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PART I.

**LEGISLATIVE AND ADMINISTRATIVE  
DEVELOPMENTS**

1. UNITED STATES OF AMERICA AND TERRITORIES

1. *U. S. Copyright Office.*

Patents, trade-marks, and copyright. C.F.R., Title 37, Ch. II—Copyright Office, Library of Congress, Revision of Chapter.

*Federal Register*, vol. 21, no. 156 (Aug. 11, 1956), pp. 6021-6025.

Parts 201 and 202 of Title 37 of the Code of Federal Regulations have been completely revamped and now include those regulations dealing with the deposit of photographs in lieu of copies in certain art classes which had been provided for by P.L. 452 of the 84th Cong., 2d sess.

2. *U. S. Copyright Office.*

Regulations of the copyright office (in effect as of August 11, 1956).

*Washington, Govt. Print. Off., August 1956. 5 p. (U. S. Copyright Office Cir. No. 96).*

3. *U. S. Laws, statutes, etc.*

Loi destinée à amender la loi sur le droit d'auteur afin de permettre, pour certaines catégories d'œuvres, le dépôt de photographies ou autres reproductions assurant l'identification, en lieu et place d'exemplaires d'œuvres publiées (du 29 mars 1956).

*Le Droit d'Auteur*, vol. 69, no. 6 (June, 1956) p. 81.

French translation of P.L. 452, 84th Cong., 2d sess., which provides for the deposit of photographs in certain classes in lieu of original copies.

## 2. FOREIGN NATIONS

4. *Great Britain. Parliament. House of Commons.*

Copyright Bill [Lords], Second reading.

*Parliamentary Debates (Hansard)*, vol. 553, no. 162 (June 4, 1956), pp. 717-813.

The discussion by members of Parliament covers such topics as duration, phonograph records, photographs, broadcasting and television, periodicals, libraries, and the international conventions. The bill was committed to a Standing Committee for further consideration.

## PART II.

## CONVENTIONS, TREATIES AND PROCLAMATIONS

5. *International Labor Organization.*

Proposed international convention concerning the protection of performers, manufacturers of phonographic records and broadcasting organizations. Text approved by the committee of experts (Geneva, 10-17 July 1956).

*Geneva, International Labor Office, July 1956. 10 p. (multilith).*

6. *Republic of Germany (East Germany).*

Déclarations de l'Allemagne (République fédérale), du Canada, de l'Espagne, de la France, de la Hongrie, de l'Irlande, de la Nouvelle-Zélande, du Pakistan, des Pays-Bas, de la Suisse, de la Thaïlande, de la Turquie, concernant l'application à la République démocratique allemande de la Convention de Berne révisée à Rome le 2 juin 1928.

*Le Droit d'Auteur*, vol. 69, no. 8 (Aug. 1956), pp. 105-109.

A series of notifications received by the Swiss government from countries, members of the International Copyright Union, relative to a letter from the Democratic Republic of Germany (East Germany) concerning the application of the Bern Copyright Convention as revised through 1928 to that territory.

7. *Switzerland.*

Notification par le gouvernement suisse, aux gouvernements des pays unionistes, concernant l'appartenance de l'Indonésie à l'Union internationale pour la protection des oeuvres littéraires et artistiques (du 15 mai 1956).

*Le Droit d'Auteur*, vol. 69, no. 7 (July 1956), pp. 93-94.

Notification by the Swiss government concerning the adherence of Indonesia to the Bern Copyright Convention as revised in 1928.

8. *United Nations Educational, Scientific and Cultural Organization. Intergovernmental Copyright Committee.*

Report on the First Session (Unesco House, Paris, 11-15 June 1956).

Paris, Unesco, July 26, 1956. 8, 6, 3 p. (UNESCO/CUA/78, Annex A, B, C).

9. *United Nations Educational, Scientific, and Cultural Organization. Copyright Section.*

Universal Copyright Convention: State of Ratifications and Accessions.

*Copyright Bulletin*, vol. 9, no. 1, (Paris, 1956) pp. 3-4.

Note: Also given in French.

## PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY  
AND ARTISTIC PROPERTY**

## A. DECISIONS OF U. S. COURTS

## 1. Federal Court Decisions

10. *DeSylva v. Ballentine*, 76 S.C. 974, 100 L.Ed. No. 16, 109 U.S.P.Q. No. 10, Supp. (U.S.Sup.Ct., June 11, 1956), *rehearing denied*, Oct. 8, 1956, 111 U.S.P.Q. No 3, p. 111. (See 3 BULL. CR. SOC. p. 148, item 416.) The Editors understand that a second petition for rehearing is being filed with the United States Supreme Court in the above case.

11. *Smith v. George E. Muehlebach Brewing Company*, 140 F.Supp. 729 (D.C.W.D. Mo. Mar. 13, 1956).

Action for infringement of copyright under 17 U.S.C. 5 (e) for a musical composition entitled "Tic Toc", verbally described as "Tic Toc, Tic Toc, Time for Muehlebach", scored to notes C and G in the musical key of C. Plaintiff admitted that the words "Tic Toc" were in the public domain, and "Time for Muehlebach" had been dedicated to the public domain by publication without copyright. He testified he had a friend "write down the music" to produce the sound of a clock ticking. The issue of law as to whether the musical composition was subject to copyright protection was submitted to the Court before trial.

*Held*, there was no valid copyright. Complaint dismissed.

The Court said "it must be kept in mind that a musical composition as an idea or intellectual conception is not subject to copyright, either as to its words or music. . . . It is the words and music of a song, or jingle, considered as a unitary whole, which is the subject of copyright". And, "if all that an author of a musical composition does is add a mechanical application of sound to a word that is itself not copyrightable, and adds the same to a descriptive phrase already dedicated to the public domain, without the use of even the most simple harmonious chords, he has no musical composition subject to copyright."

In applying these rules to the instant case, the Court found: "That the music claimed for his jingle is too simple to be copyrightable, that it is a mere copy of what has been in the public domain of all music for centuries, and that it may be reproduced, mechanically, by a clock, and is, therefore, standing alone, not fit material or subject for copyright, should need no fortifying authority. . . . We have no hesitancy in ruling that plaintiff has no copyright to the music of his jingle."

"Nor does he have a copyright because he was the first to use the words 'Tic Toc, Tic, Toc, Time for Muehlebach', which is the main premise for his claim of copyright. . . . plaintiff's jingle, measured by all that plaintiff can claim under his copyright, is the addition to "Time for Muehlebach' of the phonetic sound, 'Tic, Toc', which denotes time itself. That such sound is not original and is the least possible expression that could be added to that descriptive phrase is the most that can be said for such jingle. Such insignificance is not copyrightable, because among other things as above indicated, 'time' has long been a referent to 'Muehlebach' beer."

12. *Oleg Cassini, Inc. v. Dorene Fashions Corporation*, 110 U.S.P.Q. 451 (N.Y.Sup.Ct., Special Term, July 7, 1956).

Plaintiff sued for injunction restraining defendants from copying any of its original dress designs. They were not patented or copyrighted, and the dresses were freely sold in the market. Plaintiff's claim rested on the single ground, in effect conceded by the defendants, that they copied the original designs.

*Held*, injunction granted.

The Court said that "Ordinarily anyone is free to copy an original dress design released to the public and not protected by patent or copyright." However, in 1954 plaintiff had sued defendants' predecessor corporation for infringement of a design patent. The suit was settled by a stipulation, and the predecessor corporation promised in a letter of the same date, signed by its president who owned 50% of its stock, that "at no time will we infringe or copy any of your designs. . . ."

The Court found "The foregoing letter was an integral part of the settlement of the infringement action. Its language is explicit and all-embracing as it was intended to be. It committed the corporation contractually to refrain from copying the plaintiff's designs, whatever might have been its rights in the absence of such contractual undertaking. The commitment so made must be honored and may not be evaded by the plea that the business is now being conducted in the form of a partnership, in which the signer of the letter just quoted is an equal partner. The other partner had been active in the corporation and was obviously familiar with the terms of the settlement."

13. *Trifari, Krussman & Fishel, Inc. v. B. Sternberg-Kaslo Co. et al.*, 110 U.S.P.Q. 487 (D.C.S.D.N.Y., July 12, 1956).

Action for copyright infringement and unfair competition, alleging that plaintiff's copyright covering a pin representing a hansom cab was infringed by defendants' allegedly similar pins.

*Held*, motion for preliminary injunction denied without prejudice to renewal upon evidence that defendants had resumed manufacture or distribution of the pins.

Defendants' first defense was that costume jewelry was not copyrightable. But the Court upheld the validity of Regulations 37 C.F.R. 202.8, which include costume jewelry as "works of art".

The second defense claimed substantial differences between the two pins, but the Court found them to be substantially identical. The fact that representations of hansom cabs may have been used for costume jewelry earlier was of no import where defendants admittedly used plaintiff's pin, with minor changes, as a model.

As a third defense, defendants claimed that the copyright notice "Trifari ©" did not meet the requirements of 17 U.S.C. 19 since Trifari was not the full name of the proprietor but of the trademark owned by the proprietor. Citing *National Comics Publications v. Fawcett Publications*, 2 Cir., 191 F.2d 594, 90 U.S.P.Q. 274 and other cases permitting insubstantial deviations from the letter of the statutory requirement as to notice, the Court found it difficult to believe that any innocent person could have been misled; the notice substantially complied with the statutory prescription.

The fourth defense, that the copyright notice was not on the pin which defendants used as a model, was, however, accorded more weight. The Court found the effect of 17 U.S.C. 21 to be "that, where one copies the copyright owner's article and, because of unintended omission of the notice from the original, is unaware of the copyright, he cannot be treated as an infringer except with respect to things after he learns of the copyright, while, if he is aware of the copyright, omission of the notice or a defect in the notice will not protect him." The original pin that was copied was not available, but defendants produced other pins made by plaintiff where only a faint © could be seen with the naked eye, and only careful scrutiny under a magnifying glass could detect a faint "Trifari". The printed copyright notice on two tags usually attached to plaintiff's pin did not meet the statutory requirements of 17 U.S.C. 19, and they were not effective as actual notice since they may have been removed in the retail store. Also, even though "Trifari" was advertised and may have been a well-known name, it "could not be held sufficient to advise even the most experienced of custom jewelers that "Trifari" had produced a copyrighted though unlabeled pin."

The question remained whether a preliminary injunction should issue, in view of defendants' statement that they ceased to manufacture and sell the infringing pin, and that they did not intend to do so during the pendency of the action. The Court found conflict among the decisions and, in its discretion, denied the injunction. "Where, as here, the court could not make a finding that the defendants had notice of the copyright prior to the institution of the action and defendants do not intend to infringe during the pendency of the action, I do not believe a preliminary injunction is warranted.

14. *Nikanov v. Simon & Schuster, Inc., et al.*, 110 U.S.P.Q. 491 (D.C.S.D. N.Y., July 27, 1956).

Plaintiff, a teacher of Russian, and defendant publishing company carried on negotiations for a period of years concerning the publication of a Russian primer. Plaintiff's copyrighted chart for teaching the Russian alphabet and grammar through the use of pictures and cognate words, as well as his manuscript, had been in defendant's possession. Defendant decided against publishing the primer, but eventually came out with a book entitled "An Invitation to Russian", giving co-authorship credit to an employee (also defendant herein) who apparently knew Russian "after a fashion"; and to the author (also defendant herein) of "An Invitation to Spanish", who allegedly had prepared "An Invitation to French" and "An Invitation to Portugese" (all published by defendant publishing company) with the help of co-authors familiar with those languages, by merely substituting them for Spanish. The latter testified that she did the same with "An Invitation to Russian", with the help of the employee who substituted Russian for Spanish. Plaintiff alleged causes of action (1) based exclusively on the copyrighted chart and (2) based on unfair competition, for copying both the chart and the unpublished manuscript.

*Held*, for plaintiff.

Access having been established, the court found that probably less than 5% of the total printed matter was similar to plaintiff's manuscript, "but without the alphabet scheme and the use of cognates and mnemonic drawings used by plaintiff the balance of the book would be meaningless. The first hurdle in teaching the Russian language is the alphabet and without that clearly understood the balance luxuriates in a riotous morass". The Court also discounted defendants' claim that the other Invitation books were used as a format.

With reference to defendants' objection to the court's jurisdiction over the second cause of action, the Court said: "Actually the second cause of action is based upon plaintiff's common right in an unpublished writing and his copyrighted chart, parts of which have been adopted by defendants in *An Invitation to Russian*. Is such a cause of action a claim for 'unfair competition' so as to come within the statutory categorization permitting joinder of such claims with copyright claims [28 U.S.C. 1338(b), requiring a substantial and related claim under the copyright laws]? We hold it is a claim for 'unfair competition'." Defendants' claim that they merely took plaintiff's method over-simplified their action; plaintiff proved copying of his expression, stories and diagrams, the result of

his personal skill. The Court found plaintiff's "claim for unfair competition was properly before the court since it was joined with a substantially related claim under the copyright law."

"With reference to plaintiff's first cause of action for copyright infringement, the evidence clearly indicates that defendants have copied without any independent industry a part of plaintiff's copyrighted chart. But is such copying a substantial part? We are convinced that the rule is not quantity but the quality of what was copied. What was copied principally was the scheme in plaintiff's own expression of the alphabet and the cognate words he used to make the student better acquainted with the language before any question of grammar or syntax could be learned."

15. *Ilyin v. Avon Publications, Inc.*, 110 U.S.P.Q. 356, (D.C.S.D.N.Y., July 24, 1956).

Action for copyright infringement and third party action for indemnification of defendant from Partisan Review. In 1930 Librarie Stock published, in France, Jean Cocteau's "La Voix Humaine", and obtained a U.S. copyright. Later that year, Atlantic Monthly secured copyright on its entire issue containing an English translation of the play. In 1935, Cocteau "assigned" the motion picture rights to plaintiff for 21 years. Later in 1935, Cocteau granted plaintiff "the exclusive rights to the aforementioned play" for translation, publication etc. in all languages and countries except France. Plaintiff translated it and secured copyright, even though he filed only one copy with the Register. In 1947, Stock authorized the Partisan Review to "translate (the play) for publication in the Partisan Review". It was so translated and published in 1948, the Review obtaining a copyright on its entire issue. When Plaintiff became aware of this in 1950, he requested an explanation from the Review; the latter disclaimed knowledge of plaintiff and referred him to Stock. Stock and the plaintiff then agreed to unite their efforts to have the play published, and to decide by mutual consent which publisher should be granted those rights. In 1953 the Review granted exclusive rights to defendant to publish Review stories in book form, and promised to hold it harmless against copyright infringement claims. The Review then sent two royalty checks to Stock; the latter asked in vain for an explanation and reserved its rights. Defendant published a book containing Review's translation of play.

*Held*, complaint dismissed for failure to join an indispensable party, the decree being left open to enable plaintiff to request Stock to join as co-plaintiff. If the request be refused, plaintiff may serve Stock with a

notice of suit and make it an involuntary party, pursuant to Fed.R.Civ.P. 19(a).

The answer contained 13 separate defenses, but the Court found only four merited discussion. The first was that defendant's publication was with the express authorization of the Review, a licensee of the copyright proprietor. But the Court held the Review could not give such permission since it had been granted solely the right to publish a translation. "Partisan Review became a bare licensee, . . . without any right to assign its privilege. . . . A blanket right on an issue of a periodical does not give any rights to a particular article unless such rights had been previously assigned to the publisher." Defendant was an infringer; if it be liable to plaintiff, it must be indemnified by the Review, pursuant to their agreement.

With respect to the second defense (that plaintiff failed to comply with the statutory requirements for the filing of copies and notice of claim) and to the third defense (that his copyright was ineffectual since his translation was made without the copyright owner's consent), "the short answer is that the validity of plaintiff's copyright is immaterial since he is seeking to recover on the basis of the Librarie Stock copyright." Nevertheless the Court decided to dispose of these defenses and found that plaintiff had secured copyright for an unpublished play under Sect. 12 of the Act of 1909. The mimeographing of 100 copies of plaintiff's translation, and their distribution to producers free of charge to interest them in the work, was not publication within the meaning of the statute. Consequently, plaintiff was not affected by 17 U.S.C. 10 and 19, pertaining to sufficiency of copyright notice. Also, he did have the copyright owner's consent for his translation, whether Cocteau or Stock were such owner.

The last defense was that plaintiff was not the real party in interest, and that Atlantic Monthly and Stock were indispensable parties. As to Atlantic Monthly, "for all that appears it may have been an infringer or a bare licensee"; it was not even a proper party. But Stock, on the face of the record, was the copyright proprietor. Plaintiff claimed Stock was merely Cocteau's agent and publisher and Cocteau was the equitable owner. However, "aside from the fact that no evidence exists to support this contention, it would avail plaintiff nothing since Cocteau would then become an indispensable party. This is so because even a sole and exclusive licensee may not sue without joining the owner of the copyright. . . . While it is true that the agreement between plaintiff and Cocteau speaks in terms of assignment, it does not satisfy the requirements for an assignment of a copyright. . . , enabling plaintiff to sue by himself."

## 2. State Court Decisions

16. *Desny vs. Wilder et al.*, 299 P.2d 257, 110 U.S.P.Q. 433 (Sup. Ct. of Calif., June 28, 1956).

Action to recover the reasonable value of a literary composition or of an idea for a photoplay, based on facts from historical material in the public domain. Plaintiff alleged he submitted a synopsis, embodying the idea, to co-defendant motion picture company through the secretary of one of its producers, co-defendant Wilder, and for the purpose of sale. Plaintiff claimed the idea and synopsis were accepted and used by defendants in making the motion picture "Ace in the Hole". The picture closely paralleled both the synopsis and the historical material. The lower Court granted defendants' motion for summary judgment. Plaintiff appealed.

*Held*, reversed and remanded.

The Court discussed in a lengthy opinion, much to the displeasure of one of the judges who, however, concurred in the result, the law pertaining to summary judgments, to ideas, to literary property and to amendments of complaints. Applying the law to the facts, it said: "Here, as conceded by defendants for purposes of their summary judgment motion, plaintiff, in accordance with his testimony, submitted his synopsis to them through Wilder's secretary and such submission included a declaration by both plaintiff and the secretary that defendants were to pay for his story if they used it. The mere fact that at the time of plaintiff's first telephone call to Wilder's office he described the central idea of the story to the secretary in response to her insistence that he explain the purpose of his call would not as a matter of law deprive plaintiff of the right to payment for the story discussed by him and the secretary when he again spoke with her two days later and at her request read his synopsis to her, for her to take down in shorthand for defendant's consideration; the two conversations appear to have been parts of a single transaction and must be construed as such" Furthermore, "the evidence would support a finding that plaintiff's synopsis reached defendants through the secretary, and that they are chargeable with knowledge of the conditions on which the synopsis was offered."

The Court compared synopses of defendants' scenario and plaintiff's story, and found that a factual issue rather than one of law existed as to whether defendants used plaintiff's synopsis or developed the production independently. It refused to view the picture itself, as relating merely to the weight of the evidence.

The Court then instructed the trier of facts: "Inasmuch as plaintiff's story is taken from the public domain, and as both his story and that of the defendants are in principal substance historically accurate, it must be borne in mind that the mere facts that plaintiff submitted and offered to sell to defendants a synopsis containing public domain material and that thereafter defendants used the same public domain material, will not support an inference that defendants promised to pay for either the synopsis or for the idea of using the public domain material. The plaintiff can have no property right in the public domain facts . . . or in the abstract idea of making a photoplay dramatizing those facts. On the other hand, the fact that plaintiff used the public domain material in constructing his story and synopsis would afford no justification whatsoever for defendants to appropriate plaintiff's composition and use it or any part of it in the production of a photoplay — and this, of course, includes the writing of a scenario for it — without compensating plaintiff for the value of his story. And the further fact, if it be a fact, that the basic idea for the photoplay had been conveyed to defendants before they saw plaintiff's synopsis would not preclude the finding of an implied (inferred-in-fact) contract to pay for the manuscript, including its implemented idea, if [they] used such manuscript."

17. *Glane v. General Mills, Inc.*, 298 P.2d 626, 110 U.S.P.Q. 391 (Cal. Dist. Ct. of App., 2d Dist., June 14, 1956).

Prior to 1945, plaintiffs were employed by defendant. They wrote to defendant that they were working on a promotional idea directed to young girls, i.e. a packaged kit containing cooking utensils, a recipe book and small packages of defendant's products. Plaintiff Glane also suggested the kit could contain a membership card to be sent to Martha Meade or Betty Crocker. The letter continued: "If you are interested in this idea we would naturally expect to have a conference with you personally on this matter. We would be glad to send you a sample kit which we are now working up if you would like us do so." Nothing happened until 1953 or 1954, when defendant began selling a Betty Crocker Junior Baking Kit. Plaintiffs claimed the kit used their original format and idea outlined in the letter. A demurrer was sustained to their original complaint, attempting to state a cause of action for misappropriation of literary property, infringement of common law copyright, breach of contract and accounting. A demurrer was also sustained to their first amended complaint, attempting to state a cause of action for breach of contract and accounting, it not being clear whether they alleged an express or implied contract. Plaintiffs then filed a second amended complaint,

attempting to state again the same last two causes of action. The lower Court sustained, without leave to amend, a demurrer to this complaint. Plaintiffs appealed.

*Held, judgment affirmed.*

On the facts, the Court found the last complaint did not state sufficient facts to constitute a cause of action for breach of an express contract. Even if the letter could be deemed to be an offer, there was no acceptance, for plaintiffs admitted they had received no response. "There is language in the complaint to the effect that the alleged use of plaintiffs' format and idea constituted an acceptance of their offer, but this language is, at best, conclusory, and is refuted both by plaintiffs' own admissions and by the lapse of time between plaintiffs' offer and the appearance of General Mills' own kit."

As to the alleged breach of an implied contract, plaintiffs relied on *Weitzenkorn v. Lesser*, 40 Cal.2d 779, 256 P.2d 947, 97 U.S.P.Q. 545, 1 BULL. CR. SOC. 39, item 105 (1953) and *Kurlan v. C.B.S.*, 40 Cal.2d 799, 256 P.2d 962, 97 U.S.P.Q. 556, 1 BULL. CR. SOC. 38, item 104 (1953), in which the Supreme Court of California had reversed judgments sustaining demurrers without leave to amend. But the Court said: "The complaint in the instant case, as well as the complaints in *Kurlan* and *Weitzenkorn*, contained allegations to the effect that material was submitted at the request of the defendants under an implied agreement that if the material were used by defendants, plaintiff would be paid the reasonable value thereof. In our case, however, the letter which was incorporated into the complaint contradicts those allegations. It requested an expression of opinion as to whether General Mills was interested in plaintiffs' idea and format and indicated that plaintiffs would prepare and submit a kit and cookbook if plaintiffs received a favorable answer. No favorable answer was received, and the kit and cookbook were never submitted to General Mills for the good reason that General Mills was not interested . . . Under plaintiffs' theory anyone to whom the plan was submitted would be forever barred from putting out a children's baking kit without paying plaintiffs for the privilege. Rights in commonplace ideas may not be appropriated in this manner."

18. *Sunset Securities Company v. Coward McCann, Inc.*, 110 U.S.P.Q. 329, (Cal. Dist. Ct. of App., 2nd Dist., May 18, 1956).

The author of the novel "Prelude to Night" assigned all his rights to defendant publishing company. Defendant copyrighted it in 1945. In 1946, defendant conveyed to American-International, for a period of

ten years, the exclusive motion picture and television rights, and the right to copyright such adaptations; it was further agreed that after this period all rights would revert to defendant unless American-International chose to pay an additional amount for all rights in perpetuity. This option was exercised in 1946 but the amount due was never paid. However, defendant assigned all its rights to American-International, which in turn assigned them to Producing Artists. The latter produced and copyrighted a motion picture entitled "Ruthless", based on the novel. A bank foreclosed its lien given to it by the producer on the motion picture, motion picture rights and copyright of the film, purchased the property and assigned it to plaintiff, who had no knowledge of the various prior assignments. Plaintiff moved for summary judgment to quiet title to "Ruthless", its copyright and all revenues therefrom. Defendant also moved for summary judgment on its cross-complaint, seeking a declaration that it "is the owner of the motion picture, publication and incidental rights", subject only to their original agreement with American-International. Defendant's motion was granted. Plaintiff appealed.

*Held*, judgment reversed. Plaintiff's motion granted.

Defendant contended its agreement was a conditional sales contract, it never parted with title, and at the end of the ten-year period, the additional amount not having been paid, all motion picture rights including the film itself and the right to exhibit it reverted to it. The Court, however, concluded "that defendant's interpretation of the agreement . . . is not tenable and that plaintiff has good title to the film . . . Defendant's agreement conveyed . . . certain intangible rights, viz., the right to make, exhibit, sell and copyright a motion picture, to American-International. It would strain common sense to maintain that the agreement transferred the right to make and copyright a motion picture, as it certainly did, and at the same time reserved the 'title' to the right to make and copyright the picture in defendant. The film *Ruthless* was actually made and copyrighted within the 10 year period. The film is a separate entity from *Prelude to Night* . . . As a copyright endures for 28 years, exclusive of extensions . . ., defendant's contention that the copyright taken out on *Ruthless* would revert to defendant at the end of 10 years is implausible." Furthermore, the copyright being distinct from the property in the material copyrighted (17 U.S.C. 27), defendant's claim if any would not embrace title to the film itself. Also, "assuming that there was a reversion to defendant of the right to make a film from *Prelude to Night* after 10 years, defendant would not be entitled to possession of the film made under the agreement. Only those rights could properly revert to defendant which were granted to American-International under the agreement . . .

Not only did defendant *not* sell a film to American-International, but nothing in the agreement suggests that the parties intended defendant to have any right, title or interest in and to any film made pursuant to the agreement . . . The right in and to the film *itself*, together with the copyright to Ruthless and the right to exploit Ruthless remains in American-International and its successors without limitation at to time."

#### PART IV.

### BIBLIOGRAPHY

#### A. BOOKS AND TREATISES

##### 1. United States Publications

##### 19. Desbois, Henry

The Universal copyright convention and the Berne convention. Published in the September, October and November, 1955 issues of *Le Droit d'Auteur*, pp. 130, 150 and 169. [Translated by Borge Varmer].

*New York, Copyright Society of the U.S.A., 1956. 33 p. (photo offset) Copyright Society of the U.S.A., Translation Service 1956, no. 5a.*

##### 20. United Nations Educational, Scientific, and Cultural Organization.

Copyright laws and treaties of the world. Compiled by . . . with the cooperation of the Copyright Office of the United States of America and the Industrial Property Department of the Board of Trade of the United Kingdom of Great Britain and Northern Ireland.

*Washington, Bureau of National Affairs, 1956. 1 v. (loose-leaf).*

##### 2. Foreign Publications

##### (a) In English

##### 21. International Labor Office. *Committee of Experts.*

Protection of performers, manufacturers of phonographic records, and broadcasting organizations. Explanatory memorandum concerning the draft international convention regarding the protection of performers, manufacturers or phonograph records and broadcasting organizations.

*Geneva, May 1956. 26 p. (autoprint) (C.E.P.R., WD/3)*

## 22. Ivamy, E. R. Hardy

Show business and the law.

*London, Stevens, 1955. 188 p.*

A chapter of this work is devoted to what constitutes public performance and thereby infringement of a copyrighted dramatic or musical work. In his preface the author characterizes this chapter as follows: "Infringement of copyright is a very important question. A general survey of the law is therefore given, reference being made to the recent Copyright and Television Exhibiting Right Bill, which, however, was dropped after a second reading in the House of Lords owing to the lack of parliamentary time in view of the imminence of the General Election."

## 23. United International Bureau for the Protection of Industrial, Literary and Artistic Property.

The Performing Artiste, The Record Manufacturer, The Broadcaster.

*Berne, April 1956, 22 p., printed.*

Foreword by Jacques Secretan concerning the preparation of an international draft convention for the protection of interpretative or performing 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.

## 24. Whale, R. F.

The British copyright bill.

*Berne, [International copyright union] 1956. 16 p.*

An explanation of some of the major provisions contained in the British copyright bill, including such items as copyright in original works, sound recordings, moving pictures, radio and television broadcasts; remedies for infringements; the proposal of a performing right tribunal and such rights affecting performing artists.

(b) In French

25. International Publishers' Congress, 14th *Florence-Rome, 1956. Permanent Bureau.*

Rapport sur l'évolution des résolutions prises lors du XIIIe Congrès.

*Rapports*, pp. 25-47.

The Permanent Bureau of the International Publishers' Congress reported on the status of the resolutions acted upon at the previous session of the congress. Those of interest to the copyright field were the resolutions dealing with "domaine public payant," photocopying (fair use), the Universal Copyright Convention, and discussions between the publishers of music and the phonograph record industries.

26. Le Tarnec, Alain

Manuel juridique et pratique de la propriété littéraire et artistique. Préface de J. Paul-Boncour.

*Paris, Dalloz, 1956. 314 p.*

Manual of the basic principles of French copyright law, and the texts of the multilateral conventions which affect these principles.

27. Sarraute, Raymond

Droit de la cinématographie par . . . et Michel Gorline.

*Paris, Librairie du Journal des Notaires et des Avocats, 1955. 382 p.*

The work is organized into five major parts. The first, bearing the title of "Administrative Organizations", discusses the National Motion Picture Center, the Public Title Registry and various methods used for financing the development of the industry. Part II deals with copyright protection, Part III with problems of production, Part IV with methods of distribution, and the last part is devoted to regulations concerning the exhibition of motion picture films.

(c) In German

28. 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, trade marks.

29. Hauffe, Hans Günter.

Der Künstler und sein Recht.

*München, C. H. Beck [1956]. 344 p.*

The "Creator and his Rights" includes sections on the protection of artistic and literary works under German and international copyright, and the relationship between author and publisher. Appendices list German copyright societies, forms of contracts between authors and publishers, and include a section on taxation.

30. Schulze, Erich

Urheberrecht in der Musik und die deutsche Urheberrechtsgesellschaft. 2. Auflage.

*Berlin, W. de Gruyter, 1956. 464 p.*

This is the second edition of a work prepared by the General Director of the German Performing Rights Society (GEMA). The work summarizes the German copyright legislation, and the provisions of the several international conventions affecting copyright relations between Germany and the major music producing and using countries. The second part of the book is an explanation of the organization known as KEMA and its relationship with various international affiliates. The work also contains a bibliography of German works and international periodicals devoted to material on copyright law.

## B. LAW REVIEW ARTICLES

### 1. United States

31. Burns, Robert P.

Contracts—royalties—copyrights. [April Productions, Inc. v. G. Schirmer, Inc. (N.Y.) 126 N.E.2d 283].

*Brooklyn Law Review, vol. 22, no. 2 (April 1956) p. 322-325.*

The writer agrees with the majority opinion that the doctrine that licensing agreements terminate with the expiration of the copyright or patent may be extended to a factual situation not involving an actual licensing agreement.

*New York, 1956. 8 p. (multilith).*

## 32. Gibbons, Gerald R.

The Compulsory license system of the Universal Copyright Convention.

*Duke Bar Journal*, vol. 6, no. 1 (1956), pp. 23-40.

An adaptation from a Nathan Burkan Memorial Competition paper, this article discusses the evolution of the provision in the Universal Copyright Convention which deals with the control of authorized translations.

## 33. Jackson, Roy V.

Proposals for new industrial design legislation.

*Journal of the Patent Office Society*, vol. 38, no. 6 (June 1956), p. 371-379. See 3 BULL CR. SOC. p. 159, item 441, (1956):

## 34. Publication governed by state law where recordings not eligible for copyright under federal statute.

*Columbia Law Review*, vol. 56, no. 1 (Jan. 1956), 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 dependant upon the question of publication.

## 2. FOREIGN

## (a) In English

## 35. Bogsch, Arpad.

Study group on so-called "neighbouring rights" (intermediate intellectual rights), Paris, 7-11 1956.

*The Performing Artiste, The Record Manufacturer, The Broadcaster*, (July 1956), pp. 49-58.

Note: English version of article in French which appears on pp. 37-47 of same issue.

A report of the discussions had by the Study group of the Bern Copyright Union with the Director-General of UNESCO concerning the possible scope of an international convention on neighboring rights. Juris-

diction, terminology, the various types of protection and remedies were considered for each of the categories: i.e. performing artists, sound recordings and radio broadcasters, as well as such topics as moral rights, duration, formalities and application of treaties.

36. United Nations Educational, Scientific, and Cultural Organization. *Copyright Section*.

Neighbouring rights: a comparative study of the law and jurisprudence of certain countries.

*Copyright Bulletin*, vol. 9, no. 1, (Paris, 1956), p. 9-60.

Note: Also in French, p. 61-116.

The laws and decisions of the following nine countries are included: Czechoslovakia, Denmark, France, German Federal Republic, Italy, Netherlands, Switzerland, United Kingdom, and the United States.

(b) In Dutch

37. Mak, W.

Phonogrammen en droits voisins.

*Nederlands Juristenblad*, 1956, no. 6 (Feb. 11, 1956) pp. 119-127.

A discussion of the treatment of phonograph records under domestic legislation and under the so-called Rome draft.

(c) In French

38. Abel, Paul

Lettre de Grande-Bretagne.

*Le Droit d'Auteur*, vol. 69, no. 5 (May 1955), p. 64-69; no. 6 (June 1955), p. 89-91.

A report on recent developments in Great Britain, which includes a summary of the action taken in the House of Lords on the British Copyright Bill, a brief statement on the Children and Young Persons (Harmful Publications) Bill; and resumé's of recent copyright litigation such as the Purefoy Engineering Co. Ltd. v. Sykes Boxall & Co. Ltd. (involving the copyright in catalogs); Kemp's Commercial Guides Ltd. v. Fashion Publications Ltd. (copyright in an annual publication); Loew's Inc. v. Littler et al. (Unfair competition in the use of the title "The Merry

Widow") and Associated Newspapers Ltd. v. Kemsley Newspapers Ltd. et al (Unfair competition in the publication of the Gordon Richards story). The letter also refers to items of interest from the Bulletin of the Performing Right Society.

39. Boosey, Leslie A.

Influence de la télévision sur la diffusion de la musique, par . . . et le Dr. Adolf Aber.

*International Publishers Congress, 14th, Florence-Rome, 1956. Reports, pp. 143-154.*

In the English summary to this report, at p. 152 appears this statement: "One development enhanced by television which provides a serious menace to the composer and thence to his publishers is the demands of performers for copyrights on their performances on records and television films. This may be understandable on their part but nevertheless can lead to a multitude of demands on the music user which can be met only at the expense of the author."

40. Boutet, Marcel

Sur Les Oeuvres de Commande.

*Revue Internationale du Droit d'Auteur, no. 12, (July 1956), pp. 3-17.*

A French article with English and Spanish translations on the copyright protection of works which have been commissioned, contracted for, or created on an employer-employee basis.

41. Duchemin, Jacques-Louis

Le Protection internationale des oeuvres des arts appliqués.

*Revue Internationale du Droit d'Auteur, no. 12 (July 1956), p. 87-109.*

A discussion of the protection granted architecture and works of applied art by the provisions of the Bern Copyright Convention as revised in 1948, by the International Conventions on Industrial Property and by the Universal Copyright Convention. The conclusion is reached that, perhaps, a separate convention would best solve the problem of protecting such works since they overlap both the copyright and patent fields. English and Spanish translations are also given.

## 42. Gaspar, Florent

Les notions d' "oeuvre publiée" et de "pays d'origine" en droit d'auteur.

*Revue de Droit Intellectuel, l'Ingénieur-Conseil, vol. 46, no. 1-3 (Jan.-Mar., 1956), p. 16-17.*

A comparative note on the concepts of publication and "country of origin" under the Belgian law of 1886, the Brussels Revision of the Bern Copyright Convention and under the Universal Copyright Convention.

