Italian

363. Bogsch, Arpad L.

Diritto d'Autore internazionale; descrizione del trattamento fatto da tutti i paesi del mondo alle opere ed agli autori stranieri di . . . in collaborazione con Dr. William S. Roach. Edizione italiana a cura dell'Avv. Luigi Licitra, jr.

Milano, Casa Editrice Dott. A. Giuffrè, 1956. 224 p.

An Italian translation of the information relative to copyright law and regulations in a number of countries which had been compiled by UNESCO during the preliminary stages of the Universal Copyright Convention.

(d) In Spanish

364. Morales, Rafael.

Protección de los derechos de autor y otros derechos conexos; anteproyecto de ley. Editado por la Asociación Peruana de Autores y Compositores (A.P.D.A.Y.C.).

Lima, 1955. 87 p.

The draft of a law designed to protect the rights of authors and to give rights to performers, manufacturers of phonograph records, and radio broadcasting organizations, as well as containing provisions for registration, litigation and remedies for infringement.

LAW REVIEW ARTICLES

1. United States

365. Jackson, Roy V.

Industrial Design Law in Canada.

Journal of the Patent Office Society, vol. 38, no. 2 (Feb. 1956), pp. 125-144.

A paper read at the annual meeting of the Patent Institute of Canada, September 1955, examining the field of independent product design, copyright design protection, and proposals for preparing a new act.

366. Stiefel, Maurice B.

Piracy in high places—government publications and copyright law.

The George Washington Law Review, vol. 24, no. 4 (Mar. 1956), pp. 423-448.

A study of the rights of copyright owners against the government for appropriation of copyrighted material; the rights of the government against private individuals who appropriate government publications; and the rights of government employees, who are authors or compilers of government publications.

367. Memel, Robert A.

Literary property: dedication: property rights in phonograph records as affected by public sale.

UCLA Law Review, vol. 3, no. 1 (Dec. 1955), p. 113.

In a case note on the appellate decision in the *Capitol Records v. Mercury Records* case, see 2 BULL. CR. SOC. 166, item 330 (1955), the author concludes that if the recorded composition is not copyrighted and it is held that it has not been published by sale of records, then an anomalous and unjustifiable situation is created wherein the owner of an uncopyrighted work is afforded greater protection than the holder of copyright because of the effect of compulsory licensing. Thus, statutory protection is turned into a statutory penalty.

Publication governed by state law where recordings not eligible for copyright under federal statute.

368. *Columbia Law Review*, vol. 56, no. 1 (Jan. 1955), pp. 126-130.

In commenting on the circuit court decision in the *Capitol Records v. Mercury Records Corp.* case, 2 BULL. CR. SOC. 166, item 330 (1955), the writer expresses the feeling that congressional legislation is needed to clarify the issue as to whether the application of state or federal law is a federal question and dependent upon the question of publication.

369. Randerson, Roelif J.

Can Community antenna TV be enjoined?

Albany Law Review, vol. 20, no. 1 (Jan. 1956), pp. 69-79.

Community antenna TV companies have been erecting an antenna on a high point, amplifying television impulses and transmitting them by coaxial cables to nearby communities, where subscribers upon payment of a hook-on charge of \$125 to \$175 and a monthly service charge of \$2.50 to \$7.00 are furnished several programs simultaneously by means of drop wires. The original broadcasters are alleging unauthorized use of their copyrighted programs. The conclusion is reached that because divergent state views as to common-law copyright could create haphazard rights in television programs, federal regulation is needed.

370. Yankwich, Leon R.

The Development of the Law of Intellectual Property and Creative Arts in the Western States.

The Hastings Law Journal, vol. 7 (Feb. 1956), pp. 123-142.

"... it is the object of this study to show how the courts in the Western States comprising the Ninth Circuit . . . both federal and state, have applied the law of literary property and other legal principles relating to literature, drama and art as the West 'has grown up.'"

2. FOREIGN

(a) In English

371. Canada. Royal Commission on patents, copyright, trade marks and industrial designs.

National industrial design council (NIDC) presentation on industrial designs.

Canadian Patent Reporter, vol. 24, Part 1, Sec. 1, pp. 17-19.

The NIDC has recommended that all useful designs be protected by patent legislation and all creative designs be protected under the copyright law or industrial design registration. Design should be defined as "features of shape, configuration, pattern or ornament which in a finished industrial article appeal to and are judged by the eye, but does not include method or principle of construction." The council also suggests a compulsory license.

372. Canada. Royal Commission on patents, copyright, trade marks and industrial designs.

Presentation of Association of Canadian Industrial Designers (ACID).

Canadian Patent Reporter, vol. 24, Part 1, Sec. 1, pp. 19-23.

Pointing out that the definition of design has changed over the years, the ACID suggests that the differences of shape, material and finish or decoration be used in validating a new design.

(b) In French

373. International Federation of Associations of Motion Picture Producers.

Mémoire de la . . . concernant les problèmes qui, dans le champ du droit d'auteur, intéressent la cinématographie.

Le Droit d'Auteur, vol. 69, no. 3 (Mar. 1956), pp. 30-32.

A brief by the Federation on problems of copyright ownership in motion pictures.

374. U. S. Copyright Office.

Circulaire du copyright office concernant la nouvelle lois des Etats-Unis relative à l'application de la Convention universelle sur le droit d'auteur (de juillet 1955).

Le Droit d'Auteur, vol. 69, no. 3 (Mar. 1956), pp. 29-30.

375. Nouvelle loi américaine donnant exécution à la Convention universelle sur le droit a'auteur.

Revue de droit intellectuel, l'Ingenieur-Conseil, vol. 45, no. 12 (Dec. 1955), pp. 254-256.

French translations of the circular distributed by the Copyright Office in July, 1955, explaining the changes in copyright registration brought about by ratification of the Universal Copyright Convention.

376. Strauss, William.

Le Droit moral et la protection des droits personnels de l'auteur.

Le Droit d'Auteur, vol. 68, no. 11 (Nov. 1955), pp. 173-179; no. 12 (Dec. 1955), pp. 185-188; no. 69, no. 1 (Jan. 1956), pp. 6-9; no. 3 (Mar. 1956), pp. 32-35.

A French translation of the article which appeared in Vol. 4 of the American Journal of Comparative Law, pp. 506-538. See 3 BULL. CR. SOC. 102, item 288 (1956).

(c) In German

377. Abel, Paul.

Der Schutz der Typographie im englischen Urheberrechtsgesetz-Entwurf 1955.

Auslands- Und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, nr. 1 (Jan. 1956), pp. 5-6.

A discussion of Section 15 of the new British Copyright Bill which provides for a copyright in typographical arrangement.

378. Boor, [Hans Otto] de.

Urheberrechtliche Grundsatzfragen in Schrifttum und Rechtsprechung.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 21, no. 3/4 (Feb. 1956), pp. 129-150.

A German version of the two articles by the same author which appeared in French in *Droit d'Auteur*, in October and November, 1955. The present article is a resume of books recently published on copyright in Germany and of recent court decisions.

379. Fischler, Josef.

Der schwedische Schriftstellerfonds.

Auslands- Und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, nr. 1 (Jan. 1956), pp. 6-8.

An explanation of the Swedish Law of July 8, 1955, which provides for the establishment of an Author's Fund and a comparison of the ways in which the operation will differ from the systems used in Norway and Denmark.

380. Furler, Hans.

Die Neuheit im Geschmacksmusterrecht.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 58, no. 2 (Feb. 1956), pp. 49-51.

Resume of new developments in the German design law.

381. Hensler, Eberhard.

Urheberschutz für Modeschöpfungen.

Juristenzeitung, vol. 10, no. 22 (Nov. 20, 1955), pp. 693-697.

Study of the elements which require protection in the field of designs, and the distinctions envisioned by the terms "industrial design" and "applied art."

382. Hirsch Ballin, E.D.

Entignung von Urheberrecht.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 21, no. 3/4 (Feb. 1956), pp. 196-215.

In discussing the various means by which a copyright may be expropriated, the author touches upon bankruptcy and its effect upon copyright ownership and use; compulsory license; and execution upon a copyright in satisfaction of judgment or creditors.

383. Leinveber, G.

Titelschutz im Filmrecht.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 58, no. 2 (Feb. 1956), pp. 64-68.

Discussion of the protection given motion picture titles in Germany, the function of the title-register, and a comparison to the status of title protection under the draft legislation of 1932, 1939, and 1954.

384. Roeber, Georg.

Urheberrecht oder Geistiges Eigentum.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 21, no. 3/4 (Feb. 1956), pp. 150-96.

Entitled "Author's Rights or Intellectual Property", the article deals with the distinctions being made with regard to the two terms and the growing tendency to use the more "nebulous" term, "intellectual property."

385. Troller, Alois.

Angebot und Nachfrage als urheberrechtliches Problem.

Archiv für Urheber-, Film-, Funk- und Theaterrecht, vol. 21, no. 3/4 (Feb. 1956), pp. 216-234.

Presentation of the problem of what effect supply and demand may have on a copyrighted work.

386. Zippelius, Reinhold.

Die Weitergeltung internationaler Verträge über gewerblichen Rechtsschutz und Urheberrecht gegenüber ehemaligen Kriegsgegnern.

Auslands- Und Internationaler Teil von Gewerblicher Rechtsschutz und Urheberrecht, no. 3 (Mar. 1956), pp. 102-105.

A study of the effect the war had upon patents and copyrights governed by international agreements.

(d) In Italian

387. Celoria, Carlo.

Della titolarità a mero del diritto di autore in capo al critico che abbia pubblicato un'opera originale altrui in edizione critica.

Rivista di Diritto Industriale, vol. 4, nos. 3-4, (July-Dec. 1955), Part II, pp. 271-313.

A case note concerning a Milan Court of Appeals decision which dealt with the rights of the editor of a critical edition of works originally written by another.

388. Francescelli, Remo.

Il regime giuridico degli estratti da riviste.

Rivista di Diritto Industriale, vol. 4, nos. 3-4 (July-Dec. 1955), Part II, pp. 260-270.

Note on a Milan Court of Appeals decision which involved the unauthorized reprinting and sale of an article originally published in a law review by the publisher of the review.

389. Giannini, Amedeo.

Questioni di diritto d'autore (serie sesta).

Rivista di Diritto Industriale, vol. 4, nos. 3-4 (July-Dec. 1955), Part I, pp. 285-324.

In this sixth of a series of discussions on questions concerning copyright, the author analyzes some of the penalties prescribed by the Italian copyright law of 1941, as compared to those found in the law of 1882; restrictions on adaptation; problems of photocopying; protection of liturgical music; and the relationship of price publishing contracts and author's rights.