## 43. Gillon, Etienne

Le droit de reproduction en matière d'illustration.

*International Publishers' Congress, 14th Florence-Rome, 1956. Rapports, pp. 51-65.*

The article recommends that publishers support the establishment of an international center which would grant licenses or permissions to reproduce illustrations, collect fees for such use or disseminate information concerning the reproduction of works of art. Although the original of the report is written in French, English and German, summaries are to be found on pages 59 through 65.

## 44. Mélas, Victor Th.

Lettre de Grèce; droit moral de l'auteur et droit général de la personnalité.

*Le Droit d'Auteur, vol. 69, no. 6 (June 1956), p. 91-92.*

A report on a recent court decision in Greece involving the question of moral rights in the work of a sculptor.

## 45. Palagyi, Robert

Lettre de Hongrie; la situation du droit d'auteur en Hongrie.

*Le Droit d'Auteur, vol. 69, no. 7 (July 1956), pp. 102-104; no. 8 (Aug. 1956), pp. 114-116.*

A review of recent developments in Hungary concerning copyright and related subjects such as the application of Decree 98 of 1951 to publishing contracts, payment of royalties for the performance of dramatic and dramatico-musical works, and the rights involved in motion pictures, radio, public performance, recording rights, photographs and the formation of an agency for the licensing of copyrighted works.

## 46. Troller, Alois

Le Droits prétendument "voisins."

*The Performing Artiste, The Record Manufacturer, The Broadcaster*, May 1956, pp. 21-22; June 1956, pp. 29-35.

A discussion of the nature of the rights involved in the so-called "neighboring rights" together with some of the economic and social factors which influence these rights.

## 47. 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.*

Nouvelle loi américaine donnant exécution à la Convention universelle sur le droit d'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.

## 48. Vaunois, Louis

Le Droit d'Auteur au Maroc: la photographie et l'architecture.

*Revue Internationale du Droit d'Auteur, no. 12 (July 1956), pp. 19-39.*

A discussion in French, together with English and Spanish translations, of the protection of literary and artistic works in the French Zone of Morocco, with particular reference to court decisions involving the protection of photographs and architecture.

## 49. Vilbois, Jean

Le Révision de la loi fédérale suisse.

*Revue Internationale du Droit d'Auteur, no. 12 (July 1956), pp. 57-85.*

A resumé of the work of the drafting committee and the contents of

the legislation which entered into force on December 1, 1955. Such topics as duration, broadcasting rights, newspapers and periodicals, civil and criminal penalties, the application of the Bern Copyright Convention to Swiss authors and ratification of the Universal Copyright Convention are covered by this article which also appears in English and Spanish translation.

(d) In German

50. Whale, R. F.

Le projet de loi britannique sur le droit d'auteur.

*Le Droit d'Auteur*, vol. 69, no. 6 (June 1956), pp. 81-89; no. 7 (July 1956), pp. 94-102.

51. Pedrazzini, Mario M.

Das Ausstellungsrecht an Werken der bildenden Künste (Bemerkungen zu einem italienischen Urteil).

*Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht*, Heft 1, (May 1956), pp. 72-97.

Exhibition rights connected with works of art under the Italian law. The article is written in German with a French resumé.

52. Peer, Wilhelm

Der Entwurf einer Novellierung des österreichischen Verwertungsgesellschaften-Gesetzes 1936.

*Revue Internationale du Droit d'Auteur*, no. 12 (July 1956), pp. 41-55.

Discussion of a draft revision of the Austrian Law of 1936 concerning the regulation of Performing Rights Societies, namely A.K.M. and L.V.G. The revision is designed to make a more adequate provision for the recording and broadcasting of musical and dramatico-musical performances. The article has been translated into English and French.

(e) In Italian

53. Barbieri, Pietro

L'arte applicata all'industria; dottrina e giurisprudenza nella preparazione della legge 1941.

*Rassegna della proprietà industriale, letteraria, artistica*, vol. 18, no. 4-6 (July-Dec. 1955), pp. 285-297.

A discussion of the provisions concerning the use of designs as applied to industrial products to be found in Italian legislation, the sometimes contradictory interpretations arising in court decisions and the need for legislative revisions.

54. Brzechwa, Jan

La situazione giuridica degli autori in Polonia.

*Il Diritto di Autore*, vol. 27, no. 1 (Jan.-Mar., 1956), pp. 97-115.

"The legal status of authors in Poland" is a report presented at a recent meeting of the Legislative Committee of the International Confederation of Authors and Composers Societies (CISAC).

55. Fabiani, Mario

Opera collettiva, opera composta e comunione del diritto di autore.

*Il Diritto di Autore*, vol. 27, no. 1 (Jan.-Mar., 1956), pp. 53-58.

Commentary on a Rome Court of Appeals decision involving the merits of the rights of the compiler of collected works *vs.* the author of a contribution.

56. Fioretta, Piero

In tema di limiti impliciti alla pubblicazione di fotografia pubblicitaria.

*Rivista di Diritto Industriale*, vol. 5, no. 2, Part II (Apr.-June, 1956), pp. 207-210.

In a short commentary on a Turin Civil Court decision, handed down on July 14, 1955, the author discusses right of privacy from the viewpoint of subsequent publication of a photograph for advertising purposes.

57. Giannini, Amedeo

Il concetto di "creazione" nel diritto.

*Rivista internazionale di filosofia del diritto*, vol. 33, 3d ser., fasc. 3 (May-June, 1956), pp. 308-313.

An article on the concept of "creation" in law on both the domestic and international levels and in relation to performers and producers of musical and dramatic works including motion pictures.

## 58. Giannini, Amedeo

Disegni e opere d'architettura, piani di lavori ed opere di ingegneria.

*Il Diritto di Autore*, vol. 27, no. 1 (1956), pp. 1-19.

A discussion of the theory evidenced in the Italian copyright law of 1941 concerning the protection of architectural designs.

## 59. Santamaria, Massimo Ferrara

In tema di esclusività e di divieto di riprese cinematografiche di avvenimenti sportivi.

*Il Diritto di Autore*, vol. 27, no. 1 (Jan.-Mar., 1956), pp. 68-79.

Note on a Rome Court decision involving the question of royalties or license fees in payment for the use of a motion picture film of a sports event.

## 60. Sgroi, Vittorio

Le tutela dell'immagine dell'attore cinematografico nell'elaborazione del film sotto forma di foto-romanzo.

*Rivista di Diritto Industriale*, vol. 5, no. 2, Part II (Apr.-June 1956), pp. 232-244.

Note on a decision of a Rome Court which involved the right to take pictures of an actor from a motion picture and use them to make a picture story.

## 61. Un convegno internazionale dei traduttori.

*Il Diritto di Autore*, vol. 27, no. 1, (Jan.-Mar., 1956), pp. 33-34.

A brief note on a recent conference of the International Federation of Translations (F.I.T.).

### C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

#### 1. United States

## 62. House sends to Senate four Copyright Bills.

*Publishers' Weekly*, vol. 170, no. 3 (July 16, 1956), p. 214.

63. Neither pro nor con Kilgore Bill comment.

*Billboard*, vol. 68, no. 29 (July 21, 1956), p. 22.

64. Redding, Frank

ATPI votes record budget for expanded program.

*Publishers' Weekly*, vol. 169, no. 24 (June 18, 1956), pp. 2627-2632.

At a meeting of the American Textbook Publishers' Institute, the Copyright Committee reported on the passage by the House of Lords of the British Copyright Bill, which, if enacted would permit British adherence to the U.C.C. and relieve American publishers of much detail in effecting copyright abroad.

65. SIAE and Sonzogno win Mascagni heirs' suit.

*Variety*, vol. 203, no. 12 (Aug. 22, 1956), p. 47.

66. Senate drops Postal Rise; will consider next year.

*Publishers' Weekly*, vol. 170, no. 6 (Aug. 6, 1956), p. 614-615.

A report on Senate subcommittee hearings on the proposed postal rate increase, H.R. 11380, held in July just before the close of the session.

67. Shaw, Ralph R.

Publication and distribution of scientific literature.

*College and Research Libraries*, vol. 17, no. 4 (July 1956), pp. 293-303.

In discussing the problem of securing copies of a scientific publication which has been produced in relatively small edition, the author states "Quite clearly, making a copy is not a copying in the sense of the copyright law; and quite clearly it was never intended that private use was to be affected in any way by the copyright. Copyright was and is still intended to protect the author against use of his labors publicly by others for profit without sharing those profits with the author."

68. Showtune writers keeping tight grip on scores including album rights.

*Variety*, vol. 203, no. 12 (Aug. 22, 1956), p. 1.

69. Schulman and Dubin see 50-Yr. Copyr'ts.

*Billboard*, vol. 68, no. 29 (July 21, 1956), p. 21.

70. Winger, Howard W.

Regulations relating to the book trade in London from 1357 to 1586.

*The Library Quarterly*, vol. 26, no. 3 (July, 1956), p. 157-195.

A presentation of the various restraints attempted in Old England to suppress the printing of books opposing Church and state, and to regulate book printing and trade.

## 2. England

71. Copyright and scientific development.

*Nature*, vol. 177, no. 4512 (Apr. 21, 1956), pp. 717-719.

A commentary on the British copyright law from the point of view of the provisions in Section 7 appropos the Royal Society's Fair Copying Declaration insofar as periodical literature is concerned. The article summarizes the legislative provisions as giving "librarians rights which they do not possess under the existing law, and the safeguards it provides for the copyright owner operate only when these new rights are being exercised."

72. Copyright bill in last stages; why "libraries of deposit" clause is not included.

*The Bookseller*, no. 2642 (Aug. 11, 1956), pp. 800-802.

A presentation of some of the amendments proposed by the Standing Committee of the House of Commons and the discussion which developed. Among the proposals were provisions concerning deposits of books, films and recordings; a six-year statute of limitation; reproductions of publications of the Stationery Office and Crown copyright.

73. Copyright: Government still opposes librarians' wishes.

*The Bookseller*, no. 2637 (July 7, 1956), p. 4.

A note on developments in the Standing Committee's consideration of the British Copyright Bill, particularly with regard to the provisions concerning the right of libraries to furnish photocopies of scientific material.

74. Copyright: the full 50 years. Commons discuss author's rights and public interest.

*The Bookseller*, no. 2633 (June 9, 1956), pp. 1538-1541.

## 75. International Publishers' Congress.

*The Bookseller*, no. 2633 (June 9, 1956), p. 1549.

Among some of the matters discussed at the recent congress in Florence was the work of UNESCO in the reduction of copyright, tariff and other obstacles to the free flow of books across frontiers.

## 76. M.P.'s discuss the Author's rights under new Copyright Bill.

*The Bookseller*, no. 2636 (June 30, 1956), p. 1678.

## 77. Preparation of the convention for the protection of ancillary rights.

*E.B.U. Bulletin*, vol. 7, no. 38 (July-Aug. 1956), pp. 547-548.

A summary of activities on the part of UNESCO, ILO and the International Copyright Union since April 1956 in the preparation of the draft international convention on neighboring rights.

## 78. Walton, Anthony

Copyright in technical literature; proposed changes in the law.

*Engineering; an illustrated weekly journal*, vol. 181, no. 4702 (Apr. 20, 1956), pp. 247-248.

A discussion of the problems of photocopying scientific literature in Great Britain before and after the development of the Royal Society's Declaration of Fair Copying, and the effects Section 7 of the proposed revision of the British Copyright Law will have on the present practices of British scientific libraries. The author concludes that although Section 7 has been criticised by ASLIB, the provisions are as liberal as can be hoped for.

## NEWS BRIEFS

## 79. ITALY, ICELAND AND PORTUGAL JOIN UNIVERSAL COPYRIGHT CONVENTION.

The Italian Official Gazette of August 23, 1956, has published Law 923, dated July 19, 1956, whereby Italy ratified the Universal Copyright Convention.

Unofficial word has been received that, during September, Iceland and Portugal deposited with UNESCO in Paris their ratifications of the

Convention, bringing to twenty-one the number of states having ratified and deposited. The Convention will come into force in these two countries during December 1956, the exact date to be announced when confirmation of the deposits is received.

80. **AGREEMENT ON THE IMPORTATION OF EDUCATIONAL, SCIENTIFIC, AND CULTURAL MATERIALS.**

A provision has been made in the UNESCO budget for 1957-58 for the convening of a meeting of government experts to discuss the application of the Agreement on the Importation of Educational, Scientific and Cultural materials. Approximately 22 countries adhere to the Agreement which provides exemptions from customs duties of such materials as books, publications and documents, works of art, articles for the blind, etc.

81. **ARGENTINE INSTITUTE OF INTELLECTUAL RIGHTS.**

A "Declaration" by the Argentine Institute of Intellectual Rights announces its reactivation as of March 1956 and urges a revision of the copyright laws and regulations of Argentina. Mendilaharsu, Garcia, Mouchet, Radaelli, Rivarolla, and Aceby are named as members of the Institute Council.

82. **NEIGHBORING RIGHTS.**

At the 14th meeting of the European Broadcasting Union (EBU) Legal Committee held in Cologne from June 25-28, 1956, the agenda included, among other items, the International Convention for the Protection of "ancillary rights," on the eve of the convening of the Committee of Experts by the International Labor Organization (I.L.O.) for July 10. It was reported that, at the first meeting of the joint European Broadcasting Union (EBU) — International Confederation of Societies of Authors and Composers (CISAC) Committee held in Paris on June 23, 1956, a working party had been formed to make proposals to the Joint Committee at its next session for rules for the demarcation between the domains of "petits droits" and "grand droits" in sound and visual broadcasting.

At the meeting of the Committee of Experts convened by the I.L.O. on July 10, 1956 in Geneva a draft international Neighboring Rights Convention was adopted which incorporated important changes in the texts of previous drafts.

The matter of rights related to or neighboring on copyright was also on the agenda of the International Literary and Artistic Association (ALAI) meeting in Amsterdam, September 3-8, 1956, of CISAC in Hamburg, September 17-23, 1956, and will be taken up again by the I.L.O. at its Governing Body sessions in Geneva in November, and at the UNESCO General Conference in New Delhi November 5-December 5, 1956.

83. AMERICAN BAR ASSOCIATION. SYMPOSIUM ON COPYRIGHT.

At a symposium held on Saturday afternoon, August 25, by the Section of Patent, Trademark and Copyright Law at the 79th annual meeting of the American Bar Association at Dallas, Texas, Max K. Lerner spoke on musical performance, Robert J. Burton on recordings, Seymour Bricker on motion pictures, Joseph A. McDonald on broadcasting, and Barbara A. Ringer on the current activities of the Copyright Office.

84. DESIGN PROTECTION.

It was reported at the A.B.A. Dallas meeting that the Subcommittee of the Coordinating Committee of the National Council of Patent-Law Associations had nearly completed a draft bill which should be available for distribution by the time the new Congress convenes.

85. CUMULATIVE INDEX OF COPYRIGHT CASES 1909-1954.

The Index is now available from the Register of Copyrights or the Superintendent of Documents at \$1.75 per copy.

86. COPYRIGHT LAWS AND TREATIES OF THE WORLD (CLTW).

A comprehensive compilation, in the English language, of the copyright laws, orders, rules, regulation, etc. in effect in 85 countries, and all the international treaties and conventions, has been prepared by UNESCO in cooperation with The Copyright Office and the U. K. Board of Trade and is published by UNESCO and the Bureau of National Affairs. This compilation is available at \$97.50 per copy through the Bureau of National Affairs, Inc., 1231 24th Street, N. W., Washington 7, D. C. In order that this service may be kept up to date, periodic supplements will be prepared by the Copyright Section of UNESCO and distributed by the Bureau of National Affairs. The cost of this supplementary service has not yet been announced.

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87. INTERGOVERNMENTAL COPYRIGHT COMMITTEE.

The first session of the Committee was held in Paris June 11-15, 1956 to consider problems particularly related to the coming into effect and development of the Universal Copyright Convention. Copies of the report of the Committee and the resolutions adopted may be secured from the UNESCO Copyright Section, 19 Avenue Kleber, Paris 16, France.

88. GENERAL REVISION OF THE COPYRIGHT LAW OF THE U.S.A.

Under a three-year Congressional appropriation, the U. S. Copyright Office working with a Panel of Consultants appointed by the Librarian of Congress, is engaged in a series of studies looking toward recommendations for a comprehensive revision of Title 17 U.S.C.

89. COPYRIGHT SOCIETY TRANSLATION AND DOCUMENTS SERVICE.

The subscription price for the translation and documents service is reduced to \$50. In some instances additional copies of single translations and documents may be secured at list price or by photo-duplication on request directly to the Copyright Society of the U.S.A. c/o Fred B. Rothman & Co., 57 Leuning Street, South Hackensack, New Jersey.

90. CANADIAN ROYAL COMMISSION.

The Canadian Royal Commission appointed to make recommendations for a comprehensive revision of the Canadian copyright and related laws continues its investigations and hearings but has not yet made a report.

91. UNITED KINGDOM COPYRIGHT LAW REVISION.

Consideration of the comprehensive revision of the U. K. copyright law passed by the House of Lords has been completed by the House of Commons. The debates appeared in Hansards, *Parliamentary Debates, House of Commons, vol. 553, no. 162 (June 4, 1956), col. 717-813.* See *item 4, supra.*

92. BOLIVA AND THE BUENOS AIRES CONVENTION OF 1910.

The Pan American Union has just been advised by the Representative of Argentina on the Council of the Organization of American States that his government considers Bolivia a party to the four inter-American

Conventions signed at the Fourth International Conference held at Buenos Aires in 1910, since by note of May 15, 1914, the Government of Bolivia communicated to the Government of Argentina, in its capacity as depository, its adherence to the conventions indicated. The conventions include the one on literary and artistic property.

## THE NEW COPYRIGHT OFFICE REGULATIONS

by GEORGE D. CARY  
*Principal Legal Advisor*  
*U. S. Copyright Office*

(NOTE: *The Editorial Board is pleased to publish the following article especially prepared for the benefit of our readers as a primer on the new Rules and Regulations of the Copyright Office. We are greatly indebted to the author and to the Register of Copyrights for having made this contribution available. This article is published in accordance with the Society's recently adopted policy to publish from time to time informative articles written by leading authorities in the field of copyright. Our readers and subscribers are invited to submit appropriate materials of this kind to the Editorial Board.*)

On August 11, 1956, there appeared in the Federal Register a revision of the Regulations of the Copyright Office. Although the principal reason for issuing the new Regulations resulted from the enactment of an amendment to the Copyright Law (70 Stat. 63) authorizing the submission of photographs, in lieu of copies of works as published, in certain specified categories, the revision also includes a number of additions and clarifications. It, therefore, appears salutary at this time to discuss briefly the principal substantive changes in the Regulations for the benefit of those who may have occasion to resort to them. [Copies of the new Regulations may be had free of charge by writing to the Copyright Office and requesting Circular No. 96].

As stated above, the principal new substantive matter relates to the deposit of photographs in lieu of copies. The new amendment of Section 13 of the Copyright Law, approved March 29, 1956, resulted from an executive communication from the Librarian of Congress to the Speaker of the House for the introduction of such legislation. The Librarian's letter related two main considerations for the requested legislation, first, that submitting large, heavy, fragile, or expensive copies to the Office entailed a not inconsiderable burden and expense to the copyright claimants; and second, that storage of these articles presented a housekeeping problem for the Copyright Office. The committees of Congress recognized these problems and the reports and subsequent enactment reflect Congressional approval of the remedy requested. Section 202.16 of the Regulations was prepared pursuant to the authorization of the new law.

It should be emphasized at the outset that, under the new law, the privilege of submitting photographs applies only to four specified classes of works, namely, works of art, reproductions of works of art, plastic works of a scientific or technical character, and prints, pictorial illustrations and commercial prints or labels. An exception is contained in Section 202.16(b) of the Regulations providing that the option of submitting photographs does not apply to fine prints and two-dimensional art reproductions. The Library of Congress desires and selects such work for its collection.

In general, the privilege of submitting photographs applies where the Register of Copyrights considers that the works are impracticable of deposit because of their size, weight, fragility, or monetary value. For example, it is obvious that a roadside billboard containing a commercial advertisement would be impracticable of deposit; likewise in the case of artistic cemetery monuments. Too, there are instances where the deposit happens to be very fragile pieces of chinaware. And again, some jewelry deposited in the Office, such as that created by the artist, Salvador Dali, and deposited some years ago, possesses a high monetary value. In all of these types of examples, photographs will in the future be acceptable and thereby relieve the copyright claimants of the hardship and expense of transporting such articles to the Office; and likewise the Copyright Office will be relieved of the problem of using a considerable amount of its fast-shrinking storage space for such deposits. The privilege of submitting photographs may not be available in all cases, however. The Register of Copyrights expressly reserves the right in a given instance to require the deposit of the three-dimensional copies.

To simplify the procedure as much as possible, the Regulations contain a provision that a work is to be considered impracticable of deposit when it is unsuited to the filing procedures of the Copyright Office.

The photographs to be submitted must be of equal size, no larger than 9 x 12, but preferably 8 x 10 inches, and shall present an image of the work not smaller than four inches in its greatest dimension. In order that the size of the object can be ascertained, it is also required that the exact measurement of one dimension of the work shall be indicated on the photograph. Further, to assist the examiners in ascertaining that the appropriate copyright notice appears on the work, the copyright notice must be clearly shown in one of the photographs. Since it is realized that it is not always possible to obtain a clear photograph of a copyright notice, especially as regards a small work, provision is made in such cases for the submission of a drawing, of the same size as the photograph, which will reveal the exact appearance and dimensions of the notice.

In addition to the foregoing major change in the Regulations, there follows numerically by section, a brief statement of the other principal substantive changes.

*Section 201.2.* This Section, which deals with the information which is furnished by the Office to the public, has been amplified to state more fully the types of situations concerning which the Office does not furnish legal opinions or advice. The four examples listed in the Regulations are self-explanatory and represent the most frequent types of request received by the Office in which legal advice is sought.

An addition to Sub-section (b) provides that the Office will not permit the inspection of its records for the purpose of compiling mailing lists or other similar uses. Although the records are by law open to public inspection, it is considered that the use of the records for compilation of mailing lists, which frequently have been utilized to victimize unsuspecting songwriters throughout the country, was not a valid use of the public records. The new amendment, therefore, makes clear that the Office will not sanction this type of activity.

The revision of Sub-section (c) has the effect of permitting the inspection of certain correspondence in the Copyright Office files by persons who are properly and directly concerned, and authorizes the making of copies of such correspondence. The previous Regulations made no provision for this, and since on a number of occasions in the past, attorneys considered it necessary to obtain copies of the correspondence for submission in evidence in litigation matters, it was felt that such reasonable requests ought to be granted, and the Regulations have been amended accordingly.

This Sub-section also indicates that the Office will not permit examination of correspondence which relates either to pending or rejected applications, which are considered to be of a confidential nature.

*Section 201.4.* This Section, which relates to the recording of assignments of copyrights and similar papers, has been enlarged by the addition of a more comprehensive listing of the types of documents which will be recorded in the Office records, and also by a statement of the procedure to be followed in submitting such documents for recordation.

*Section 201.5.* Sub-section (b) is new. Its purpose is to indicate that in certain exceptional types of cases, a registration may be corrected by the filing of a new application, accompanied, of course, by the statutory fee and the number of copies required by law. If the copies are unobtainable at the time the new corrected registration is sought, photostat or microfilm copies of the original may be submitted.

*Section 201.6.* Under Sub-section (d), which is also a new provision, the Office, in the case of rejected applications, reserves the right to retain the deposited copies. In such cases, however, the fee will be refunded.

*Section 202.1.* This entire section is new and includes a listing of the types of works which are not subject to copyright registration. The Office finds it necessary to reject a great many applications of the types listed, and it is considered that the listing may assist applicants with the end result that the number of applications of these types may be substantially reduced in volume.

*Section 202.2.* This Section, which also is new, primarily contains a listing of the most common defects in the copyright notice, which require the Office to reject applications where the accompanying works bear notices of one of the types listed. These examples are self-explanatory, but perhaps a few words are not amiss in connection with several of the examples listed:

**Example No. 6** confirms the practice of the Office requiring that the notice in the published form of a previously registered unpublished work be the year date of the latter.

**Example No. 8** concerns the situation where the work contains a post-dated notice. This type of notice is most frequent near the close of any calendar year; and relates especially to periodicals. It is not at all uncommon for the Office to receive in late November, for example, an application for registration of the issue of a periodical which bears an issue date of the following January, but publication is stated to have occurred late in November. If, for example, the publication took place in the year 1956, the year date in the notice should be 1956 even though this is the January, 1957, issue. This is consistent with the doctrine enunciated on a number of occasions by the courts that a notice containing a year date subsequent to the actual year of publication may be invalid as an attempt to claim more than twenty-eight years' protection.

Not infrequently, small objects submitted for copyright bear the notice on a small tag attached to the object rather than upon the object itself. **Example No. 11** reveals that the Office will reject such applications. In a relatively recent case, the Court indicated that a tag-notice did not meet the requirements of the law. (*Trifari v. Steinberg*, 110 U.S.P.Q. 478, see *item 12, supra*.)

**Example No. 13** reflects a situation which has become increasingly more evident in recent years. An advertisement is submitted for copyright, bearing a notice immediately in juxtaposition to certain words which appear prominently throughout the advertisement. The implication clearly exists that copyright is claimed in the coined words or phrases rather than in the text of the advertisement as a whole. The matter is sometimes complicated by the addition of

a trade-mark symbol. Where it is clear that the copyright claim is restricted solely to uncopyrightable matter, the Office cannot accept the claim for registration.

*Section 202.3.* Sub-section (b) (2) is new but since it is self-explanatory no discussion is required here. Sub-section (b) (3), however, governs a situation which perhaps merits a brief word. A work is published, bearing the copyright notice in the name of "A", but no registration is made in the Office. The copyright is later assigned to "B", who thereupon wishes to register the work in his name, rather than in the name of "A". Since Sections 10 and 11 of the Copyright Law considered together, indicate that it is the person who obtains copyright by publication that is entitled to the registration, the Office practice is not to register "A's" work in "B's" name. The correct procedure would be to file the registration in the name of "A", and to record in the Office the document of assignment from "A" to "B". In this way, a complete record of the chain of title will be available in the public records.

*Sections 202.4 through 202.15* list the various classes of works for which copyright may be obtained and contain an expanded statement with respect to the types of works which are considered registrable in the various enumerated classes. Of particular interest are the examples registrable in Classes C and D, the difference between which appears to be confusing to a great many of those who prepare material for radio and television. The revision of the statement relating to Class G (works of Art) contains a brief statement of the works which are considered to fall within and without this category.

*Sections 202.17 and 202.18* concern renewals and the filing of notices of use. These sections are new, but inasmuch as they are self-explanatory no need exists for an elaboration thereof.

The Regulations of the Copyright Office are intended to be a form of guidepost for those submitting applications. It is hoped that these Regulations will assist them in the preparation of claims and advise them generally of the types of applications that will be accepted and those that will be rejected. If any user of the Copyright Office service considers that additional provisions would be helpful or that some of the existing sections are not clear, the Office invites comments from all such interested persons, and assures them that full consideration will be given to all suggestions and comments.



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## PART I.

LEGISLATIVE AND ADMINISTRATIVE  
DEVELOPMENTS

## 1. UNITED STATES OF AMERICA AND TERRITORIES

93. *U. S. Congress. American Patent Law Association. Committee on Copyrights Report 1955-56.*

*American Patent Law Association, Bulletin (Sept. 1956), pp. 270-272.*

A listing of copyright legislation in the 84th Congress.

94. *U. S. Copyright Office.*

Rundschreiben des Copyright Office betreffend das neue Gesetz zur Durchführung des Welturheberrechtsabkommens vom Juli 1955.

*Blatt für Patent-, Muster- und Zeichenwesen, vol. 58, nos. 8/9 (Aug./Sept. 1956), pp. 300-301.*

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

95. *U. S. Laws, statutes, etc.*

Armed Forces (U.S.C., Title 10, approved Aug. 10, 1956) Sec. 2386: Copyrights, patents, designs, etc.; acquisition.

*United States Code Congressional and Administrative News, 1956, no. 17 (Oct. 5, 1956), p. 171.*

Provides that funds appropriated for making or procuring supplies may be used for acquiring copyrights, licenses under copyrights, etc.

96. *U. S. Laws, statutes, etc.*

Title 28, United States Code. [Sections 1338, 1400, and 2072].

*Blatt für Patent-, Muster- und Zeichenwesen, vol. 58, nos. 8/9 (Aug./Sept. 1956), p. 300.*

German translation from Howell's *The Copyright law*, 3d ed., Washington 1952, p. 232, of excerpts from Judicial Code, Title 28, U.S.C.

97. *U. S. Laws, statutes, etc.*

U. S. Code, Title 17, Copyrights.

*Blatt für Patent-, Muster- und Zeichenwesen*, vol. 58, nos. 8/9 (Aug./Sept. 1956), pp. 289-299.

German translation of Title 17, U.S.C., incorporating the amendments up to and including the Act of March 29, 1956.

## 2. FOREIGN NATIONS

98. *Canada. Dept. of the Secretary of State.*

Notice regarding German trade-marks and copyrights.

*The Canada Gazette*, vol. 90, no. 29 (Jul. 21, 1956), p. 2559.

This notice dated July 17, 1956 announces the release of unlicensed German copyrights vested in the Custodian and states that every German copyright which has been licensed and every trade-mark presently vested in the Custodian will remain so vested and be disposed of at the Custodian's direction, unless an application for the release thereof has been filed on or before Dec. 31, 1956.

99. *Gi. Britian. Parliament. House of Commons. Standing Committee B.*

Official report, Copyright bill [Lords] 19th June—31st July, 1956.

London, H.M. Stationery Off., 1956.

This discussion by the Standing Committee B of the House of Commons includes such topics as broadcasts of recordings and motion picture films, exclusive licenses, court jurisdiction over foreign broadcasts, amendment of the Dramatic and Musical Performers' Protection Act of 1925, and the false registration of industrial designs.

100. *Italy. Laws, statutes, etc.*

Legge 19 luglio 1956, n. 923. Ratifica ed esecuzione della Convenzione universale sul diritto d'autore, firmata a Ginevra il 6 settembre 1952, e dei Protocolli n. 2 e n. 3 annessi alla Convenzione stessa.

*Gazzetta Ufficiale*, 97, no. 210 (Aug. 23, 1956), pp. 3092-3093.

Text of the Italian law of July 19, 1956, authorizing the ratification of the Universal Copyright Convention and of Protocols nos. 2 and 3 annexed thereto.

101. *Italy. Laws, statutes, etc.*

Protezione del diritto d'autore. Legge 22 aprile 1941, n. 633, e Regolamento 18 maggio 1942, n. 1369, aggiornati con le disposizioni successive. Convenzioni di Berna e di Ginevra.

Collezione legale Pirola, n. 1030, *Milano* 1950, 120 p.

This 1956 edition of the Italian copyright laws and regulations includes the amendments, the law of Feb. 16, 1953, ratifying the Brussels revision of the Bern Convention with the French text of the Convention, the draft law ratifying the Universal Copyright Convention with the French text of the Convention and a table of fees of the Italian Copyright Office.

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

Règlement sur le droit d'auteur (Amendement du 13 avril 1955).

*Le Droit d'Auteur*, vol. 69, no. 9 (Sept. 1956), p. 119.

French translation of the amendatory regulation relating to the payment of royalties on phonograph records.

103. *Sweden. Laws, statutes, etc.*

Upphovsmannarätt till litterära och konstnärliga verk; lagförslag av Auktorrättskommittén.

*Stockholm, Iduns Tryckeriaktiebolag*, 1956. 633 p. ([Sweden] *Statens offentliga utredningar*, 1956: 25)

Text of Swedish draft copyright laws and reports thereon by the Copyright Committee with appendices which include Swedish texts of the 1928 and 1948 revisions of the Bern Copyright Convention and the Universal Copyright Convention, and the opinion of the Copyright Committee regarding the Rome Draft.

## PART II.

**CONVENTIONS, TREATIES AND  
PROCLAMATIONS**104. *Copyright Society of the U. S. A. Translation Service.*

Compilation of official documents of intergovernmental organizations concerning neighboring rights. Supplement no. 2: Replies of 28 governments to February 4, 1953 inquiry of the Berne Bureau concerning the Rome Draft, assembled as of January 31, 1955.

133 p. (multilith).

105. *International Labor Office. Committee of Experts.*

Draft International Convention.

*The Performing Artiste, the Record Manufacturer, the Broadcaster*, Oct. 1956, pp. 89-92.

Text of the draft convention for the protection of performing artists, record manufacturers and broadcasting organizations, adopted at the meeting of the Committee of Experts in Geneva, July 10-17, 1956.

106. *Republic of Germany (East Germany)* Erklärungen der Bundesrepublik Deutschland, Kanadas, Spaniens, Frankreichs, Ungarns, Irlands, Neuseelands, Pakistans, der Niederlande, der Schweiz, Thailands und der Türkei betreffend die Anwendbarkeit der in Rom am 2. Juni 1928 Revidierten Berner Ubereinkunft auf die sowjetische Besatzungszone Deutschlands.

*Blatt für Patent-, Muster- und Zeichenwesen*, vol. 58, nos. 8/9 (Aug./Sept. 1956), pp. 301-304.

Translated from the French version which appeared in *Le Droit d'Auteur*, Aug. 1956. Contains a series of notifications received by the Swiss Government from member countries of the International Copyright Union relative to a letter from the German Democratic Republic (East Germany) concerning the application of the Bern Copyright Convention as revised through 1928 to that territory.

## PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY  
AND ARTISTIC PROPERTY**

## A. DECISIONS OF U. S. COURTS

## 1. Federal Court Decisions

107. *Joshua Meier Co., Inc. v. Albany Novelty Manufacturing Co.*, 236 F.2d 144, 111 U.S.P.Q. 197 (2nd Cir., July 30, 1956).

Action for copyright infringement (also for trademark infringement and unfair competition). Both parties were engaged in manufacturing and selling substantially similar display and photograph albums, transparent sheet holders, book covers etc. Plaintiff published a copyrighted catalogue in 1951, 1952 and 1953, containing photographs and description of the items for sale, and other information. In 1954 defendant published its catalogue, and plaintiff alleged much of it was copied from the latter's catalogues. The District Court, Southern District of New York, denied a preliminary injunction.

*Held*, reversed. Preliminary injunction granted on the basis of copyright infringement.

The Court found little doubt that defendant deliberately copied a large part of the catalogue. "In many instances defendant uses exactly the same language in the description of similar items; in other cases the language is the same except for the inversion of certain words or the substitution of one word for another. This crude effort to give the appearance of dissimilarity is itself evidence of copying." Similarity alone wouldn't necessarily indicate copying, because both parties were describing similar items in simple non-technical terms; but in one instance defendant used plaintiff's stock number "LE-2" for a product. "The use of this stock number, 'LE-2', is hard to explain on any hypothesis other than copying, especially since neither plaintiff nor defendant designates any of its products 'LE-1'." Moreover, defendant's affidavits carefully omitted any direct denial that copying took place; this "strongly suggests that there was copying, and provides additional support for the inference which naturally follows from the substantial similarities in the two catalogues."

The Court also discussed the alleged trademark infringement and unfair competition, but refused to reverse the District Court's denial of preliminary injunctions on those grounds.

108. *Bernstein v. National Broadcasting Co., Inc.*, 232 F.2d 369 (2nd Cir., April 30, 1956).

Action for invasion of right of privacy. Plaintiff was indicted in 1933 for murder. He was tried, convicted and sentenced to death. Several persons, including a Washington Daily News reporter, took interest in the case and were eventually able to obtain a Presidential pardon. After his release plaintiff lived quietly and without notoriety. In 1952 defendant presented a nation-wide telecast entitled "The Big Story"; the telecast was a fictionalized dramatization of the trial, publicity and release; only the reporter's true name was used. The events pictured differed in many respects from the actual events, but no features derogatory to plaintiff, other than those which appeared in the Court records or in the publicity as of the time of the events, were depicted. Plaintiff conceded that only persons familiar with the trial or the publicity at the time would have identified him in the telecast. The District Court granted defendant's motion for summary judgment.

*Held*, affirmed.

The Court of Appeals based its decision on the "long, careful and exhaustive opinion" of Judge Keech in the Court below, reported in 129 F.Supp. 817 (D.C.D.C., March 17, 1955). Judge Keech had discussed (1) the law of what jurisdiction or jurisdictions was to be applied; (2) can a person involved in a criminal trial, by virtue of time spent out of the public gaze, regain a private status so as to make his past legally protectible against invasion of privacy; (3) did the complaint allege a cause of action; and (4) was there any issue of material fact making summary judgment inappropriate.

109. *Inge et al v. Twentieth Century-Fox Film Corp.*, 143 F.Supp. 294, 111 U.S.P.Q. 153 (D.C.S.D.N.Y., July 30, 1956).

Plaintiff Inge was the author, and plaintiff W-S Bus Stop Co. the Broadway producer of "Bus Stop"; the latter had the exclusive stage rights, subject to Inge's contract with defendant motion picture company. Under this contract, as amended, defendant could produce the picture "Bus Stop" but was not to release it until December 1, 1956, or the closing of all first-class stage presentations (unless within 30 days after

such closing contracts for a new first-class production were signed), whichever occurred first. Defendant decided to release the motion picture in August 1956.

*Held*, preliminary injunction granted, without prejudice to defendant's right to vacate it should plaintiffs cease to comply with the requirements deferring the picture's release, and on condition plaintiffs post \$50,000 to indemnify defendant should it eventually succeed in the action.

The first defense was that the restriction on the release was "illegal, immoral and unenforceable." But the Court held the restriction was not improper or in restraint of trade, even though Inge may have been influenced by a corresponding requirement of the Dramatist Guild. "The fact is that the copyright belonged to Inge, that he is a party who made the contract, that there was no necessity for the purchase of this particular film by the defendant since it appears that as a matter of fact film companies draw only a portion of their stories from the members of the Guild."

The second defense, that the conditions of the contract deferring the release date were not met, was not substantiated by the facts.

The defendant also claimed that there was no basis for equitable relief, since (1) plaintiffs' losses will be small, or the earlier release of the picture will increase rather than decrease stage profits; (2) the preliminary injunction would alter the status quo rather than retain it; (3) the "balance of convenience" favors defendant; (4) no irreparable injury will result to the plaintiffs. But the Court noted that in copyright infringement cases an injunction has always been recognized as a proper remedy both by statute [17 U.S.C. 112] and independently thereof. "Under the circumstances, if a preliminary injunction is not granted, the computation or determination of plaintiffs' damages would be a difficult and complex task, although the damages may be real and in all likelihood substantial."

The Court also found the parties plaintiffs were sufficient and proper, both having an interest in the relief demanded, and that there were no laches.

110. *G. Ricordi & Co. v. A. J. Slomanson et al.*, 19 F.R.D. 196 (D.C.W.D.Pa., July 2, 1956).

Action for infringement of copyright by performing "Madam Butterfly" without plaintiff's permission.

*Held*, motion for summary judgment denied.

Upon argument, evaluation of the pleadings and of the contentions of the parties, and particularly of defendant's answer and affidavit, the Court found that an issue of fact existed whether or not plaintiff consented to the performance and whether one of the defendants conducted his relations with plaintiff in an individual capacity and/or as an officer of a defendant corporation. "Viewing the evidence most favorably to the parties against whom the motion is lodged, giving to said parties the benefit of all favorable inference that may be drawn from the evidence, issues of fact are presented which preclude the granting of motion for summary judgment."

111. *Kramer Jewelry Creations, Inc. v. Capri Jewelry Inc.*, 143 F.Supp. 120, 111 U.S.P.Q. 151 (D.C.S.D.N.Y., July 2, 1956).

Action for copyright infringement and unfair competition. Plaintiff had registered a copyright claim for a bracelet, necklace, earrings and pin called "Dearly Beloved" as a three-dimensional work of art. In April 1956 plaintiff became aware that defendant was selling jewelry of identical size, shape and design. Defendant claimed that the copyright notice was defective in that it failed to contain the symbol ©, as required by 17 U.S.C. 19; also, that it was unaware, when it first ordered the items, that they resembled those sold by anyone else. Defendant submitted affidavits and exhibits to the effect that plaintiff's jewelry purchase at six prominent New York stores did not bear the symbol ©, even though the name "Kramer" appeared on it. Plaintiff contended that only 2% of its total production could have, through accident or inadvertent error, passed inspection without the proper copyright notice, but it offered no evidence refuting defendant's assertions.

*Held*, motion for preliminary injunction denied.

In discussing 17 U.S.C. 21, relating to the accidental omission of the notice from "a particular copy or copies", the Court stated: "Plaintiff's assertion that only 2% of its jewelry fails to bear the copyright symbol, if undisputed, might bring it within the coverage of Section 21. However, defendant's exhibit and affidavits raise considerable doubt as to whether the great bulk of plaintiff's jewelry bore the prescribed notice. Assuming that initially plaintiff had acquired a valid copyright, it cannot now be determined on the basis of the affidavits and exhibits submitted on this motion that plaintiff has not forfeited its copyright by marketing its jewelry without affixing thereto the required notice."

Plaintiff further asserted unfair competition, independent of copyright infringement, in that defendant allegedly copied plaintiff's work and sold it at half the price, for the purpose of enticing away plaintiff's customers. The Court said "such conduct is regrettable but not actionable if plaintiff does not possess a valid copyright. Absent a valid patent or copyright, a manufacturer whose products have not acquired a secondary meaning cannot restrain another party from copying his designs, if no attempt is made to sell the goods as those of the manufacturer."

- 111a. *Miller Harness Co., Inc. v. Arcaro & Dan's Saddlery, Inc.* 142 F.Supp. 634, 110 U.S.P.Q. 190 (D.C.D.N.Y., July 10, 1956).

Action for copyright infringement. Both parties were engaged in the sale of horseback riding and driving equipment, and each put out catalogues. The catalogues were entirely different in outward appearance, and only plaintiff's catalogue (which was copyrighted) contained items of wearing apparel. Defendant's catalogue contained over 2,000 items, including approximately 25 cuts or illustrations similar to those in plaintiff's catalogue.

*Held*, motion for temporary injunction denied.

Whether the 25 similar cuts or illustrations were reproductions of those in plaintiff's catalogue or merely pictures of articles generally on sale could not be determined in the absence of expert testimony; also, this was not "a substantial portion of plaintiff's catalogue". Furthermore, there was no duplication of errors in defendant's catalogue. The Court denied the motion because "it seems clear to this Court that the inconvenience which would be suffered by the defendant if this motion were to be granted, would far outweigh any possible advantage which would accrue to the plaintiff by a contrary disposition."

## 2. State Court Decisions

112. *Walter Giesecking v. Urania Records Inc.*, 155 N.Y.S.2d 171 (S.Ct. N.Y., July 6, 1956).

Action by the late renowned pianist (1) under New York Civil Rights Law Sec. 50 and 51 for the unauthorized use of his name on allegedly inferior recordings while he was under contract with another record company, and (2) for unfair competition in that defendant allegedly obtained magnetic tape reproductions of plaintiff's performances not rendered for this purpose.

*Held*, motion for dismissal of the complaint for insufficiency denied.

As to the first cause of action, defendant claimed Mr. Giesekeing was a public figure not desiring "to be let alone", and therefore his civil rights could not be invaded. But the Court held "[a] performer has a property right in his performance that it shall not be used for a purpose not intended, and particularly in a manner which does not fairly represent his services. The originator or his assignee of records of performances of an artist does not, by putting such records on public sale, dedicate the right to copy or sell the record."

The second cause of action "comes clearly within Metropolitan Opera Association v. Wagner-Nichols Recorder Corp., 199 Misc. 786, 101 N.Y. S.2d 483, affirmed 279 App.Div. 632, 107 N.Y.S.2d 795."

113. *Christian Dior et al. v. Milton et al.*, 155 N.Y.S.2d 443, 110 U.S.P.Q. 563 (Sup.Ct. of N.Y., Spec. Term, N.Y.County, July 30, 1956). Affirmed by the Appellate Division Nov. 8, 1956, without opinion, 136 N.Y.L.J. 6 (Nov. 8, 1956).

Action for damages, accounting and injunctive relief restraining defendants from exploiting plaintiffs' designs, publishing and selling their sketches and from competing unfairly. Plaintiffs, famous designers, in order to protect their designs, had used for many years an elaborate system of showing their designs under such conditions as to make certain that they are never published or revealed to persons not legally prevented from divulging them in any way, unless specifically authorized by plaintiffs. The designs were shown only to manufacturers, buyers, retailers and photographers who had beforehand agreed to these conditions. Defendants allegedly so agreed but induced plaintiffs' employees to deliver the designs to them, and sold a subscription "sketch service" containing these designs.

*Held*, motion to dismiss complaint denied.

The Court traced the evolution of the unfair competition concept from "those simple and halcyon days, when the chief business malpractice was 'palming off'", to the International News Service decision and to the present. "The modern view as to the law of unfair competition does not rest solely on the ground of direct competitive injury, but on the broader principle that property rights of commercial value are to be and will be protected from any form of unfair invasion or infringement, and from any form of commercial immorality, and a court of equity will penetrate and restrain every guise resorted to by the wrongdoer. The courts have thus

recognized that in the complex pattern of modern business relationships, persons in theoretically noncompetitive fields may, by unethical business practices, inflict as severe and reprehensible injuries upon others as can direct competitors."

Defendants claimed the complaint did not set forth property rights which had been interfered with. True, some damage to property rights is required; "however, 'property rights', as has often been pointed out, are rights which are recognized and protected by the courts by excluding others therefrom. The designation is therefore more in the nature of a legal conclusion than a description." The Court held that any of plaintiffs' allegedly injured property rights would be sufficient: their rights in the creation of a unique and valuable dress design; in using exclusively their names and reputations; in exclusively owning the designs, models and sketches created by their skill; in exclusively being able to license them.

Another objection was that plaintiffs had abandoned their rights by inviting certain individuals, including reporters, to their showings. However, "the care with which plaintiffs protected their showings, the elaborate scheme devised for such protection, the method by which persons were admitted to the showings, clearly demonstrated the intent not to abandon, but on the contrary, an attempt to retain effective control over the reproduction, sale and copying of plaintiffs' original and unique designs." There was no abandonment here.

The complaint could also be sustained as stating a cause of action for unjustifiable interference with the plaintiffs' contractual rights. "The present defendants' conduct interferes with plaintiffs' enjoyment of the benefit of the exclusive right which it has to license to others the right to copy and simulate plaintiffs' original designs. The right of the parties to protect their interest in those contracts against interference by the intentional acts of third parties is not limited by the analogies of common-law property rights."

Defendants further claimed an injunction would violate their right of free speech, freedom of the press, due process and would result in a restraint of trade. "It is difficult to follow the argument of the defendants or to determine how they bring this within the protection of the free speech and freedom of the press clause of the Constitution. To say that someone who by fraud and deception obtains the fruits of another's labors and sells them commercially for his own advantage is acting as a disseminator of news and is therefore entitled to the constitutional protection would be a contorting of the Constitution beyond limits not even envi-

sioned by the most radical protagonist of this salutary constitutional provision. . . . Equally unavailing is the argument of the defendants that due process would be violated if an injunction were granted in this case. The court confessedly simply cannot follow this contention of the defendants." As to restraint of trade, "there is nothing in the complaint to show this to be the fact. None of the plaintiffs has a monopoly of the fashion business or even a segment thereof, and no such inference can be drawn from the complaint. There is no showing that the plaintiffs have ever acted in concert to exclude anyone from the fashion field. . . . The mere fact that the plaintiffs have joined together in this complaint does not mean that they are acting in concert in the manner and method contemplated by the cases relating to restraint of trade."

The Court also dismissed defendants' claim that plaintiffs failed to heed the direction of the Court to state and number each cause of action separately. "Allegations in the complaint that the defendants have misappropriated and wrongfully traded on the plaintiffs' names and reputations are clearly proper. They are elements of plaintiffs' cause of action for unfair competition. Also, the fact that specifications of the various unlawful acts and conduct by the defendants are set forth in the complaints does not import that each wrongful act alleged constitutes a separate and distinct cause of action. The complaint postures a single actionable wrong to the plaintiffs giving them a single primary right."

114. *Frank M. Shaw, Inc. v. C. H. Cleworth & Associates, Inc.*, 110 U.S.P.Q. 394 (Sup.Ct. of N.Y., Spec. Term, N.Y.County, July 2, 1956).

Action for unfair competition. Both parties were business and management consultants. Plaintiff alleged that defendant, in soliciting the same trade, used a duplication of plaintiff's brochure. The brochures were similar even to certain illustrations appearing on the same pages.

*Held*, motion for temporary injunction granted.

"While plaintiff's product may be in the public domain, and defendant's brochure carries clearly its own name, yet plaintiff has established sufficiently an adaptation and use unfair in competitive enterprise. . . . The deception and the use of the material without effort or expense with its consequent economic advantage constitutes a practice well within the scope of unfair competition."

PART IV.

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A. BOOKS AND TREATISES

1. United States Publications

115. Ashley, Paul P.

Say it Safely: Legal Limits in Journalism and Broadcasting.

*Seattle, University of Washington Press, 1956. 117 p.*

A handbook for working newspapermen and broadcasters by a member of the Seattle Bar, and former Associate Professor of Business Administration at the University of Washington.

116. Cahn, Joshua Binion.

Copyright in works of art. (2d ed.)

*Artists' Equity Association, New York, 1956. 15 p.*

First published in 1948 under title "Artistic copyright," this pamphlet briefly discusses common law and statutory copyright, international copyright, and infringement with reference to works of art.

117. Rothenberg, Stanley.

Copyright law: basic and related materials. With an introduction by Morris Ebenstein.

*Clark Boardman Co., New York, 1956. 1082 p.*

Compilation of materials, edited in part, on domestic and international copyright, which includes texts of federal, state, and territorial laws and regulations; legislative reports and hearings; English texts of international conventions; selected federal and state court decisions; the Berne Union report and Rome Draft on neighboring rights; texts and materials on domestic trademark and patent legislation; and a comprehensive annotated bibliography.

## 2. Foreign Publications.

## (a) In English

## 118. Barker, R. E.

Copyright in books. [Books for all.] *UNESCO, Paris, 1956, pp. 48-56.*

A brief history of copyright, including material on international copyright conventions with particular reference to the Universal Copyright Convention, and on the transfer of royalties.

## (b) In Italian

## 119. Ascarelli, Tullio.

Teoria della concorrenza e dei beni immateriali; lezioni di diritto industriale.

*A. Giuffrè, Milano, 1956. 630 p.*

"Theory of competition and intangible property; lectures on industrial law," is a treatise on the laws of unfair competition and industrial property in Italy, covering those subjects in their broadest aspects to include patent laws and legislation, copyright law, moral rights, neighboring rights, and commercial law.

## B. LAW REVIEW ARTICLES

## 1. United States

## 120. Finkelstein, Herman.

The copyright law—a reappraisal.

*University of Pennsylvania Law Review, vol. 104, no. 8 (June 1956), pp. 1025-1063.*

The author points out the need of revision of the U. S. copyright law in the light of advances in the arts of mass communication since the last general revision in 1909, and presents some of the issues requiring re-examination.

- 120a. Copyright—Study of the Term “Writings” in the Copyright Clause of the Constitution.

*New York University Law Review*, vol. 31, no. 7, (Nov. 1956), p. 1263.

A study undertaken by members of the staff of New York University Law Review to assist the program of studies being conducted by the United States Copyright Office for the general revision of the copyright law.

- 120b. Taubman, Joseph.

Joint Authorship and Co-Ownership in American Copyright Law.

*New York University Law Review*, vol. 31, no. 7 (Nov. 1956), p. 1246.

A discussion of the problems of joint authorship and co-ownership in American copyright law raised by the recent Supreme Court decision in *De Sylva v. Ballentine*, 351 U.S. 570 (1956). (See 3 BULL. CR. SOC. p. 148, item 416).

- 120c. Copyright—Renewals—Rights of Widow and Children of Deceased Author: *De Sylva v. Ballentine* (U.S. 1956).

*New York University Law Review*, vol. 31, no. 7 (Nov. 1956), p. 1319.

A note on *De Sylva v. Ballentine* (see Item 120b *supra*).

121. Literary property and contracts for hire.

*Reprinted from De Paul Law Review in New York Law Journal* (Oct. 25 and 26, 1956).

A discussion of who is entitled to the copyright in literary property where it is produced under employment contracts or by independent contractors.

## 2. FOREIGN

## (a) In English

## 122. Vaunois, Louis.

Letters from France: recent cases.

*Copyright Society of the U. S. A. Translation Service* 1956, no. 6a., 15 p.

Translation by Borge Varmer from the French article published in *Le Droit d'Auteur*, vol. 69, no. 1 (Jan. 1956), pp. 9-15.

## 123. Copying of British Textile Designs.

*Monthly Report, Trade Marks Patents and Design Federation, Great Britain*, Nov. 1956, p. 6.

Report on a "gentlemen's agreement" based on the Japan Textile Colour Design Centre—a foundation independent of trade interest—and enforcement procedures introduced by the Japanese Cotton Textile Exporter's Association, to prevent the copying of British designs by Japanese firms.

## (b) In French

## 124. Bappert, Walter.

La mention de réserve dans la Convention universelle sur le droit d'auteur (Article III). (Par... et Egon Wagner.)

*Le Droit d'Auteur*, vol. 69, no. 8 (Aug. 1956), pp. 110-114; vol. 69, no. 9 (Sept. 1956), pp. 119-123.

Translated from the German and revised by the author, "The copyright notice in the Universal Copyright Convention (Art. 3)" is a commentary covering such topics as freedom from formalities for unpublished works, the copyright notice as a condition of copyright for published works, and the principle of national treatment.

125. Déclarations de la Belgique, de la Hongrie et du Liban, concernant l'application à la République démocratique allemande de la Convention de Berne révisée à Rome le 2 juin 1928.

*Le Droit d'Auteur*, vol. 69, no. 9 (Sept. 1956), pp. 117-118.

Notifications received by the Swiss Government from Belgium, Hungary, and Lebanon concerning the application to the German Democratic Republic (East Germany) of the Bern Copyright Convention as revised in 1928.

126. Goldbaum, Wenzel.

Lettre d'Amérique latine.

*Le Droit d'Auteur*, vol. 69, no. 9 (Sept. 1956), pp. 123-126.

A brief comparative study of the copyright relations of the Latin American states with particular reference to the Universal Copyright Convention and other copyright conventions to which they adhere.

127. La Radiodiffusion des disques du commerce; deux études sur l'arrêt de la Cour de cassation du 19 janvier 1956: A. Note de Robert Plaisant. B. Note de André De Bluts.

*Revue de Droit Intellectuel, l'Ingenieur-Conseil*, vol. 46, nos. 6-7, (June-July 1956), pp. 49-60.

Two notes on a recent decision of the Belgian Supreme Court dealing with the question whether, under a contract authorizing the broadcast of certain works, commercial records bearing labels limiting them to private use may be used in radio broadcasting without specific authorization.

128. Sanctis, Valerio de.

Lettre d'Italie.

*Le Droit d'Auteur*, vol. 69, no. 9 (Sept. 1956), pp. 127-129; no. 10 (Oct. 1956), pp. 138-144.

In summarizing recent highlights in the field of Italian copyright law, the writer comments on legislative problems concerning the protection of works of applied art and of motion pictures, and on taxation reform and copyright law; on judicial decisions concerning unpublished works,

the right of the author in respect to critical editions of his works, collective works (newspapers and periodicals), photographs of news events, compensation for violation of moral rights, and the right of a person to be properly portrayed in a motion picture; and on constitutional questions concerning freedom of expression and the criminal liability of newspaper publishers.

(c) In German

129. Bappert, Walter.

Schutz musikalischer Werke nichtamerikanischer Komponisten in den USA nach dem Inkrafttreten des Welturheberrechtsabkommens. (16 September 1955). Walter Bappert und Egon Wagner.

*GEMA Nachrichten, Heft 30 (Aug. 1956), pp. 14-16.*

An article on the protection in the U. S. of works by foreign composers after the U.C.C. came into effect on Sept. 16, 1955.

130. Bappert, Walter.

Das Urteil des Bundesgerichtshofs vom 18. Mai 1955 über die private Magnetonaufnahme.

*Gewerblicher Rechtsschutz und Urheberrecht, vol. 58, no. 6 (July 1956), pp. 255-258.*

A commentary on a decision of the German Supreme Court dealing with the private use of tape recordings.

131. Gamm, Otto Friedrich.

Mängelhaftung im Filmrecht.

*Gewerblicher Rechtsschutz und Urheberrecht, vol. 58, no. 6 (June 1956), pp. 258-260.*

"Liability for defects in motion picture law" discusses the faulty performance of film contracts in Germany.

132. Glücksmann, Anselm.

Erläuterungen zur "Verordnung über die Wahrung der Aufführungs- und Vervielfältigungsrechte auf dem Gebiete der Musik" vom 17.3.1955 (GBL. Nr. 37). Der Schutz der Rechte des Komponisten in der Deutschen Demokratischen Republik.

*GEMA Nachrichten*, no. 30 (Aug. 1956), pp. 17-20.

An explanation of an East German decree, dated March 17, 1956, concerning the requirements for the performance and reproduction of musical compositions.

133. Donker, Duyvis, F.

Urheberrecht und Photoduplikate.

*Revue de la Documentation*, vol. 23, no. 1 (Mar. 1956), pp. 4-8.

A commentary, with English summary, on a recent German Supreme Court decision concerning the right of unauthorized photo-copying of contributions to periodicals.

134. Haeger, Siegfried.

Gedanken zur Entwicklung eines Gesamturheberrechts für Filmwerke, Fernsehwerke und Hörwerke.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 22, nos. 1/2 (June 1, 1956), pp. 55-71.

"Thoughts on developing a 'compound' copyright in cinematographic works, television works and aural works." The author criticizes the German Draft Copyright Law of 1954 in that it overlooks new types of works evolving from modern technical developments and proposes new rules for the protection of such works.

135. List, Friedrich.

Technik und Urheberrecht.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 22, nos. 1/2 (June 1, 1956), pp. 71-91.

A philosophical commentary on the relationship between technology and copyright, with particular reference to neighboring rights.

136. Roeber, Georg.

Die Urheberschaft am Film.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 22, nos. 1/2 (June 1, 1956), pp. 1-41.

"Authorship in films"; problems and tasks in revising the German copyright laws.

## 137. Runge, Kurt.

Das Gruppenwerk als Objekt urheberrechtlichen Schutzes.

*Gewerblicher Rechtsschutz und Urheberrecht*, vol. 58, no. 9 (Sept. 1956), pp. 407-409.

The problem involved in the protection of works created by group enterprise, including motion pictures, radio broadcasts, phonograph recordings as well as literary and scientific works, with special reference to the moral rights of the individual authors of such works which should be considered in the revision of the German copyright laws.

## 138. Werhahn, Jürgen W.

Streitfragen der Filmurheberschaft.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 22, nos. 1/2 (June 1, 1956), pp. 42-55.

"Issues of authorship of motion picture films"; a commentary which serves at the same time as a critique of Ulmer's article on the same subject.

## (d) In Italian

## 139. Fabiani, Mario.

Cineromanzi a fumetti e diritti del produttore cinematografico.

*Rassegna di Diritto Cinematografico*, vol. 5, nos. 3-4 (May-Aug. 1956), pp. 66-67.

A discussion of the Italian laws in reference to the right to take pictures of scenes from a motion picture and use them to make a picture story.

## 140. Funari, Antonio.

Il film e il Pubblico Registro Cinematografico.

*Il Diritto di Autore*, vol. 27, no. 2 (Apr.-June, 1956), pp. 207-228.

A commentary on the registration of motion pictures in Italy.

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La protezione della fotografia nel diritto comparato. (Legislazioni britannica, francese ed italiana).

*Il Diritto di autore*, vol. 27, no. 2 (Apr.-June 1956), pp. 159-206.

"The protection of the photograph in comparative law"; commentary on the British, French, and Italian laws, covering such topics as authorship, portraits, photographic reproduction of works of art, assignments, exclusive rights, fair use, and duration.

(e) In Spanish

142. Menica, Carlos G.

La Legislación del Peru sobre el Derecho de Autor y el Anteproyecto de ley del Dr. Rafael Morales.

*Jurisprudencia Argentina*, vol. 18, no. 6460 (Aug. 1, 1956), pp. 1-2.

A commentary on the draft Copyright Law of Peru, proposed by Dr. Rafael Morales in his "Protección de los derechos de autor y otros derechos conexos; anteproyecto de ley (1955)." The commentator touches on such aspects as Peru's international copyright relations, duration, deposit of copies as condition precedent to litigation, exhibition rights, publication contracts, and the like.

### C. ARTICLES PERTAINING TO COPYRIGHT

#### 1. United States

143. ASCAP, BMI alert supermarkets to copyright, threaten \$250 fine.

*Variety*, vol. 204, no. 6, p. 53.

Supermarkets in the Boston area warned about the unauthorized use of recorded music.

144. Caissons have stopped rollin'.

*The Billboard*, vol. 68, no. 37 (Sept. 15, 1956), p. 17.

Note on announcement that the U. S. Army holds the copyright on its new official song, "The Army Goes Rolling Along." The tune is based on the late Brig. Gen. Gruber's "The Caissons Go Rolling Along."

145. Cleffers sue 3 pubs on "No Man an Island."

*Variety*, vol. 204, no. 5 (Oct. 3, 1956), p. 65.

Note on suit brought in N. Y. Federal Court by songwriters Joan Whitney and Alex Kramer against Ross Jungnickel and other music firms, alleging infringement of the plaintiffs' tune, "No Man is an Island."

146. Defunct firm sues to protect a copyright.

*Variety*, vol. 23, no. 13 (Aug. 29, 1956), p. 46.

Breach of contract suit brought by Hudson Music, a defunct N. Y. firm, against Decca, et al., involving the tune "Looking Back to See", and dealing with the question whether a dissolved firm can sue to protect a copyright previously taken out in its name.

147. DeSylva widow seeks Supreme Court reversal.

*The Billboard*, vol. 68, no. 41 (Oct. 13, 1956), p. 16.

A note that the petition for a rehearing by Marie DeSylva in the DeSylva v. Ballentine case is slated for a ruling by the Supreme Court on Oct. 8, and a brief comment on the case.

148. Legislation could clear up fuzzy renewal rights proviso.

*The Billboard*, vol. 68, no. 42 (Oct. 20, 1956), p. 20.

A note stating that although the Supreme Court's denial of the petition for review in the DeSylva v. Ballentine case closes off further recourse to the courts, the renewal rights provision "could be legislated out of the Copyright Act" by the revision of the Copyright Act of 1909 now under study in the Copyright Office.

149. Screen writers seek copyright to set up 'Lease' principle.

*Variety*, vol. 204, no. 7 (Oct. 17, 1956), p. 17.

A note on plans of the Writers Guild of America to sponsor a change in the copyright law to enable a writer to copyright a feature film script before production of the motion picture, and effect automatic separation of rights, with a writer leasing his story rights to a motion picture company.

## 2. England

## 150. The Copyright Bill.

*The Author*, vol. 67, no. 1 (Autumn, 1956), pp. 2-3.

In a brief comment on the British Copyright Bill the writer points out that a number of clauses were substantially improved during the discussions of the Standing Committee of the House of Commons beginning on June 19th, particularly in regard to divisibility of copyright for articles in periodicals and the extension of the period during which an action for infringement may be brought.

## 151. James, F. E. Skone.

Copyright—Publishing Agreement—Agreement governed by German law—Proper law of a publishing agreement.

A brief commentary on a decision of the German Supreme Court involving an action in which a British publisher granted translation and publishing rights for a novel to a German publisher. The writer points out that in view of the decision that the law of the place of business of the publisher of the translation should govern in the absence of an agreement to the contrary, a clear and unambiguous clause should be inserted in the publishing contract.

## NEWS BRIEFS

## 152. AMERICAN BAR ASSOCIATION.

At the 79th annual meeting of the ABA held in Dallas, Texas, Aug. 27-31, on the recommendation of the Board of Governors, the House of Delegates supported the principle that the U. S. Government and its agencies should be liable for copyright infringement. The House also recommended a federal statute of limitations of four years in all actions for copyright infringement.

## 153. COPYRIGHT LAWS AND TREATIES OF THE WORLD (CLTW).

The Copyright Office in Washington has an almost complete collection of the original foreign-language texts of all items which, in English translation, appear in *Copyright Laws and Treaties of the World*. These origi-

nal texts are the relevant pages of the official gazettes or official collection of laws of each country. Photostatic copies may be ordered from the Copyright Office at the usual rates charged by the Library of Congress Photoduplication Service for making photostats.

154. INTERNATIONAL ASSOCIATION OF LITERATURE AND ARTS.

At its meeting in Amsterdam, Sept. 3-8, 1956, the association adopted resolutions on the following subjects: neighboring rights; the British Copyright Bill with particular reference to radio broadcasting; and tape recordings, microfilms and photocopies. The resolutions recommended that national legislation relating to materials in the latter group should safeguard the legitimate interests of the authors.

155. INTERNATIONAL FEDERATION FOR DOCUMENTATION (FID).

At its meeting in Stuttgart on August 27-29, 1956, the Council of the International Federation for Documentation (FID) heard a report from Carl J. Braband, head of the patent section of Allgemeine Elektrizitäts-Gesellschaft, on the problems of copyright and photoduplication. The Council decided, as a result, to establish a committee to express the views of the members of the Federation as documentalists. The "Provisional Summary Report" of the meeting states that "One issue of the *Review of Documentation* should be devoted to this subject."

156. INTERNATIONAL FEDERATION OF FILM PRODUCERS ASSOCIATIONS.

According to a communication from Mr. Gérard Bolla (*The Performing Artiste, the Record Manufacturer, the Broadcaster*, Oct. 1956, p. 87), the Federation at a meeting in London during July, unanimously adopted a resolution supporting the International Copyright Union and UNESCO as being the organizations competent to convoke or organize conferences for the establishment of an international convention on neighboring rights.

157. INTERNATIONAL FEDERATION OF FILM WRITERS.

The 4th Congress of the International Federation of Film Writers was held in La Toja (Pontevedra), Spain, July 24-26, 1956, in which delegates from Latin America and eastern Europe participated for the first time. The federation issued "decisions, motions and resolutions" on such sub-

jects as standard contracts, moral rights involved in the substitution of music in motion pictures, censorship, neighboring rights, arbitration, and television.

158. UNESCO.

In response to a request of the International Conference of Artists, Venice, 1952, the Director General of UNESCO called a meeting of the "Liaison Committee of International Organisations in the Field of Arts and Letters" in Paris on Oct. 10-12, 1955. Among those present was Mr. Juan Diaz-Lewis, head of the Copyright Division.

159. UNIVERSAL COPYRIGHT CONVENTION RATIFICATIONS.

The following is a copy of a press release issued on October 24, 1956, by UNESCO:

"Italy today became the 22nd nation to join the Universal Copyright Convention when Mr. Gian Franco Pompei, permanent delegate of Italy, deposited his government's instructions of ratification at UNESCO House in Paris. Italy will be bound by the provisions of the convention as of January 24, 1957, three months after ratification.

"The Convention now applies to: Andorra, Cambodia, Chile, Costa Rica, France, the Federal Republic of Germany, Haiti, the Holy See, Israel, Japan, Laos, Liberia, Luxembourg, Monaco, Pakistan, Philippines, Spain, Switzerland and the United States. It will take effect for Iceland and Portugal on December 18 and 25 respectively."

160. PROTECTION OF FOREIGN LITERARY WORKS IN MEXICO.

The New York Times reported on Oct. 19, 1956 that a bill "designed to end Mexico's reputation for literary piracy" was given preliminary approval by the Mexican Senate on Oct. 18, 1956. The new law would provide a system of registration for foreign literary works and give authors and their publishers protection for seven years, with provisions for renewal.





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THE TRANSLATION AND DOCUMENT SERVICE  
of  
THE COPYRIGHT SOCIETY OF THE U. S. A.

is about to distribute to subscribers to the Translation Service a Consolidated Supplement to the bound collection of Neighboring Rights Documents which was issued in the Spring of 1956.

The first volume of documents covered the period from June 1928 to March 1956. The consolidated supplement binds together additional copies of two supplements already distributed in looseleaf form to subscribers to the Service with Supplement No. 3 which is now ready for release. Supplement No. 3 alone consists of 228 pages of Berne Union, Unesco and ILO reports in addition to texts of the Revised Rome Draft originating during the period from April 30, 1956, to July 17, 1956.

The issuance of this consolidated supplement brings the total number of pages of neighboring rights documents up to 700. The issuance of these documents, many of which are available in English but difficult to assemble, has caused the name of the Translation Service to be expanded to the Translation and Document Service.

Since its inauguration in 1955, the Translation and Document Service, in addition to producing the two bound volumes referred to above, has sent to subscribers translations or summaries in English of outstanding articles published in *Le Droit d'Auteur* and other sources such as:

Summary of the German Draft Law on Copyright and of the Report of the Drafting Commission by William Strauss, U.S. Copyright Office.

Sixth Meeting of the Executive Subcommittee of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works.

Film Rights in the Draft for a New German Copyright Law by Dr. Eugen Ulmer.

Sound Recordings in the Draft of a New German Copyright Law by Assessor Dr. Lutz Hackemann.

Opinion of the Commission on Legislation of COSAC Concerning the Draft Law on Copyright of the German Federal Republic.

To accommodate the more than 300 pages of translation material already distributed a loose-leaf binder and an index and separation tabs will shortly be sent to each subscriber to the service.

For the first year subscribers paid dues in the amount of \$100. each. For the second year the dues were reduced to \$50. A limited number of extra copies of the translations which have been issued and of the two bound volumes of Neighboring Rights Documents are available.

New subscribers to the Service paying dues for both years, that is \$150.00, will receive a full set of all the material including the bound volumes. The bound volumes of Neighboring Rights Documents are also available individually at \$22.50 each. Orders should be sent to the Society in care of Frederick B. Rothman & Co., 57 Leuning Street, South Hackensack, New Jersey.



## PART I.

**LEGISLATIVE AND ADMINISTRATIVE  
DEVELOPMENTS**

## UNITED STATES OF AMERICA AND TERRITORIES

161. *U. S. Congress. House Committee on Education and Labor.*

Musicians performance trust funds. Hearings before a special subcommittee of the Committee on Education and Labor, House of Representatives, Eighty-fourth Congress, 2nd Session, on investigation with respect to the operations of and contributions to musicians performance and trust funds.

*Washington, Govt. Print. Off., 1956. 219 p.*

Hearings before Special Subcommittee, Committee on Education and Labor, Phil M. Landrum, chairman, held in Los Angeles on May 21 and 22, 1956.