390. Rinaldi, Carlo Marco.

Degli Effetti del fallimento del produttore cinematografico per i coautori del film.

Rassegna di Diritto Cinematografico, vol. 4, no. 5 (Sept.-Oct. 1955), pp. 121-122.

Discussion of the effect bankruptcy of a motion picture may have on the rights of a co-author of the motion picture film.

391. Sala, Guiseppe, Jr.

Origini della protezione del disegni e modelli ornamentali.

Rivista di Diritto Industriale, vol. 4, nos. 3-4 (July-Dec. 1955), Part I, pp. 327-370.

Tracing the development of design protection from a decree by Louis XI dated Feb. 23, 1466, granting the city of Lyon the privilege

of manufacturing cloth of gold, the article covers the evolution of legislation, regulations, and litigation particularly in France through the 19th century. An appendix includes the reproduction of eight documents dealing with litigation in Lyon.

392. Sanctis, Valerio de.

L'arte industriale e la sua tutela nei rapporti internazionali.

Rivista di Diritto Industriale, vol. 4, nos. 3-4 (July-Dec. 1955), Part I, pp. 269-284.

Originally presented as a paper at a meeting of the Italian Section of the International League against Unfair Competition, in Milan, held in November, 1955. Dr. de Sanctis discusses the treatment given designs and applied art by the various international conventions.

ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

393. C. John Doe 1955; the story of the Universal Copyright Convention.

United Nations Review, vol. 2, no. 9 (Mar. 1956), pp. 25-27.

Historical account of the development of "copyright" from the domestic level to the international as epitomized in the Universal Copyright Convention. The title and text of the article erroneously used a "C" instead of the prescribed ©. This error was brought to the editor's attention and correction was noted in the subsequent April issue.

394. Coleman, Earle E.

Copyright deposit at Harvard.

Harvard Library Bulletin Notes. (Offprint from Vol. X, no. 1, Winter 1956), pp. 135-140.

An account of plagiarism and the problems of early copyright protection in Massachusetts and Connecticut during the period from 1783 to 1790.

395. Urge Mass. ops back state juke exemption.

The Billboard, vol. 68, no. 7 (Feb. 18, 1956), p. 104.

House Bill No. 700 has been introduced for the purpose of exempting jukeboxes from royalty payments in the event the proposed federal legislation is enacted.

396. Pilpel, Harriet F.

"But Can You Do That?"

Publishers Weekly, vol. 169, no. 9 (Mar. 3, 1956), p. 1244.

Mrs. Pilpel reviews and discusses the implications of *Jacova v. Southern Radio & Television Co.* Sup. Court, Florida, decided Oct. 26, 1955, a Florida right of privacy case; a case dealing with the question of who are the necessary parties to litigation to interpret a book publication contract, *Curtis v. American Book Co.*, 107 USPQ SDNY 1955; and *Henry Hirsch, as Administrator of the Estate of Aaron Hirsch, Decd., plaintiff, v. Twentieth Century Fox Film Corp. et al, defendants*, Sup. Court, Special Term, N. Y. County, April 18, 1955, a plagiarism case holding that prior newspaper publication abroad and at home had resulted in material falling into the public domain.

2. England

397. The Copyright Bill.

The Author, vol. 66, no. 3 (Spring 1956), pp. 48-51.

Discussion of some of the amendments to the British Copyright Bill proposed in Committee in the House of Lords. The amendments deal with the ownership of commissioned works, the duration of protection for motion pictures and the recording of works for broadcast purposes.

398. For the past year problems have jostled for attention—P. A. Raport.

The Bookseller, no. 2622 (Mar. 24, 1956), pp. 952-954.

The Publishers' Association, in reporting on problems encountered during 1955, comments hopefully that the new British copyright bill—which is generally satisfactory—will be passed, and with the participation of the United Kingdom in the Universal Copyright Convention, a "very old sore" will be healed, namely more beneficial copyright relations for American and British authors and publishers.

399. Government to resist "erosion of authors' rights."

The Bookseller, no. 2618 (Feb. 25, 1956), p. 842.

A report on the discussion in the House of Lords on the proposal to give libraries greater freedom in the photocopying of copyrighted works.

3. Germany

400. Bappert, [Walter].

Ersatzpflicht des Druckers, der im Auftrag eines Verlegers einen widerrechtlichen Nachdruck herstellt.

Börsenblatt für den Deutschen Buchhandel, Frankfurter Ausgabe, vol. 11, no. 96, (Dec. 2, 1955), p. 786.

The problem of the printer who has been commissioned to print unauthorized copies of a work for a publisher.

401. Bappert, [Walter].

Urheberrechtlicher Schutz von Werken nichtamerikanischer Urheber in den USA nach dem Inkrafttreten des Welturheber-rechtsabkommens (61. 9. 1955) von . . . und Wagner.

Börsenblatt für den Deutschen Buchhandel, Frankfurter Ausgabe, vol. 11, no. 91 (Nov. 15, 1955), pp. 738-741.

An explanation, intended for German publishers, of the steps required to secure copyright protection in the United States for non-American works since the coming into force of the Universal Copyright Convention.

402. Plage, Wilhelm.

U.S.A. Copyright-Merkblatt.

Gema Nachrichten, no. 28 (Feb. 1956), pp. 24-25.

Brief description of the procedure for registering German works for copyright in the United States under the Universal Copyright Convention.

403. Pinner, H. L.

Das Entleihen von Abbildungen im britischen und amerikanischen Recht, mit einem Überblick über das Recht in anderen Ländern.

Börsenblatt für den Deutschen Buchhandel, Frankfurter Ausgabe, vol. 11, no. 96 (Dec. 2, 1955), pp. 781-785.

A discussion of "fair use" of pictorial works under British and American law, with a summary of related provisions from the laws of a number of other countries.

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CONTENTS

	Page
PART I.	LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS.
1.	United States of America and Territories 6, 35, 89, 119, 143
2.	Foreign Nations12, 36, 69, 89, 120, 146
PART II.	CONVENTIONS, TREATIES AND PROCLAMATIONS13, 38, 90, 147
PART III.	JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY.
A.	Decisions of U. S. Courts.
1.	Federal Court Decisions14, 38, 71, 90, 120, 148
2.	State Court Decisions16, 46, 96
B.	Decisions and Rulings from Other Nations127, 153
PART IV.	BIBLIOGRAPHY.
A.	Books and Treatises.
1.	United States Publications17, 47, 74, 97, 128, 154
2.	Foreign Publications.
1.	English74, 99, 129, 158
2.	French75, 99, 160
3.	German50, 130, 162
4.	Italian131, 163
5.	Spanish 131

B. Law Review Articles.

1. United States	20, 51, 76, 100, 131, 156
2. Foreign	
1. Dutch	53
2. English	22, 52, 77, 103, 133
3. French	23, 54, 77, 104, 134
4. German	25, 56, 80, 106, 135
5. Italian	28, 60, 82, 108, 137
6. Spanish	31

C. Articles Pertaining to Copyright from Trade Magazines.

1. United States	32, 62, 83, 109, 139, 165
2. England	33, 64, 86, 112, 140, 168
3. France	33, 113
4. Germany	65, 113, 141

INDEX — Volume 3, September 1955-July 1956	172
---	------------

PART I.

LEGISLATIVE AND ADMINISTRATIVE
DEVELOPMENTS

1. UNITED STATES OF AMERICA AND TERRITORIES

404. *U. S. Congress. Senate.*

Copyrights—Deposit of photographs or other reproduction in copyright office. Senate Report No. 1602, Feb. 27, 1956 [To accompany H.R. 5876]. . . .

U. S. Code Congressional and Administrative News, no. 6 (Apr. 20, 1956), pp. 1260-1263.

The Senate report has here been reproduced as the legislative history of Public Law No. 452.

As we go to press, we learn that the bills which are the subjects of the next three House Reports have all been passed by the House and sent to the Senate early in July:

404a. *U. S. Congress. House. Committee on the Judiciary.*

Statute of Limitations on civil copyright actions. Report to accompany H.R. 781.

Washington, Govt. Print. Office, June 22, 1956. 6 p. (U. S. 84th Cong. 2d sess., H. Rept. No. 2419).

The purpose of the bill is to provide a statute of limitations with respect to civil actions relating to copyrights. The Committee on the Judiciary reported the bill favorably with amendments of a technical nature designed to make the language and catch line of the bill conform with the language of Title 17. The bill provides for a three year period running from the time the cause of action arose.

404b. *U. S. Congress. House. Committee on the Judiciary.*

Infringement of copyrights by the United States. Report to accompany H.R. 6716.

Washington, Govt. Print. Off., June 27, 1956. 13 p. (U. S. 84th Cong., 2d Sess., H. Rept. No. 2494).

The bill was designed to provide a remedy in the Court of Claims for the infringement by the U. S. Government, or by any contractor acting with its consent, of any work protected under the copyright laws of the U. S. The report recommends an amendment to the original bill which is in the nature of a substitute bill, and also recommends that the bill be favorably acted upon.

404c. *U. S. Congress. House. Committee on the Judiciary.*

Copyright Fees. Report to accompany H.R. 10263.

Washington, Govt. Print. Office, June 25, 1956. 4 p. (U. S. 84th Cong., 2d sess., H. Rept. No. 2417).

The purpose of the bill is to reduce the registration fees on prints and labels to \$4 and increase the renewal fees to \$4, so that all copyright registration fees are uniform. The report is favorable to the bill and recommends that it be passed by the House.

405. *U. S. Copyright Office.*

Copyright Law of the United States of America.

Washington, Govt. Print. Office, 1956. (U. S. Copyright Office, Bulletin No. 14.) 25 cents.

The latest edition of this Bulletin, including the amendments to Title 17 up to and including the Act of March 29, 1956 (70 Stat. 63), the Universal Copyright Convention, Rules of the Supreme Court concerning practice and procedure in copyright cases; and copyright in territories and insular possessions of the United States, with various other tables, schedules, etc.

406. *U. S. Copyright Office.*

Regulations of the Copyright Office (in effect as of September 16, 1955). Reprinted from the *Code of Federal Regulations*, Title 37, Ch. II.

Washington, Govt. Print. Office, April 1956. 3 p. (U. S. Copyright Office, Circular No. 96.)

407. *U. S. Law, statutes, etc.*

Copyrights—Deposit of photographs or other reproduction in copyright office. Ch. 109—Public Law 452, [H.R. 5876].

U. S. Code Congressional and Administrative News, no. 6 (Apr. 20, 1956), p. 1197.

A reproduction of the text of the new law amending U. S. copyright legislation, permitting the Register of Copyrights to issue regulations concerning deposit of photographs in lieu of three-dimensional works of art. The new regulations have not yet been issued.