162. *U. S. Congress. House. Committee on Education and Labor.*

Musicians performance trust funds. Report by special subcommittee of Committee on Education and Labor, House of Representatives, Eighty-fourth Congress, 2nd Session, to investigate the operations of the musicians performance trust funds of the American Federation of Musicians. Submitted Oct. 10, 1956; Phil M. Landrum, chairman of subcommittee.

*Washington, Gov. Print. Off., 1956, 5 p.*

Following an executive session held on Oct. 1 and 2, 1956, to consider the material presented at the hearings and additional information received since the hearings, the subcommittee recommends that additional hearings be held to determine the feasibility of amending the Labor Management Relations Act of 1947 so that "each employee would have a legally protected right to decide for himself if he wanted his share of 'wage' increases paid to him or to the union or in any other conceivable manner."

163. *U. S. Congress. Senate. Committee on the Judiciary.*

A review of the evidence relating to the copyright law as it applies to jukeboxes in connection with S. 590, a Bill relating to the rendition of musical compositions on coin-operated machines. Nov. 30, 1956. [Submitted by the Subcommittee on Patents, Trademarks, and Copyrights, Mr. O'Mahoney, chairman].

*Washington, Govt. Print. Off.*, 1956, 36 p. (*U. S. 84th Cong., 2d Sess., Senate. Document No. 155*).

A summary of the arguments presented by the opposing sides at an executive conference held on Feb. 29, 1956. The document includes the memoranda from which the summary was prepared and a statement that the summary was submitted "in the hope that it may be helpful to those concerned in promoting an agreed compromise proposal for the consideration of the committee."

## 2. FOREIGN NATIONS

164. *Canada. Patent and Copyright Office.*

Réglement régissant le droit d'auteur (du 1<sup>er</sup> décembre 1954).

*Le Droit d'Auteur*, vol. 69, No. 11 (Nov. 1956), pp. 149-153.

French text of the Canadian copyright regulations now in effect.

165. *France. Laws, statutes, etc.*

Décret complétant l'article 10 du décret du 17 décembre 1920 concernant l'exercice du droit de suite par les artistes de nationalité étrangère. (No. 56-932, du 15 septembre 1956).

*Le Droit d'Auteur*, vol. 69, No. 11 (Nov. 1956), p. 153.

An amendatory decree providing that artists of foreign nationality who have resided in France for at least five years, not necessarily consecutive, may secure for themselves the same benefits of the "droit de suite," i.e., the right of the artist to share in the profits resulting from the public sale of his works of art, as are given to French nationals.

166. *Germany (Federal Republic). Laws, statutes, etc.*

Gesetz betreffend das deutsch-isländische Protokoll vom 19. Dezember 1950 über den Schutz von Urheberrechten und gewerblichen Schutzrechten, vom. 25. September 1956.

*Gewerblicher Rechtsschutz und Urheberrecht (Auslands- und internationaler Teil)*, No. 11 (Nov. 1956), p. 477.

The law of Sept. 28, 1956, implementing the protocol between the German Federal Republic and Iceland regarding reciprocal protection of intellectual and industrial property.

167. *Gt. Britain. Laws, statutes, etc.*

Copyright act, 1956, 4 & 5 Eliz. 2, ch. 74.

*London, H. M. Stationery Off.*, 1956. 91 p.

The text of the new British Copyright Act which received the Royal Assent on Nov. 5, 1956.

168. *India. Parliament. Joint Committee on the Copyright Bill, 1955.*

The Copyright Bill, 1955; report of the Joint Committee, presented on the 19th November 1956.

*New Delhi, Rajya Sabha Secretariat*, 1956. 104 p.

Includes the text of the Bill as amended by the committee.

169. *Sweden. Laws, statutes, etc.*

Ordonnance n° 464 relative au Fonds des Auteurs de Suède: promulguée au Palais de Stockholm, le 17 Juin 1955, et publiée au Recueil des Lois le 7 Juillet 1955 (1).

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 189-191.

French translation of the text of the administrative order of June 17, 1955, establishing an Authors' Fund in Sweden.

170. *Switzerland. Laws, statutes, etc.*

Bundesgesetz betreffend das Urheberrecht an Werken der Literatur und Kunst vom 7. Dezember 1922 in der Fassung des Änderungsgesetzes vom 24. Juni 1955.

*Blatt für Patent-, Muster- und Zeichenwesen*, Vol. 58, No. 10 (Oct. 1956), pp. 327-334.

Text of the Swiss copyright law incorporating the changes made by the amendatory law of June 24, 1955.

## PART II.

**CONVENTIONS, TREATIES AND  
PROCLAMATIONS**171. *Germany, Treaties, etc.*

Bekanntmachung über das Inkrafttreten des Abkommens zwischen der Bundesrepublik Deutschland und der Föderativen Volksrepublik Jugoslawien über gewisse Rechte auf dem Gebiet des gewerblichen Rechtsschutzes und des Urheberrechts, vom 11. Juni 1956.

*Gewerblicher Rechtsschutz und Urheberrecht*, No. 11 (Nov. 1956), p. 4.

Announcement of the coming into force of the agreement between the German Federal Republic and the Federal People's Republic of Yugoslavia in regard to certain rights in the areas of industrial property and copyright.

172. *Germany, Treaties, etc.*

Protokoll über Verhandlungen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Island betreffend den Schutz von Urheberrechten und gewerblichen Schutzrechten.

*Gewerblicher Rechtsschutz und Urheberrecht (Auslands- und internationaler Teil)*, no. 11 (Nov. 1956), p. 478.

The protocol between the governments of the Republic of Germany and Iceland regarding reciprocal protection of intellectual and industrial property, signed Dec. 19, 1950.

173. *Indonesia.*

Notifikation der Schweizer Regierung an die Regierungen der Unionsländer betreffend die Zugehörigkeit Indonesiens zur Internationalen Union für den Schutz von Werken der Literatur und Kunst vom 15. Mai 1956.

*Blatt für Patent-, Muster- und Zeichenwesen*, Vol. 58, No. 10 (Oct. 1956), p. 335.

Notification by the Swiss Government concerning the adherence of Indonesia to the Bern Copyright Convention as revised in 1928. [Translated from *Le Droit d'Auteur*, July 1956]

174. *Portugal.*

Anwendung der zuletzt am 26. Juni 1948 in Brüssel revidierten Berner Übereinkunft auf die überseeischen portugiesischen Provinzen. (3. August 1956).

*Blatt für Patent-, Muster- und Zeichenwesen, Vol. 58, No. 10 (Oct. 1956), pp. 335-336.*

The Swiss Government has notified the Bern Union member countries as of Aug. 3, 1956, that the Bern Copyright Convention of 1886, as revised at Brussels in 1948, is applicable to the overseas provinces of Portugal. [Translated from the French version which appeared in *Le Droit d'Auteur*, Aug. 1956].

175. *Republic of Germany (East Germany).*

Erklärungen Belgiens, Ungarns und des Libanon über die Anwendbarkeit der in Rom am 2. Juni 1928 revidierten Berner Übereinkunft auf die sowjetische Besatzungszone Deutschlands.

*Blatt für Patent-, Muster- und Zeichenwesen, vol. 58, No. 10 (Oct. 1956), pp. 334-335.*

Notifications received by the the Swiss Government from Belgium, Hungary, and Lebanon concerning the application to the German Democratic Republic (East Germany) of the Bern Copyright Convention as revised in 1928. [Translated from the French version which appeared in *Le Droit d'Auteur*, Sept. 1956].

## PART III.

## JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

### A. DECISIONS OF U. S. COURTS

#### 1. Federal Court Decisions

176. *Bernstein v. National Broadcasting Co., Inc.*, 232 F. 2d 369, 4 BULL. CR. SOC. p. 42, item 10B, cert. den. (Dec. 10, 1956).

177. *Biltmore Music Corporation et al. v. Kittinger*, 238 F.2d 373 (9th Cir., Aug. 3, 1956), cert. den. 111 U.S.P.Q. No. 13, p. 11 (Dec. 17, 1956).

Action for copyright infringement. The Court of Appeals affirmed the District Court decision in favor of defendant, reported in 2 BULL. CR. SOC. p. 125, item 212, after striking out one paragraph of the judgment not connected with the primary issues.

Among the questions raised in the petition for certiorari were these: (1) Does 17 U.S.C. 1(e), the "Compulsory License Act", apply outside the U.S.A., so as to require a German copyright owner who licenses a German recording of a musical copyright for release and sale in Germany only, to file a Notice of Use with the U.S. Register of Copyrights? (2) Does the failure to file a Notice of Use of a German recording forever preclude the German copyright owner from exercising any rights under Sec. 1(e), where he, or someone deriving rights from him, subsequently files a Notice of Use at the time the first mechanical use is authorized by the copyright owner in the U.S.?

178. *Jack Benny and Columbia Broadcasting Co. v. Loew's Incorporated et al.*, 112 U.S.P.Q. 11, (9th Cir. Dec. 26, 1956), affirming 131 F.Supp. 165, 105 U.S.P.Q. 302, 2 BULL. CR. SOC. p. 177, item 337.

Action for copyright infringement. A play entitled "Gas Light" was copyrighted in 1939, Loew's obtained the exclusive motion picture rights and produced a successful movie. In 1952 C.B.S. telecast a show burlesquing "Gas Light", with Jack Benny in the leading role. No consent from the copyright owner or Loew's was ever obtained. When C.B.S. prepared to re-telecast this show, Loew's and the copyright owner brought this action and obtained a temporary restraining order. Upon a trial on the issues the District Court found substantial copying resulting in copyright infringement, and granted injunctive relief. C.B.S. and Jack Benny appealed.

*Held*, affirmed.

The Court first compared the original play and the parody and agreed with the District Court that there was substantial copying; "if the material taken by [defendants] from "Gas Light" is eliminated, there are left only a few gags, and some disconnected and incoherent dialogue. If the television play were presented without [defendants'] contribution, there would be left the plot, story, principal incidents, and same sequence of events as in the photoplay." As to fair use of the copyrighted material, defendants' main contention on appeal, "whether the audience is gripped with tense emotion in viewing the original drama, or, on the other hand, laughs at the burlesque, does not absolve the copier. Otherwise, any individual or corporation could

appropriate, in its entirety, a serious and famous dramatic work, protected by copyright, merely by introducing comic devices of clownish garb, or movement, or facial distortion of the actors, and presenting it as burlesque."

Neither was it a defense that Mr. Benny had presented his versions of dramatic works for twenty-five years; and the contention that the burlesque presentation was in effect literary or dramatic criticism "would seem to be a parody upon the meaning of criticism."

179. *American Visuals Corporation v. Holland et al.*, 111 U.S.P.Q. 288 (2nd Cir., Nov. 20, 1956); prior decision in 104 U.S.P.Q. 222, 2 BULL.CR. SOC. p.124, item 211.

Action for copyright infringement, unfair trade practice and unfair competition. Plaintiff copyrighted a book entitled "Killer in the Streets"; 200 copies were disseminated to interest insurance companies in using the book for safety advertising campaigns; 100 copies were placed on a table in a hotel where insurance executives were convening; an insurance association was induced to send copies to its 112 member companies. In form, the book consisted of photostats of a "comprehensive rough dummy", bearing a copyright notice. Defendant published a book "It Can't Happen To Us", allegedly largely copied from plaintiff's work. The District Court dismissed the complaint because (1) plaintiff's limited publication failed to comply with 17 U.S.C. 10, and (2) the form of plaintiff's book prevented it from being copyrighable.

*Held*, reversed and remanded.

The Court found that the various decisions indicate that "the courts apply different tests of publication depending on whether plaintiff is claiming protection because he did not publish and hence has a common law claim of infringement — in which case the distribution must be quite large to constitute 'publication'—or whether he is claiming under the copyright statute—in which case the requirements for publication are quite narrow. In each case the courts appear so to treat the concept of 'publication' as to prevent piracy. . . . In the present case, it is clear that the distribution was limited as to purpose: The creator was seeking a purchaser of his ideas for a safety campaign. That was the only purpose, indeed, for which plaintiff's work was created and the only reason plaintiff could have for distributing it. On the facts it would seem plaintiff did everything it could to distribute, bearing in mind that the creation itself was for a distinct purpose. But

plaintiff placed no limitation on who could inspect, retain or receive through any of the original distributees, a copy of his work. If we were to hold that he had not 'published' within the meaning of 17 U.S.C. Section 10, we would be holding that federal copyright protection is unavailable to persons, in plaintiff's position, who create works with a view to having others purchase them for wider distribution. We conclude therefore, that while the 'purpose' of the distribution was limited, the 'persons' to whom it might be given was unlimited."

The Court did not have to decide whether mere deposit with the Copyright Office was sufficient publication under the Copyright Act, as was held in several cited cases. "Some doubt is cast upon these decisions when one considers that the present 17 U.S.C. Section 13 requires deposit 'after copyright has been secured by publication', implying that copyright is secured by publication other than deposit with the Copyright Office. . . . But if we hold that deposit with the Copyright Office is not enough, even so we think plaintiff has published the requirement of 17 U.S.C. Section 10."

As to the second ground for dismissal, the Court did not have "any difficulty finding that the photostatic copies of pencilled art work distributed by plaintiff, were in copyrightable form. . . . Nor does 17 U.S.C. Section 5, specifying the material which may be the subject of copyright, warrant any limitation on copyrighting of a work merely because it may subsequently achieve more perfect or final form.'

Judge Medina, concurring, was satisfied that "whether or not there is a difference between publication sufficient to extinguish literary property and publication sufficient to support a statutory copyright, in the case at bar enough appears to support the statutory copyright, whether the test to be applied be a liberal or a rigid one. That being true I do not think it necessary to comment on the supposed difference, which seems not to have been previously perceptible to the courts or the copyright bar."

180. *Advisers, Incorporated v. Wiesen-Hart, Inc.* 111 U.S.P.Q. 318 (6th Cir., Nov. 27, 1956).

Action for copyright infringement. The actual date of publication of plaintiff's book, a promotional and advertising pamphlet to be used by the jewelry trade, was August 1953 (when the books were shipped to the jewelers), while the registration certificate set forth December 9, 1953 as date of publication (when the books were first

distributed to the public). The District Court held, on defendant's motion for summary judgment, that the variance rendered the copyright unenforceable. Plaintiff appealed.

*Held*, order granting summary judgment set aside and case remanded for determination on the merits.

Defendant claimed the variance invalidated the copyright because it attempted to extend the protection for longer than the statutory period, citing 17 U.S.C. 17, 24, 26 and 209, and *Baker v. Taylor*, 2 Fed. Cases No. 782 (1848) and *Wheaton v. Peters*, 33 U.S. 591, both under prior copyright statutes. But the Court found that the Act of 1909 was different from the earlier statutes both in scheme and language. "The [1909] statute grants valuable rights to persons who create such matter which is copyrightable; and the later cases, in the courts of appeals and in the district courts, emphasize, implicitly, perhaps, on the ground of the subsequent revision of the copyright laws, that useless technicalities are not to be allowed to cut down the benefits conferred. . . . It should be pointed out, however, that the opinion of the district court is clearly sustained by what was said in the early cases therein relied upon, including the decision of the Supreme Court; and it may well be that that court may desire to review our determination in the instant case because of what was held in the earlier adjudication. It is our conclusion, nevertheless, that an innocent misstatement, or a clerical error, in the affidavit and certificate of registration, unaccompanied by fraud or intent to extend the statutory period of copyright protection, does not invalidate the copyright, nor is it thereby rendered incapable of supporting an infringement action."

Defendant also moved to dismiss the appeal because plaintiff, having ascertained that publication may have taken place in August, 1953, had secured from the Register of Copyrights a corrected certificate of registration. "Under the regulations of the copyright office, issued, however, subsequent to the judgment in this case, it would appear that the Register of Copyrights considers that a certificate of registration may be corrected within the intendment of the statute, Regulation 201.5(b) of the Regulations of the Copyright Office, issued August 8, 1956, 21 F.R. 6021; and we are not convinced that such view is contrary to the statute."

181. *Phillip v. Jerome H. Remick & Co., et al.*, 145 F. Supp. 756 (D.C.S.D. N.Y., July 31, 1956).

Action for copyright infringement: Plaintiff obtained a copyright

on his operetta "Alma Wo Wohnst Du" as an unpublished work, and then granted to defendant Remick "the sole, exclusive, absolute and unlimited right, license, privilege and authority to copyright, publish, print, reprint, copy and vend the music, lyrics and titles of all the musical compositions of the operetta". Remick then transferred, allegedly without authority, the exclusive non-dramatic performing rights in the separate musical compositions contained in the operetta, and various defendants broadcast and performed non-dramatic renditions of the operetta. Defendants moved to dismiss the complaint for failure to state a cause of action.

*Held*, motion denied (also plaintiff's motion for judgment on the pleadings and defendants' motion for summary judgment).

Defendants contended the agreement gave Remick the full right to use the songs not only by publication but by performance for profit and in every other way. However, the Court held that "the words of the grant other than the words 'to copyright' appear to be for certain enumerated purposes. In such cases the courts have construed licenses to be for the specific enumerated purposes only. . . . A composer selling without reservation the right to copyright his songs might well be deemed to have relinquished all rights of publication and performance. . . . But these are not the circumstances of this case. The songs were part of an operetta which before the execution of the agreements had already been copyrighted as a work not reproduced for sale. That the parties contemplated that the [plaintiff] would retain [his] rights in the operetta is apparent on the face of the agreements. . . . The term 'Copyright' may refer merely to the re-registration required by Sec. 11 of the Copyright Law, 17 U.S.C.A. 12, where a work, originally copyrighted before its reproduction for sale, is later published wholly or in part. . . . A larger meaning may have been intended, but the purposes of the parties are left in doubt. Such doubt as there is should be resolved in favor of the composer. The clearest language is necessary to divest the author of the fruits of his labor."

182. *Orgel et al. v. Clark Boardman Co., Ltd., et al.*, 111 U.S.P.Q. 435 (D.C. S.D.N.Y., Oct. 19, 1956).

Action for copyright infringement and unfair competition, seeking an injunction, damages and an accounting. Prior to non-jury trial plaintiffs proposed to examine defendants extensively concerning damages and profits; defendants urged such examination should await the establishment of liability.

*Held*, defendants' motion under Rule 30(b) to limit the scope of the examination granted.

After discussing various decisions the Court felt that "in the exercise of judicial discretion and economy, the better view would ordinarily not permit the plaintiff to obtain discovery on the question of damages in a copyright infringement suit, until after the question of whether he has a right to damages and an accounting has been determined. . . . Defendants here claim that the inquiry would be oppressive and unduly burdensome, but have not made an adequate showing to that effect. Nevertheless, it is apparent that an extensive inquiry is contemplated, and even though it may not be oppressive, it may prove to be an unnecessary burden. In addition, business competitors in the law book publishing field are involved as opposing parties, and to allow an extensive discovery into the issue of damages might result in an unnecessary disclosure of defendant publisher's business affairs to plaintiff competitor." Furthermore, the Court could see no prejudice resulting to plaintiff.

183. *Robertson, d.b.a Birchwood Music Co. v. Batten Barton, Durstine & Osborn, Inc., et al.*, 111 U.S.P.Q. 251 (D.C.S.D.Cal., Oct. 18, 1956).

Action for copyright infringement. Plaintiff, a professional songwriter, copyrighted his original song "The Happy Whistler." A Notice of Use having been filed, the composition was released in record form and became a hit. Defendants recorded and broadcast musical commercials allegedly copied from plaintiff's composition.

*Held*, preminary injunction granted.

The Court found the commercials "featured a vocal refrain with a whistled melodic obligato [as did plaintiff's composition] and used the same combination of musical elements found in plaintiff's copyrighted composition, namely, piano, drums, handclapping, bass and guitar"; and a professional whistler who had borrowed the sheet music and recording arrangement from plaintiff whistled the obligato for the commercials. Also, two bars in the commercials were identical with two of the four bars of plaintiff's key melody. "In addition, the arrangement used by defendants creates an impression on the ear of substantial similarity with that of plaintiff's."

## 2. State Court Decisions

184. *Samuel Winston, Inc. v. Charles James Services, Inc.*, 136 N.Y.L.J. no. 99, p. 8, Nov. 23, 1956 (S.Ct. N.Y., Nov. 20, 1956).

In a contract action defendant James interposed two counterclaims, one of them seeking substantial damages for plaintiff's conduct in selling James' styles without labeling them as such or giving it proper credit.

*Held*, counterclaim dismissed for failure of proof.

The proof revealed an undeniable resemblance between the creations of Winston and James. "In this connection, it was significant that an absolutely unknown figure in the designing field, Roxanne, employed by the plaintiff, suddenly emerged as a noted fashion name. Her overnight metamorphosis from a recent housewife and former buyer, to an extensively publicized dress designer, taxes one's credulity. It seems far more plausible, as suggested by the defendants, that Roxanne's mercurial transformation was achieved principally through her intimate knowledge of and easy access to the patterns of the defendant James which were on the premises and in the possession of the plaintiff. She graciously conceded, at least, that many of her designs were 'inspired' by the defendants' originals."

But even after "making due allowance for conjecture and speculation", the Court found the evidence was not strong enough. However, "the failure of the defendants to produce sufficient proof is unfortunate not only for themselves but for those similarly situated, since absent so much sentiment and balderdash, and present a more constructive marshalling of the available facts, the trial, conceivably, could have been the vehicle for expressing a solution of an evil problem that has vexed a prosperous and legitimate industry for many years . . . While authors, composers and inventors are afforded legal protection against misappropriation of the products of their efforts, the practice of 'knocking off' a competitor's successful styles without payment or credit to the designer is indulged in with impunity even by manufacturers of otherwise acknowledged commercial integrity."

## PART IV.

**BIBLIOGRAPHY**

## A. BOOKS AND TREATISES

## 1. United States Publications

## 185. Finkelstein, Herman.

The Nathan Burkan Memorial Competition: Illustrative Cases and Bibliography (1956).

*New York, American Society of Composers, Authors and Publishers. 84 pp.*

Mr. Finkelstein has presented the legal profession with a most remarkable tool for entering the complicated specialties comprising the law of literary property. I purposely substitute the term *literary property* for copyright because, as Mr. Finkelstein adroitly points out by his arrangement of cases and writings under succinctly appropriate headings, copyright is related to many "neighbors", such as trademarks, unfair competition and performers' rights. His choice of cases and works, and categorical breakdown thereof, with which to open a path through the highly complicated areas of Ideas, Copyrightable Subject Matter, Fair Use, and Renewal Rights, to name merely a few, is superb. One familiar with the selected cases and writings can readily visualize how this outline might be expanded into a highly useful and scholarly treatise. The dissection the author has presented should serve as an invaluable touchstone not only for the student of copyright but also for the next treatise writer on this intensely interesting and certainly important aspect of our law, commerce and culture. S. R.

## 186. Sanctis, Valerio de.

Industrial art and its protection on an international basis. Published in the original Italian in *Rivista di Diritto Industriale*, vol. 4, nos. 3-4 (July- Dec. 1955), pt. I, pp. 269-284 [English translation by Guido Pignatelli].

*New York, Copyright Society of the U.S.A., Translation Service, 1956, No. 7a. 14 p. (Multilith).*

## 2. Foreign Publications

## (a) In English

## 187. St. John-Stevas, Norman.

Obscenity and the law. With an introduction by Sir Alan P. Herbert.

*London, Secker & Warburg, 1956. 289 p.*

A study of the problems of obscenity in England from both the legal and literary points of view, with particular attention paid to foreign law and a special chapter on law and practice in the United States. Appendices include a draft bill for the reform of the English law, an account of the Roman Index, a list of banned books, a bibliography, and a table of cases and statutes.

## (b) In German

## 188. Goldbaum, Wenzel.

Welturheberrechtsabkommen, Kommentar. *Berlin. F. Vahlen, 1956. 118 p.*

German text of the Universal Copyright Convention, including a prefatory note, a bibliography, and an article-by-article commentary. An appendix contains a German translation of P.L. 743 followed by a commentary thereon.

## B. LAW REVIEW ARTICLES

## 1. United States

## 189. Finkelstein, Herman.

Advice to authors and users of musical works.

*The Practical Lawyer, Vol. 2, No. 7 (Nov. 1956), pp. 78-86.*

The general attorney of ASCAP discusses three of the problems with which a client interested in writing or using musical compositions is likely to confront his attorney: (1) How to secure protection against infringement. (2) What rights are obtained under the copyright law. (3) What sources of income are made possible from such rights.

190. Torts—right of publicity—performer's rights in reproductions of his performance.

*Rutgers Law Review*, Vol. 10, No. 4 (Summer 1956), pp. 741-744.

A case note on the appellate decision in *Ettore v. Philco Television Broadcasting Corp.*, 229 F.2d 481 (3rd Cir., 1956), in which the writer questions the granting of relief in the instant and similar cases on the theories of right of privacy, unfair competition, and common law copyright, and suggests that, from a standpoint of sound adjudication, the basis for relief should be the right of a well-known personality in the 'publicity' value of his photograph.

## 2. Foreign

### (a) In English

191. Eddy, J. P.

Progress of the Copyright Bill.

*The Law Journal*, Vol 106 [N.S.], No. 4730 (Sept. 21, 1956), pp. 597-599; No. 4733 (Oct. 12, 1956), pp. 644-645; No. 4734 (Oct. 19, 1956), pp. 661-662; No. 4736 (Nov. 2, 1956), pp. 692-695; No. 4738 (Nov. 16, 1956), pp. 726-727. 5 pts. (autostat.)

An analysis of the British Copyright Bill and of the Parliamentary proceedings thereon issued in five installments, with the following contents: (1) The two conventions. (2) Proposed changes in the law. (3) "Fair dealing." Industrial design. (4) Gramophone records. (5) Remedies for infringements of copyright. Performing Right Tribunal.

192. James, F. E. Skone.

The Copyright Act.

*The Author* (Winter 1956), pp. 38-40.

A short discussion of the major innovations of the new British copyright act.

## (b) In French

## 193. Castelain, Raoul.

Le plagiat musical.

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 37-57.

A commentary in French, English, and Spanish on the meaning of "musical plagiarism" in French law.

## 194. Derenberg, Walter J.

Lettre des États-Unis d'Amérique.

*Le Droit d'Auteur*, Vol. 69, No. 11 (Nov. 1956), pp. 158-164.

A commentary on the effect of the amendments to the United States copyright law which permitted ratification of the Universal Copyright Convention and a resumé of recent American court decisions concerning copyright.

## 195. Kjerulf, Ragnar.

L'arrêt de la Cour Suprême de Norvège en faveur de fabricants de disques.

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 25-35.

A commentary in French, English, and Spanish on a Norwegian Supreme Court decision involving the right of a manufacturer of phonograph records to sell them with the prohibition of public use if the author has refused the same.

## 196. Matthyssens, Jean.

Survivance du droit régalien.

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 95-127.

Using the Comedie-Française as an example, the writer points out that certain survivals of the "royal right" are to be found in France, the state having taken the place of the royal power.

## 197. Radojkovic, Zivan.

Le droit d'auteur en Yougoslavie.

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 59-93.

"Copyright in Yugoslavia." [In French, English, and Spanish].

## 198. Tournier, Alphonse.

Une oeuvre en quête d'auteurs.

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 3-23.

"A work in quest of authors"; a commentary in French, English, and German on the problem of authorship in a cinematographic work.

## 199. Tournier, Jean Loup.

Nouvelles des Etats-Unis.

*Revue Internationale du Droit d'Auteur*, No. 13 (Oct. 1956), pp. 129-151.

"News from the United States." The writer discusses the Kilgore jukebox bill, and the *Miller v. Goody*, *de Slyvia v. Ballentine*, and *United States v. Twentieth Century-Fox* cases.

(c) In German

## 200. Goldbaum, Wenzel.

Das Welturheberrechtsabkommen vom 6. September 1956 [i.e. 1952] in der Praxis und in der Literatur.

*GEMA Nachrichten*, No. 31 (Oct. 1956), pp. 24-26.

A criticism of the U.C.C. copyright notice provision.

## 201. Lange, Erhard.

Freiheit und Wirklichkeit? Zur Lage der Künstler.

*GEMA Nachrichten*, No. 31 (Oct. 1956), pp. 27-30.

The writer discusses the economic problems of the creator in the fields of music, literature, and the fine arts, and suggests possible solutions by means of tax relief and old age pensions.

## 202. Strauss, Walter

Zur Urheberrechtsreform.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, Vol. 22, Nos. 3/4 (Sept. 1956), pp. 129-146.

A discussion of the pending German copyright reform proposals.

C. ARTICLES PERTAINING TO COPYRIGHT  
FROM TRADE MAGAZINES

1. United States

## 203. Cleffer sues nets and BMI.

*The Billboard*, Vol. 68, No. 47 (Nov. 24, 1956), p. 30.

Item on treble damage suit filed in New York Federal Court by Gloria Parker, BMI song-writer, charging NBC, CBS, and BMI with violation of antitrust laws.

## 204. Coast musicians file 2d suit against AFM.

*The Billboard*, Vol. 68, No. 49 (Dec. 8, 1956), p. 21.

The American Federation of Musicians and a number of motion-picture and television film producers and distributors are defendants in a suit filed in Los Angeles Superior Court on Nov. 28 by dissident members of A.F.M. Local 47, charging the Federation with diversion of royalties.

## 205. Douglas ahead, his suit goes on.

*Variety*, Vol. 205, No. 1 (Dec. 5, 1956), p. 29.

A note on the opinion by Los Angeles Superior Court Judge David denying a defense motion to dismiss Kirk Douglas' lawsuit against Walt Disney Productions charging unauthorized use, on the "Disneyland" television show, of photographs of Douglas and his family, in which the Court stated that "if the picture or photographs of an individual have a unique commercial value due to his professional character, the non-authorized use thereof commercially may be actionable as a special wrong in itself."

## 206. Pilpel, Harriet F.

"But Can You Do That?"

*Publishers' Weekly*, vol. 170, no. 13 (Sept. 24, 1956), pp. 1596-1600.

Under the title "Is Obscenity an exception to no prior restraint on our Press?", Mrs. Pilpel discussed *Brown v. Kingsley Books, Inc.*, 1 N. Y. 2d 177, 151 N. Y. S. 2d 639 (1956); and *Capital Enterprises, Inc. v. Board of Regents of the University of the State of New York*, 1 App. Div. Rep. 2d. 990. In "Where the law of unfair competition can help," the subject cases were *Ex parte Cooper*, 110 USPQ 323 (1956), and *Frank M. Shaw, Inc. v. C. H. Cleworth & Associates, Inc.*, 110 USPQ 394 (1956). "A word to the wise publisher who is making an anthology" discussed *Ilyin v. Avon Publications, Inc.* 110 USPQ 356 (1956).

*Publishers' Weekly*, vol. 170, no. 18 (Oct. 29, 1956), pp. 2039-2042.

The subject matter and cases discussed in this item were "Time limitations in Movie contracts that did not hold" — *Sunset Securities Co. v. Coward-McCann, Inc.*, 110 USPQ 328 (D. Ct. App. Calif. 1956); "Post Office must observe free press guarantees of Constitution" — *Sunshine Book Co. et al. v. Summerfield* (Ct. App. D. C. 1956); and "Congress acts regarding Post Office's Stop-Mail orders" — H. R. 9842, 84th Cong., 2d Sess., Public Law 821, Chapter 755.

*Publishers' Weekly*, vol. 170, no. 22 (Nov. 26, 1956), pp. 2357-2359.

This item included a discussion of *Desny v. Wilder*, 110 USPQ 433 (Sup. Ct. Calif. 1956); *Brogan v. Passaic Daily News et al.*, (N. J. Sup. Ct. 1956); and *Kramer Jewelry Creations, Inc. v. Capri Jewelry, Inc.*, 111 USPQ 151 (S.D.N.Y. 1956).

## 207. Senate wants settlement on issue of juke-boxes; ASCAP-RIAA views.

*Variety*, vol. 205, No. 2 (Dec. 12, 1956), pp. 53, 60.

An article presenting the views of ASCAP, Songwriters' Protective Association, Recording Industry Association of America, and Librarian of Congress, as given in the O'Mahoney subcommittee report.

## 208. Velie, Lester.

The union that fights its workers.

*The Reader's Digest* (Dec. 1956), pp. 47-53.

An account of the "rebellion" of a segment of the Los Angeles local of the American Federation of Musicians against the AFM Music Performance Fund.

## 2. England

## 209. The Copyright Bill.

*The Bookseller*. No. 2653 (Oct. 27, 1956), p. [1433].

Considerable dissatisfaction with some aspects of the British Copyright Bill as it affects composers has been expressed to Members of Parliament. Further criticism is made of the decision of the Government not to include in the Bill provision for the statutory deposit of phonograph records comparable with that of books.

## 209a. Final stages of Copyright Bill; Government rejects appeals made for biographers.

*The Bookseller*, No. 2654 (Nov. 1956) pp. 1517-1518.

A comment on the passage of the Third Reading of the British Copyright Bill in the House of Commons in which the amendment proposing that copyright should subsist in unpublished letters for 50 years after the death of the writer of the letter, or for 100 years after the writing of the letter, whichever was the later, was defeated by 192 votes to 220.

## NEWS BRIEFS

## 210. BRITISH COPYRIGHT ACT.

As reported elsewhere in this issue the British Copyright Act of 1956 received the Royal Assent on November 5. It is understood that the Board of Trade will probably not issue the necessary Order placing the Act in operation until early in 1957. Certain subordinate legislation and the establishment of the Performing Right Tribunal are required before the new Act can be brought in operation.—*The Editorial Board is endeavoring to obtain one or more articles by leading British copyright attorneys on the new Act.*

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210a. GERMAN PERFORMING RIGHTS SOCIETY (GEMA).

At the 22d meeting of the society held in Munich, Sept. 27-29, 1956, the agenda included, in addition to organizational matters, such subjects as copyright reform, free competition, sales taxes, receipts from abroad, and payments to foreign countries.

211. INTERNATIONAL CONFEDERATION OF AUTHORS' AND COMPOSERS' SOCIETIES (CISAC).

At its 19th Congress held in Hamburg, Sept. 17-22, 1956, CISAC adopted resolutions on the following subjects: The Universal Copyright Convention, neighboring rights, the British Copyright Bill, the reports of the mixed CISAC-U.E.R. Commission, use of orchestral material in broadcasting, Charter of the Rights of Authors, protection of ideas, performance rights and the American Armed Forces in Europe, and assignment of copyright.

212. NEW MEXICAN COPYRIGHT LAW.

A new copyright bill designed to provide the implementing legislation for the previously ratified Universal Copyright Convention, was passed by the Mexican Senate on October 30, 1956. The bill was then sent to the Chamber of Deputies. It is not known whether action has as yet been taken by that body.

213. ASCAP ANNOUNCES NEW VOLUME OF COPYRIGHT SYMPOSIUM.

ASCAP has announced that Columbia University Press will publish "Copyright Law Symposium: Number Eight" during January 1957. The National Awards of \$500 each were voted for "Piracy in High Places: Governmental Publications and Copyright Law" by Maurice Stiefel, George Washington University Law School; and for "Protection of Comic Strips" by Nathan Newbury, III, Harvard Law School. Honorable Mention was awarded to "The Universal Copyright Convention and the United States: A Study of Conflict and Compromise" by William G. Wells, University of Illinois College of Law; and "Depreciation & Income Aspects of Copyright under the Internal Revenue Code of 1954" by Stephen E. Strom, University of Missouri School of Law.

214. 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
Iceland	December 18, 1956
Israel	September 16, 1955
Italy	January 24, 1957
Japan	April 28, 1956
Laos	September 16, 1955
Liberia	July 27, 1956
Luxembourg	October 15, 1955
Monaco	September 16, 1955
Pakistan	September 16, 1955
*Philippines	November 19, 1955
Portugal	December 25, 1956
Spain	September 16, 1955
Switzerland	March 30, 1956
United States of America	September 16, 1955

\*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.