408. *U. S. House of Representatives.*

H.R. 781 regarding statute of limitations on copyright actions, and H.R. 10263 relating to copyright fees, approved by the Committee on the Judiciary.

109 USPQ No. 13, IV (June 25, 1956).

409. *U. S. Department of State.*

The Intergovernmental Copyright Committee convened its First Session at Paris, France, June 11-16, 1956.

Arthur Fisher, Register of Copyrights, United States Copyright Office, Library of Congress, is the United States Representative on the Intergovernmental Copyright Committee, and represented the United States Government at this First Session.

The UNESCO-sponsored Universal Copyright Convention, which became effective on September 16, 1955, provides for the Intergovernmental Copyright Committee to study the problems concerning the application and operation of the Convention, prepare for its periodic revision, and study other problems of international copyright protection in consultation with interested intergovernmental organizations. The United States adheres to the Convention and is a member of the Committee.

The First Session of the Committee had the task of adopting Rules of Procedure and of establishing precedents for its future activities. The Committee also discussed questions pertaining to (1) international protection of performing artists, record manufacturers and broadcasting organizations and (2) protection granted to news and other press information on current events by national copyright laws and international treaties and conventions.

There are now 18 parties to the Universal Copyright Convention: Andorra, Cambodia, Chile, Costa Rica, France, Federal Republic of Germany, Haiti, Holy See, Israel, Japan, Laos, Liberia, Luxembourg, Monaco, Pakistan, Spain, Switzerland, and the United States.

2. FOREIGN NATIONS

410. *Czechoslovakia. Laws, statutes, etc.*

Gesetz über das Urheberrecht (Urheberrechtsgesetz) vom 22. Dezember 1953. Nr. 115 Slg.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 5/6 (May 1956), pp. 309-327.

A German translation of the Czechoslovakian copyright law of 1953.

411. *France. Laws, statutes, etc.*

Loi No. 46.2196 du 11 octobre 1946 créant une Caisse Nationale des Lettres, modifiée et complétée par la loi No. 56-202 du 25 février 1956 tendant à assurer le fonctionnement de la Caisse Nationale des Lettres.

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), pp. 151-153.

The text of a law of 1946 as amended in 1956 providing for the establishment and operation of a French National Authors' Fund.

412. *Norway. Laws, statutes, etc.*

Law of December 2, 1955, concerning temporary extension of the term of protection of intellectual works.

Washington, Copyright Office, translated by Borge Varmer, May 1, 1956. 1 p. (typewritten ms.).

This law provides for the extension of the term of protection for certain copyrighted works for a period of six years, if the author or last surviving author died prior to the end of 1955.

413. *Norway. Laws, statutes, etc.*

Loi du 4 novembre 1955 sur la prolongation provisoire du délai de protection des oeuvres de l'esprit.

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), p. 150.

French translation of a recent Norwegian law extending copyright protection for certain types of works for a period of six years.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

414. *Germany. Laws, statutes, etc.*

Bekanntmachung über das Inkrafttreten des Vertrages zwischen der Bundesrepublik Deutschland und den Vereinigten Mexikanischen Staaten über den Schutz der Urheberrechte ihrer Staatsangehörigen an Werken der Tonkunst vom 21. März 1956.

Bundesgesetzblatt, Teil II, no. 9 (Apr. 6, 1956), p. 410.

Announcement that the treaty between Mexico and Germany concerning reciprocal copyright protection of musical works was ratified by Mexico on January 20, 1956 and thereby entered in force on February 20, 1956 in accordance with Article IV of the treaty.

415. *Italy.*

Reciprocal copyright protection.

E.B.U. Bulletin, vol. 7, no. 37 (May-June 1956), p. 395.

The President of Italy promulgated an agreement on March 10, 1955, whereby Italy undertakes to extend for a period of six years the copyrights of Yugoslav citizens whose works were protected as of April 6, 1941. Yugoslavia also undertook to extend within its territory for a like period the protection of copyrighted works by Italian subjects on the same terms.

PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY
AND ARTISTIC PROPERTY**

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions

416. *DeSylva v. Ballentine*, 100 L. ed. 869, 109 USPQ No. 10, Supplement (U.S.Sup.Ct. June 11, 1956).

The Supreme Court has ruled on the action brought by an illegitimate child claiming a right to share in the renewal rights where there is a widow surviving who claims the renewal rights. See 3 BULL. CR. SOC. 38, item 110 (1955).

The court stated the way the case had progressed thus far.

"Respondent, the child's mother, brought this action on the child's behalf against the widow, who is the petitioner here, seeking a declaratory judgment that the child has an interest in the copyrights already renewed by the widow and those that will become renewable during her lifetime, and for an accounting of profits from such copyrights as have been already renewed. The District Court, holding that the child was within the meaning of the term 'children' as used in the statute but that the renewal rights belonged *exclusively* to the widow, gave judgment for the widow. Agreeing with the District Court on the first point, the Court of Appeals reversed, holding that on the author's death *both* widow and child shared in the renewal copyrights. * * * Because of the great importance of these questions in the administration of the Copyright Act, we granted certiorari. . . ."

Mr. Justice Harlan posed the issues as follows: "(1) do the widow and children take as a class, or in order of enumeration, and (2) if they take as a class, does 'children' include an illegitimate child. Strangely enough, these questions have never before been decided, although the statutory provisions involved have been part of the Act in their present form since 1870."

Proceeding to the first question involving the phrase "or the widow, widower, or children of the author, if the author be not living" found in Section 24 of the Copyright Act the court said:

"We start with the proposition that the word 'or' is often used as a careless substitute for the word 'and'; that is, it is often used in phrases where 'and' would express the thought with greater clarity. * * * In this instance we need look no further than the very next clause in this same section of the Copyright Act for an example of this careless usage: '* * * or if such author, widow, widower, *or* children be not living, then the author's executors * * *.' If the italicized 'or' in that clause is read disjunctively, then the author's executors would be entitled to renew the copyright if any *one* of the persons named 'be not living.' It is clear, however, that the executors do not succeed to the renewal interest unless *all* of the named persons are dead, since from the preceding clause it is at least made explicit that the 'widow, widower, or children of the author' all come before the executors, after the author's death. The clause would be more accurate, therefore, were it to read 'author, widow or widower, *and* children.' It is argued with some force, then, that if in the succeeding clause the 'or' is to be read as meaning 'and' in the same word grouping as is involved in the clause in question, it should be read that way in this clause as well. If this is done, it is then an easy step to read 'widow' *and* 'children' as succeeding to the renewal interest as a class as the Court of Appeals held they did."

Reviewing the history of copyright legislation which originally gave to the widow and children as a class, and dismissing the administrative practice and opinion of the specialists in the field the court concluded:

"While the matter is far from clear, we think, on balance, the more likely meaning of the statute to be adopted by the Court of Appeals, and we hold that, on the death of the author, the widow and children of the author succeed to the right of renewal as a class, and are each entitled to share in the renewal term of the copyright."

Setting the stage for the other question involving the illegitimate child, Mr. Justice Harlan continued:

"We come, then, to the question of whether an illegitimate child is included within the term 'children' as used in §24. The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than

federal law. * * * This is especially true where a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern."

He then answered:

"If we look at other persons who, under this section of the Copyright Act, are entitled to renew the copyright after the author's death, it is apparent that this is the general scheme of the statute. To decide who is the widow or widower of a deceased author, or who are his executors or next of kin, requires a reference to the law of the State which created those legal relationships. The word 'children,' although it to some extent describes a purely physical relationship, also describes a legal status not unlike the others. To determine whether a child has been legally adopted, for example, requires reference to state law. We think it proper, therefore, to draw on the ready-made body of state law to define the word 'children' in §24. This does not mean that a State would be entitled to use the word 'children' in a way entirely strange to those familiar with its ordinary usage, but at least to the extent that there are permissible variations in the ordinary concept of 'children' we deem state law controlling.

"This raises two questions: first, to what State do we look, and second, given a particular State, what part of that State's law defines the relationship. The answer to the first question, in this case, is not difficult, since it appears from the record that the only State concerned is California, and both parties have argued the case on that assumption. The second question, however, is less clear. An illegitimate child who is acknowledged by his father, by a writing signed in the presence of a witness, is entitled under §255 of the California Probate Code to inherit his father's estate as well as his mother's. The District Court found that the child here was within the terms of that section. Under California law the child is not legitimate for all purposes, however; compliance with §230 of the Civil Code is necessary for full legitimation, and there are no allegations in the complaint sufficient to bring the child within that section. Hence we may take it that the child is not 'adopted' in the sense that he is to be regarded as a legitimate child of the author."

"Considering the purposes of §24 of the Copyright Act, we think it sufficient that a status of the child is that described by §255 of the California Probate Code. The evident purpose of §24 is to provide for the family of the author after his death. Since the author cannot assign his family's renewal rights, §24 takes the form of a

compulsory bequest of the copyright to the designated persons. This is really a question of the descent of property, and we think the controlling question under state law should be whether the child would be an heir of the author. It is clear that under §255 the child is, at least to that extent, included within the term 'children.'"

Coming to the practical question of the meaning of the decision to copyright holders, purchasers of copyright interests and copyright practitioners the court said:

"Finally, there remains the question of what are the respective rights of the widow and child in the copyright renewals, once it is accepted that they both succeed to the renewals as members of the same class. Since the parties have not argued this point, and neither court below has passed on it, we think it should not be decided at this time.

"For the foregoing reasons, the judgment of the Court of Appeals is affirmed."

Mr. Justice Douglas concurred in an opinion which as joined by Mr. Justice Black holding that "The meaning of the word 'children' as used in §24 of the Copyright Act is a federal question. * * * I would * * * hold that illegitimate children were 'children' within the meaning of §24 of the Copyright Act whether or not state law would allow them those dependence benefits."

417. *Avedon v. Exstein, d.b.a. Marboro Books*, 109 USPQ 376 (D.C.S.D.N.Y. May 21, 1956).

Plaintiff, photographer, brought an action for breach of contract and declaratory judgment and infringement of copyright in a photograph taken for Marboro Books in connection with an advertisement which appeared in the New York Times. Subsequently plaintiff also delivered the negative which was sold to another company for use in its advertising campaign. Plaintiff alleged that there was a custom and usage of the trade that a commercial photographer is the owner of the negative and that the photograph was licensed only for use in connection with the specific product.

Held: Complaint dismissed. Custom and usage cannot be introduced where there is a rule of law "that a photographer, employed to take a picture for a client, retains no rights in the picture after delivery except such as are expressly reserved." Since plaintiff has not reserved any rights and may not offer his evidence of custom and usage his complaint must fail. Plaintiff is granted leave to amend his complaint.