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## PART I.

**LEGISLATIVE AND ADMINISTRATIVE  
DEVELOPMENTS**

## 1. UNITED STATES OF AMERICA AND TERRITORIES

215. *U. S. Congress. House.*

H. J. Res. 81. 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 Jan. 3, 1957 and referred to the Committee on the Judiciary.)

2 p. (85th 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." Identical with H. J. Res. 270 of the 84th Cong., 1st Sess. See 3 BULL. CR. SOC. 6 Item 3.

216. *U. S. Congress. House.*

H. J. Res. 174. Joint resolution providing that the United States shall not participate in any civil action except as a party to such civil action. (Introduced by Mr. Whitten on Jan. 17, 1957 and referred to the Committee on the Judiciary.)

2 p. (85th Cong., 1st Sess.)

Provides that "the United States shall not appear as *amicus curiae* or in any other fashion (except as a party) in any stage of any civil action in any court of the United States."

217. *U. S. Congress. House.*

H. R. 277. A bill to amend title 17 of the United States Code entitled "Copyrights" to provide for a statute of limitations with respect to civil actions. (Introduced by Mr. Keating (by request) on Jan. 3, 1957 and referred to the Committee on the Judiciary.)

2 p. (85th Cong. 1st Sess.)

A bill to amend Sec. 115 of the U. S. C. Title 17, by requiring a civil action to be commenced within three years after the claim accrued. Reported favorably by the sub-committee to the full committee without amendment on Jan. 31. This is a reintroduction of H. R. 6225 of the 83rd Cong., 2nd Sess., and H. R. 781 of the 84th Cong. 1st Sess. See 1 BULL. CR. SOC. 29 Item 87 (1953) and 2 BULL. CR. SOC. 118 Item 191 (1955).

218. *U. S. Congress. House.*

H. R. 287. A bill to amend title 17 of the United States Code entitled "Copyrights" with respect to provisions governing notice of copyright. (Introduced by Mr. Keating (by request) on Jan. 3, 1957 and referred to the Committee on the Judiciary.)

4 p. (85th Cong., 1st Sess.)

The bill would liberalize the statutory requirements as to contents and position of the copyright notice. Identical with H. R. 6608 of the 83d Cong., 2d Sess. and H.R. 782 of the 84th Cong., 1st Sess. See 1 BULL. CR. SOC. 30 Item 88 (1953) and 2 BULL. CR. 118 Item 192 (1955).

219. *U. S. Congress. House.*

H. R. 673. A bill to amend title 17 of the United States Code (relating to copyrights) to provide that reception of radio or television programs or the playing of phonograph records in hotels shall not constitute public performances for profit. (Introduced by Mr. Hale on Jan. 3, 1957 and referred to the Committee on the Judiciary.)

Proposal to amend section 1(e) of the Copyright Act.

220. *U. S. Congress. House.*

H. R. 4416. A bill to provide funds to pay nationals of the United States who have war damage claims against Germany and Japan, without direct appropriations therefor, and to amend the Trading With the Enemy Act and the War Claims Act of 1948, as amended. (Introduced by Mr. Preston on Feb. 5, 1957 and referred to the Committee on Interstate and Foreign Commerce.)

30 p. (85th Cong., 1st Sess.)

Some of the provisions would permit the return of most of the copyrights or of rights pertaining thereto which remain vested in or transferred to the Alien Property Custodian as a result of World War II.

In addition the Library of Congress would receive the prints of motion pictures except those subject to litigation. Somewhat similar bills were introduced in the 84th Congress.

221. *U. S. Congress. House.*

H. R. 4572. A bill to amend title 17 of the United States Code (relating to copyrights) to provide that reception of radio or television programs or the playing of phonographic records in hotels shall not constitute public performances for profit. (Introduced by Mr. Hill on Feb. 7, 1957 and referred to the Committee on the Judiciary.)

Identical with H. R. 673, *supra*, item 219.

222. *U.S. Congress. Senate.*

S. 600. A bill to amend the War Claims Act, as amended, and the Trading With the Enemy Act, as amended, and to provide for the payment of certain American war damage claims. (Introduced by Mr. Johnston of South Carolina, Jan. 14 (legislative day, Jan. 3), 1957, and referred to the Committee on the Judiciary).

31 p. (85th Cong., 1st Sess.)

Somewhat similar to H. R. 4416, *supra*, item 220.

223. *U. S. Copyright Office.*

Vorschriften über das Copyright Office vom 16. 9. 1955 (Code of Federal Regulations, Titel 37, Kap. II) Redaktionseigene, nichtamtliche Übersetzung.

*Das Gesamte Recht der Presse, des Rundfunks und des Fernsehens, Ergänzungslieferung Nr. 31 (Dec. 29, 1956), 8 p.*

An unofficial German translation of the Copyright Office regulations of Sept. 16, 1955.

224. *U. S. Copyright Office.*

Fifty-ninth annual report of the Register of Copyrights for the fiscal year ending June 30, 1956. Washington, 1956.

14 p.

Reprint from the Annual report of the Librarian of Congress ending June 30, 1956.

## 2. FOREIGN NATIONS

225. *Argentine Republic. Laws, statutes, etc.*

Décret no. 20.305, du 19 novembre 1956.—Désignant une Commission chargée de conseiller le Gouvernement National sur la ratification de Conventions internationales en matière de droits d'auteur.

*Inter-Auteurs*, no. 125 (4e trimestre 1956), pp. 189-196.

A decree appointing a commission charged with counselling the National Government on the following points: (1) if it is expedient to ratify the U.C.C.; (2) what will be the result in its relation to copyright conventions ratified by the Argentine Republic and with regard to the Bern Convention and its later revisions.

226. *France. Laws, statutes, etc.*

Décret français portant publication des lettres échangées les 24 octobre et 20 novembre 1956 entre le Gouvernement français et le Gouvernement norvégien au sujet de la prolongation du délai légal de protection des oeuvres littéraires et artistiques. (No. 56-1380, du 10 décembre 1956).

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), pp. 5-6.

French decree containing publication of letters exchanged on Oct. 24 and Nov. 20, 1956 between the French and Norwegian Governments on the subject of prolongation of the term of copyright protection.

227. *Guatemala. Laws, statutes, etc.*

Gesetz über das Urheberrecht an literarischen, wissenschaftlichen und künstlerischen Werken, vom 8. Februar 1954.

*Archiv für Urheber-, Film-, Funk-, und Theaterrecht*, vol. 22, nos. 5/6 (Nov. 1, 1956), pp. 355-360.

A German translation, by Dr. Wenzel Goldbaum, of the Guatemalan copyright law.

228. *Mexico, Laws, statutes, etc.*

Ley Federal sobre el Derecho de Autor.

*Diario Oficial*, vol. 219, no. 50 (Dec. 31, 1956), pp. 21-32.

Text of the new Mexican Copyright Law which becomes effective thirty days after its official publication.

229. *Republic of Germany (East Germany), Minister for Culture.*

Anordnung über die Errichtung des "Büros für Urheberrechte" vom 23. Oktober 1956.

*GEMA Nachrichten*, no. 33 (Jan. 1957), pp. 33-34.

An order issued by the East German Minister of Culture in connection with the establishment as a government corporation of the "Office of Copyrights." The by-laws of the office appear as an annex to the order.

230. *Sweden. Laws, statutes, etc.*

Draft Law on Copyright in Literary and Artistic Works proposed by the Swedish Copyright Committee. [Translated from Swedish by Borge Varmer.]

*Copyright Society of the U. S. A., Translation and Document Service* 1957, no. 1b, 18 p. (multilith).

The original draft was published by the Ministry of Justice of Sweden, Stockholm, 1956.

231. *Varmer, Borge.*

Summary of the Report of the Swedish Copyright Committee on its Proposed Draft Law on Copyright in Literary and Artistic Works.

*Copyright Society of the U. S. A., Translation and Document Service* 1957, no 1a. 9 p. (multilith).

The original report in Swedish accompanied the draft law which was published by the Ministry of Justice of Sweden, Stockholm, 1956.

## PART II.

**CONVENTIONS, TREATIES AND  
PROCLAMATIONS**232. *Germany. Bundesminister des Auswärtigen.*

Bekanntmachung über den Geltungsbereich der Berner Übereinkunft zum Schutze von Werken der Literatur und Kunst, vom II. September 56.

*Blatt für Patent-, Muster- und Zeichenwesen*, vol. 58, no. 12 (Dec. 1956), p. 388.

Changes in Bern Union membership, as announced by the Minister of Foreign Affairs of the German Federal Republic, in accordance with notifications received from the Swiss embassy in Cologne.

233. *Germany. Treaties, etc.*

Accord entre la République fédérale d'Allemagne et les Etats-Unis du Mexique, concernant la protection des droits d'auteur de leurs ressortissants sur des oeuvres musicales.

*Le Droit d'Auteur*, vol. 69, no. 12 (Dec. 1956), pp. 171-173.

French text of the agreement between the German Federal Republic and Mexico concerning reciprocal copyright protection of musical works, which was signed on Nov. 5, 1954 and entered into force on Feb. 20, 1956.

234. *Greece.*

Adhésion à la Convention de Bern pour la protection des oeuvres littéraires et artistiques révisée en dernier lieu à Bruxelles le 26 juin 1948 (avec effet à partir du 6 janvier 1957).

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), p. 5.

Notification of Dec. 6, 1956 by the Swiss Government to Bern Union member countries of the adherence of Greece to the Brussels revision of the Bern Copyright Convention effective Jan. 6, 1957.

235. *International Copyright Union.*

Elévation de la dotation du Bureau de l'Union internationale pour la protection des oeuvres littéraires et artistiques.

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), p. 4.

Notification of Dec. 28, 1956 by the Swiss Government to member countries of the Bern Union concerning an increase in the Bern Bureau budget.

236. *International Copyright Union.*

Etat au 1er janvier 1957.

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), pp. 1-4.

Report of the Bern Bureau with tables showing application of the Convention and its revisions, including reservations, as of Jan. 1, 1957.

237. *Republic of Germany (East Germany).*

Déclarations de la Hongrie, du Japon et de la Suède concernant l'application à la République démocratique allemande de la Convention de Berne révisée à Rome le 2 juin 1928.

*Le Droit d'Auteur*, vol. 69, no. 12 (Dec. 1956), pp. 169-171.

Notifications received by the Swiss Government from Hungary, Japan, and Sweden concerning the application to the German Democratic Republic (East Germany) of the Bern Copyright Convention as revised in 1928.

238. *Rumania.*

Changement de classe pour la participation aux dépenses du Bureau de l'Union internationale pour la protection des oeuvres littéraires et artistiques.

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), p. 5.

Notification of Dec. 10, 1956, by the Swiss Government concerning Rumania's change in class for participation in the expenditures of the Bern Bureau.

239. *Treaties in force; a list of treaties and other international agreements of the United States [in force on] Oct. 31, 1956. Compiled by the Treaty Affairs Staff, Office of the Legal Adviser, Dept. of State.*

Washington, U. S. Govt. Print. Off., 1956. 250 p. (*U. S. Dept. of State. Publication 6427*).

The list, first issued in 1955, is arranged in two parts, followed by an appendix. Part 1 includes bilateral treaties and other agreements listed by country or other political entity, with subject subdivisions. Part 2 includes multilateral treaties and other agreements, arranged under subject, together with a list of the states which have become parties to each agreement.

In the appendix is given an annotated list of those countries with which the United States has established copyright relations by virtue of Presidential proclamations, treaties and conventions. Copyright treaties and conventions in force Oct. 31, 1956 are also included in the main sections under appropriate country or subject headings.

240. *United International Bureaux for the Protection of Industrial, Literary and Artistic Property.*

Rapport à Messieurs les membres de la Sous-commission exécutive du Comité permanent de l'Union internationale pour la protection des oeuvres littéraires et artistiques sur la participation de l'Union de Berne à la préparation d'un Accord international pour la protection des artistes interprètes ou exécutants, des fabricants de phonogrammes et des organismes de radio-diffusion.

*The Performing Artists, the Record Manufacturer, the Broadcaster* (Dec. 1956), pp. 109-111.

Report, dated Nov. 28, 1956, of the Director of the International Bureaux to the Executive Sub-Committee of the Permanent Committee of the International Copyright Union on the participation of the Bern Union in the preparation of an international agreement for the protection of performers, manufacturers of phonograph records, and broadcasting organizations.

### PART III.

## JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

### A. DECISION OF U. S. COURTS

#### 1. Federal Court Decisions

241. *Cardinal Films, Inc. v. Republic Pictures Corp.*, 112 U.S.P.Q. 292 (D.C.S.D. N.Y., Jan. 4, 1957).

Action for antitrust violation. In 1949 defendant copyright owner granted plaintiff an exclusive license to distribute 16 mm. prints of 30 motion pictures, plaintiff being required to order exclusively from defendant all prints needed, at specified charges. Plaintiff claimed that this was an illegal "tie-in" under the Clayton Act, and a substantial and unreasonable restraint on competition under the Sherman Act, defendant charging plaintiff higher prices than other customers and higher prices than other processors would have charged, resulting in a loss to plaintiff. As a second cause of action, plaintiff asked for treble damages under the

Sherman Act for advance payment it had made in order to get prints of commercially satisfactory quality, defendant having furnished prints of poor quality. Defendant moved for summary judgment.

*Held*, motion granted.

Section 1(a) and (d) of 17 U.S.C. gave defendant the exclusive right to print, reprint, publish, copy and vend the copyrighted works, and to produce the dramatic works in any manner and by any method. This case was not analogous to cases where restrictions involved not materials within the patent monopoly but rights to use or purchase materials not covered by patents; "[h]ere, any laboratory attempting to process one of defendant's films would be guilty of infringement. . . . Here, the copyright owner derives his profit from an operation within the scope of the copyright monopoly. . . . [A] licensor may properly condition the right of his licensee to purchase only from the licensor the services necessary to bring the licensed use to fruition." There was no "tie-in" within the Clayton Act. "By the same token, since the defendant's exercise of its copyright monopoly does not go beyond the legitimate exploitation of its exclusive privilege, there is no violation of the Sherman Act. It is true that an agreement illegal because it suppresses competition is no less so because the competitive article is copyrighted. . . . But there is no suppression of competition here beyond that permitted by the copyright law."

The Court also discussed the statute of limitations in 28 U.S.C. Section 15(b), which barred part of the first cause of action and the entire second cause of action.

242. *Chappel & Co., Inc. et al. v. Palermo Cafe, Inc.* 146 F. Supp. 867 (D. C. Mass., Dec. 17, 1956).

Action against copyright infringer for injunction and just damages in lieu of actual damages and profits. Defendants moved for a jury trial.

*Held*, motion granted.

In a recent case squarely in point, Judge Ford of the same District granted an identical motion, even though the majority rule was to the contrary. Judge Wyzanski said: "Obedient to our practice in this District of following the recent rulings of brother judges which are not inescapably erroneous, I shall follow Judge Ford." However he indicated that but for this ruling he would "look sympathetically upon a construction of 17 U.S.C. Sec. 101 that gave breadth to the incidental jurisdiction of an equity court." Precedents to the effect that an equity judge could not allow

incidental damages in a copyright suit for an injunction, unless authorized by statute, should be narrowly construed, and departure from these precedents—at least as concerns “just damages”—can easily be justified by the present copyright statute.

243. *Cholvin et al. v. B. & F. Music Co., Inc. et al.* (D.C.N.D. Ill., Jan 18, 1957), not officially reported.

Action for copyright infringement. Plaintiff registered his song “When the Sun Bids the Sky Goodnight” as an unpublished work and filed the notice of use. Subsequently one of the defendants registered a song entitled “While We Dream”, also as an unpublished work, and another defendant made and sold records of that song without obtaining a license from plaintiff. About one half of the chorus (the first and last eight bars) was identical to plaintiff’s song.

*Held*, for plaintiff.

Even though actual access was not proven, the circumstantial evidence that plaintiff’s composition was widely played, recorded and broadcast was sufficient, and plaintiff’s copyright was infringed. Defendants claimed the melodic germ of plaintiff’s song in the first and last eight bars was the same as in “When We Danced at the Mardi Gras”, a song copyrighted in 1931, and that its notation was the same except for the insertion of two notes in “Mardi Gras” made necessary by its lyrics. But the Court held that “[d]istinct and individual characteristics of a composition are not necessary ingredients to originality, especially in the field of popular music whose range lies in a very narrow scope, and a slight resemblance in the progression of a few bars to predecessor songs does not defeat the test of originality. The plaintiff’s composition shows a substantial variation in arrangement of notes and tones from that of When We Danced at the Mardi Gras, except for a minimal similarity in the first bar and two measures thereof.” (*Courtesy of Morion Schaeffer.*)

244. *Cloth et al. v. Hyman et al.*, 146 F. Supp. 185, 112 U.S.P.Q. 254 (D.C. S.D.N.Y., Sept. 28, 1956).

Defendants’ request for award of attorney’s fees in copyright infringement action. Plaintiff was the author of a copyrighted story which defendants were alleged to have copied in their novel and play “No Time for Sergeants”. It involved a latrine orderly who wired together the toilet seats and, upon being called to attention during an inspection, pulled the wire causing all the seats to come to “attention.” Defendants claimed that the story was in the public domain and widely circulated in the Army

while plaintiff was in the service, and that a similar version had appeared in the "Bull Sheet" before he wrote it. Plaintiff consented to a summary judgment for defendants.

*Held*, attorney's fees of \$3,000 in the aggregate awarded to defendants.

Defendants' novel and play were not plaintiff's offspring, and the latrine episode in plaintiff's story did not originate with him; instead, both versions were "literary siblings sired by the same Army anecdote". Thus, Judge Herlands found, plaintiffs did not act in good faith. Also, co-plaintiff publisher's casual joining in this litigation amounted to sheer recklessness, and plaintiffs showed their unreliability by first charging defendants with largely copying from their story and later minimizing the alleged infringement in order to devalue the services of defendants' attorneys.

Judicial interpretation of 17 U.S.C. Sec. 116 [giving the Court discretionary power to award reasonable attorney's fees] indicated that such awards are properly made where plaintiff's real motive is to vex and harass defendant, and there are no arguable questions of law or fact; that no fees will be allowed where the infringement claimed is not synthetic, capricious or unreasonable; that only fees fairly earned, and not punitive awards, will be allowed; and that in determining the fee the Court will consider the amount of work necessary and actually done, the skill employed, the amount involved and the result achieved.

245. *Curtis v. Time, Inc.*, 147 F. Supp. 505, 112 U.S.P.Q. 248 (D.C.D.C., Jan. 25, 1957).

Action for damages caused by misappropriation of an idea and unfair competition. Plaintiff was creator and owner of a comic strip called "The Medal of Honor", describing the careers of medal winners by illustration and narrative, and he also embodied the idea in other forms. Defendant published ads for U. S. Savings Bonds illustrated with photos of medal winners and with narratives.

*Held*, complaint dismissed on the merits.

"No one has a right of property in a historical or biographical event. . . . A person can acquire . . . a property right in a specific embodiment of an idea, and if the embodiment is in a literary or pictorial form that embodiment may be protected under the copyright law. . . . Plaintiff does not claim any infringement of copyright of the specific embodiment of his idea." Furthermore, defendant had apparently prior to plaintiff

published such material; “[c]onsequently, the idea of the plaintiff in its general and broad scope is not novel, although his specific embodiment may be”.

246. *Hammond & Company v. International College Globe Inc. et al.*, 146 F. Supp. 514, 112 U.S.P.Q. 291 (D.C.S.D.N.Y., Dec. 3, 1956).

Action for copyright infringement and unfair competition. Plaintiff contended that defendants’ inflatable globe infringed the former’s copyrighted inflated globe, and moved for summary judgment.

*Held*, motion denied.

Plaintiff claimed that copying was proved by four common errors; by eleven common selections of uncommon places; by several common omissions of important places; and by an unusually similar selection of airline routes and mileage distances. Defendants’ cartographer admitted in his affidavit access to plaintiff’s globe, but could not remember copying from it. He stated there were over 50 uncommon errors; of the alleged four common errors two were not errors, and source maps contained all four places in the same position as on the two globes; there were many uncommon places on one globe and not on the other, and source maps contained unusual places common to both and also common omissions. The Court found that “copying as to these matters has not been conclusively demonstrated.”

Of the 38 airline routes and mileages on plaintiff’s globe, 30 of defendants’ were identical as to lines and figures within one mile. “While the likelihood of copying is very strong here, the question of whether it constitutes an improper appropriation remains. . . . Even if the routes and mileages were copied, it is not sufficiently clear that this would constitute a material or substantial infringement of plaintiff’s copyright to warrant judgment on this motion.”

The unfair competition cause of action alleged confusion in the public mind between the two globes because of their similar appearance and the use of “International” in both names. However, “[a]lthough there is undoubtedly a superficial similarity in appearance, this alone is not sufficient to render defendants liable for unfair competition. Plaintiff has not shown, *inter alia*, that there is any confusion in the public mind between the two globes or that the public identified plaintiff by the word ‘International’. Moreover, these are not issues which should be resolved on the basis of a decision between conflicting affidavits.”

247. *Malkin v. Dubinsky et al.*, 146 F. Supp. 111, 112 U.S.P.Q. 263 (D.C.S. D.N.Y., Nov. 21, 1956).

Action for copyright infringement of unpublished copyrighted play "The Battle Goes On" and its Yiddish version by defendants' motion picture "With These Hands". Defendants moved for summary judgment.

*Held*, motion denied.

Defendants conceded, for purposes of this motion, that they had access to plaintiff's play and that they actually copied those parts common to both works, but they contended that the similarities were either in the public domain or inconsequential. The Court, after reviewing some of the similarities, found they were more than inconsequential, and, in view of defendants' concessions, the only question was whether a jury could reasonably find unlawful appropriation. "While any one similarity taken by itself seems trivial, I cannot say at this time that it would be improper for a jury to find that the over-all impact and effect indicate substantial appropriation. . . . At the trial, the jury will have the opportunity to see the film involved, to hear witnesses describe the props and staging devices used in the play, and to determine any questions which may arise regarding their testimony."

248. *Q.E.D. Textiles Inc. v. Coleport Fabrics, Inc.*, 112 U.S.P.Q. 306 (N.Y.S.Ct., Jan. 26, 1957).

Motion for injunction pendente lite restraining defendant from copying or reproducing the "Border Poodle Pattern" and from selling fabric containing a reproduction containing this design created by plaintiff.

*Held*, motion denied.

Plaintiff placed the design on the market without the protection of a design patent or copyright, and thus it could be freely reproduced. "Albeit a claim by the plaintiff that such reproduction is being sold by the defendant at a price below that which the plaintiff can afford to sell its fabric because of the expense in creating the original design would not justify the remedy sought." Whether the allegation that the design was obtained by a breach of trust, or by fraudulent and unfair means, would warrant a different decision did not have to be determined since it was a bare conclusory statement without support in the record.

249. *Stasny Music Corp. v. Mills Music, Inc. et al.* (D.C.S.D.N.Y., Jan. 19, 1957), not officially reported.

Action for copyright infringement by proprietor of renewal right.

Defendants, prior to answer, moved to dismiss complaint for failure to state a claim upon which relief could be granted.

*Held*, motion denied, but plaintiff must answer the following interrogatories: 1. Were the authors living at the time of the renewal year of the copyright? 2. Did plaintiff acquire right of proprietorship to renewal copyright by written document? 3. If so, give contents of such document. 4. Did right of proprietorship to renewal copyright devolve upon plaintiff or its assignor by operation of law? 5. If so, state in what manner and by what reason of what statute or law. (*Courtesy of Theodore R. Kupferman.*)

## 2. State Court Decisions.

250. *Richard J. Cole, Inc. v. Manhattan Modes Co., Inc.*, 157 N.Y.S.2d 259, 112 U.S.P.Q. 193 (N.Y.S.Ct., App. Div., Dec. 11, 1956).

Action to enjoin defendant from exhibiting, manufacturing or selling dresses similar in design to those of plaintiff. In order to prevent publication of its original designs, plaintiff invited to its showings buyers, customers and magazine representatives, some by invitation and some by phone. The invitations, however, bore no warning against disclosure, there were no notices posted, and plaintiff did not try to obtain an agreement from the viewers not to divulge any information. There was disputed evidence that an announcement concerning nondisclosure was made at some point during the showing. The lower Court attributed defendant's ability to copy to an article in "Women's Wear" and dismissed the complaint after trial before a referee, and plaintiff appealed.

*Held*, judgment affirmed.

The higher Court found no doubt that there was piracy, and it could not go along with the lower Court finding that defendant copied merely from the description in the trade paper article. But there was a hiatus of proof regarding breach of trust and confidence. "Assuming, arguendo, that . . . an announcement [concerning nondisclosure] was made, we would be inclined to hold that it came too late and could not be considered binding upon those present." Also, the record did not contain sufficient proof that there was a custom in the trade imposing nondisclosure.

251. *Winer et al. v. Glaser*, 157 N.Y.S.2d 62 (S.Ct.N.Y., Oct. 10, 1956).

Action for fraud, interference with contractual relationship, in-

fringement of common law copyright and breach of implied contract. Defendant was the agent of Ruth Etting and a friend of Snyder, her former husband. Plaintiffs wrote their life story as an original movie or other dramatic presentation, but the consent of Snyder was required, and defendant was to obtain this consent. Defendant moved to dismiss the complaint for insufficiency, and in the alternative, to make the pleading more definite and strike out certain parts.

*Held*, motion denied.

Under the fraud cause of action plaintiffs alleged that Miss Etting and her then husband engaged them to write the story, with exclusive rights for 27 months from Nov. 6, 1947, all proceeds to be shared equally. Early in 1948 the story was submitted to M-G-M which agreed to pay a certain amount if all necessary consents were obtained. Defendant sought to be entrusted with the task of obtaining Snyder's consent, claiming he alone could do so and that attempts by others would risk personal violence. He was retained in 1948, and represented until Dec. 27, 1951 that he made every effort but that Snyder refused. Actually Snyder was willing to give his consent for money, and defendant obtained it at a time after the M-G-M contract expired but when Miss Etting and her husband were still willing to extend plaintiffs' time till 1955. Relying on defendant's representations, plaintiffs did not pursue the offer of extension. Thereupon Miss Etting and her husband consummated a contract with M-G-M, resulting in a successful motion picture; under this contract, defendant received half of the proceeds. "The foregoing is a sufficient and explicit statement of a cause in fraud in every respect and as to every allegation, including the damage flowing from the failure to procure the contract with M-G-M and the customary 'credit'."

The second cause of action sounded in interference with contractual relations. Defendant allegedly told Miss Etting and her husband that only he could obtain Snyder's consent, persuading them to reject plaintiffs and accept defendant as their agent, although prior thereto plaintiffs could have obtained an extension; also, the subject matter came to defendant as a result of his request to be entrusted with it, and that he was faithless in this respect. "The interference was by fraudulent betrayal. A sufficient cause is stated."

The third cause of action was for common law copyright infringement. Plaintiffs allegedly disclosed the idea and the script for the sole purpose of use in contractual relations with them; but defendant represented to M-G-M, as a fact rather than opinion, that plaintiffs

had abandoned and lost their rights, M-G-M relying thereon, and being encouraged by defendant to use plaintiffs' material. Furthermore, defendant denied to plaintiffs that a contract was being made with M-G-M or that it was using plaintiffs' material. "In those circumstances defendant is charged with knowledge of the existence of a common-law copyright and with participation in its violation and infringement."

The final cause of action alleged that defendant received plaintiffs' script and retained it for 18 months while in a position of confidence, charged with the sole duty to sell it for plaintiffs and under a disability to do anything else with it; and that under California law an implied contract arose not to deviate from the relationship and its purpose and to pay for a wrongful use. This statement was sufficient.

#### PART IV.

### BIBLIOGRAPHY

#### A. BOOKS AND TREATISES

##### 1. United States Publications

252. Spring, Samuel.

Risks & rights in publishing, television, radio, motion pictures, advertising, and the theater. 2d ed., rev.

*New York, Norton (1956). 365 p.*

A work written primarily for laymen, covering such topics as privacy, defamation, statutory, common-law, and international copyright, unfair competition, ideas as property, monopoly restraints upon organized artists and obscenity and censorship.

## 2. Foreign Publications

## (a) In English

## 253. Dadachanji, Rustom Ruttonshaw.

Law of copyrights & movie-rights in a nut-shell. 1st ed.  
*Bombay*, 1955. 172 p.

A historical and legal compendium of Indian copyright, "essentially meant for the entertainment world," with copious references to American, British, and Indian cases. The appendices include: List of Amending Acts and Adaptation Orders, The Indian Copyright Act (Act III of 1914), Portions of the Imperial Copyright Act of 1911, Applicable to India, The Indian Copyright Regulations, 1914, The Cinematograph Act, 1952, Cinematograph (Censorship) Rules, 1951 (as amended up to 1st March 1954, and Synopses of Recent [Indian] Cases.

## (b) In German

## 254. Bappert, Walter.

Internationales Urheberrecht. Kommentar . . . von Walter Bappert [und] Egon Wagner.

*Munich*, C. H. Beck, 1956. 326 p.

A commentary, with German texts, on the Brussels revision of the Bern Convention and on the Universal Copyright Convention, including texts of international conventions and bilateral treaties to which Germany is a party, an alphabetical list of all the countries of the world with references to national laws, conventions, and treaties applicable to German nationals for the securing of copyright protection and the texts of German copyright laws now in effect.

## 255. Lehmann, Heinrich.

Über das Wesen des Urheberrechts. Die Verantwortung von Staat und Gesellschaft für das geistige Schöpfungstum, von Gustav Ermecke.

*Berlin*, Verlag Musik und Dichtung, 1956. 51 p. (*Internationale Gesellschaft für Urheberrecht. Schriftenreihe, Bd. 2*)

The first contribution is a discussion of the nature of copyright based on the present German law, which the author describes as out-

dated, but on a consideration of the preponderance of moral over material aspects of the right. The second study is concerned with the responsibility of state and society for the encouragement of intellectual creation.

## B. LAW REVIEW ARTICLES

### 1. United States

#### 256. Alsberg, Renate.

Phonograph recordings and the Copyright Act.

*Intramural Law Review*, vol. 12, no. 2 (Jan. 1957), pp. 118-125.

In commenting on the *Miller v. Goody* decision the writer concludes that the Copyright Act should be amended so as to make recordings copyrightable.

#### 257. Anderson, William E.

What every lawyer should know about copyrights.

*Illinois Bar Journal*, vol. 45, no. 3 (Nov. 1956), pp. 138-148

A general survey of American copyright law, first presented before the American Chemical Society at its 130th National Meeting held in Atlantic City.

#### 258. Copyrights—In general—Section 101(b) of the Copyright Act not applicable to infringement by unauthorized sale of records.

*Harvard Law Review*, vol. 70, no. 2 (Dec. 1956), pp. 367-369.

A case note on *Miller v. Goody*.

#### 259. Horwitz, Lester.

Copyright law—rights in ideas.

*The University of Kansas City Law Review*, vol. 24, no. 4 (summer 1956), pp. 262-275.

A discussion of the protection of ideas in the absence of contract and the contractual basis of rights in ideas.

## 260. Katz, Arthur S.

The publication of intellectual productions—a common sense approach.

*Reprinted from Southern California Law Review, vol. 30, no. 1 (Dec. 1956), pp. 48-72.*

The writer criticizes the concept of publication in American jurisprudence with particular reference to phonograph records and ideas as property as having been seriously distorted and points out that unless the distinction "between *publication as an act of exploitation*, and *publication as an act of law* is recognized, illogical and economically disastrous legal developments will result."

## 261. Levitsky, Serge L.

The Soviet press and copyright legislation: some legal concepts.

*Fordham Law Review, vol. 25, no. 3 (autumn 1956), pp. 469-483.*

Based upon a chapter in the author's forthcoming book, *The Soviet Press*, this article "is devoted to some aspects of the legal concept of 'freedom of the press' in the Soviet Union and the penal protection of its exercise, as well as a discussion of some legal problems arising in connection with the application of Soviet copyright legislation."

## 2. Foreign

## (a) In English

## 262. Bell, P. Ingress.

Copyright and rediffusion.

*The Law Times, vol. 222, no. 5930 (Dec. 7, 1956), pp. 298-299.*

A discussion of "rediffusion" or "relay service" rights under the new British Copyright Act and art. 11 *bis* of the Brussels Convention.

## 263. Bell, P. Ingress.

Copyright in gramophone records.

*The Law Times, vol. 222, no. 5926, (Nov. 9, 1956), pp. 244-245.*

An analysis of the provisions of the British Copyright Act relating to phonograph records.

## 264. Kuharkov, N.

Copyright deposit and related services: the All-Union Book Chamber of the U. S. S. R.

*Unesco Bulletin for Libraries*, vol. 11, no. 1 (Jan. 1957) pp. 2-4.

The director of the All-Union Book Chamber, the central agency for the receipt and distribution of copyright deposits, describes its activities and lists its regularly published bibliographies.

## 265. Robbins, E. C.

The new British Copyright Act.

*E. B. U. Bulletin*, vol. 8, no. 41 (Jan-Feb. 1957), pp. 1-5.

A commentary on the main provisions of the Act which are likely to affect broadcasting in the light of the Parliamentary debates thereon.

(b) In French

## 266. Desbois, Henri.

Le projet de loi indien.

*Le Droit d'Auteur*, vol. 69, no. 10 (Oct. 1956), pp. 133-138; no. 11 (Nov. 1956), pp. 153-157; no. 12 (Dec. 1956), pp. 173-180.

The writer analyzes the Indian Draft Copyright Law, comparing it with its British counterpart, and criticizes the formalities provisions as incompatible with the spirit of the Brussels and Geneva Conventions.

## 267. Hepp, François.

Variations sur le mot "art."

*The Performing Artiste, the Record Manufacturer, the Broadcaster*, (Dec. 1956), pp. 112-114.

Dr. Hepp discusses the many shades of meaning of the word "art" as applied to the rights of authors and performing artists. He thinks it is a mistake to regard the rights of performing artists as "droits voisins," and advocates "measures which are half contractual, half legislative."

## 268. Hesser, Torwald.

Le projet de loi suédois.

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), pp. 9-12.

A commentary by the secretary of the Swedish Copyright Committee on the new Swedish draft copyright laws, translated by Mme. Malou Höjer.

## 269. Radoïkovitch, Zivan.

L'Institut Yougoslave pour la Protection des Droits d'Exécution (ZAMP).

*Inter-Auteurs*, no. 125 (4e trimestre 1956), pp. 189-196.

A study of the origin and functions of the Yugoslav Performing Rights Institute.

## 270. Ulmer, Eugen.

Lettre d'Allemagne.

*Le Droit d'Auteur*, vol. 69, no. 12 (Dec. 1956), pp. 180-184; vol. 70, no. 1 (Jan. 1957), pp. 12-16.

Survey of problems in German copyright law revision and comments on recent court decisions.

## 271. Whale, Royce F.

La nouvelle loi anglaise sur le copyright (1956).

*Inter-Auteurs*, no. 125 (4e trimestre 1956), pp. 181-184.

"The new English Copyright Law (1956)" is a brief presentation of "the balance-sheet of profits and losses which result from the comparison of the new law with the old."

## 272. Whale, Royce F.

Le projet de loi indien (1955).

*Inter-Auteurs*, no. 125 (4e trimestre 1956), pp. 185-188.

A brief account of the author's mission to India as a representative of the Performing Right Society, the British Joint Copyright Council, and CISAC, for the purpose of making a verbal presentation of the views of the organizations on the Draft Indian Copyright Law to the Joint

Select Committee of the Indian Parliament. The author is critical of the present draft law as failing to protect the interests of the author, but believes, from the favorable reception given to his talks in India, that a new version more beneficial to authors will be introduced.