418. *Lampert v. Hollis Music, Inc.*, 109 U.S.P.Q. 242 (D.C.E.D.N.Y. Feb. 20, 1956).

Prior decision as to other parties 2 BULL. CR. SOC. 9, items 16 (1954).

Plaintiff composed a musical composition entitled "Annabella" which was copyrighted but never published. She claims infringement by the song "Cause I Love You." Defendant, Piaf, wrote the music to the song which was eventually translated into English and published by defendant Hollis Music.

Held: For defendants—complaint dismissed. (1) There is no proof of access on the part of defendants; (2) since only three notes involved in sequences are common to the two songs, there is not a sufficient musical concept to be considered a motif.

There were some similarities as to the words used in the English translation but these seemed to the court "to be the result of accident rather than design." With regard to the coincidence of musical notes the court said: "There was no quality of true musical composition involved in so slender a contribution to what might have eventually developed into a melody if carried far enough forward to support such a definition."

Proof of access was completely lacking in the opinion of the court.

419. *Philco Television Co. v. Ettore*, 109 U.S.P.Q. No. 7, II (May 14, 1956).

Petition for writ of certiorari denied May 7, 1956. See 3 BULL. CR. SOC. 93, item 271 (1956).

420. *Cory v. Commissioner of Internal Revenue*, 109 U.S.P.Q. No. 12, II (June 18, 1956).

Petition for writ of certiorari filed June 7, 1956. See 3 BULL. CR. SOC. 120, item 347 (1956).

421. *Szekely v. Eagle Lion Films, Inc.*, 109 U.S.P.Q. 348 (D.C.S.D.N.Y., May 8, 1956).

Action for infringement of common law copyright based on contract made between plaintiff and Geiger under which it was agreed that all rights to a screen adaption of Di Donato's novel "Christ in Concrete" were to remain in plaintiff until he was paid \$35,000. There was also provision for a profit-sharing arrangement. Geiger was unable to complete payment of the \$25,000 balance due plaintiff and turned the script over

to some English producers who, upon completion of the film, (through their general distributor) arranged with defendants for the distribution of the motion picture in the Western Hemisphere.

Plaintiff had written to Geiger prior to production reserving his rights but had been met with the answer that his script was not being used and, furthermore, that plaintiff's best course of action was to permit production due to the blocked currency situation. When plaintiff read of defendant's plans to distribute in the United States he notified defendant of his rights.

Held: For plaintiff. Since plaintiff retained his literary property in his manuscript until paid he had a common law copyright. "Plaintiff had never given his consent to the utilization of his literary product for the production of the film, in the absence of receipt of payment of \$35,000 from Geiger Productions and, therefore, the use of his literary ideas in the production of the film constituted plagiarism and a deprivation of his literary property for which plaintiff is entitled to the issuance of an injunction and an award of damages."

The court decided that plaintiff's work had been used and cited the credit lines of defendant's film in support of its conclusion. But, held the court, this was not an instance requiring punitive damage and, since plaintiff had not requested an accounting, the measure of damages was the \$25,000 balance due plaintiff, with interest. In addition, the court granted an injunction against defendant from further distribution of the film.

DECISIONS AND RULINGS FROM OTHER NATIONS

1. Morocco

422. *Rabat (Morocco). Court of Appeals.*

Protection of Architectural Works. Judgment by the Rabat Court of Appeal.

E.B.U. Bulletin, vol. 7, no. 37 (May-June, 1956), pp. 395-396.

The decision held that infringement occurred whenever a person photographed architectural works and reproduced them in books, albums, booklets and as postcards without the architect's permission. The principle upon which the opinion was based is that an author is entitled to restrain any reproduction of his work, and the right extends to all methods of reproduction, even though they may belong to different fields of art.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

423. Ransom, Harry.

The First Copyright Statute. *An Essay on An Act for the Encouragement of Learning*, 1710.

Austin, University of Texas Press, 1956.

This historical essay on the Statute of Anne is one of a series of studies on the history of English and American copyright to be published by the University of Texas Press. 145 pp.

424. American Society of Composers, Authors and Publishers.

Copyright law symposium, number seven. Nathan Burkan Memorial Competition sponsored by . . . [ASCAP].

New York, Columbia University Press, 1956. 252 p.

This volume includes:

Dreben, Raya S.

Publication and the British Copyright Law. pp. 3-34.

Shull, J. Roger.

Collecting collectively: ASCAP's perennial dilemma. pp. 35-54.

Cracas, Ronald.

Judge Learned Hand and the law of copyright. pp. 55-90.

Laskin, Franklin T.

All Rights unreserved: The author's lost property in publishing and entertainment. pp. 91-138.

Young, Robert E.

The Copyright terms. pp. 139-175.

Singer, Daniel M.

International copyright protection and the United States: The Impact of the Universal Copyright Convention on existing law. pp. 176-217.

425. American Society of Composers, Authors and Publishers.

The Nathan Burkan memorial competition. Rules governing the competition; illustrative cases and bibliography prepared by Herman Finkelstein.

New York, ASCAP, 1956. 84 p.

In addition to the statement of the rules governing the competition, the bibliography of selected source material has been greatly expanded, and includes many recently published items.

426. Copyright Society of the U. S. A. Translation Service.

Compilation of official documents of intergovernmental organizations concerning neighboring rights, June 1928—March 1956.

New York, Copyright Society of the U. S. A. 1 v. (multilith).

Supplement to compilation . . . March 9, 1956—May 5, 1956.

New York, Copyright Society of the U. S. A., 1956.

427. Dubin, Joseph S.

Copyright—Duration of protection. Chart No. II, Revision No. 3, May, 1956.

Universal City, Calif., 1956. 3 p., 43x55 cm.

428. Dubin, Joseph S.

Copyright—Formalities, moral rights, etc., and protection for U. S. works. Chart No. III, Revision No. 3, May 1956.

Universal City, Calif., 1956. 3 p., 43x55 cm.

429. Dubin, Joseph S.

Copyright relations between nations. Chart No. 1, Revision No. 4, March 1956.

Universal City, Calif., 1956. 1 p., 55x42 cm.

430. Sanctis, Valerio de.

Copyright Society of the U. S. A., Translation Service 1956, no. 4a.

The "Neighboring Rights" by . . . Published in the original Italian in Vol. LIII (1955) *Rivista del Diritto Commerciale* 167, and in German Translation by E. Hirsch Ballin in 20 (1955) *Archiv für Urheber- Film- Funk- und Theaterrecht* . . . 22. [English translation by Borge Varmer].

New York, Copyright Society of the U. S. A., 1956. 14 p. (multilith).

431. U. S. Dept. of Commerce.

Summary of information on copyrights and copyright office services. Compiled in the Office of Distribution.

Washington, U. S. Dept. of Commerce, 1956. 7 p. (Business Service Bulletin No. 30).

The bulletin briefly covers common-law protection, statutory protection, transfer or assignment of copyright, what may be copyrighted, general requirements for copyright, prints and labels, how copyrights, trademarks and patents are distinguished, what constitutes infringement; and international protection. The pamphlet may be secured from the Department of Commerce or its field offices at the price of ten cents.

B. LAW REVIEW ARTICLES

1. United States

432. Copyright—Fair Use—Burlesque of literary property.

New York University Law Review, vol. 31, no. 3 (Mar. 1956), pp. 606-608.

A case note on the decision in *Loew's v. CBS*. See 2 BULL. CR. SOC. 177, item 337 (1955).

433. Copyrights—Statutes—Right to renew copyright vests in author's widow and children as a class; illegitimate child held entitled to share of renewal right.

Harvard Law Review, vol. 69, no. 6 (Apr. 1956), pp. 1129-1132.

A case note on the appellate decision in *Ballentine v. DeSylva* discussing the question of whether state or federal law should be applied in determining when a widow and acknowledged, illegitimate child may share in a right, created by federal statute, namely, the renewal of copyrights. See 3 BULL. CR. SOC. 38. item 110 (1955).

434. Flinders, Arthur C.

Copyright law—fair use—parody.

Southwestern Law Journal, vol. 10, no. 1 (Winter, 1956), pp. 68-71.

A case note concerning *Loew's v. Columbia Broadcasting System*, 2 BULL. CR. SOC. 177, item 337 (1955), in which the writer suggests that the test of substantial taking may become pragmatic as a test for striking a balance between the right of the author to use his work and the right of the public to disseminate knowledge and to promote the progress of science and the useful arts.

435. Minton, John H., Jr.

Copyright—Common law literary property—Conflict of laws.

Baylor Law Review, vol. 7, no. 4 (Fall, 1955), pp. 442-447.

Noting *Capital Records v. Mercury Records*, 2 BULL. CR. SOC. 166, item 330 (1955). The writer holds that publication of phonograph records is a matter to be decided on the basis of state law.

436. Parody and copyright infringement.

Columbia Law Review, vol. 56, no. 4 (Apr. 1956), pp. 585-606.

In a note on two recent court decisions, *Loew's v. CBS*, 2 BULL. CR. SOC. 177, item 337 (1955), and *Columbia Pictures v. NBC*, 3 BULL. CR. SOC. 71, item 210 (1956), involving the right to parody copyrighted works, the author concludes that there is a definite need to give more explicit judicial examination to the problems arising from use of new media, but not necessarily an examination in the light of old judicial doctrines appropriate only to an era when the printed word was the main source of copyright litigation.

437. Situs of intangible property in conflict of laws.

St. John's Law Review, vol. 30, no. 2 (May 1956), pp. 224-236.

In comparing the decisions rendered with regard to the question of situs of such intangible property as copyrights, literary property, ideas, and competition, the author of this note concludes that the Universal Copyright Convention could serve as a model for obtaining universal uniformity of treatment in the protection of intangible property rights.

438. Wasserstrom, Alfred H.

The copyrighting of contributions to composite works: some attendant problems.

Notre Dame Lawyer, Vol. XXXI (May 1956), pp. 381-413.

The author defines his purpose ". . . to consider some of what are believed to be the more critical problems which confront authors and proprietors of copyrightable artistic and literary material, with special reference to the use thereof in composite works, including periodicals."

2. FOREIGN

(a) In English

439. Bramall, Brian.

With regard to neighbouring rights: [a letter]; [together with] Mr. Dommange's answer.

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), pp. 118-130.

A commentary by the General Director of the International Federation of the Phonographic Industry on an article which appeared in a previous issue, together with a reply by the author of the original article.

440. Goodman, A.

The Copyright bill.

The Modern Law Review, vol. 19, no. 2 (Mar. 1956). pp. 186-193.

Observations on the British copyright bill, prepared while the bill was still going through its various stages in the House of Lords. The author expresses the opinion that the interests of the author, artist and composer have not been well served, and that he hopes corrective measures will be adopted in the Commons.

441. Jackson, Roy V.

A new approach to protection for the designs of new products.

Reprinted from The Canadian Bar Review, vol. 34, no. 4 (Apr. 1956), pp. 369-392.

Finding that the Industrial Design and Union Label Act of Canada is obsolete, the author delineates the characteristics a new design law should incorporate in order to secure better protection for the manufacturer and retailer.

442. James, F. E. Skone.

The Copyright bill—an interim report.

The Solicitors' Journal, vol. 100, no. 17 (Apr. 28, 1956), p. 309.

A commentary on several of the amendments to the British Copyright Bill accepted by the House of Lords such as making it an infringement to publish "cartoon" versions of literary or dramatic works; excepting artistic works from infringement when used incidentally on television or in motion pictures; and extending motion picture protection to 50 years.

443. International copyright union. Permanent Committee.

Sixth session of the permanent committee of the international union for the protection of literary and artistic works (Paris, 4th-5th May 1956).

[*Berne, 1956*]. 12 p.

Report of the Director of the Bureau of the Union on the state of the preparatory work in the preparation of a draft international convention for the protection of interpretative or performing artists, record manufacturers and broadcasting organizations (Resolution No. 4 adopted by the Permanent Committee at its meeting at Lugano—28th June to 2d July 1954); and the report of the session in general.

444. Ljungman, Seve.

The tendencies to extend intellectual rights: "droits voisins" (rights of performers, recorders and broadcasters).

The Performing Artiste, The Record Manufacturer, The Broadcaster (May 1956), pp. 23-28.

A resume of the concept of "droits voisins" or neighboring rights, the protection given performing artists, record manufacturers and broadcasters in different countries and the pros and cons advanced to date. The conclusion is drawn that the introduction of additional collection agencies would create a tendency to make royalty collections a tax matter with payment of such royalties being made from state funds. This the author feels would be "disastrous for all the parties concerned."

(b) In French

445. Duron, Jacques.

La Caisse nationale des lettres.

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), pp. 5-19.

An essay treating of the enactment of amendatory legislation concerning the French National Authors' Fund, the purpose of which is to subsidize and encourage creative work.

446. Hepp, Francois.

La Notion d'oeuvre litteraire et artistique.

Le Droit d'Auteur, vol. 69, no. 4 (Apr. 1956), pp. 45-50.

The idea of a literary or artistic work is studied principally from the viewpoint of French laws and consideration is given the extension of the concepts embodied in eighteenth century legislation to modern photography, motion pictures, recordings and television.

447. Hepp, Francois.

Le public inconnu.

Revue International du Droit d'Auteur, no. XI (Apr. 1956), pp. 35-59.

A discussion of the difficulties involved in learning of unauthorized performances of recorded music and determining the amount of royalties due. The article goes into the possibility of taxing the manufacturers of recording machines as a means of securing the royalties due for collection societies.

448. International Copyright Union. Permanent Committee.

Sixieme session du comite permanent de l'Union internationale pour la protection des oeuvres litteraires et artistiques (Paris, 4-5 mai, 1956).

Le Droit d'Auteur, vol. 69, no. 5 (May 1956), pp. 69-80.

Sixth session of the permanent committee of the international union for the protection of literary and artistic works.

449. Masouye, Claude.

Le Droit d'auteur a Tanger.

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), pp. 85-113.

A discussion of the present status of copyright protection in Tangiers.

450. Saporta, Marcel.

Quelques notes sur la creation des "personnages."

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), pp. 61-83.

The question of copyright protection for characters and ideas is discussed.

451. Vaunois, Louis.

Lettre de France.

Le Droit d'Auteur, vol. 69, no. 4 (Apr. 1956), pp. 50-54; no. 5 (May 1956), pp. 61-64.

Summary of recent French court decisions involving the protection of designs, photographs, publications, and a Moroccan decision on the infringement of architectural rights. (See Decisions and Rulings from other Nations.)

452. Tournier, Alphonse.

L'arrêt de la Cour de Cassation belge du 19 Janvier 1956.

Revue Internationale du Droit d'Auteur, no. XI (Apr. 1956), pp. 21-33.

A Belgian Supreme Court decision involving the right of an author to authorize the "radiophonic" use of phonograph records the manufacture and distribution of which he has permitted for private use only.

(c) In German

453. Bussmann, Kurt.

Zur Begriffsbestimmung der "enregistrements ephemeres."

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 5/6 (May 1956), pp. 258-268.

A discussion of the recording and use of internationally broadcast programs from the viewpoint of Article 11, paragraph 3 of the Rome Convention and various domestic laws applicable to the situation.

454. Gamm, Otto-Friedrich von.

Der Anspruch auf Abdruck einer Gegendarstellung bei rechts verletzenden Presseveröffentlichungen.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 58, no. 4 (Apr. 1956), pp. 170-172.

Right to public retraction of libelous statements.

455. Knap, Karel.

Das neue Urheberrechtsgesetz der Tschechoslowakei.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 5/6 (May 1956), pp. 269-306.

Analytical presentation of the Czechoslovakian Copyright Law of 1953, touching upon such matters as the protection of motion pictures, radio and television programs and trust funds.

456. Leinveber, G.

Der Schutz des Urheberpersönlichkeits rechts.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 58, no. 5 (May 1956), pp. 203-206.

Treatment given moral rights under the Rome Revision of the Bern Copyright Convention of 1928, and the various subsequent drafts of German copyright legislation, particularly the most recently proposed revision of 1954.

457. Leinveber, G.

Zur neuesten urheberrechtlichen Rechtsprechung des Bundesgerichtshofes.

Juristische Rundschau, No. 2 (Feb. 1956), pp. 54-55.

A commentary on one of the most recent copyright decisions handed down by the Supreme Court of the Federal German Republic (June 24, 1955), involving the protection of musical compositions. The author compares the holdings with the provisions contained in the proposed draft revision of the German copyright law now under consideration.

458. Lögberg, Ake.

Musik während der Arbeit aus der schwedischen Rechtsprechung.

Archiv für Urheber- Film- Funk- und Theaterrecht, vol. 21, no. 5/6 (May 1956), pp. 307-309.

Case note concerning a Swedish decision of the Stockholm District Court (Stockholmer Landgericht), which involved the performance of recorded music during working hours in industrial plants and the collection of royalties thereon.

(d) In Italian

459. Fabiani, Mario.

In Tema di illecito per lesione del diritto morale di autore.

Il Diritto di Autore, vol. 26, no. 4 (Oct.-Dec., 1955), pp. 474-480.

A case note on an Italian Court of Cassation decision involving the evaluation of damage to an author's moral rights in accord with Art. 20 of the basic Italian copyright law.

460. Hepp, Francois.

Il Diritto degli artisti interpreti ed esecutori.

Il Diritto di Autore, vol. 26, no. 4 (Oct.-Dec. 1955), pp. 421-441.

Rights of the interpretative artists in their performances (translated from the French).

461. Masouye, Claude.

Il Diritto di autore e il fisco.

Il Diritto di Autore, vol. 26, no. 4 (Oct.-Dec., 1955), pp. 442-450.

The rights of an author as related to certain provisions contained in the United Nations' Universal Declaration of the Rights of Man.

462. Möhring, Philipp.

Magetofono e fotocopia.

Il Diritto di Autore, vol. 26, no. 4 (Oct.-Dec. 1955), pp. 485-488.

An Italian translation of a note on a German Supreme Court decision (Grundig Radio Werke Gmb-H. *c.* GEMA) which involved the question of recording music for personal use and its effect on the author's rights. The Court cited the preamble and Art. 1 of the UCC and Art. 27, par. 2 of the Universal Declaration of Human Rights in arriving at its opinion.

463. Sanctis, Valerio de.

In Tema di plagio dell'opera inedita.

Il Diritto de Autore, vol. 26, no. 4 (Oct.-Dec., 1955), pp. 464-473.

Note concerning a decision by the Italian Court of Cassation based on a claim that the defendant had plagiarized a part of a translation of Eugene O'Neill's "Strange Interlude" which the plaintiff had submitted as a possible contribution to a projected collection of dramatic works by foreign authors that the University of Rome was planning to publish. In discussing plagiarism of unpublished works, the writer refers to the relationship of American common-law copyright to its statutory copyright.

464. Sanctis, Valerio de.

Tentativi di estensione del diritto di autore: i cosiddetti "droits voisins."

Rivista del Diritto Commerciale, vol. 53, no. 3-4 (Mar.-Apr. 1955), pp. 167-180.

Comparative study of the various domestic and international laws relating to the field of neighboring rights and the manner in which they affect authors' rights.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

465. ABPC meeting stresses distribution; action committees formed.

Publishers' Weekly, vol. 169, no. 23 (June 11, 1956), pp. 2502-2515.

In reviewing current developments in the book trade, the American Book Publishers Council received reports on import-export problems, the Library Service's Bill and the plans for revision of the U. S. Copyright law.

466. Al Lewis sues Robert Music.

The Billboard, vol. 68, no. 22 (June 2, 1956), p. 13.

Suit alleging defendant obtained renewal rights to plaintiff's compositions by fraud by failing to produce "A-1" plugs and additional disks in accordance with the contract.

467. Bill would charge postage for copyright deposits.

Publishers' Weekly, vol. 169, no. 18 (May 17, 1956), p. 1957.

Comment on two Post Office Bills, H.R. 9562 and S. 1871 which would eliminate the free mailing of deposits to the Copyright Office for registration.

468. British rate GBS rights at more than \$1,200,000.

Variety, vol. 202, no. 8 (Apr. 25, 1956), p. 1.

The British Public Trustee Office has agreed with the executor of George Bernard Shaw's estate to value his copyrights at \$1,200,000 for purposes of estate taxes.

469. Bundy, June.

Bloom sues Mills on copyright renewals. Action spots trend to legal battle by cleffers to solve renewal problem.

The Billboard, vol. 68, no. 20 (May 19, 1956), pp. 12, 15.

470. Commons get U. K. Copyright bill; would ratify U.C.C.

Publishers' Weekly, vol. 169, no. 16 (Apr. 21, 1956), p. 1793.

A note stating that the House of Lords passed the new British copyright bill on March 22 and sent it to the House of Commons. If enacted the bill would permit ratification by Britain of the Universal Copyright Convention.

471. Court denies Rose motion in "Gang" suit. Plaintiffs' attorney tabs decision a skirmish, main issues to come.

The Billboard, vol. 68, no. 18 (May 5, 1956), pp. 19, 22.

472. Winterich, John T.

American Book Publishers Council celebrates tenth anniversary.

Publishers' Weekly, vol. 169, no. 19 (May 14, 1956), pp. 2036-2044.