(c) In German

273. Bappert, Walter.

Der Begriff der Veröffentlichung nach dem Welturheberrechtsabkommen, von W. Bappert und E. Wagner.

*Archiv für Urheber-, Film-, und Theaterrecht*, vol. 22, nos. 5/6 (Nov. 1, 1956), pp. 340-352.

"The Concept of Publication According to the Universal Copyright Convention."

274. Hirsch, Ernst E.

Entstehungsgeschichte und Grundlinien des Türkischen Urheberrechtsgesetzes von 1951.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 22, nos. 3/4 (Sept. 15, 1956), pp. 147-170; nos. 5/6 (Nov. 1, 1956), pp. 257-312.

"Genesis and basic concepts of the Turkish Copyright Law of 1951." An analytical study offered as a contribution to the reform of the German copyright laws.

275. Jannsen, Margarete.

Soll für die Verwertung gemeinfreier Werke eine Vergütung gezahlt werden?

*Archiv für Urheber-, Film, Funk- und Theaterrecht*, vol. 22, nos. 5/6 (Nov 1, 1956), pp. 324-340.

A comparative study of "domaine public payant" legislation in which arguments for and against the enactment of such legislation for Germany are presented and a suggestion made that the difficulties of the problem should not be permitted to impede legislative action.

## 276. Schneider, Gerhard.

Sol sich das Verbreitungsrecht des Urhebers künftig auf das gewerbsmässige Vermieten erstrecken?

*Archiv für Urheber-, Film, Funk- und Theaterrecht*, vol. 22, nos. 5/6 (Nov. 1, 1956), pp. 312-324.

The writer suggests the possibility of revisiting the German copyright laws so as to extend an author's exclusive rights of publication and distribution to include the right to make his works available for profit by means of rental or loan. He points out that similar laws exist in the Scandinavian countries.

## (d) In Italian

## 277. Giannini, Amedeo.

Modificazioni delle opere dell'ingegno.

*Rivista del Diritto Commerciale*, vol. 54, nos. 5-6 (May-June, 1956), pp. 240-250.

An analysis of the provisions of the Italian Copyright Law dealing with the right to modify intellectual works. The writer concludes that the law secures to the author absolute authority to make changes in his own work, but for journalistic and cinematographic works, because of the complexity of their creation, he must accept changes made by others.

## 278. Giannini, Amedeo.

Note e problemi del diritto di autore.

*Il Diritto di Autore*, vol 27, no. 3 (July-Sept. 1956), pp. 307-343.

Prof. Giannini discusses the following problems of Italian copyright law: exploitation of copyright and neighboring rights, constitutional basis of copyright protection, what is meant to be protected in scientific works, first publication, performances with puppets, rights to exhibit, seizure based on neighboring rights, and droit de suite.

## 279. Giannini, Amedeo.

Utilizzazione radiofonica, cinematografica, grammofonica.

*Rivista di Diritto Industriale*, vol. 5, no. 3 (Jul.-Sept. 1956) pp. 294-307.

Prof. Giannini discusses the provisions of the Italian Copyright law dealing with the rights involved in the economic utilization of radio broadcasts, motion pictures, and phonograph records.

280. Sordelli, Luigi.

Natura del deposito del disco fonografico e nascita dei diritti a favore del produttore.

*Rivista di Diritto Industriale*, vol. 5, no. 3 (Jul.-Sept. 1956) pp. 323-330.

A study of the origin of the registration of phonograph records in Italy as a condition precedent to the securing of rights and of nature of the deposit requirements.

281. Vercellone, Paolo.

Diritti del direttore di orchestra sulle riproduzioni di esecuzioni musicali.

*Il Diritto di Autore*, vol. 27, no. 3 (Jul.-Sept. 1956), pp. 400-407.

Note on a French court decision involving the rights of an orchestra conductor in reproductions of musical performances.

(e) In Spanish

282. Menica, Carlos G.

La Convención Universal sobre Derecho de Autor de Ginebra (1952) y la conveniencia de su ratificación por la República Argentina.

*Jurisprudencia Argentina*, vol. 18, no. 18, 6390 (May 22, 1956), pp. 1-4.

The writer makes a case for the ratification of the U. C. C. by Argentina as affording greater protection for works of Argentine authors, and follows with the text of the convention in Spanish.

C. ARTICLES PERTAINING TO COPYRIGHT  
FROM TRADE MAGAZINES

1. United States

283. Allen, Harry.

Canada sets music license tariffs.

*The Billboard*, vol. 69, no. 7 (Feb. 16, 1957), p. 24.

The license fees which may be collected by Composers, Authors and Publishers Association of Canada, Ltd. and BMI Canada, Ltd. in the tariff recently approved by the Copyright Appeal Board.

284. ASCAP calls for meeting with juke ops.

*The Billboard*, vol. 68, no. 51 (Dec. 22, 1956), p. 65.

Item on an official invitation extended by Paul Cunningham, ASCAP president, to the jukebox operators to meet for a discussion of the copyright legislation problem as suggested by the O'Mahoney subcommittee.

285. ASCAP gabs with Roosevelt in D.C.

*Variety*, vol. 205, no. 8 (Jan. 23, 1957), p. 42.

Item on a recent conference between Herman Finkelstein and Paul Cunningham, ASCAP general counsel and president, respectively, and Congressman James Roosevelt, in connection with charges, made chiefly by composers in California, against the ASCAP method of distributing royalties.

286. ASCAP suit vs. 2 radio stations.

*Variety*, vol. 205, no. 8 (Jan. 23, 1957), p. 43.

Item on actions filed recently in Federal courts by ASCAP members against WMID, Atlantic City, and WSAY, Rochester, N.Y., for unauthorized performances of ASCAP music. Such actions against broadcasters are described as "relatively rare."

287. BMI—Palace suit cues non-radio policing.

*The Billboard*, vol. 69, no. 7 (Feb. 16, 1957), p. 26.

Item on infringement suit filed recently in N.Y. Federal Court by BMI and a number of its affiliate publishers against the Palace Theater involving live stage presentations at the theater.

288. Cleffer Mark McIntyre latches on Lanham Act in 'arrangement' suit.

*Variety*, vol. 205, no. 56 (Jan. 2, 1957), p. 41, 48.

Note on a suit filed recently by attorney Arthur S. Katz in the Los Angeles Federal Court against Double-A Music Corp. and Bregmann, Vocco & Comm, Inc. for alleged "misappropriation" of McIntyre's arrangement of the tune "Tonight You Belong to Me." The writer states. "This marks the first time that this law [the Lanham Act] has been invoked in a musical copyright case."

289. Diamond, Sidney A.

Photographer's release might save you lawsuit.

*Advertising Agency Magazine*, vol. 49, no. 24 (Nov. 23, 1956), p. 34.

Comment on the case of Avedon v. Exstein, 109 U.S.P.Q. 376.

290. Diamond, Sidney A.

How to protect ads under copyright laws.

*Advertising Agency Magazine*, vol. 49, no. 25 (Dec. 7, 1956), p. 42.

Discussion of the proper classification of an advertisement under the Copyright Act and the appropriate form of copyright notice for advertisements; also the requirements and advantages of the Universal Copyright Convention.

291. Diamond, Sidney A.

Music copyrights can jangle your jingles.

*Advertising Agency Magazine*, vol. 50, no. 2 (Jan. 18, 1957), p. 25.

A discussion of the decision in Robertson v. Batten, Barton, Durstine & Osborn, Inc., 111 U.S.P.Q. 251.

292. Disposition of De Sylva earnings doing an encore in suit vs. MPH.C.

*Variety*, vol. 205, no. 8 (Jan. 23, 1957), p. 43.

An article on a suit filed recently in N.Y. Supreme Court by Ross Jungnickel Music against Music Publishers Holding Corp., a subsidiary of Warner Bros., seeking an accounting on the share of all copyrights owned by De Sylva's son, Stephen Ballentine, which had been acquired by the plaintiff. The article states that the attorneys for the defendant are attempting to transfer the case to the Federal courts, claiming that a copyright ownership question is involved rather than a legal accounting.

293. Hall, Mildred.

Cleffers in ring for new BMI bout.

*The Billboard*, vol. 69, no. 7 (Feb. 16, 1957), pp. 22, 40.

An article on the BMI-ASCAP controversy in which Mrs. Hall reports that some new angles, not brought out at the House anti-trust hearing in New York last fall, will probably be offered, this time before the Senate Commerce Committee. Mention is also made of a meeting of the National Association of Radio and Television Broadcasters to be held on Feb. 27 to go over music licensing problems with the aid of a survey completed by the association in November, 1956.

294. Jukes won't talk to ASCAP. Want status quo Copyright Act.

*Variety*, vol. 205, no. 3 (Dec. 19, 1956), pp. 51, 60.

Spokesmen for the Music Operators of America have rejected proposals to hold any bargaining talks to discuss proposed amendments to the Copyright Act providing for the repeal of the jukebox exemption and have notified Senator O'Mahoney that they do not contemplate "industry suicide" by agreeing in any way to the payment of licensing fees to ASCAP or other performing rights societies.

295. MOA directors meet, shape 1957 'all-music' convention.

*The Billboard*, vol. 68, no. 51 (Dec. 22, 1956), pp. 65, 68.

Item on arrangements made recently by the Music Operators of America board of directors for the 1957 convention to be held May 19-21 in Chicago and aimed at representation of the entire music-record industry. One of the chief topics of discussion at the board meeting

was the jukebox bill, S.590, concerning which plans were made to investigate as soon as possible, in Washington, D.C., all the latest developments.

296. Music 'Ice' thaws out Icelanders.

*Variety*, vol. 205, no. 11 (Feb. 13, 1957), p. 84.

Item date-lined Feb. 12 to the effect that the long drawn-out controversy on music performance between the American Iceland Defense Force and STEF, the Iceland licensing authority, appears to be ended with the approval of an annual payment of about \$4,100 by the military-operated radio station, TFK.

297. New dimout on Benny's 'Gaslight.'

*Variety*, vol. 205, no. 5 (Jan. 2, 1957), p. 29.

A note on the recent denial by the U.S. Court of Appeals in San Francisco of an appeal from a verdict in favor of the plaintiff in the case of *Loew's, Inc. v. Columbia Broadcasting System, Inc.*, involving Benny's filmed television parody of the Metro film, "Gaslight." An appeal to the U.S. Supreme Court is indicated as "reportedly in the works."

298. Pilpel, Harriet F.

"But Can You Do That?"

*Publishers' Weekly*, vol. 170, no. 26 (Dec. 31, 1956), pp. 2677-2680.

Under the title "Our obscenity laws: to be or not to be", Mrs. Pilpel discusses *U.S. v. Roth* (2d Cir. 9-18-56), decision on bail, 1 Led.2d 10-8-56. "Are prior restraints on movies unconstitutional?" is a discussion of *In the Matter of the Application of Excelsior Pictures Corp.* (N.Y. App. Div. 3d Dept. 11-14-56). The case discussed under "The test of obscenity under Pennsylvania law" is *Commonwealth v. Hueston* (Ct. of Quarter Sessions, Mercer Co., Pa. 10-11-56). *Turntable Products Co., Inc. v. RCA*, 110 U.S.P.Q. 508 (S. Ct. N.Y. 1956), is the subject of "Better not make the idea known to the general public."

*Publishers' Weekly*, vol. 171, no. 5 (Feb. 4, 1957), pp. 36-39.

The subject matter and cases discussed in this article ("Who is going to laugh last?") *Jack Benny and Columbia Broadcasting Co. v. Loew's Inc. et al.*, 112 U.S.P.Q. 11 (9th Cir. 1956); ("The copyright owner can win the battles and lose the case") *Trifari-Krussman & Fisher, Inc. v. B. Steinberg-Kasle Co. et al.*, 110 U.S.P.Q. 487 (D.C.S.D. N.Y.: 1956); ("A tactful suggestion to the Supreme Court") *Advisers Inc. v. Wiesen-Hart Inc.*, 111 U.S.P.Q. 318 (6th Cir. 1956); and ("Technical pitfalls not as bad as they sometimes seem") *Joshua Meier Co. Inc. v. Albany Novelty Mfg. Co.*, 236 F.2d 144, 111 U.S.P.Q. 197 (2d Cir. 1956).

299. Schoenfeld, Joe.

Needed: depletion allowance for talent.

*Variety*, vol. 205, no. 3 (Dec. 19, 1956). p. 4.

An article attacking the Treasury's proposed amendments to the 1954 Code of Internal Revenue as discriminatory against creative people in show business.

300. SPA pubs may take over pic income administration.

*The Billboard*, vol. 69, no. 7 (Feb. 16, 1957), pp. 22, 40.

Item on information secured from "highly placed writer and publisher executives" that SPA may replace ASCAP in the administration of film performance rights.

301. Tooters may re-argue jurisdiction issue on Fund suit; AFM wins test.

*Variety*, vol. 205, no. 9 (Jan. 30, 1957), pp. 41, 47.

Item on decision by California Superior Court Judge Ford refusing to enjoin payment of royalties into the AFM Music Performance Trust Funds on jurisdictional grounds. An appeal to the Appellate Court is expected.

302. Wittenberg, Philip.

Fair use, quotation and permission.

*Publishers' Weekly*, vol. 171, no. 2 (Jan. 14, 1957), pp. 29-31.

A selection, somewhat abridged, from the author's "The Law of Literary Property" which is scheduled for publication on Feb. 25, 1957.

## 2. England

## 303. Copyright Act receives Royal Assent.

*The Bookseller*, no. 2659 (Dec. 8, 1956), pp. 1972-1974.

A brief summary of the new Act, with a statement that under its provisions it will come into force in whole or in part only when the Government department concerned has issued an order to that effect and that such an order cannot be issued until "certain other subsidiary legislation" is passed. The writer also points out that the Universal Copyright Convention cannot be ratified until the Act comes into force.

## 304. Income tax on copyright sales and royalties.

*The Bookseller*, no. 2666 (Jan. 26, 1957), p. 152.

A brief explanation of the income tax deductions from royalties earned on English sales payable to resident and non-resident authors under the terms of the British Finance Act of 1956.

## 305. The Right to perform "Pygmalion."

*The Bookseller*, no. 2659 (Dec. 8, 1956), pp. 1976-1977.

A note on critical reactions to reports that the Society of Authors had imposed or been party to a 10-year ban on all performances of "Pygmalion" in England in the interests of "My Fair Lady," the musical version of Shaw's play.

## NEWS BRIEFS

## 306. EUROPEAN BROADCASTING UNION.

The E. B. U. Legal Committee held its 7th Plenary Session from 25 to 29 Sept., 1956. Among the matters debated were the draft international convention on "ancillary rights," the problem of international delimitation of the domains of "petits droits" and "grands droits," protection of works of figurative art in various countries against screening on television, the protection of titles of broadcasting features, and the extent to which a promoter of a sporting event can prevent television organizations from taking first-hand sequences of the nature of ordinary news.

## 307. GREECE.

Sources in Athens reveal that on October 6, 1956 Greece ratified the Brussels text of the Bern Convention with no reservations as to translations. These same sources believe that now that the translation hurdle has been overcome, Greece will be in a position in the near future to deposit its ratification of the Universal Copyright Convention.

## 308. ITALY.

The Permanent Consultative Council on Copyright, established under the provisions of article 190 of the Italian Copyright Law of 1941, has been reconstituted for the four-year period, 1956-1959. Under the presidency of Dr. Filippo Pasquera, special committees have been designated to study problems of television, neighboring rights, publicity in relation to copyright law, and droit de suite.

## 309. NEIGHBORING RIGHTS.

Since the meeting of the I. L. O. Committee of Experts, July 10-17, 1956, the following international congresses have adopted resolutions supporting the Bern Union and UNESCO as being the organizations competent to deal with the matter of neighboring rights: International Literary and Artistic Association (ALAI), International Confederation of Authors' and Composers' Societies (CISAC), and International Federation of Film Producers' Associations (FIAPF). The International Union of Publishers (UIE) adopted similar resolutions last June.

The EBU Administrative Council has recently approved the draft reported out by the Committee of Experts, reaffirming at the same time EBU's right to be associated with any further initiatives on the subject, wherever they may originate.

Cf. *E. B. U. Bulletin*, vol. 7, no. 40 (Nov.-Dec. 1956), p. 813.

## 310. MEXICO JOINS UNIVERSAL COPYRIGHT CONVENTION.

According to information received from Roger C. Dixon, Chief, International Business Practices Division, Office of International Trade and Resources, Department of State, the Mexican Ambassador deposited with UNESCO Mexico's instrument of ratification of the Universal Copyright Convention on February 12, 1957. At the same time Mexico deposited its ratification of Protocol 2 annexed to the Convention.





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## THE UNITED KINGDOM COPYRIGHT ACT OF 1956

F. E. SKONE JAMES, B.A., B.C.L. (Oxon)

(NOTE: As our subscribers doubtless know, the British Copyright Act of 1956 was passed by Parliament on October 30, 1956, and according to an Order issued May 17, 1957, by The Board of Trade, comes into full operation on June 1, 1957. In view of the far-reaching changes made by the new statute, the Editorial Board has invited Mr. F. E. Skone James, Bencher of the Middle Temple, to contribute a special article to our BULLETIN, explaining the major changes brought about by the Act of 1956. The author is undoubtedly known to most members of the United States copyright bar as one of the leaders of the British copyright bar and as co-author (since 1927) of the Copinger-Skone James LAW OF COPYRIGHT, now in its eighth edition.)

A Copyright Committee was set up by the United Kingdom Government in the year 1951 to report whether any changes in the law of copyright were desirable first in order to enable the Government of the United Kingdom to ratify the Convention made at Brussels in the year 1948 introducing further revisions of the original Berne Convention which had previously been revised at Berlin and at Rome and to ratify the UNESCO Convention which was then under discussion and was in fact signed at Geneva in the year 1952. Secondly, the Committee was to consider whether any revisions of the law were necessitated in view of modern developments in copyright material and its exploitation which had taken place since the year 1911 when the previous United Kingdom Copyright Act was passed. Following upon the Report of the Committee made in October 1952, a Copyright Bill was introduced which became law on the 5th of November, 1956, but will not come into operation until a date appointed by the Board of Trade.

The Committee in fact found no serious difficulty in dealing with the changes in the law necessary in order to enable the Conventions to be ratified. The Brussels Convention involved only slight changes in the provisions of the Act of 1911, and the Geneva Convention gave protection in general less far reaching than that already subsisting in English law. The only substantial change necessary in order to comply with the provisions of that Convention was in fact to secure that an author domiciled in, or a national of a Convention Country, should be entitled to copyright in England in his work, notwithstanding that it was first published neither in England nor in any Convention Country. Under the Act of 1911, the subsistence of copyright in a published

work depended solely on the place of first publication and not on the nationality of the author. This had rather curious results. Thus a British author became the owner of a statutory copyright in his literary work as soon as he wrote it, as an unpublished work, but, if he first published it in the U.S.A. and did not simultaneously publish it in a Commonwealth or Berne Union Country, he lost his English copyright on publication. The Geneva Convention contemplates the alternative basis of protection for published works namely, either an author's qualification or a place of publication qualification and pursuant to the recommendation of the copyright committee, this system has now been adopted in the Copyright Act 1956.

As has been said, the Committee's duties in regard to adapting the law, so as meet the new Conventions, involved little effort.

The Act of 1956 itself follows in its international aspect the formula of the Act of 1911 and leaves it to Orders in Council to extend the Act so as to protect works of foreign authors or first published abroad. Such Orders have not yet been issued. No doubt they will give effect both to the Brussels and UNESCO Convention and in so far as they may be anticipated to extend greater protection to works of U.S.A. origin will include novel and important features, but it is yet too early to speculate as to their details.

The problems which involved the hearing of a great deal of evidence and prolonged discussion, before the Committee, were of three main types. First and most important, were those involved in claims for copyright protection for new types of material such as cinematograph films, gramophone records, television and broadcast performances, public exhibitions and sports programmes and the actual performances of performers. Secondly, and somewhat involved with the foregoing, the problem of monopolies or quasi monopolies, created by the formation of societies and organisations controlling the whole or substantially the whole of particular classes or work. A third and quite different problem was that created by any attempt to define a border between artistic copyright on the one hand and the protection of industrial designs on the other.

As will be seen, each problem raises in an acute form, the conflict between the creator, who wants the maximum commercial exploitation of his creation, on the one hand, and the public which wants unfettered use of the creation, on the other. One form of this conflict which has led to serious argument in the past, namely, the term for which protection should be granted, did not, on this occasion, create a serious problem. The practical reason for this is that the light music, television programmes and similar productions wherein lies the substantial commercial interest, are, in any event, ephemeral so that questions whether they should endure for 20 years or 50

years are of little practical interest. Moreover, the United Kingdom is tied to the Berne Convention which has always prescribed the primary period of protection of the life of the author and 50 years thereafter so that any real alteration in term was not a matter for practical consideration. An attempt, however, was made by the Copyright Committee to recommend that the period of protection for what may be termed secondary copyrights, namely, copyrights in material which is not an initial creation but involves some measure of mechanical reproduction, such as photographs, cinematograph films and sound recordings, should enjoy a reduced term of copyright only. The period suggested by the Committee was 25 years from the creation of the work, but these reduced periods were strongly opposed by interested parties in the passage of the Act through Parliament and a period of 50 years from publication or creation is now established by the Act of 1956 for engravings, photographs, gramophone records, cinematograph films and television and sound broadcasts and it is only in the case of the protection given to the typographical arrangement of existing works that the period of 25 years from publication remains. Nevertheless the Act does recognise that in these classes of works there is a less measure of the individual act of creation than in the case of the older subjects of copyright, namely literary, musical, dramatic, and artistic works and, accordingly, the protection is for a fixed period and not, as in the case of the other works, the period of the life of the author and 50 years thereafter.

The main interest in the new Act therefore, is to see how it has dealt with these three serious modern problems. Copyright is a right whose legal recognition has closely followed every expansion in the forms of reproduction. It originally arose from the creation of the art of printing and, though recognised in England as having subsisted at common law, it was not of practical importance until the production of printed copies of literary works gave rise to the first Copyright Act in the reign of Queen Anne. The production of printed copies of musical notation gave rise to the copyright protection of music and a parallel development gave rise to the protection of dramatic works. As a logical consequence of protecting the reproduction of musical and dramatic works, followed the protection of performing rights in such works. The next development was the creation of mechanical or semi-mechanical means of reproducing works of art by engravings, lithography and photography and Acts were passed to protect the creators of works of this nature. But here, for the first time, the situation arose that the act of creation of the work was not a purely intellectual act of creation but involved technical skills and these forms of protection were the first of what has now come to be spoken of as "secondary copyrights," that is to say, copyrights in material which is not wholly a work of intellectual creation but is in fact a reproduction by mechanical means of something which already existed either in an artistic form or in nature itself. The border line may

be difficult to draw between a literary work such as an encyclopaedia, dictionary or directory which is a compilation of existing information and an engraving or photograph which reproduces an existing picture or scene in nature, but one still has the feeling that the former possesses intellectual originality in a sense in which the latter do not. Theoretically it might have been determined that protection should only be given to these secondary creations in so far as they possess individual originality but, from a practical point of view, this would obviously be too burdensome for any Court to interpret and in practice the legislature has indicated its sense of the distinction by giving a lesser period of protection to these secondary copyrights but otherwise treating them on the same footing as the primary copyrights.

The last development of this kind which had occurred before the Act of 1911 was the manufacture of gramophone records and the Act of 1911 not only provided that the making of records was an infringement of the copyright in literary and musical and dramatic works but conferred copyright on the manufacturers of the records in respect of such records as a right additional to the right enjoyed by the owners of the copyright in the music. It would seem that the legislature in 1911 had only contemplated protecting the gramophone manufacturers against the unlawful copying of their records but, in the year 1934, the Courts gave a wider interpretation to Section 19 of the Copyright Act 1911 and held that the gramophone record manufacturer enjoyed a performing right in his record which entitled him to stop anyone performing the record in public without his consent and that such right was additional to the right of the owner of the copyright in the music recorded. As a result of this decision, an organization was set up by the gramophone industry to control the public performance of its records. The Musicians Union were obviously seriously concerned with the public use of records, where live musicians had hitherto been hired for performances, and in consequence put pressure upon the gramophone companies to restrict the performance of their records, a pressure which they were enabled to enforce because of the inability of the gramophone record manufacturers carrying on their business without the goodwill of the Union. The position therefore has arisen in England that the gramophone companies were seriously restricting the use of gramophone records for public performances at theatres and other places of entertainment and were not merely charging fees for the use of the records but were refusing to allow the records to be used at all in the interests of the Musicians Union.

This then was one feature of the first problem above indicated, namely, whether to allow the gramophone companies or the Musicians Union to continue to restrict the use of records in the manner indicated or whether to give some other reasonable protection to the members of the Musicians Union. A somewhat similar problem was raised by other performers such as music hall artists who

were interested not only in the recordings of their performances on records and the subsequent use thereof, but also with the reproduction of their performances by means of broadcasting or television. A certain limited form of protection had already been given to performers by an Act passed in the year 1925 which made it an offence to make records of performances given by performers without the consent of the performer or to perform records so made. This however, did not give the performer any right in the nature of copyright but merely entitled him to exact penalties from the person making the record if no consent was given. The performers of music and the music hall artists were asking for something more than this, namely, a right in the nature of copyright which would entitle them to take proceedings for infringement against anyone reproducing their performances in the form of records or films and from performing their performances in public by the performance of such records of films or by means of television. A right of this kind would have been something quite new. Presumably it could only have been conferred where some actual performance had been preserved in recognisable form in a gramophone record or film. As such however, there was some force in the performers' contention that, in so far as protection is to be given to a record of someone singing a song or performing a concerto in addition to the copyright enjoyed by the composer of the song or music, there is some justification for saying that the additional material which ought to be protected lies as much in the work of the singer or performer as in the work of the employees of the gramophone company who make the recording. Neither the Copyright Committee nor the legislature however, thought it practicable to give protection of this sort to musical or dramatic performers and the Copyright Act of 1956 has preserved and continued the copyright of the gramophone companies in their records. The performing right in their records, however, has received some modification in the new Act. For instance it has been provided that it is not an infringement of copyright in a record to perform it in public at premises where persons reside or sleep as part of the amenities provided for inmates and so long as no special charge is made. Again it is not an infringement to perform a record as part of the activities of a club or organization established for the advancement of religion, education or social welfare. Furthermore, it is not an infringement of copyright in a record which has been broadcast to perform the broadcast in public, as was the case under the Act of 1911. These restrictions will have the effect that where they are applicable, the gramophone companies will not be able to require licence fees to be paid and the musicians will not be able to prevent the records being performed. To this extent therefore, the performers' rights are qualified. On the other hand, the rights of performers are slightly extended by the new Act in that the offences under the previous Act apply now not only to the making of gramophone records but to the making of cinematograph films. It is now an offence for any person knowingly to make a cinemato-

graph film directly or indirectly from or by means of the performance of any dramatic or musical work without the consent in writing of the performers. It is also an offence to use for exhibition a film so made. This however would not seem to be a matter of great practical importance and it may be said therefore, that the Act of 1956 has not produced any very novel features in respect of the rights of musical and dramatic performers and if anything, has in fact curtailed them in the public interest.

The other main controversy about new rights arose from the development of the television of sports programmes and similar features. There has clearly never been any copyright in a horse race, a game of football, a boxing match or a procession but many of these features are capable of factual protection against broadcast or television because they are held on private premises and cannot therefore be broadcast or recorded in practice without the licence of the owner of the premises. The difficulty, however, is that although this gives an initial right to the sports promoter or other owner of the premises where the event takes place, it does not give him any subsequent control if he once consents to a broadcast or television performance. If therefore, for good commercial reasons, he does not want the performance shown in public too near to his own premises, he has not hitherto had any means of imposing such a restriction. Nor could the broadcasting authority themselves impose a restriction since no copyright subsists in an event of this kind and therefore, once broadcast, anyone could show it in public without infringing anyone's right. This therefore was the problem which it was desired to face.

The problem might have been approached by creating a copyright in the actual event concerned, such copyright being of course limited to a right to reproduce or exhibit the event by means of broadcasting or television and perhaps by cinematographic means. This right might have been vested in the promoter or performer or organiser of the event or show concerned, who would then have been entitled to make such terms as he thought fit, both with the broadcasting authority and with any person receiving the broadcast who desired to reproduce it or exhibit it in public. But the notion of conferring rights in the nature of copyright upon the organisers of sporting events or shows would seem to go a long way beyond any previous notions of the extent of copyright protection. It has always been the essence of ordinary copyright protection that there should be some physical creation of the author to be protected and that mere ideas or selections of ideas should not be protected unless they had been organized by the author in the form of some physical creation. This notion in fact seems to flow from a distinction in philosophical jurisprudence between the protection of discoveries and the protection of inventions. For the purpose of this notion, the word 'discovery' is used to denote the finding of some new feature of science or technology or some law of

nature which always existed although it remained to be discovered, while 'invention' is used to describe the creation of some novel material which is individual to the creator. Discoveries in this sense should be protected, if at all, by the more limited protection afforded by the laws of Letters Patent and it is only invented creations which are the proper matter for copyright protection. Whether or not this may be the underlying distinction, from a practical point of view it was clearly a lesser departure from existing principles to confer copyright protection not upon the organiser of the spectacle but upon the broadcasting authority itself and then in respect only of the actual image broadcast. The protection could then be assimilated to the protection already conferred upon such things as photographs and gramophone records although, even so, the right conferred is of a novel character in that it is conferred in respect of mere televised image which is not necessarily recorded in any concrete form at all.

What the Act of 1956 in fact does, is to provide that copyright is to subsist in every television broadcast and in every sound broadcast made by the British Broadcasting Corporation or the Independent Television Authority from a place in the United Kingdom or in any other Country to which the provisions of the Act may be extended. The rights so conferred are vested in the Corporation or the Authority as the case may be for a period of 50 years. The copyright conferred in respect of a television broadcast will be infringed by making a film of it, otherwise than for private purposes, and by causing it to be seen or heard in public by a paying audience, and by re-broadcasting it. The copyright in a sound broadcast will be infringed by making a sound recording of it otherwise than for private purposes and by re-broadcasting it. These copyrights are additional to and are not to interfere with the ordinary literary, musical or dramatic copyrights, if any, subsisting in the material televised or broadcast or, subject to certain limitations, in any copyright subsisting in any gramophone records or films used for the purposes of such broadcasts. The result of these provisions is to create new rights for the protection of those concerned with the broadcasting of programmes which do not incorporate existing copyright material and additional rights where the programmes do include such material. The practical effect would seem to be that, where sporting events and spectacles are broadcast, the promoters of such spectacles will be able to make terms with the broadcasting authority requiring them to see to it that the programmes are not filmed or recorded or shown publicly except to an extent authorized by the promoter. It should be observed, however, that there is no restriction on the public performance at the receiving end of sound broadcasts, although there is in the case of televised broadcasts. Furthermore, it is provided that the restriction on televised broadcasts only applies where a sequence of images is reproduced so as to be seen as a moving picture,

and, consequently, the reproduction of single photographs is not restricted. Again the restriction is in respect of performances to "a paying audience" and audiences consisting of residents and members of a club are not to be treated as paying audiences.

The creation of these new broadcasting rights added to the problem already existing of monopolistic or quasi-monopolistic control and added the broadcasting authorities to the number of the associations already imposing licensing systems on the public in respect of the use of copyright material, the more important of the existing bodies being the Performing Right Society, which has for many years controlled the great part of the light music available for public performance, and the society already referred to controlling the use of gramophone records. While objection in the public interest has frequently been made to Societies of this nature, it has on the other hand, generally been recognised that without the existence of such Societies, the position of the user of material would be even more difficult since he would not know where to go to obtain licences and the Act of 1956 itself provides for the appointment of an organisation to control the broadcasting copyright conferred by the Act upon the British Broadcasting Corporation and the Independent Television Authority. No-one therefore contemplated it as a reasonable solution to curtail the existence of these societies or organisations, since it was generally recognised that they provided an essential system in the administration of copyright licensing. On the other hand, it was generally felt that some limit on their powers must be imposed. In the case of a body such as the Performing Right Society, which was always ready and willing to grant licenses on terms, no great difficulty arose since the only complaint could be as to the rate of royalty charged and this could have been made the subject of some relatively simple system of annual review as under the Canadian Copyright Act or of compulsory arbitration. But a greater difficulty arose where the Society concerned might not desire to grant licences at all in specific cases so that a mere regulation of rates was insufficient. As already pointed out, this has already occurred in the case of the gramophone records where the interest of the Musicians Union was to limit the use of records and not merely to collect fees for their use. Similarly it was envisaged that the interest of the sports promoters and organisers, who might come to control the new television right, might also be to restrict performances and not merely to license them on terms. In view of these considerations, a more complex system seemed necessary and the Act of 1956 has sought to meet the problem by providing for the setting up of a permanent Performing Right Tribunal.

The Tribunal is to consist of a Chairman appointed by the Lord Chancellor, who will be a lawyer and not less than two nor more than four other persons appointed by the Board of Trade. The Tribunal will have two functions,

namely, the approval or variation of license schemes, and the decision of individual applications for licences.

The Tribunal is concerned only with performing rights in literary, dramatic, or musical works in records and in television broadcasts. It also only has jurisdiction where a licensing body is concerned and licensing body is defined so as to include: a society or organisation having as one of its main objects the negotiation or granting of licences to perform literary, dramatic or musical works of a general nature extending to the work of several authors; any owner of copyright in records, or any body acting for such owner or owners granting licences for the performance of records; and, in the case of television broadcasts, the British Broadcasting Corporation or the Independent Television Authority, or any organisation appointed by them. As matters now stand, therefore, the Tribunal will be concerned only with the Societies and organisations to which reference has already been made, and will not be concerned, for example, with publishers of dramatic works because these normally do not grant general licences but only licences for the performance of individual works.

The first function of the Tribunal contemplates that the bodies in question will set up licence schemes setting out the classes of cases in which they are willing to grant licences and the charges, terms and conditions upon which licences will be granted. Such schemes will, it is contemplated, be brought before the Tribunal and discussed between the licensing body and bodies or organisations representing users and finally confirmed and approved by the Tribunal with such modifications as may be required with power to bring them before the Tribunal again from time to time as circumstances may alter.

The other part of the jurisdiction of the Tribunal is concerned with cases where the licensing bodies do not provide license schemes covering a particular matter and some applicant requires a licence. In such cases the Tribunal may, if it thinks fit, order that the applicant is entitled to a licence on such terms and conditions and subject to the payment of such charges as the Tribunal may determine to be reasonable in the circumstances. It is provided that in the exercise of its jurisdiction, in relation to television broadcasts, the Tribunal is to have regard to any conditions imposed by the promoters of any entertainment and not hold a refusal to grant a licence to be unreasonable, if it could not have been granted consistently with those conditions, provided that the conditions do not relate to charges or payments. This appears to have been intended to give the Tribunal power to refuse to grant a licence on any terms for the public performance of a televised programme of a sporting event, if the Tribunal thinks it is reasonable in the interest of the promoter that a particular performance should not take place.

The sanction for the decisions of the Tribunal is that anything thereafter done in accordance with these decisions will not constitute an infringement of the right in question. Obviously a Tribunal of this sort is a new departure in copyright law in so far as it not only regulates charges but is given power to grant licences where the copyright owner was unwilling to grant a licence on any terms at all. As, however, its functions are limited to works controlled by organisations of a quasi-monopolistic character, and do not affect the individual copyright owner, the change is perhaps not so drastic as might otherwise appear. At any rate, it is apprehended that either by anti-monopoly laws or some other measure of control, most countries at the present time have been driven to legislation of some kind to control the position which arises where copyrights are no longer controlled by individuals but by widespread organisations.