At page 2041 is a resume of the American Book Council's participation in behalf of the Universal Copyright Convention and its ratification.

473. Hearings on Copyright Bill.

Information Bulletin, vol. 15, no. 22 (May 28, 1956), pp. 276-277.

Hearings on H.R. 6716, a bill introduced by Congressman Shepard J. Crumpacker of Indiana, to amend Title 28 of the United States Code, to permit actions against the United States for infringement of copyrights, were held on May 24, 1956, before Subcommittee No. 3 of the

House Committee on the Judiciary. The hearings were conducted before Congressman Edwin E. Willis of Louisiana, Chairman of the Committee, and Congressman Crumpacker.

Testimony in favor of the general principle of the bill, namely, that the Government should permit itself to be sued for copyright infringement as it does in the case of patent infringement, was given on behalf of the American Book Publishers Council, the textbook publishers, the American Bar Association, and the Bar of the City of New York. No Government agency interposed any objection to the general principle of the bill; several offered suggestions on its scope and procedure.

Among Government agencies testifying were the United States Information Agency, the Government Printing Office, and the Navy Department (speaking for the Defense Department). Arthur Fisher, Register of Copyrights, presented the position of the Librarian of Congress and the Copyright Office in general support of the bill. The Register stressed the general agreement on the principle of the bill. Letters were filed by other agencies.

474. Pilpel, Harriet F.

"But Can You Do That?"

Publishers' Weekly, vol. 169, no. 13 (March 31, 1956), pp. 1550-1552.

"The Defense of Fair Comment on Matters of Public Interest in Libel Actions"—(a discussion of the Connecticut case of *Charles Parker Co. v. The Silver City Crystal Co.*, Conn. Supreme Court of Errors, June term, 1955);

"In Cases of Copyright Infringement, he who would copy must beware" (a brief summary of a case involving infringement of copyright or jewelry but which has literary property implications: *Hollywood Jewelry Mfg. Co. Inc. v. Dushkin*, 107 USPQ 354 (S.D.N.Y. 1955).)

475. Pilpel, Harriet F.

"But Can You Do That?"

Publishers' Weekly, vol. 169, no. 17 (Apr. 28, 1956), pp. 1870-1873.

"What is Fair Use in the Case of Burlesque" (a discussion of the "From Here to Obscurity" television parody of the Columbia Pictures' film "From Here to Eternity": *Columbia Pictures Corp. v. N.B.C.* 107 USPQ 344 (S.D. Calif. 1955).)

"As to Recovery for Ideas, It's a Question of Balancing Equities"—(a decision holding that the Wyatt Earp radio program does not plagiarize the plaintiff's copyrighted book "Wyatt Earp. Frontier Marshal": *Stuart M. Lake v. C.B.C., Inc. (a Corp.), et al.*, (S.D. Calif.).)

"Publishers are Right to Beware When Real Person's name Pops up in Fiction"—(the right of privacy and libel implications of a suit by a well-known gymnasium operator against Paramount Pictures for using his name in a feature film: *Stillman v. Paramount Pictures Corp., et al.*, NYLJ for 5/5/56 (Supreme Court New York County).)

476. Pilpel, Harriet F.

"But Can You Do That?"

Publishers' Weekly, vol. 169, no. 21 (May 28, 1956), pp. 2245-2247.

Discussed are two tax cases of interest to authors, one involving the never-ending search for capital gains: *Cory v. Commissioner*, 109 USPQ 1 (2d Cir. 1956), and the other dealing with an encouraging development in connection with the spreadback provisions of the Revenue Code: *Beardsley et al v. U. S.*, 109 USPQ 27 (D. Conn. 1956). A third case is a privacy case in which a man who had publicly praised a publication objected to that publication's use of his words of praise for promotion purposes: *Roberts v. Conde Nast Pub., Inc.*, New York Law Journal, Feb. 6, 1956 (App. Div. 1st Dept. 1955).

477. Pilpel, Harriet F.

"But Can You Do That?"

Publishers' Weekly, vol. 169, no. 25 (June 25, 1956), pp. 2755-2757.

A discussion of the Supreme Court decision in *De Sylva v. Ballentine*, 100 L. Ed. 869 (June 11, 1956), and of permissible freedom of discussion in political debate focusing on a recent decision of the Supreme Court, May 26, 1955.

2. England

478. Briefly reported: Copyright.

The Bookseller, no. 2629 (May 12, 1956), p. 1311.

Asked if he would tell the House of Commons whether the Government intended to make any progress with the Copyright Bill during the current session, Mr. Butler replied "Yes."

479. Greco, Paolo.

Does Broadcasting from commercial records constitute a reproduction of the recorded work?

E.B.U. Bulletin, vol. 7, no. 37 (May-June 1956), pp. 391-394.

Critical analysis of the Belgian Supreme Court decision involving the right to perform recorded music from commercial records for broadcast purposes. The study includes comparisons of European legislative provisions pertinent to the questions of fact involved.

480. International Labour Organization.

Preparation of a convention for protection of ancillary rights.

E.B.U. Bulletin, vol. 7, no. 37 (May-June 1956). pp. 391-394.

A news report on the agreement reached at a January 1956 meeting of the five international organizations interested in the Neighboring Rights Convention, i.e. IFPI, EBU, the International Federation of Musicians (FIM), the International Federation of Actors and the International Federation of Variety Artists. The agreement includes proposed changes in the texts of articles 4, 5, 7, and 8 of the preliminary draft convention submitted at Rome in 1951.

481. No legislation for records and films.

The Bookseller, no. 2629 (May 12, 1956), p. 1306.

A member of Parliament asked the President of the Board of Trade if he would introduce legislation requiring deposit of sound recordings and films in the British Museum, on a basis similar to the requirements for books as contained in the Copyright Act of 1911. The answer was "No."

482. Publishers will have to report royalty payments for tax.

The Bookseller, no. 2629 (May 12, 1956), p. 1312.

The new Finance Bill now being considered by Parliament, provides that publishers shall report royalties and other payments made to authors (except when the total amount is less than 15 pounds). The right to request such information is being given to Inspectors of Taxes in accordance with a recommendation found in the final report of the recent Royal Commission on Income Tax.

483. Shaw copyrights valued at £430,000.

The Bookseller, no. 2626 (Apr. 21, 1956), p. 1105.

A member of the House of Commons plans to inquire into the methods by which the Public Trustee, the executor of George Bernard Shaw's estate and the Estate Duty Office agreed on a copyright valuation of £430,000.

484. **COMPILATION OF THE REGULATIONS CONCERNING COPYRIGHT.**

The set of regulations concerning copyright, dating from 1874, which the Copyright Office Librarian, Mrs. Wilma Davis, recently compiled for the Copyright Office Library, has been reproduced by microfilm, with a table of contents for the 33 items in the collection. This accumulation of regulations provides an interesting historical document on the administration of the copyright laws in effect during 8 decades. Positive microfilm copies can be procured from the Photoduplication Service of the Library of Congress at a cost of \$6.50 each. Photoprint copies size 8" x 10", will cost \$155.00.

485. **LATEST LIST OF ACCESSIONS AND RATIFICATIONS OF THE UNIVERSAL COPYRIGHT CONVENTION.**

<i>Country</i>	<i>Effective Date</i>
Andorra	September 16, 1955
Cambodia	September 16, 1955
Chile	September 16, 1955
Costa Rica	September 16, 1955
France	January 14, 1956
German Federal Republic	September 16, 1955
Haiti	September 16, 1955
Holy See	October 5, 1955
Israel	September 16, 1955
Japan	April 28, 1956
Laos	September 16, 1955
Luxembourg	October 15, 1955
Monaco	September 16, 1955
Pakistan	September 16, 1955
*Philippines	November 19, 1955
Spain	September 16, 1955
Switzerland	March 30, 1956
United States of America	September 16, 1955
Liberia	July 27, 1956

*UNESCO has advised the U. S. Government that on November 14, 1955, a letter was received from the Philippine Minister in Paris stating that the Philippine President had directed the withdrawal of the instrument of accession prior to November 19, 1955, the date on which the Convention would become effective in respect of the Philippines. No determination has been made as to the legal effect of this communication.

486. LAST MINUTE NEWS.

The President of the Copyright Society of the U. S. A. has just received the following letter from the Secretary General of the Federacion Interamericana de Sociedades de Autores y Compositores, Havana, Cuba:
Dear Mr. President:

I am very glad to inform you that the Senate of the Republic of Cuba, has just ratified the World Convention on Copyright, which was signed in Geneva in 1952.

* * *

Yours very sincerely,

NATALIO CHEDIAK

INDEX

Volume 3—September 1955—July 1956

**LEGISLATION, CONVENTIONS, TREATIES
AND PROCLAMATIONS**

	Item*
Austria	
Ratification of State Treaty by U. S.	25
Canada	
Appeal Board, report on license rates	204
Enemy property, instructions on release	205
Chile	
Argentina, deposit of ratification of 1910 Convention with	102
Inter-American Convention, adherence to	101
Colombia	
National Council for Television, decree	103
Cuba	
Inter-American Convention, approval of	206
Law of Jan. 18, 1955	264
Czechoslovakia	
Law of 1953 (German text)	410
Egypt	
Law of June 24, 1954 (French text)	22
France	
Ecuador, reciprocal protection	109
Law of 1946, amended (National Authors' Fund)	411
Germany (Democratic Republic)	
Berne Copyright Convention, Rome revision	105
Performance and reproduction of musical works, decree of Mar. 17, 1955	208
Performance and reproduction of musical works, Regulation 1, Apr. 27, 1955	207

*All references are to item number, except where page numbers are given.

	Item*
Germany (Federal Republic)	
Ratifying Universal Copyright Convention	23, 104
Berlin (Western Sector), Universal Copyright Convention applicable to	24
Draft law of 1953 (representation of persons in motion pictures)	106
Mexico, treaty with	414
Great Britain	
Bill implementing Universal Copyright Convention	209
Israel	
Order of August 21, 1955, Universal Copyright Convention	345
Italy	
Yugoslavia, agreement of Mar. 10, 1955	415
Japan	
U. S., provisional arrangement with	26
Luxembourg	
Draft law to amend Act of 1898 (German text)	107
Norway	
Draft law extending protection (French text)	108
Law of Dec. 2, 1955 to extend protection	412
Law of Dec. 2, 1955 to extend protection (French text)	413
Switzerland	
Law of June 24, 1955	265
United States	
President, The	
Proclamation of August 5, 1955 (University Copyright Convention) 1,	267
Austria, treaty with	25
India, agreement with	266
Japan, provisional arrangement with	26
Public Law 452 (deposit of photographs in Classes G. H. I. K.)	343, 452
Congress (84th)	
House of Representatives	
H. J. Res. 270 ("Stars and Stripes Forever")	3
H. J. Res. 341 ("Star Spangled Banner")	4

* All references are to item number, except where page numbers are given.

	Item*
H. J. Res. 385 (Cannon's Procedure)	5
H. R. 5876 (deposit of photographs in Classes G, H, I, K)	6
H. R. 6654 (coin-operated machines)	7
H. R. 6716 (infringement)	8
H. R. 6716 (infringement), H. Rep. 2494	404b
H. R. 6730 (return of vested property)	9
H. R. 6855 (coin-operated machines)	10
H. R. 6890 (coin-operated machines)	11
H. R. 6970 (return of vested property)	12
H. R. 7300 (tax, patent infringement income)	13
H. R. 7643 (tax, royalty income from U. K.)	14
H. R. 10263 (fee, print or label)	344
H. R. 10263 (fee, print or label), H. Rep. 2417	404c
H. R. 781 (statute of limitations)	408
H. R. 781 (statute of limitations), H. Rep. 2419	404a
 Senate	
S. 2213 (interstate commerce, transport of publications)	18
S. 2227 (return of vested property)	19
S. 125, report (Illinois Lincoln emblem)	20
S. Rep. 1602 (on H. R. 5876; deposit of photos in Classes G, H, I, K)	263, 404
 Department of the Army	
Sec. 598.204 (contracts for motion pictures, etc.)	21
 Department of State	
Intergovernmental Copyright Committee, Paris, June 1956, report	409
U. S. Treaties (Japan)	26
U. S. Treaties (India)	266
U. S. Treaties (U. S. and other Governments)	267
 Treasury Department	
Belgium, income tax convention	100
Customs Bureau, Sections 11.19 and 11.21, Code of Federal Regulations	342
 Copyright Office	
Copyright Notice, provisions	2
Registration, miscellaneous amendments	99

*All references are to item number, except where page numbers are given.

	Item*
Regulations (in effect as of Sept. 16, 1955)	406
Regulations (1874 to date)	485
Statute of Limitations on Copyright Litigation, Hearings on H. R. 781	337
Title 17, with amendments up to and including the Act of March 29, 1956, 70 Stat. 63	405

DECISIONS

Affiliated Music Enterprises v. Sesac, Inc. (S.D. N.Y.)	115
Alexander v. Irving Trust Co. (S.D. N.Y.)	30
Alexander v. Irving Trust Co. (2d Cir.)	211
Avedon v. Exstein (S.D. N.Y.)	417
Ballentine v. DeSylva (9th Cir.)	110
Boucher v. DuBoyes, Inc. (S.D. N.Y.)	349
Buckler v. Paramount Pictures, Inc. (S.D. N.Y.)	31
Cinerama Products Corp. v. Schwarz (Sup. Ct. N.Y.)	272
Columbia Pictures Corp. v. National Broadcasting Co., Inc. (9th Cir.)	210
Composers, Authors and Publishers Association of Canada Ltd. v. Elmwood Hotel Ltd. (Exch. Ct. of Canada)	351
Composers, Authors and Publishers Association of Canada Ltd. v. Sandholm Holdings, Ltd. (Exch. Ct. of Canada)	352
Cory v. Commissioner of Internal Revenue (2d Cir.)	347
Cory v. Commissioner of Internal Revenue (pet. cert.)	420
Curtis v. American Book Company(S.D. N.Y.)	114
Desny v. Wilder (Cal. D.C. of App.)	119
DeSylva v. Ballentine (S.Ct.)	416
DeSylva v. Ballentine (cert. gr.)	212
Edward B. Marks Music Corp. v. Continental Record Co. (2d Cir.)	27
Edward B. Marks Music Corp. v. Continental Record Co. (cert. den.).....	111
Ettore v. Philco Television Broadcasting Corp. (3d Cir.)	271
Greenbie v. Noble (S.D. N.Y.)	269
Hill and Range Songs, Inc. v. London Records, Inc. (Sup. Ct. N.Y.)	32
Hollywood Jewelry Mfg. Co., Inc. v. Dushkin (S.D. N.Y.)	213
Kashins v. Keystone Lamp Mfg. Co. (S.D. N.Y.)	117
Lampert v. Hollis Music, Inc. (E.D. N.Y.)	418
M. J. Golden & Co. v. Pittsburgh Brewing Co. (W.D. Pa.)	268

*All references are to item number, except where page numbers are given.

	Item*
Miller v. Goody (S.D. N.Y.)	348
Miner v. Employees Mutual Liability Insurance Co. of Wisconsin (D. D.C.)	28
Miner v. Employees Mutual Liability Insurance Co. of Wisconsin (C.A. D.C.)	270
Morrocco, Rabat (Ct. of App.)	422
Philco Television Co. v. Ettore (cert. den.)	419
Republic Pictures Corp. v. Rogers (9th Cir.)	29
Royal v. Radio Corp. of America (S.D. N.Y.)	116
Rushton Company v. F. W. Woolworth Co. (S.D. N.Y.)	112
Standard Industries Ltd. v. Rosen (Ont. High Ct.)	353
Szekely v. Eagle Lion Films, Inc. (S.D. N.Y.)	421
Trifari, Krussman & Fishel, Inc. v. Charel Co. (S.D. N.Y.)	113
Warshawsky v. Carter (D. D.C.)	118
Wihtol v. Wells (7th Cir.)	350

TREATISES, ARTICLES AND EDITORIALS

Authors

	Item*		Item*
Abel, Paul	55, 377	Brock, Leo.....	76
Arras, Gerth	64	Bundy, June	469
Bandorf, Robert.....	233	Burkhardt, Karl	65
Banker, Robert E.	184	Burton, Robert J.	123
Bappert, Walter	194, 400, 401	Bussmann, Kurt.....	453
Beier, Friedrich Karl	159	Canals Navarete, Salvador	43
Benkard, Georg.....	234	Candian, Aurelio	241
Bergstrom, Svante.....	359	Cary, George D.	39, 53, 142, 143
Bogsch, Arpad	56, 148, 363	Castelain, Raoul.....	294
Bohmer, Alois	44	Celoria, Carlo	387
Bolla, Plinio	39, 57, 140	Choka, Allen O.	137
Boor, Hans Otto de	223, 378	Chopnick, Max	246, 247
Boutet, Marcel	39, 141	Claughton, Richard	248
Bramhall, Brian	439	Coleman, Earle E.	394
Bricker, Seymour M.	218a	Collins, Warren Thomas	138

*All references are to item number, except where page numbers are given.

Item*	Item*
Cracas, Ronald 424	Hartlieb, Horst von 163
Davis, Wilma S. 122	Hauffe, Hans Günter 67
Dean, Joseph 292	Henn, Harry G. 45, 127
Derenberg, Walter J. 150, 280, 354	Henssler, Eberhard 381
Desbois, Henri 151, 224, 225	Hepp, Francois 58, 152, 191
Diaz Lewis, Juan O. 249	295, 446, 447, 460
Dommenge, René 149	Heyn, Karl 164
Dreben, Raya S. 424	Hirsch Ballin, Ernst D. 68, 128
Dubin, Joseph S. 124, 427, 428, 429	146, 165, 166, 236, 303, 335,
Duron, Jacques 445	382, 430
Emringer, E. 302	Hüttl, Adolf 237
Ermecke, Gustav 136	Ilosvay, Thomas 296
Erstad, Tennes I. 355	Ioannoufi, Tassos 176
Evans, Luther H. 187, 250, 281	Ivamy, E. R. Hardy 293
Fabiani, Mario 78, 174, 459	Jackson, Roy V. 221, 365, 441
Fernandez del Castillo, German ...	James, F. E. Skone 222, 442
39, 144	Janssens Casteels, Willy 177
Finkelstein, Herman 125, 425	Jougllet, Rene 98
Fischler, Josef 379	Kaemmel 197
Fisher, Arthur 148	Kaplan, Benjamin 218b, 253
Flinders, Arthur C. 434	Kaye, Sydney M. 304
Foley, Patrick J. 282	Kleine, Heinz 69
Foner, Mathew 120	Knap, Karel 455
Franceschelli, Remo 242, 388	Kopsch, Julius 238
Francon, Andre 38	Kupferman, Theodore R. 120
Freyer, M. 195	Ladas, Stephen P. 47
Friebberger, Kurt 160	Laskin, Franklin T. 424
Friedrich, Wolfgang 196	Lehmann, Heinrich 136
Froschmaier, Franz 161	Leinveber, G. 383, 456, 457
Furler, Hans 380	Lemhoefer, Dieter 360
Gamm, Otto Friedrich von 454	Lid, Olav 154, 259
Gebhardt, Armin 134	Ljungman, Seve 444
Gerstenberg, Ekkehard 235	Logdberg, Ake 357, 458
Giannini, Amadeo 79, 175,	Masouye, Claude 449, 461
310, 389	Mattyssens, Jean 59, 297
Goldbaum, Wenzel 162, 334	Meagher, Wm. H. 48
Goldman, Abe A. 33, 34	Memel, Robert A. 367
Goodman, A. 440	Mentha, Bénigne 70
Goren, Robert 283	Metzler, Wolfram von 167, 168
Greco, Paolo 94, 479	Michaelson, Leonard 49
Guèlielmetti, G. Antonio 243	Middleton, George 320
Hackemann, Lutz 126	Minton, John H. Jr. 435
Haeger, Siegfried 66	Möhring, Philipp 462
Haertel, Kurt 401	Moll, Theodor 71
Halperin, Daniel 252	Morales, Rafael 364

*All references are to item number, except where page numbers are given.