The third problem to which reference was made at the beginning of this Article was of quite a different character and related to the problem which has seemed to become increasingly acute in recent years, namely, the borderline between artistic copyright and design copyright. Prior to the passing of the Copyright Act 1911, artistic copyright was protected in England by a number of separate statutes dealing specifically with fine arts on the one hand and engravings, prints, and sculpture on the other, whereas industrial designs were dealt with quite separately under a Designs Act. The Act of 1911 generalised the protection of artistic copyright by the use of the phrase: "reproduce in any material form whatsoever" so that a painting or drawing might be infringed by its reproduction either in two dimensions or three dimensions and whatever the purpose of the reproduction. As this would have resulted in securing copyright under the Copyright Act for wholly industrial designs, it was specifically provided that artistic copyright should not apply to designs capable of being registered under the Designs Act if such designs were used or intended to be used as models or patterns to be multiplied by industrial process. This provision led to a great deal of uncertainty and it was finally determined by the Courts that it only applied if the artist at the moment of creating the work, intended it to be used for industrial processes, and that if he had no such intention, the fact that it was afterwards used as an industrial design did not deprive it of copyright protection. This appeared to be a somewhat arbitrary distinction and had the effect of encouraging manufacturers to use designs which were capable of copyright protection, although more suitable designs might have been obtained if the artist was specifically commissioned to produce a design for the industrial product under consideration, because of the longer period of protection enjoyed under the Copyright Act. It also had the effect that the same work might obtain double protection by having artistic copyright and being registered under the Designs Act with the result

that although the Designs Act registration had expired, copyright protection continued, with the possibility that the public, having inspected the register, might be misled.

The 1956 Act reverses the existing position. Copyright is conferred under that Act upon any artistic work whatever the intention of the artist and will be infringed by converting the work into a three dimensional form, or, if it is in three dimensions, by converting it into a two dimensional form, provided that the making of an object which is in three dimensions is not to infringe an artistic work in two dimensions, if the object would not appear to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work. The only exclusion, therefore, is that an artistic work which is a mere engineer's drawing or design, will not be infringed by a three dimensional work incorporating the design, unless the fact that it is a reproduction is apparent to the ordinary public. The owner of the copyright is then given the right, if he desires to use the work for an industrial design, to register it under the Designs Act and, if he does so, he will obtain Designs Act protection for the design but will lose his copyright protection for any industrial use when the design registration expires. If, however, he allows his design to be used for industrial purposes without registering it under the Designs Act, then he will at once lose his copyright protection for any industrial use of the design. Though it is comparatively simple to express the principle of these provisions of the Act, they are highly complicated in detail and have involved alterations both of copyright law and designs law but it is thought that the result is fairer to all concerned than that which previously existed and it is hoped that it will prove so in practice.

The foregoing sets out the main novel provisions of the Act of 1956. It has made a great deal of detailed alteration in the light of changes which have seemed desirable since the Act of 1911. One matter which may be of interest concerns the activities of public libraries and illustrates the development of library methods since the year 1911. That Act authorised the copyright of library material for purposes of private study and research but this provision only protected the actual student who was assumed, presumably, to do his own copying in manuscript. Nowadays the machinery is quite different and libraries are asked to put portions of their books at the service of students and researchers by means of photographic copying or micro-photography. Sometimes this is a service provided by the library from its own books and sometimes by procuring copies of portions of other books from other libraries at a distance where it is cheaper and safer to dispatch photographic copies than to send the original. None of these activities is protected under the existing law and strong representations were made by public libraries and scientific bodies to the Copyright Committee to provide protection in this class of circumstance.

On the other hand, it was appreciated that the sale of specialised scientific books was in any case limited, so that undue copying might well be a severe hardship upon the author and publisher and lead to diminution in the supply of material of this character. The Act of 1956 has provided limited authority to public libraries to supply material of this character but subject to fairly rigorous restrictions, the details of which are left to be fixed by regulation. This again is a matter about which it is hard to judge until its operation is seen in practice, but it must be a problem of general importance which will arise increasingly in all parts of the World.

The relief given to libraries in respect of the photographic copying of articles and parts of books was chiefly for the benefit of the scientist. A somewhat different form of relief has been given to the historian and the biographer. An increasing number of private collections of letters and manuscripts is finding its way into the public libraries and public interest in history and biography of previous centuries seems increasing. Consequently, there has been a demand for greater liberty to use such material for publication. The copyright in unpublished letters and manuscripts is perpetual and consequently no-one can safely publish such material without the consent of the copyright owner. On the other hand when many years have expired since the production of the work, it is impracticable to find the present owner or to trace the devolution of title through a number of estates. Moreover, the copyright in letters is vested in the writer and not in the recipient so that the owners of the copyright in a collection of letters may be manifold. The Act of 1956 makes an attempt to face this problem. In the first place it is provided that where at any time more than 50 years from the end of the year in which the author died and more than 100 years after the time when the work was made, the work has not been published and a manuscript or a copy of the work is kept in a library, museum or other institution, open to public inspection, the work may be reproduced for purposes of study or with a view to publication. This step entitles a researcher to prepare a work for publication incorporating such ancient material. It is next provided that when such a new work has been created, a notice may be given in accordance with Regulations provided by the Board of Trade, and if the identity of the owner of the copyright is not known or then discovered, the work may be safely published. This again is possibly a new approach to what must be a fairly general problem.

In addition to the important matter of television rights, the Act of 1956 has created two new subject matters of copyrights, namely cinematograph films and typographical arrangements.

While it may be thought surprising that, having regard to the general importance of the subject matter, the creation of a film copyright is not regarded

as of outstanding importance, the truth of the matter is that the new right, while novel in form, does not seem to effect any substantial alteration in the law. The Copyright Act 1911 treated a cinematograph production as a dramatic work where the arrangement or acting form gave the work an original character, and as an artistic work, where it did not, and films were, therefore, in practice protected under one or the other head, and, while there were differences in theory between the two forms of protection, particularly in regard to the ownership of the copyright, in practice this never seems to have given rise to any difficulty. The Act of 1956 defines cinematograph film as any sequence of visual images recorded on material of any description, so as to be capable of being shown as a moving picture and includes the sounds embodied in any sound track associated with the film. The copyright vests in the person by whom the arrangements necessary for the making of the film are undertaken, and is to continue until the end of 50 years from first publication or first registration under the Cinematographic Films Act 1938. The most important feature of the provisions of the Act of 1956 in regard to films, is that when the copyright in the film expires, the film may thereafter be exhibited in public without infringing any musical or dramatic rights in material incorporated in the film and, to this extent, it modifies and limits the rights of these copyright owners. The copyright in films is itself restricted in that, where a film is televised and this is done with the licence of the owner of the copyright in the film, anyone can show the television performance in public without any further licence from the owner of the copyright in the film and, if the film has been televised without the licence of the owner of the copyrights in the film, the rights of such owner are against the broadcasting authority and not against the person, if any, who has shown the televised performance in public.

Owing to the development of processes of photographic reproduction of print, it has become commercially practicable to produce books by photographic process. If, therefore, a publisher has set up in type and printed and published an old work, the copyright in which is in the public domain, he would have no remedy under the existing law if another publisher reproduced his material by photographic process. In order to meet this point, a new copyright has been conferred by the Act of 1956 in every published edition of literary, dramatic or musical works, conferring the right to prevent the reproduction of the typographical arrangement of the edition by any photographic or similar process.

It was a matter of some doubt, under the Act of 1911, whether a musical work was published by the issue of the records of the work, without any publication of the musical score. Though the view had generally been taken that as publication in that Act was defined as "the issue of copies of the work,"

and there had been decisions before 1911 that records were not copies of musical works, the issue of records did not constitute publication. The doubt has been set at rest under the Act of 1956 by a specific provision that the issue of records of a literary, dramatic or musical work, is not to constitute publication of the work.

A matter which may be of some interest since it affects the title to English copyrights is a new provision of the Act of 1956 dealing with the assignment of the copyright in works not yet created. Under the existing law it had been decided that a purported assignment of a work not yet in existence, was ineffective except as a contract. Consequently, where an author or composer agreed to write or compose a book and purported to agree that the work when created should forthwith vest in a publisher or film company, this was inoperative except as an agreement and the copyright nevertheless vested automatically, when it came into existence, in the author or composer, with the result that he might be able to confer a legal title upon someone else, provided that that person took without notice of the contract. The Act of 1956 provides that, where by an agreement made in relation to any future copyright signed by or on behalf of the prospective owner, the prospective owner purports to assign the future copyright to another person, then the copyright shall, on its coming into existence, vest in the assignee or his successor in title. This provision may be of considerable importance in the drafting of documents and is one which those concerned with English copyrights should have in mind after the Act of 1956 comes into force.

The above is an outline of the main changes introduced into English law by the Copyright Act 1956, though the operation of some of its provisions still awaits the making of Regulations and Orders in Council to bring them into effect.

Though the Act is no doubt beneficial in bringing the law of copyright in England into line with modern developments, there is one feature of the matter which seems to be unfortunate, though probably unavoidable. The Copyright Act 1911 extended throughout His Majesty's Dominions and had been in fact enacted in identical terms in the self governing Dominions of Canada, Australia, New Zealand and South Africa. There therefore existed a single copyright code throughout the British Commonwealth and, in a subject of so international a nature as copyright, this had the greatest advantages in that a lawyer could advise with reasonable certainty about the nature of the copyright in a particular work throughout the Commonwealth. In dealing with books, films and popular music, this was obviously of the greatest importance. The Act of 1956 in terms applies only in the United Kingdom and the Act of 1911 will continue to apply in other parts of the Commonwealth

unless steps are taken to alter the law. It is understood that both Canada and Australia are contemplating new legislation but it is very possible that they may introduce legislation of their own which may be thought to meet more closely their particular problems. It may well be, therefore, that in a few years, there will be different systems of copyright in a number of different parts of the Commonwealth and those concerned with world-wide copyright interests and those who have to advise them can only regard this as a retrograde step. While one perfectly recognises the right of each country to introduce legislation to meet its own problems, one can only hope that the advantage of a reasonably universal code in the interests of all, will not be lost to view. This, however, is a matter which concerns not only the British Commonwealth but all countries of the World, and here the picture is more reassuring, since the increasing regard for the desirability of Convention agreements seems in the long run to be bound to bring about an increasing similarity in the municipal law of every country.

***Last Minute News:***

The United Kingdom Copyright Act of 1956 comes into full operation on June 1, 1957. According to an announcement in the *London Times* of May 18, 1957, Mr. F. J. Erroll, Parliamentary Secretary to the Board of Trade on May 17, 1957 made an Order which has the effect of bringing the whole of the Act into operation on that date. Mr. Erroll added that regulations concerning the exception from copyright in respect of libraries, archives, records and musical works and rules under the section making special exception in respect of industrial designs will be laid before Parliament in the near future. The Performing Rights Tribunal will comprise the following: Mr. Clive Burt, Q. C., Chairman; Mr. W. Evans, Dame Alix Meynell, and Mr. James A. Walker, Members.

## PART I.

LEGISLATIVE AND ADMINISTRATIVE  
DEVELOPMENTS

## 1. UNITED STATES OF AMERICA AND TERRITORIES

311. *National Council of Patent Law Associations.*

Draft of a proposed bill for the Protection of Ornamental Designs of Useful or Decorative Articles, prepared for the Coordinating Committee of the National Council of Patent Law Associations by its Drafting Committee.

13 p. [New York, Mar 8, 1957.]

312 *U. S. Congress. House.*

H. R. 4952. A bill to amend the Internal Revenue Code of 1939 and the Internal Revenue Code of 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 on Feb. 18, 1957, and referred to the Committee on Ways and Means.)

3 p. (85th 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. A reintroduction of H.R. 7643 of the previous Congress which, after passage, was vetoed by the President on Aug. 10, 1956 as being preferential legislation.

313. *U. S. Congress. House.*

H.R. 5647. A bill to amend the Trading With the Enemy Act, as amended, and the War Claims Act of 1948, as amended. (Introduced by

Mr. Burdick on March 6, 1957, and referred to the Committee on Interstate and Foreign Commerce.)

44 p. (85th Cong., 1st Sess.)

Provides for the return of most of the copyrights or rights or licenses pertaining thereto which remain vested in or transferred to the Alien Property Custodian or Attorney General, except those involved in pending litigation. One of a number of similar bills introduced in the previous and instant Congresses.

314. *U. S. Congress. House.*

H.R. 5478. A bill to amend subchapter G, part II of the Internal Revenue Code of the United States, relating to personal holding companies. (Introduced by Mr. Keogh on Feb. 28, 1957 and referred to the Committee on Ways and Means.)

2 p. (85th Cong., 1st Sess.)

This bill would amend Section 543(a) of the Internal Revenue Code and would have the effect of exempting from imposition of an 85% tax, the undistributed personal holding company income consisting of copyright royalties if "(A) such royalties constitute 50 percent or more of the gross income, and (B) the deductions allowable under Section 162 (relating to trade or business expenses but not including royalties paid or accrued) other than compensation for personal services rendered by the shareholders, constitute 25 percent or more of the gross income."

315. *U. S. Congress. House.*

H.R. 5814. A bill to provide funds to pay nationals of the United States who have war damage claims against Germany and Japan, without additional direct appropriations therefor, and to amend the Trading With the Enemy Act and the War Claims Act of 1948, as amended. (Introduced by Mr. Cunningham of Nebraska on Mar. 11, 1957 and referred to the Committee on Interstate and Foreign Commerce.)

30 p. (85th Cong., 1st Sess.)

Identical with H.R. 4416, introduced on Feb. 5, 1957 by Mr. Preston, and similar to bills introduced in this and previous Congresses.

316. *U. S. Congress. House.*

H.R. 6034. A bill to amend the War Claims Act of 1948, as amended,

and the Trading With the Enemy Act, as amended, and to provide for the payment of certain American war damage claims. (Introduced by Mr. Simpson of Illinois, Mar. 14, 1957, and referred to the Committee on Interstate and Foreign Commerce.)

30 p. (85th Cong., 1st Sess.)

One of many similar bills.

317. *U. S. Congress. House.*

H.R. 6083. A bill to provide funds to pay nationals of the United States who have war damage claims against Germany and Japan, without additional direct appropriations therefor, and to amend the Trading With the Enemy Act and the War Claims Act of 1948, as amended. (Introduced by Mr. Hale, Mar. 18, 1957, and referred to the Committee on Interstate and Foreign Commerce.)

30 p. (85th Cong., 1st Sess.)

One of many similar bills.

318. *U. S. Congress. House. Committee on the Judiciary.*

Statute of limitations on civil copyright actions. H. Report No. 150 [to accompany H.R. 277] submitted by Mr. Willis on Feb. 21, 1957.

5 p. (85th Cong., 1st Sess.)

Includes the same statements from Librarian of Congress and the Dept. of Justice which appeared in H. Rept. 2419 on H.R. 781 of the 84th Congress, which is identical with the instant bill. When called on the Consent Calendar, Mar. 4, the bill was passed over without prejudice at the request of Mr. Wright. On Mar. 19 the bill was passed by the House and sent to the Senate without amendment.

319. *U. S. Congress. Senate.*

S. 1302. A bill to amend the Trading With the Enemy Act, as amended, and the War Claims Act of 1948, as amended. (Introduced by Mr. Young on Feb. 20 (legislative day, Feb. 18), 1957, and referred to the Committee on the Judiciary.)

44 p. (85th Cong., 1st Sess.)

Identical with H.R. 5647, *supra*, item 313.

320. *U. S. Congress. Senate.*

S. 1434. A bill to amend the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 with respect to foreign tax credit for United Kingdom income tax paid with respect to royalties and other like amounts. (Introduced by Mr. Martin of Pennsylvania, Feb. 28, 1957, and referred to the Committee on Finance.)

3 p. (85th Cong., 1st Sess.)

Identical with H.R. 4952, *supra*, item 312.

321. *U. S. Copyright Office.*

Règlement du Copyright Office. (En vigueur à dater du 11 août 1956) [Code of Federal Regulations, Titre 37, Chapitre II].

*Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), pp. 6-8; no. 2 (Feb. 1957), pp. 17-21.

French translation of the Copyright Office Regulations in effect as of Aug. 11, 1956.

## 2. FOREIGN NATIONS

322. *Czechoslovak Republic. Ministry for Culture.*

Kundmachung . . . vom 25. April 1956, Nr. 97 ABl. über die Regelung der Urheberhonorare für Werke der Literatur.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23 (no. 1/2), pp. 31-87.

German text of decree by the Ministry of Culture prescribing fees of authors of literary works and the method of their payment as authorized by Article 23 of the Czechoslovak Copyright Law of 1953.

323. *France. Laws, statutes, etc.*

Loi n° 57 du 11 mars 1957 sur la propriété littéraire et artistique.

*Journal Officiel de la République Française* (Mar. 14, 1957), pp. 2723-2730.

A codification and revision of all the copyright laws in France passed since 1791.

324. *Sweden. Laws, statutes, etc.*

Draft Law on Rights in Photographic Pictures, proposed by the Swedish Copyright Committee. [Translated by Borge Varmer.]

*Copyright Society of the U. S. A. Translation and Document Service, 1957, no. 2b. 6 p.*

The original draft was published by the Ministry of Justice of Sweden, Stockholm, 1956.

## 325. Varmer, Borge.

Summary of Report of the Swedish Copyright Committee on its proposed Draft Law on Rights in Photographic Pictures.

*Copyright Society of the U. S. A. Translation and Document Service, 1957, no. 2a. 3 p.*

The original report in Swedish accompanied the draft law which was published by the Ministry of Justice of Sweden, Stockholm, 1956.

## PART II.

**CONVENTIONS, TREATIES AND PROCLAMATIONS**326. *Germany (Federal Republic, 1949- ) Bundespatentamt.*

Anordnung des Bundespatentamts zur Durchführung des Gesetzes über die Ratifikation des Abkommens zwischen der Föderativen Volksrepublik Jugoslawien und der Bundesrepublik Deutschland über gewisse Rechte auf dem Gebiet des gewerblichen Rechtsschutzes und des Urheberrechts, vom 15. August 1956.

*Blatt für Patent- Muster- und Zeichenwesen, vol. 59, no. 1 (Jan. 1957), pp. 5-6.*

Order of the Federal Patent Office for the putting into effect of the law on the ratification of the convention between the Federative People's Republic of Yugoslavia and the Federal Republic of Germany concerning certain rights relative to industrial and intellectual property. See 2 BULL. CR. SOC. 34 Item 88 (1954).

327. *U. S. President, 1953- (Eisenhower).*

Proclamation 3175. Copyrights—Brazil, by the President of the United States of America, a proclamation. [Signed April 2, 1957.]

*The Federal Register*, vol 22, no. 67 (Apr. 6, 1957), p. 2305.

"F. R. Doc. 57-2718; filed April 4, 1957."

This proclamation reaffirms the continued existence of reciprocal copyright relations between United States and Brazil, based upon the Buenos Aires Convention of 1910, and for the first time provides for the protection in the United States of recorded musical works of Brazilian nationals.

328. Universal Copyright Convention: state of ratifications and accessions as at 15 November 1956.

*Unesco Copyright Bulletin*, vol. 9, no. 2 (1956), p. 129.

### PART III.

## JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

### A. DECISIONS OF U. S. COURTS

#### 1. Federal Court Decisions

- 328a. *Columbia Broadcasting System, Inc. v. Loew's Incorporated*, certiorari granted April 29, 1957, 113 USPQ p. ii. See 2 BULL. CR. SOC. 177 (June 1955), item 337.

329. *Szekely v. Eagle Lion Films et al.*, 242 F.2d 266 (2nd Cir., Mar. 19, 1957).

Action for copyright infringement. In 1937 Pietro di Donato wrote a short story that later developed into a novel entitled "Christ in Concrete," which was published and copyrighted in 1937 and 1939. Co-defendant Geiger acquired exclusive motion picture rights and contracted with plaintiff to write a screen play. Plaintiff was to retain all rights and title in the manuscript until he received the agreed minimum compensation of \$35,000; he actually received only \$10,000. Geiger found it necessary to have Barzman, a writer, make extensive revisions in the manuscript in order to reduce the budget for the production. The film was made in England and co-defendant Eagle Lion obtained the distribution rights for the Western Hemisphere. The publication brought in \$46,719.84 of which Geiger received \$29,758.04. After learning his

script was being used, plaintiff notified Eagle Lion of his rights in Nov. 1949 (prior to distribution of the film), notified them of his intention to sue in Feb. 1950, and actually sued both Eagle Lion and Geiger in April 1950. The suit against Geiger was dismissed by consent, a claim for accounting was abandoned on trial, and plaintiff obtained judgment against Eagle Lion for \$25,000 damages and interest. The latter appealed.

*Held, affirmed.*

Eagle Lion first claimed that plaintiff himself was an infringer. But his dramatization was made under contract with Geiger who had obtained the right to dramatize from the copyright owner.

The second defense of estoppel and laches because plaintiff's deliberate inaction led to Eagle Lion's distribution of the film was contradicted by the facts which showed actual notice of his claim before distribution, and continued distribution for several years after further warning.

The third point of the appeal was that plaintiff was merely a joint owner with Barzman. But plaintiff had retained title until payment of the full \$35,000, and the contract provided for collaboration only on his consent, which was not sought or obtained.

In upholding the award of \$25,000 damages the Court said: "The market value of that property as at least \$25,000 of the conversion is supported by its appraisal by plaintiff and Geiger in their dealings prior to the conversion. Even if it were held that those negotiations are not some evidence of a market value . . . the plaintiff should be allowed to recover for the security value placed upon it and known to defendant before the conversion, as a different value necessary to give just compensation. This is not a case where there was no market for plaintiff's property. Geiger, even if financially embarrassed, had a property salable in conjunction with plaintiff's. The two together had a substantial value, as proved by the terms of acquisition of the territorial rights by Eagle Lion. Until Eagle Lion distributed the film, plaintiff's rights were part of a salable bundle. Geiger at least was a potential market for plaintiff's rights. When Eagle Lion distributed the film, in violation of plaintiff's rights, the market ended. The legal injury is certain. We should not allow difficulty in ascertaining precisely the value of the right destroyed, which difficulty arises largely from the destruction, to enable the infringer to escape without compensating the owner of the right."

330. *Hirshon v. United Artists Corp.*, 113 U.S.P.Q. 110 (Ct. of App., D.C., Apr. 4, 1957).

Action for copyright infringement. Plaintiff composed the music of "London Bells Will Ring Again" and his mother wrote the lyrics. It was copyrighted in his mother's name as an unpublished work in Oct. 1943. In December of the same year plaintiff and his mother assigned their song, including the right to copyright it, to Carlton, a publisher, for a period of three years. About 2,500 copies were printed with the notice "Copyright 1944 by Joseph Carlton," and 2,000 were distributed to persons in the music field. In 1953 plaintiff obtained and recorded in the Copyright Office an assignment from his mother of her 1943 copyright. Claiming that a song in the motion picture "Moulin Rouge" infringed this copyright he brought suit. Defendant moved for summary judgment because (1) plaintiff was not the proprietor of the copyright and (2) the copyright was invalid. The District Court granted the motion and plaintiff appealed.

*Held*, reversed.

In support of the first contention defendant argued that the 1943 copyright was assigned to Carlton because all of the owner's rights were transferred. But the rights so assigned were conveyed for only three years, and Carlton's licensing powers were narrowly circumscribed.

The second contention was that since plaintiff's mother remained the registered owner of the 1943 copyright despite the contract with Carlton, the publication with a notice reading "Copyright 1944 by Joseph Carlton" rendered the copyright invalid. But the printed copies had to bear a copyright notice only if (1) they were "reproduced for sale" (17 U. S. C. 12) or "published or offered for sale" (17 U. S. C. 10); and (2) such reproduction or publication was by authority of plaintiff's mother (17 U. S. C. 10). It could not be concluded from the record that either of these conditions was satisfied. The terms "reproduced for sale" and "published" are apparently used interchangeably. Referring to Judge Frank's opinion in *American Visuals Corp. v. Holland*, 239 F. 2d 740, 111 U.S.P.Q. 288, 4 BULL. CR. SOC. p. 69, item 179 (1956), the Court said: "We think the authorities he cites and others warrant the more generalized observation that it takes more in the way of publication to invalidate any copyright, whether statutory or common law, than to validate it . . . All the record shows is that 2,500 copies of appellant's song were printed and that some 2,000 of them were distributed to broadcasting stations and professional musicians for 'plugging' purposes, chiefly through Broadcast Music Incorporated, named on the copies as a licensing agent. Not a single copy was sold. No license or other permission was given to anyone to perform or otherwise use

the song. Nothing was said or done, beyond the described distribution, to give any recipient of a copy the impression that he could make any use of it without first obtaining the proprietor's license through the stated licensing agent . . . Appellee says there was a general publication here because the copies distributed were not labeled 'Professional'. There is no rule of law to that effect. If a trade custom is relied on, it must be proved."

In any case, there was an issue of fact whether the publication, if such were found, was by authority of the copyright owner. "It does not appear from the record that either appellant or his mother authorized Carlton to do anything more than circularize the trade for the purpose of stimulating interest in the song. Although appellant 'acquiesced' in the form of notice of copyright Carlton had placed on the copies, both he and his mother 'questioned it and [Carlton] said that was normal procedure'."

331. *Greenbie v. Noble et al.*, 113 U.S.P.Q. 115 (D.C.S.D.N.Y., Apr. 3, 1957).

Action for copyright infringement. Plaintiff was the author of "My Dear Lady," a historical account of Anna Ella Carroll, a Civil War figure, published and copyrighted in 1940, and she alleged one Hollister Noble infringed her copyright by writing and causing to be published in 1948 a book entitled "Woman With A Sword," a fictional account of Miss Carroll's career. Noble died and was never made a party to this action; the defendants were Doubleday & Co. and Sears, Roebuck & Co., both having published editions of Noble's book.

*Held*, judgment for defendants with costs but without counsel's fees.

Defendants advanced several affirmative defenses. The first was that plaintiff was not the proper party to sue because she assigned her publication rights to her publisher. But plaintiff impliedly reserved her right to make another version by novelizing her work; also, she held the legal title to the copyright.

The second defense was laches. But in 1948 plaintiff's attorney notified Doubleday of her copyright claim and objection to the publication of Noble's book. "In any event, this court will be guided by the applicable statute of limitations in determining whether this suit should be dismissed because of laches."

Another defense was that plaintiff misused the copyright or had unclean hands. Defendants contended that plaintiff sought to restrict the material deposited by her with the Maryland Historical Society and that

she blocked out the so-called Anna Ella Carroll story to pre-empt motion picture and fictional rights. But the said restrictions consisted merely of the requirement of consent of one of Miss Carroll's relatives, and neither circumstance was an attempt to enlarge the copyright monopoly.

The fourth defense was the Statute of Limitations. The Court applied the New York statute to the claims arising in New York, but as to claims arising in Illinois it applied the Illinois statute, under authority of Sec. 13 of the New York Civil Practice Act. The application of these statutes reduced the possible recovery but was not a complete defense.

The Court therefore had to consider the merits, and after careful comparison of the two books and a review of the applicable tests of plagiarism in books on events in the public domain the Court was of the opinion that even though there was access, plaintiff had not established that a substantial or material part of the copyrightable matter in "My Dear Lady" was copied in "Woman With A Sword".

332. *Continental Casualty Co. v. Beardsley et al.*, 113 U.S.P.Q. 181 (D.C.S.D. N.Y., Apr. 4, 1957).

Action for declaratory judgment that defendant's copyright is invalid, damages for unfair competition, violation of the antitrust laws and injunctive relief; defendant claimed copyright infringement, unfair competition, inducement of breaches of implied contracts and confidential disclosures, and injunctive relief. Defendant Beardsley alleged he was the originator of the "Beardsley Plan," a blanket indemnity bond device adopted to the exigencies of the situations requiring the replacement of corporate securities which were lost or stolen. He published a booklet in 1939 consisting of 3 pages of explanatory matter and 3 insurance forms, and claimed plaintiff Continental infringed this copyright.

*Held*, declaratory judgment and injunctive relief granted to plaintiff.

In a lengthy opinion the Court first discussed copyrightability and held that since Continental used the forms in the course of its business of selling insurance rather than to disseminate information, Beardsley was not entitled to copyright protection against Continental's infringement, if any. In comparing the forms used by Continental and Beardsley, the Court said that "one must remember that words of insurance art and literary expressions are involved. Therefore what might be called a paraphrase and plagiarism in another matter, is significantly different for the purposes of the matter at hand. . . . Since the arrangement is the key idea of the Beardsley plan, and an idea cannot be copyrighted, and

since Beardsley did not use a unique form of expression, defendant's claim of infringement must fail even assuming insurance forms such as these are copyrightable."

The Court also found that there was publication without copyright notice when Beardsley distributed 100 of his pamphlets without such notice to potential customers. None of the other allegations of both plaintiff and defendant were substantiated.

333. *Independent Film Distributors, Ltd. v. Chesapeake Industries, Inc.*, 148 F. Supp. 611, 112 U.S.P.Q. 380 (D.C.S.D.N.Y., Feb. 20, 1957).

Action for preliminary injunction enjoining copyright infringement. Defendant claimed it succeeded to plaintiff's ownership of the copyrights of certain films by virtue of sale by a referee pursuant to a final judgment of the New York Supreme Court. Plaintiff moved for summary judgment.

*Held*, motion granted.

The New York judgment was rendered in an action to foreclose a motion picture film laboratory lien granted by Sec. 188 of the New York Lien Law. Plaintiff, defendant in that suit, was a foreign corporation and was served out of state without an order, pursuant to Sec. 235 of the New York Civil Practice Act; but this was not in personam service. "Such in personam jurisdiction was a prerequisite since a copyright is an intangible, incorporeal right in the nature of a privilege or franchise which does not have a situs apart of the domicile of the owner. [Citations omitted.] It is a res distinct from the property to which it attaches."

334. *Nelson v. Radio Corporation of America*, 148 F. Supp. 1 (D.C.S.D.Fla., Feb. 7, 1957).

Action for accounting, royalties, injunction and damages. In 1942 plaintiff was employed as a vocalist with Glenn Miller's orchestra, being paid weekly at union rates. Plaintiff sang six selections which were recorded for 78 r.p.m. discs and two that were recorded for radio broadcasts. Miller assigned all rights in these records to defendant who reissued two selections on 45 and 33 1/3 r.p.m. records. After Miller's death, without consulting plaintiff, defendant released an album containing two selections recorded for broadcasting without indicating plaintiff was the vocalist. In a later album a selection was used which wrongly attributed plaintiff's singing to one Eberle who had been his

predecessor with the orchestra. On defendant's motion at the pre-trial conference, plaintiff's demand that defendant be ordered to issue an album with selections sung by plaintiff only and to pay royalties thereon was stricken, but trial was had on the other issues.

*Held*, complaint dismissed with prejudice, except for \$100 damages to plaintiff, defendant to pay court costs.

Plaintiff had no agreement with Miller that the records were to be played at any particular speed, that plaintiff was to get label or advertising credit, or that he was to receive royalties. One of plaintiff's witnesses testified that singing for records is of great value to a vocalist's career, and that it is desirable to have one's name on the label. But "[a]lthough the witness . . . attached considerable importance to this, so far as concerns his testimony with respect to plaintiff, it was entirely speculative and cannot form the basis for the assessment of damages."

A master-servant relationship existed between plaintiff and Miller, and therefore all rights to the records were in Miller when he assigned them to defendant, and defendant could release them at any speed and without giving plaintiff credit. But as to the recording for broadcasting only, defendant conceded plaintiff should be paid as if the additional use for commercial records had been contemplated. The Court adopted the union rate of \$50 per selection. Defendant established that the wrong attribution of one selection to Eberle was an unintentional clerical mistake, and that it had promised prior to suit to correct it on any repressing of the record.

Plaintiff contended that such cases as *Waring v. Dunlea*, 26 F. Supp. 338 and *RCA Mfg. Co., Inc. v. Whiteman*, 114 F. 2d 86, established a common law property right in renditions of musical selections. "However, examination of these cases shows that in each instance such right as was declared to exist inhered in the leader as proprietor of the orchestra, rather than in the various employees of the orchestra. In any event, plaintiff's authorities are not controlling because they all deal with piratical uses, whereas, as pointed out above, all rights in the phonograph records here involved belonged to plaintiff's employer Glenn Miller, and were acquired by defendant from Miller."

335. *Glenco Refrigeration Corp. v. Raetone Commercial Refrigerator Corp. et al.*, 113 U.S.P.Q. 155 (D.C.E.D.Pa., Mar. 26, 1957).

Action for copyright infringement. Plaintiff published a catalogue carrying on the extreme lower left of the title page the legend "©1955

G.R.C. Printed in U.S.A.". On the same page, about an inch above and three inches to the right, the following appeared in substantially larger letters:

"GLENCO  
REFRIGERATION CORP.  
PHILADELPHIA 34, PA."

The space between was wholly blank. Both defendants moved to dismiss the complaint because the name of the copyright proprietor did not "accompany" the symbol © within the meaning of 17 U.S.C. 19.

*Held*, motion denied.

"The clear purpose of the statutory mandate is to afford to those who might otherwise innocently infringe notice that copyright is claimed and by whom. Section 19 does not establish what degree of proximity or propinquity must exist between the two to satisfy the requirement that the symbol be 'accompanied by' the name. In the absence of express legislative direction that one be placed immediately above, below or beside the other, it may be fairly concluded that the placement of the symbol and the name is left wholly to taste or discretion so long as the purpose of the statute is fulfilled by so placing them in relation to each other as to give reasonable notice of the claim of copyright and of the claimant's identity."

336. *Autotype Co. v. Yagoda et al., d.b.a. Aywon Wire and Metal Co. et al.*, 148 F. Supp. 447, 112 U.S.P.Q. 380 (D.C.E.N.Y., Feb. 21, 1957).

Application for preliminary injunction based on unfair competition and copyright infringement, and for preference. Defendants manufactured bathroom, kitchen and closet accessories and used a display panel similar to plaintiff's and their labels allegedly infringed plaintiff's copyright on his labels.

*Held*, for defendants.

Defendants' counsel advised the Court that his clients no longer used nor did they intend to use in the future the labels and display panel complained of, and their new labels and panel were entirely different. As to the accessories plaintiff could not show irreparable injury, particularly since defendants' new panel and labels made the products readily distinguishable. The application for preference was premature since a note of issue had not been filed.

## 2. State Court Decisions

337. *Sunset Securities Co. v. Coward McCann*, 306 P. 2d 777, 112 U.S.P.Q. 449 (Cal. Sup. Ct., Feb. 15, 1957). See also 110 U.S.P.Q. 329, 4 BULL. CR. SOC. p. 12, item 18 (1956).

Action to quiet title to motion picture. In 1944 the author of the novel "Prelude to Night" conveyed all rights to defendant who copyrighted it in 1945. In 1946 defendant licensed American International (plaintiff's assignor) in the first paragraph of their agreement to make, copyright, sell and exhibit a motion picture based on the novel. Pursuant to the eighth paragraph, after 10 years all rights granted to American International were to revert to defendant unless American International exercised an option to buy those rights for an additional \$25,000. This amount was not paid, and defendant contended that the copyright and the license to exhibit and perform the motion picture reverted to defendant. The Superior Court of Los Angeles County granted summary judgment on defendant's cross-complaint. Plaintiff appealed.

*Held*, affirmed.