Item*	Item*
Nicholson, Margaret..... 273	Singer, Daniel M. 424
Nimmer, Melville B. 284, 285	Solinger, David M. 274
Norman, Denny 328	Sommerich, Otto C. 287
Onder, Emilio 179	Sordelli, Luigi 42, 85, 86
Orton, Peter K. 261	87, 88, 181
Overath, Johannes..... 136	Sparano, Vincenzo..... 182
Pfennig, Bruno 72	Stark, John 255
Pilpel, Harriet F. 396, 474,	Stiefel, Maurice B. 366
475, 476, 477	Straschnov, Georges ... 227, 299, 313
Pinner, H. L. 403	Strauss, William 36, 131
Piper, Edwin E., Jr. 286	170, 228, 288, 376
Plage, Wilhelm 73, 402	Strom, Stephen E. 50
Plasant, Robert 80, 155, 217	Taubman, Joseph 289
Podaliri, Guido 81, 180	Thiebault, Emmanuel 61
Rambour, Heinz 361	Thijssen, E. H. 147
Randerson, Roelif J. 369	Tournier, Alphonse 229, 452
Ransom, Harry 423	Troller, Alois 62, 135, 158,
Recht, Pierre 279	239, 308, 362, 385
Richartz, Willy 136	Ulmer, Eugen 41, 240
Riedel, H. 305, 306	Vander Haeghen, Alfred 300
Rinaldi, Carlo Marco 390	Varmer, Borge 129, 430
Ringer, Barbara A. 130	Vaunois, Louis 301, 451
Roeber, Georg 384	Vilbois, Jean 63
Roger-Ferdinand 156	Walden, Kenneth E. 220
Ronga, G. 298	Waldkirch, Ed. von 171
Sahmer, Heinz 307	Wallace, H. A. 93
Sala, Guiseppe 82, 391	Wasserstrom, Alfred H. 438
Sanctis, Valerio de 39, 145	Wawretzko, Herbert..... 309
157, 169, 311, 392, 430, 463, 464	Weiss, Raymond 230
Saporta, Marcel 60, 89, 332, 450	Werhahn, Jürgen W. 75, 356
Sargoy, Edward 132	Whale, R. F. 193
Saurrate, R. 83	Willemetz, Albert..... 231
Schonherr, Fritz 74	Wilson, Leslie 331
Schulman, John 132	Winterich, John T. 472
Schulze, Erich 336	Wolff, Hans-Joachim 172
Secretan, Jacques 276, 358, 443	Yankwich, Leon R. 291, 370
Seidel, Arthur H. 139	Yeager, Phil 255
Sgroi, Vittorio 84	Young, Robert E. 424
Sherman, Paul J. 219	Zedek, Gustav 173
Shull, J. Roger 424	Zippelius, Reinhold 386
Siegwart, Henry 312	

*All references are to item number, except where page numbers are given.

Subject Matter

Item*	Item*
"Ace in the Hole"	119
ACID	372
Access	30, 118
Ad interim	46
Advertising	123
Alien property	19, 205, 287, 327
Andorra	1
Anglo-American relations	193
"Annabella"	418
Anne, Statute of	423
Antenna, community	369
Architectural work	422, 451
Argentina	102
Artist, privilege	153
Artist, rights	84, 238
Artistic work	2, 381
ASCAP	424, 425
Attorney's fees	27
Australia	53, 54
Austria	25, 74, 173
Author, rights	43, 79, 86, 88, 151, 224, 229, 230, 238, 241, 242, 305, 310, 461, 464
Authorization	116
Bankruptcy	382, 390
Belgium	47, 100, 279, 452, 479
Berlin	23
Berne Bureau	47, 276, 278, 358, 448
Berne Convention	39, 47, 55, 62, 70, 95, 105, 158, 225, 227, 230, 258, 279, 295, 298, 299 453, 456
BIEM	333, 336
Book	118
Book publishing	137, 184, 186
Book sellers	93, 318
Broadcasting	85, 86, 147, 164, 173, 177, 210, 224, 295, 443
Burlesque	210, 282, 286, 291, 432, 475
Cambodia	1
Canada	142, 190, 204, 205, 221, 351, 352, 365, 371, 372
Cannon's Procedure	5
"Carmen Jones"	156
"Cavalleria Rusticana"	77
Catalogs	117, 353
Characters	450
"Chee Chee-oo Chee"	32
Children, rights	110, 416, 433
Chile	1, 101, 102
CISAC	129
Co-author	114, 297
Colombia	103
Collaboration	60
Comedie Francaise	59
Common law, rights	119, 161
Composer, rights	116, 134, 136, 224, 229
Composite works	438
Compulsory license	177, 236, 367, 382
Conductor, rights	239
Conflict of laws	437
Connected rights	203
Contract	43, 59, 94, 96, 137, 151, 310, 361, 417
Contracts, Army	21
Copying	66, 118, 400
Costa Rica	1
Counterclaim	115
Cuba	206, 264, 486
Czechoslovakia	43, 63, 410, 455
Damages	78
Decisions	121, 122, 150, 199, 280
Dedication	367
Deposit	6, 138
Design	130, 221, 255, 365, 372, 380, 381, 392, 441, 451
Design, patent	49, 355
Design, protection	47, 49, 391
Diary	194

*All references are to item number, except where page numbers are given.

	Item*		Item*
Divisibility	127	Hong Kong	261
Doll	112	Idea, protection	360, 450
Dramatist's Guild	320	Illegitimate children, rights	110, 416, 433
Duration	125, 427	Illinois, emblem	20
Egypt	22	India	198, 266
Employee	307	Indonesia	298
Fair use	403, 434	Infringement	8, 13, 30, 90, 112 113, 118, 293, 350, 353
Fashion design	252	Injunction	32, 112, 113
Film, author	356	Insurance	28, 270
Film, reporting	235	Inter-American Convention	101, 102
Film, rights	133, 271	International Conventions	38, 195, 206, 249, 429
Formalities	428	International Copyright	249
France	61, 80, 83, 109, 149, 151, 155, 159, 166, 198, 231, 249, 252, 301, 389, 411	Interrogatory	269
	446	Israel	1
"From Here to Obscurity"	210	Italy	42, 76, 81, 82, 84, 86, 88, 157, 175, 179, 180, 181, 182, 241, 242, 243, 310, 313, 387 388, 389, 392, 415, 459
Future work	94	Japan	26, 184, 186, 198, 254, 319, 340
"Garbo"	183	Juke-box	16
GEMA	462	Juke-box, exemption	7, 10, 11, 395
Germany (Democratic Republic)	105, 195, 197, 207, 208	Laos	1
Germany (Federal Republic)	1, 23, 24, 36, 40, 62, 64, 66, 67, 68, 69, 70, 72, 75, 94, 104, 106, 128, 129, 133, 134, 135, 136, 159, 163, 165, 167, 196, 197, 223, 224, 234, 235, 236, 237, 240, 306, 327, 336, 361, 378, 380, 401, 402, 414, 457, 462	Law, revisions	15, 17, 33, 34, 53, 132, 143, 144, 185, 337
Gift, manuscript	347	Letters	68
"Gone with the Wind"	245	Libel	454, 474, 475
Government infringement	90, 366	Library, deposit	138, 481
Great Britain	38, 95, 192, 193, 209, 222, 244, 256, 257, 258, 260, 292, 293, 318, 321, 377, 397 398, 399, 403, 440, 442, 482	Library, photocopying	331, 399
Greece	176	Librettist	134
Haiti	1	License	115, 204, 236, 309, 310, 347, 351, 352, 361, 362
History	38	Limitations, Statute of	8
Holmes, Oliver Wendell	30	Literary property	220
Holy See	51	Literary work	97
		Luxembourg	51, 107, 177, 302
		"Madam President"	118
		Magazine rights	45
		Manufacturing clause	46, 53
		Map	2, 243
		Mechanical reproduction	46, 86

*All references are to item number, except where page numbers are given.

Item*	Item*
Mexico198, 414	Play31, 118
Microfilm 331	Prints 2
Miller, Glenn, records 348	Producers 297
Monaco 1	Property rights 61
Moral right38, 61, 78, 154, 156, 181, 228, 288, 428	Public address system 259
Morocco422, 451	Publication283, 284, 301
Motion picture29, 43, 60, 65 72, 75, 77, 80, 81, 83, 84, 86, 87, 106, 156, 163, 168, 172, 240, 289, 309, 357, 373, 383, 390	Public documents 248
Motion picture, title 167	Public domain 119
Motion to dismiss 117	Public interest 303
"Muenchhausen" 327	Public payant63, 154
Music, copyright237, 239, 272	Public performance 62
Music, recorded15, 85	Publishing18, 196, 241, 242
"My God and I" 350	Public use, copies for 174
Name 168	Radio, reception 74
Neighboring rights.....131, 148, 200, 202, 426, 430, 439, 444, 464	Recordings116, 126, 172, 367, 443, 447, 452
Ninth Circuit..... 370	Related rights128, 131, 149, 169, 299, 307, 311
Norway108, 154, 259, 359 412, 413	Remedies151, 293
Notice2, 46, 113, 213, 327	Renewal rights110, 218a, 466
Obscene work 260	Restrictions 300
Pakistan 1	Right of privacy179, 182, 235, 396
Parody291, 434, 436	Rights, transfer of94, 100, 444
Party, necessary114	Royalties14, 15, 114, 184, 452, 482
Patrimonial rights 151	Santayana, George..... 347
Patent 138	Scientific model 2
Patent infringement, tax 13, 115, 447	Scientific work89, 301, 311
Performance rights 42	Soloist, rights 239
Performers' rights43, 84, 85, 86, 88, 147, 218b, 308, 443, 461	Song, infringement 418
Performing right society...41, 55, 192	Song, rights 32
Personal use, copies for 174	South Africa 258
Philippines, The35, 51, 92, 262	Spain1, 364
Phonograph records ...141, 173, 229, 336, 435, 452	"Stars and Stripes Forever" 3
Photograph180, 263, 268, 417	"Star Spangled Banner" 4
Piracy196, 254, 255, 261, 319, 366	"Strange Interlude" 463
Plagiarism119, 211, 394, 396	"Studs Lonigan" 254
	"Sunset Boulevard" 31
	Sweden379, 458
	Switzerland57, 71, 198, 265, 339
	Tangiers 449
	Tape recorders48, 324
	Tax50, 231, 289, 296, 326
	Tax, law13, 14, 157

*All references are to item number, except where page numbers are given.

Item*	Item*
Television58, 74, 103, 204, 227, 274	Universal Copyright Convention 1, 2, 23, 24, 39, 40, 46, 51, 53, 55, 56, 58, 91, 92, 95, 99, 104, 120, 140, 141, 142, 143, 145, 157, 159, 162, 170, 171, 176, 178, 187, 191, 193, 198, 201, 209, 219, 225, 226, 244, 245, 246, 247, 249, 258, 273, 281, 304, 321, 332, 354, 363, 393, 398, 401, 402, 437, 485, 486
Textbook 114	Wagner, Cosima, diary194, 233
Three-dimensional work 268	War Claims Act 19
Titles294, 383	War, effect 386
Trading with the Enemy Act 19	Widow, rights110, 416
Trademark80, 139	"Woman of Destiny" 118
Translation, rights144, 152, 188, 325, 328	Yugoslavia 415
Treaties, U. S.25, 26	"Zippy" 112
Treble damages 115	
UNESCO39, 51, 187, 277, 281, 290, 363, 375, 409, 461	
Unfair competition348, 353	
U. S. S. R.96, 97, 98, 189, 232	
United States1, 266, 267, 304	
U. S. Copyright Office2, 6, 17, 37, 73	

*All references are to item number, except where page numbers are given.

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