Plaintiff claimed that the reversionary paragraph of the agreement, referring to rights "in and to the property," did not cause the copyright in the motion picture to vest in defendant because it was separate from the copyright in the novel and could not "revert" because it did not exist at the time of the agreement. But the Court looked at the entire agreement and found that the parties "intended by the eighth paragraph of the agreement that all rights derived from those conferred by the first paragraph should pass to the owner if the option was not exercised."

338. *Young v. Hickerson, Inc.*, 159 N.Y.S. 2d 612 (Munic. Ct., N.Y., Manh., Feb. 11, 1957).

Action for damages arising from unauthorized use of plaintiff's copyrighted portrait of L. Andrew Reinhardt. Plaintiff specialized in taking photo portraits of prominent people. In 1948 she requested Reinhardt, a prominent architect, to pose for a portrait to be used in an exhibition. He agreed, and like others contributed \$25 but did not purchase any prints at that time. Later he purchased some prints of his photograph, some of which carried a copyright notice. In 1955 he gave such a copy to another who gave it to defendant who published it as part of an advertisement.

*Held*, judgment for plaintiff in the amount of \$200.

Defendant claimed this action arose under the copyright law and the state court had no jurisdiction. But "[e]ven though a plaintiff base her action upon the existence of a copyright, it still is not an action arising under the copyright laws unless the redress she seeks is for infringement of that copyright. . . . If the acts of defendant of which the plaintiff complains constitute not merely an invasion of her statutory copyright but also a wilful interference with and abuse of her contractual relations with Reinhardt, the plaintiff may count upon such interference and abuse and obtain relief accordingly in a State court.'

The portrait having been taken at the photographer's instance and the \$25 having been paid to defray the costs of the exhibition rather than for the portrait, all proprietary interests, including the right to copyright, were in her.

Defendant was not a party to the implied contractual relationship between plaintiff and Reinhardt, but there was a copyright notice on the print received by defendant. "The defendant by reason of such notice was, or should have been, made aware of the fact that plaintiff had, or at least claimed to have, ownership rights in the photograph that existed by virtue of some contractual relationship of Reinhardt."

## PART IV.

### BIBLIOGRAPHY

#### A. BOOKS AND TREATISES

##### 1. United States Publications

#### 339. Lépervanche Parparcén, René.

Copyright. [2d ed., rev. and enl. by Rene Lépervanche Parparcén and Luis Loreto.]

*A statement of the laws of Venezuela in matters affecting business. 2d ed. Washington. Legal Division, Dept. of International Law. Pan American Union. 1956. pp. 131-136.*

A brief summary of the Venezuelan copyright law, translated and edited by Taylor W. Gannett.

## 340. Wittenberg, Philip.

The law of literary property. [1st ed.]

*Cleveland, World Pub. Co. (1957). 284 p.*

A reference work written for the writer, the publisher, and the producer in various fields of oral and mechanical reproduction, including a brief history of the concept of literary property and covering such topics as common law, statutory, and international copyright, plagiarism and piracy, fair use, names and titles, protection of ideas, libel, right of privacy and censorship.

## 2. Foreign Publications

## (a) In English

## 341. Davies, Mervyn D. H.

The Copyright Act 1956.

*London, Sweet and Maxwell Ltd. (1957). 135 p.*

This book contains a general introduction to the new English Copyright Act and a section-by-section analysis and annotation; also comparative tables concerning the 1911 and 1956 Acts and tables of cases and statutes.

## (b) In Czech

## 342. Zelezny, Oldrich.

Autorské právo. [Vyd. 1.]

Praha, Státní pedagogické nakl., 1956. 97 p. (Učební texty vysokých škol).

At head of title: Akademie musických umění v Praze. Fakulta filmová.

A manual on copyright in the Czechoslovak Republic, especially directed to "future playwrights, scenarists, and economists in the field of motion pictures." The text of the copyright law is given at the end of the work.

## (c) In Portuguese

## 343. Beviláqua, Clóvis.

Do direito autoral.

(*Direito das Coisas*. 4 ed. atualizada por José de Aguiar Dias. Rio de Janeiro, *Edicao Revista Forense*. Vol. 1 (1956), pp. 225-248.)

This chapter in the 4th edition of "Right of Things" is a compendium of Brazilian copyright law including a brief historical sketch and dealing with such topics as international conventions to which Brazil has adhered, the concept of copyright, duration, who may claim copyright, the right of exploitation, fair use, motion picture and broadcasting rights, and penalties for infringement.

## B. LAW REVIEW ARTICLES

## 1. United States

## 344. Barger, Carl F.

News photographs and the courts—constitutional law—right of privacy.

*Dickinson Law Review*, vol. 61, no. 2 (Jan. 1957), pp. 191-197.

A comment on the case of *In re Attachment for Contempt of Mack et al.*, 386 Pa. 251, 126 A.2d 679 (Pa. Sup. Ct.), representing "the first appellate venture of any jurisdiction into the question of whether a rule of court may go beyond the immediate area of the courtroom in prohibiting the press from taking photographs of criminal defendants."

## 345. Constitutional law—free press—prior restraints of obscenity.

*Minnesota Law Review*, vol. 41, no. 2 (Jan. 1957), pp. 222-225.

Case note on *Brown v. Kingsley Books, Inc.*, 1 N. Y. 2d 177, 134 N. E. 2d 461 (1956) in which the N. Y. Court of Appeals, affirming a decision of the N. Y. Supreme Court which enjoined the sale and distribution of a book it found to be obscene, held that an injunction issued *after* publication was not unconstitutional as being a prior restraint.

## 346. Hart, Kenneth N.

Equity—injunctive relief against libelous publications.

*Boston University Law Review*, vol. 36, no. 4 (fall 1956), pp. 644-647.

Case note on *Krebiozen Research Foundation v. Beacon Press, Inc.*, 134 N.E.2d 1 (Mass. Sup. Ct., 1956), involving a book which allegedly contained "false, fraudulent, wrongful, malicious and erroneous statements" concerning "Krebiozen," a new drug, still in the experimental stage, for the treatment of cancer. The case is described as "the first decision in Massachusetts which expressly states the proposition that the jurisdiction of equity extends to cases of libel and slander."

347. Henson, Ray D.

The prohibited, restricted or free use of business ideas.

*The Insurance Law Journal*, no. 408 (Jan. 1957), pp. 7-14.

A discussion of the problems raised by the recent decision of the Court of Appeals for the District of Columbia in the case of *Miner v. Mutual Liability Insurance Company of Wisconsin*, (See 3 BULL. CR. SOC. p. 92, item 270).

348. Pilpel, Harriet F.

Tax law affecting copyrights: 1954-1956.

*Taxes, The Tax Magazine*, vol. 35, no. 2 (Feb. 1957), pp. 76-82.

Presented as a sequel to her article which appeared in the April 1955 issue of *Taxes*, Mrs. Pilpel points out "the discrimination accorded the holders of copyrights as compared to the happy lot of the holders of patents, professional entertainers and movie makers, who may apply capital gain rates in many transactions," but she feels that the decision in the recent *Reece* case (233 F. 2d 30) has "real implications of future tax relief for authors."

349. Torts—right of privacy—immunity of commercial use of photographs.

*Minnesota Law Review*, vol. 41, no. 2 (Jan. 1957), pp. 235-238.

Case note on *Waters v. Fleetwood*, 212 Ga. 161, 91 S. E. 2d 344 (1956), presenting two of the problems involved in the right of privacy: the extent of the privilege to publish matters of public interest, and the question of the individual's right to sue for publication of a relative's likeness.

## 2. FOREIGN

## (a) In English

## 350. Braband, Carl.

Copyright and the reproduction of published materials.

*Unesco Bulletin for Libraries*, vol. 11, no. 2-3 (Feb.-Mar. 1957), pp. 48-52.

A brief discussion of the main reproduction processes, the measures so far taken thereon, reproduction rights in various countries, and possible solutions to the problem. (Note: Mr. Braband has agreed to be convener of a joint committee of the International Federation of Documentation and the International Federation of Library Associations "to formulate the documentalists' and librarians' attitude with regard to restrictions imposed by copyright law on the making of photocopies of published materials.")

## 351. The Copyright Act of 1956 [Special Issue].

*Performing Right*, no. 28 (March 1957).

The entire issue is devoted to a discussion of the new copyright law of Great Britain.

## 352. James, F. E. Skone.

Legal cases [R.A.R. Taylor v. L. Prior and L. Prior v. R.A.R. Taylor and others.]

*The Author*, no. 3 (Spring 1957), pp. 60-62.

A discussion of a recent English decision for "slander of title," plaintiff alleging that a book written by him had been falsely described by defendant as an infringement of copyright.

## 353. Hepp, François.

Unesco is ten years old: The Universal Copyright Convention.

*Unesco Copyright Bulletin*, vol. 9, no. 2 (1956), pp. 121-128.

The former head of the Unesco Copyright Division describes briefly the motivation behind and the planning of the work leading up to the Convention. Also in French and Spanish.

## 354. Intergovernmental Copyright Committee.

Report on the work of the Intergovernmental Copyright Committee.

*Unesco Copyright Bulletin*, vol. 9, no. 2 (1956), pp. 133-220.

The proceedings of the first session of the committee, established by Article XI of the Universal Copyright Convention, including in an appendix a report by the Rapporteur-General, Dr. Arpad Bogsch, on the proceedings of a Study Group on Neighboring Rights jointly convened by the Director-General of Unesco and the Director of the Berne Union, which met in Paris from 7 to 11 May, 1956. Also in French and Spanish.

## (b) In French

## 355. Abel, Paul.

Lettre de Grande-Bretagne.

*Le Droit d'Auteur*, vol. 70, no. 3 (Mar. 1957), pp. 46-52.

Summaries of the British Copyright Act of 1956 and the Restrictive Trade Practices Act of 1956, notes on recent British court decisions, and a brief account of a report by Sir Arthur Bliss, president of the Performing Right Society, on the activities of the Society in 1955 presented at its annual meeting on June 28, 1956.

## 356. Bogsch, Arpad.

Quelques conditions préalables pour que soit viable un accord international sur le droits voisins.

*Le Droit d'Auteur*, vol. 70, no. 2 (Feb. 1957), pp. 22-27.

"Some Prerequisites for a Viable International Agreement on Neighboring Rights." Translated from English.

## 357. Hepp, François.

La protection internationale des arts appliqués.

*Revue Internationale du Droit d'Auteur*, no. 14 (Jan. 1957), pp. 114-135.

Dr. Hepp, in his commentary entitled "The International Protection of Applied Arts," feels that "the norms of protection of works of art used industrially are to be sought in a priority of the rules of artistic protection combined with the purely commercial elements of the industrial legislation." In French, Spanish, and English.

358. Lund, Torben.

Photocopie, droit d'auteur et usage privé.

*Revue Internationale du Droit d'Auteur*, no. 14 (Jan. 1957), pp. 136-189.

"Photocopy, Copyright and Private Use"; an analysis of European copyright laws on the subject of fair use with special emphasis on the Scandinavian countries. In French, Spanish, and English.

359. Mellor, Alec.

Indivisibilité et destination.

*Revue Internationale du Droit d'Auteur*, no. 14 (Jan. 1957), pp. 190-203.

"Indivisibility and Destination"; a commentary on a French court decision involving the right of a composer, having set a radio script to music with successful results, to share with the author of the script in the proceeds from radio broadcasts of the script with musical scores by other composers. In French, Spanish, and English.

(c) In German

360. Derichsweiler, Dr.

Jugendschutz im Filmtheater.

*Archiv-, Film-, Funk- und Theaterrecht*, vol. 23, no. 1/2 (Dec. 15, 1956), pp. 73-76.

A critical note on a recent German appellate court decision, in which the defendant, as a result of having exhibited in a showcase outside his theater certain photos from a motion picture intended for adults only, was found guilty under provisions of the law against dissemination of writings dangerous to youth.

361. Froschmaier, Franz.

Rechtsvergleichende Betrachtungen zum persönlichen Gebrauch in Urheberrecht.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 1/2 (Dec. 15, 1956), pp. 23-69.

A comparative study of fair use provisions in copyright legislation.

## 362. Hennsler, Eberhard.

Geschmacksmuster- und Urheberschutz für die industrielle Formgestaltung.

*Gewerblicher Rechtsschutz und Urheberrecht*, vol. 59, no. 1 (Jan. 1957), pp. 8-16.

An address delivered at a meeting of the German Patent and Copyright Law Society, Sept. 13, 1956, on the subject of protection of industrial designs under a single law.

## 363. Hirsch Ballin, Ernst D.

Zur Freiheit des Strassenbildes.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 1/2 (Dec. 15, 1956), pp. 1-15.

A commentary on laws and court decisions affecting the freedom to take photographs of street scenes.

## 364. Knap, Karel.

Neues zum Urheberrechtsgesetz der Tschechoslowakei.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 1/2 (Dec. 15, 1956), pp. 69-73.

An analysis of a decree of the Czechoslovak Ministry of Culture, dated April 25, 1956, prescribing the fees of authors of literary works and the method of their payment as authorized by Article 23 of the Copyright Law. Written to supplement the author's study on the Czechoslovak Copyright Law of 1953 which appeared in *Ufita*, vol. 21 (May 1956), pp. 269-306. See 3 BULL. CR. SOC. 162 Item 455.

## 365. Regnault, Claus.

Die Dokumentation und ihre Forderungen an das Urheberrecht.

*Gewerblicher Rechtsschutz und Urheberrecht*, vol. 69, no. 2 (Feb. 1957), pp. 73-75.

"Documentation and its demands on the copyright law"; a discussion of the problems of fair use with relation to the reproduction of copyrighted scientific works.

## 366. Roeber, Georg.

Die Filmurheberschaft in der Gesetzgebung des Auslands.

*Film und Recht*, no. 1 (Jan. 25, 1957), pp. 3-8.

A comparative summary of legislation relating to film authorship.

## 367. Runge, Kurt.

Schranken des Urheberpersönlichkeitsrechts.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 1/2 (Dec. 15, 1956), pp. 16-23.

"Limitations on the Moral Right of the Author" with special reference to collective works.

(d) In Italian

## 368. Bile, Franco.

Sulle natura giuridica del contratto fra produttore e noleggiatore di film.

*Rassegna di Diritto Cinematografico*, vol. 5, no. 5 (Sept.-Oct. 1956), pp. 105-108.

Comment on a recent decision of the Florence Court of Appeals "concerning the juridical nature of the contract between the film producer and the distributor."

## 369. Ciampi, Antonio.

Diritto di autore, diritto naturale.

*Revue Internationale du Droit d'Auteur*, no. 14 (Jan. 1957), pp. 2-113.

"Copyright, Natural Right"; a philosophical treatise, by the director-general of the Italian Society of Authors and Publishers, on the nature and definition of copyright. In Italian, French, and English. Also issued separately as "Extrait No. XIV" of the *Revue*.

## 370. Poli, Gabriele.

L'attore ed il regista cinematografico sono lavoratori subordinati?

*Rassegna di Diritto Cinematografico*, vol. 5, no. 5 (Sept.-Oct. 1956), pp. 114-117.

"Are motion picture actors and directors subordinate workers?" The writer concludes that they must be considered as subordinate workers not only in the film hierarchy but in the sense that their contributions cannot be separated from the work as a whole. Their position is therefore not autonomous, and their only right is a moral right based on their artistic contributions.

### C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES.

(In view of the length of the article published in this issue, it was necessary to eliminate the listing of all but a few particularly noteworthy articles.—Editorial Board.)

371. ASCAP vs. BMI; some dissonances in Tin Pan Alley. [Part 1] by Oscar Hammerstein, II. [Part 2] by Carl Haverlin.

*Saturday Review*, vol. 40, no. 8 (Feb. 23, 1957) pp. 15, 36-37; no. 9 (Mar. 2, 1957) pp. 10, 33.

Mr. Hammerstein, a director of ASCAP, presents his views on the ASCAP-BMI controversy and the president of BMI replies.

372. Bray, Robert S.

Photocopying and copyright: a progress report.

*Special Libraries*, vol. 48, no. 3 (Mar. 1957), pp 100-103.

A discussion by the chairman of the SLA Photographic Reproduction Committee of the progress of the Joint ARL-SLA [Association of Research Libraries—Special Libraries Association] Committee on Photocopying and Copyright in its efforts to solve the problem of reproduction of copyrighted materials in libraries. A brief reading list appears at the end of the article.

373. Diamond, Sidney A.

Beware of Entanglement in Copyright Infringements.

*Advertising Agency Magazine*, March 29, 1957.

A discussion of *Joshua Meier Co., Inc. v. Albany Novelty Manufacturing Co.*, 236 F.2d 144, 111 U.S.P.Q. 197, 4 BULL. CR. SOC. p. 41, item 107 (1956) involving infringement of copyright on a catalogue.

374. Iceland's performing rights society cold to cuffing USAF broadcasts.

*Variety*, vol. 206, no. 4 (March 27, 1957), p. 57.

A note on a recent ruling by the City Justice of Reykjavik that the U. S. Army must pay STEF, Iceland's performing rights society, for the use of three non-American songs in radio broadcasts.

375. Ownership of '12th St. Rag' versions up for hearing in court this week.

*Variety*, vol. 206, no. 4 (Mar. 27, 1957), pp. 51, 57.

Note on new action brought by Jerry Vogel Music against Shapiro-Bernstein Music, with trial having started in N. Y. Federal Court on March 26. The song has been the subject of litigation between the same parties for the past ten years and involved the question whether a work consisting of music and lyrics, the lyrics having been added without composer's consent, was a composite or joint work.

376. 'Parody stifling' feared if MG suit upheld.

*Variety*, vol. 206, no. 3 (Mar. 20, 1957), p. 22.

Article on brief filed recently in U. S. Supreme Court by counsel for Jack Benny, C.B.S. and the American Tobacco Co. in an appeal from the lower court decisions in the "Gaslight" suit brought against them by Loew's, Inc.

## NEWS BRIEFS

377. NEIGHBORING RIGHTS. COMMITTEE OF EXPERTS.

A meeting assembled under the auspices of UNESCO and the Berne Union was held in Monaco, from March 4-13, 1957, to consider the problem of the so-called "neighboring rights" dealing with interests of performers, recorders, and broadcasters.

The group of experts prepared a draft agreement and an accompanying "Explanatory Statement" for submission to Governments for their comment. The draft embodies the following principles:

1. National treatment, i.e. each contracting state shall give the same protection to performances and phono recordings originating in another adhering state as it gives to those of domestic origin, subject to reciprocity in comparison of terms and as to certain secondary rights.

2. Ratification or adherence is open only to such states as are parties to the Universal Copyright Convention or the Berne Union.

3. Only international rights and obligations are dealt with, i.e.

those which extend across national boundaries. Exclusively internal interests and domestic laws remain unaffected.

4. Artists performing literary or artistic works are protected against unauthorized or clandestine fixation and broadcasting of live performances.

5. Recorders and performers are protected against unauthorized copying of their phonograms, i.e. exclusively aural recordings.

6. Cinematographic works (including motion pictures and their accompanying sound tracks) are explicitly excluded.

7. Certain broadcaster's rights are dealt with but on an optional basis, i.e. any contracting state may affix a reservation to all or any one of such broadcasters' rights.

8. Rights granted to performers are to the actual creative artists, i.e. no reference is made to payments to "collectivities".

The meeting also adopted four "voeux" dealing particularly with future procedures.

The U. S. Register of Copyrights, Arthur Fisher, accompanied by Dr. Arpad Bogsch, participated in the Monaco experts' meeting at the invitation of UNESCO.

It is anticipated that the comments received from Governments on the documents of the Monaco meeting will require further analysis and study prior to the possible convening of a diplomatic conference.

### 378. ECUADOR, AUSTRIA AND CUBA JOIN UNIVERSAL COPYRIGHT CONVENTION.

According to a communication received from Roger C. Dixon, Chief, International Business Practices Division, Office of International Trade and Resources, Department of State, Ecuador deposited its instruments of accession to the Convention and Protocols 1 and 2 on March 5, 1957, and Cuba on March 18, 1957. Austria did the same for the Convention and Protocols, 1, 2, and 3 on April 2, 1957. The total number of adherents is now twenty-six.

### 379. GREAT BRITAIN AND THE CONVENTION.

"It will be a matter of months, it appears, before this country will ratify the Universal Copyright Convention and so enjoy reciprocal protection with the United States. The President of the Board of Trade, Sir David Eccles, stated in Parliament last week that it was the Govern-

ment's intention to ratify both this and the Brussels Convention as soon as possible after the coming into operation of the United Kingdom's Copyright Act, 1956. He was replying to a question put by Mr. R. G. Page, Conservative member for Crosby, who then asked when the necessary regulations would be made bringing into force the several parts of the Copyright Act, 1956.

"Sir David replied: 'I hope that, within the next few months, the necessary preliminary work on Regulations, Rules and Orders in Council will be completed. I propose to bring the Act into operation immediately thereafter.'"—*The Bookseller*, no. 2671 (March 2, 1957), p. 989.

### 380. BRAZILIAN COPYRIGHT PROCLAMATION.

Following is the text of a U. S. State Department Press Release dated April 2, 1957:

"A copyright proclamation issued today by President Eisenhower in conjunction with an exchange of diplomatic notes between the United States and Brazil, served to establish a supplementary copyright arrangement between the United States and Brazil. The notes were exchanged between C. Douglas Dillon, Deputy Under Secretary of State for Economic Affairs, and His Excellency Ernani do Amaral Peixoto, Brazilian Ambassador to the United States. This arrangement reaffirms the continued existence of reciprocal copyright relations, based upon the Buenos Aires Convention on Literary and Artistic Copyright of 1910, and for the first time provides for the protection in the United States of works of Brazilian nationals in musical recordings.

"The United States and Brazil have enjoyed reciprocal copyright relations since 1915 on the basis of the Buenos Aires Convention of 1910. However, a decision of the United States Court of Appeals in New York held that the 1910 Convention did not entitle Brazilian nationalists to protection under the United States Copyright Law for their recorded musical works. In that case, the owners of the Brazilian copyright in the popular song "Tico-Tico" attempted, without success, to bring an infringement action against various United States music publishers and broadcasters for unauthorized performance of the musical composition by means of phonograph records.

"Today's action, affording Brazilian and United States nationals complete reciprocal protection for their literary and artistic works, will be of significant importance in encouraging and assisting the increasing exchange of Brazilian and United States works, particularly in the musical field." (*See item 327, supra.*)



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## **BULLETIN TO BE ENLARGED**

### ***An Important Announcement***

With this issue, The Bulletin of the Copyright Society of the U.S.A. has completed its fourth year of publication. The Translation and Document Service has been furnished to subscribers for two years.

The interest shown in both publications having been such as to require an increase in the size and scope of The Bulletin, the Executive Board of the Society has recommended to the Board of Trustees that, beginning with volume 5 number 1 (October 1957), The Bulletin of the Society be expanded.

The Bulletin will include not only the bibliographical material previously published, but also leading articles and the more important Translations and Documents formerly supplied to subscribers of the Translation and Document Service at an additional \$50.00 per year. We hope to publish from time to time articles by leading practitioners in this country, as well as English translations of important new legislation, documents and articles thereon. The number of pages in The Bulletin will be more than doubled.

Beginning with volume 5 the annual membership (and subscription) rate will be \$25.00 per year. Sustaining membership will be \$50.00 per year. The latter will be entitled, as part of their membership, to receive other Translations and Documents not included in The Bulletin.

Since the Translation and Document Service will no longer be available separately, a "Sustaining Subscription" at \$50.00 per year will be available to subscribers who are not members.

Pending action by the Board of Trustees, the renewal subscriptions and membership will not be billed until the end of September 1957.



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## PART I.

LEGISLATIVE AND ADMINISTRATIVE  
DEVELOPMENTS

## 1. UNITED STATES OF AMERICA AND TERRITORIES

## 381. Harris, Oren.

Partial return of vested enemy property and payment of certain categories of war claims; extension of remarks of Hon. Oren Harris of Arkansas in the House of Representatives . . . April 15, 1957.

*Congressional Record*, vol. 103, no. 66 (Apr. 15, 1957), pp. A2943-2949.

Rep. Harris, in connection with his introduction of H. R. 6888 at the request of the Foreign Claims Settlement Commission, inserts into the *Record* a letter, dated April 3, 1957, from the chairman of the Commission addressed to the Speaker of the House and an explanatory memorandum submitted by the Commission. The letter explains in a general way the background of this legislation which was prepared jointly by the State, Justice, and Treasury Departments, and the Commission. The memorandum includes a detailed explanation of the provisions relating to copyright properties.

## 382. U. S. Congress. House.

H. R. 6888. A bill to amend the Trading With the Enemy Act, as amended, and the War Claims Act of 1948, as amended. (Introduced by Mr. Harris, April 15, 1957, and referred to the Committee on Interstate and Foreign Commerce.)

31 p. (85th Cong., 1st Sess.)

Similar to many bills introduced in previous and present Congresses.

## 383. U. S. Congress. House.

H. R. 6914. A bill to amend title 28 of the United States Code relating to actions for infringements of copyrights by the United States. (Introduced by Mr. Curtis of Massachusetts (by request) April 15, 1957, and referred to the Committee on the Judiciary.)

3 p. (85th Cong., 1st Sess.)

This bill would amend sec. 1498 of Title 28, so as to permit a copyright owner to recover for an infringement by the U. S. Government, a corporation owned or controlled by the United States, or a contractor pursuant to a contract with or authorization by the Government, either by an action in the Court of Claims or in any district court. A six year statute of limitations would apply.

A reintroduction of H. R. 6716 of the 84th Congress. SEE 3 BULL. CR. SOC. 7, Item 8 (1955).

384. *U. S. Congress. House.*

H. R. 7236. A bill to amend the Labor-Management Relations Act, 1947, to encourage increased employee participation in and control over collective bargaining negotiations and agreements, and for other purposes. Introduced by Mr. Landrum on May 6, 1957.

4 p. (85th Cong., 1st Sess.)

This bill would make it unlawful for any person (including but not limited to a representative of employees who are employed in an industry affecting commerce) to receive or accept, or agree to receive or accept, from any person (including but not limited to an employer) any increased earnings through collective bargaining without having received written assignments from individual employees. In an extension of his remarks to the House on May 7, Rep. Roosevelt stated that the bill was introduced "to carry out the unanimous recommendations of the subcommittee appointed to investigate the operations of the musicians' performance trust funds of the American Federation of Musicians."

385. *U. S. Congress. House.*

H. R. 7780. A bill to provide in the Department of Health, Education, and Welfare for a loan service of captioned films for the deaf. (Introduced by Mr. Morano, May 27, 1957, and referred to the Committee on Education and Labor).

4 p. (85th Cong., 1st Sess.)

This bill would give the Secretary of the Department of Health, Education and Welfare authority to "make use, consistent with the purposes of this Act, of films made available to the Library of Congress under the copyright laws."

386. *U. S. Congress. House Committee on the Judiciary.*

Report of the Antitrust Subcommittee (Subcommittee No. 5) of the Committee on the Judiciary, House of Representatives, Eighty-fifth Congress, first session, pursuant to H. Res. 107 authorizing the Committee on the Judiciary to conduct studies and investigations relating to certain matters within its jurisdiction on the television broadcasting industry. March 13, 1957. [Emanuel Celler, chairman] Washington.

148 p.

Under the chapter heading "Activities of broadcasters in music" the following topics are discussed: The birth of BMI; The relationship of BMI to the broadcasting industry; Alleged practices of BMI; and, Comparison between BMI and ASCAP in the music field. The Committee concludes "that it is of importance for the Antitrust Division of the Department of Justice to undertake complete and extensive investigation into all phases of the music field discussed above to determine whether the antitrust laws have been or are being violated." Some of the members of the Committee expressed "additional views."

387. *U. S. Congress. Senate.*

S. 1870. A bill to amend section 1(e) of title 17 of the United States Code with regard to the rendition of musical compositions on coin-operated machines. (Introduced by Mr. O'Mahoney, for himself and others, on April 12, 1957, and referred to the Committee on the Judiciary.)

2 p. (85th Cong., 1st Sess.)

This bill would eliminate the so-called "juke-box exemption" from section 1(e). While similar to the Kilgore bill (S. 590) and other bills introduced in the 84th Congress, the instant bill differs in that it exempts the proprietor of the place at which a juke-box is operated from its provisions "unless such proprietor owns or exercises primary control over such machine and has exclusive control over its placement for operation."

## 2. FOREIGN NATIONS

## 388. Boutet, Marcel.

Rapport présenté . . . au nom de la Commission du Droit d'auteur de la Société d'Etudes Législatives.

*Archiv für Urheber- Film-, Funk- und Theaterrecht*, vol. 23, nos. 3/4 (Feb. 15, 1957), pp. 187-192.

A report on the rationale of the French Draft Copyright Law presented by Mr. Boutet on behalf of the Copyright Committee of the Society of Legislative Studies.

389. *France. Laws, statutes, etc.*

Loi n° 57-91 du 31 janvier 1957 autorisant de Président de la République à ratifier l'accord pour l'importation d'objets de caractère éducatif, scientifique ou culturel, adopté à Florence, en juillet 1950, par la conférence générale de l'U.N.E.S.C.O.

*Journal Officiel de la République Française*, vol. 89, no. 27 (Feb. 1, 1957), p. 1250.

Law authorizing the President of the French Republic to ratify the agreement on the importation of educational, scientific and cultural materials, adopted at Florence in July 1950 by the General Conference of UNESCO.

390. *France. Laws, statutes, etc.*

Loi n° 57-298 du 11 mars 1957 sur la propriété littéraire et artistique.

*Journal Officiel de la République Française*, vol. 89 (March 14, 1957), pp. 2723-2730.

*Revue Internationale du Droit d'Auteur*, no. 15 (Apr. 1957), pp. 164-177.

Text of the new French copyright law of March, 1957.

391. *France. Laws, statutes, etc.*

Verordnung Nr. 56932 zur Ergänzung des Art. 19 der Verordnung vom 17. Dezember 1920 über die Ausübung des Folgerechts (droit de suite) durch Künstler ausländischer Staatsangehörigkeit, vom 15. September 1956.

*Blatt für Patent-, Muster- und Zeichenwesen*, vol. 59, no. 4 (Apr. 1957), pp. 134-135.

German translation of a French amendatory decree providing that artists of foreign nationality who have resided in France for at least five years, not necessarily consecutive, may secure for themselves the same benefits of the "droit de suite," i.e., the right of the artist to share in the profits resulting from the public sale of his works of art, as are given to French nationals. See 4 BULL. CR. SOC. 64 Item 165.

392. *Germany (Democratic Republic, 1949- ) Minister für Kultur.*

Ordonnance concernant la fondation d'un "Bureau pour les Droits d'Auteur," du 23 octobre 1956.

*Inter-Auteurs, No. 126 (1. trimestre 1957), pp. 26-28.*

A French translation of an order issued by East German Minister of Culture in connection with the establishment of the "Office of Copyrights." The by-laws of the office appear as an annex to the order. See 4 BULL. CR. SOC. 89 Item 229.

393. *Gi. Britain. Board of Trade.*

First orders made under Copyright Act of 1956.

*Board of Trade Journal (May 31, 1957), p. 1253.*

"Statutory instruments were, on May 24, laid before Parliament in connection with the coming into operation of the Copyright Act, 1956, on June 1. They are as follows:

- (a) The Copyright (Libraries) Regulations, 1957.
- (b) The Copyright (Notice of Publication) Regulations, 1957.
- (c) The Copyright Royalty System (Records) Regulations, 1957.
- (d) The Copyright (Industrial Designs) Rules, 1957."

These regulations are made under Sections 7, 8, 10 and 15 of the Copyright Act.

394. *Italy. Laws, statutes, etc.*

Legge 19 décembre 1956, n. 1421. Proroga del periodo di tutela delle opere dell'ingegno.

*Gazzetta Ufficiale, no. 327 (Dec. 31, 1956), pp. 4689-4690.*

Provides for extension of the term of protection to Dec. 31, 1961 of intellectual works which would fall into the public domain in the period between the entry into force of this law and the term indicated above.

395. *Italy. Laws, statutes, etc.*

Loi du 19 décembre 1956, no. 1421 (*Gazz. Ufficiale*, no. 327, du 31 décembre 1956) prorogeant la période de protection des oeuvres de l'esprit.

*Inter-Auteurs*, no. 126 (1. trimestre 1957), pp. 28-29.

French translation of the Italian law, item 394, *supra*.

396. *Lid, Olav.*

A Norwegian Act creating a fund for performers.

*E. B. U. Bulletin*, vol. 8, no. 42 (Mar.-Apr. 1957), pp. 127-129.

A summary of the preparatory work leading up to and commentary on a new Act (No. 4 of Dec. 14, 1956), the chief purpose of which is to support Norwegian performing artists and their surviving families. The Act will be in force for three years (July 1, 1957 to June 30, 1960) "in order to stress its experimental nature." Another reason given for its temporary validity is "the wish not to create a formal bar to an international settlement of the whole question of legal protection for ancillary rights, should such a settlement really be reached before June 30, 1960."

397. *Netherlands (Kingdom, 1815- ) Laws, statutes, etc.*

Verfügung betreffend Rückgabe feindlicher Urheberrechte, vom 25. Juni/10. August 1956. [Übersetzung aus dem Niederländischen Staatscourant Nr. 64 vom 23. August 1956.]

*Blatt für Patent-, Muster- und Zeichenwesen*, vol. 59, no. 3 (Mar. 1957), p. 101.

German translation of a Netherlands order concerning the return of enemy copyrights.

398. *Paraguay. Laws, statutes, etc.*

Gesetz No. 94 vom 5. Juli 1951, durch das die künstlerischen, literarischen und wissenschaftlichen Schöpfungen geschützt werden, und durch welches das Öffentliche Register der intellektuellen Rechte geschaffen wird. Aus dem spanischen Originaltext ins Deutsche übertragen von Wenzel Goldbaum.

*Archiv für Urheber- Film-, Funk- und Theaterrecht*, vol. 23, nos. 3/4 (Feb. 15, 1957), pp. 172-183.

German translation of the Paraguayan Copyright Law of July 5, 1951.

399. *Rumania. Laws, statutes, etc.*

Decretul nr. 321 privind dreptul de autor.

*Collectie de Legi, Decrete, Hotariri si Dispozitii* (May 1-June 30, 1956), pp. 21-31.

The text of the new Rumanian copyright law, from *Buletinul Oficial*, June 27, 1956, no. 18.

## PART II.

### CONVENTIONS, TREATIES AND PROCLAMATIONS

400. *Committee of Experts on Neighbouring Rights, Monaco, Mar. 4 to 13, 1957.*

[Documents.]

*The Performing Artiste, The Record Manufacturer, The Broadcaster* (Apr. 1957), pp. 131-151.

CONTENTS.—Draft Agreement on the Protection of Certain Rights Called Neighbouring on Copyrights.—Explanatory statement accompanying the Draft Agreement.—Voeux.—List of participants.

The texts of the documents, unanimously adopted by the Committee, which was organized by the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property and the Director-General of UNESCO, appear in French and English, prefaced by the following statement: It is expected that the Draft Agreement (accompanied by the Explanatory statement) will be submitted to the various Governments for comments. The French texts of the documents are also published in *Revue Internationale du Droit d'Auteur*, no. 15 (Apr. 1957), pp. 149-162.

401. *Germany (Democratic Republic, 1949- )*

Erklärung Italiens über die Anwendbarkeit der im Rom am 2. Juni 1928 revidierten Berner Übereinkunft auf die sowjetische Besatzungszone Deutschlands.

*Blatt für Patent-, Muster- und Zeichenwesen, vol. 59, no. 4 (Apr. 1957), p. 135.*

Note received by the Swiss Embassy in Rome from the Italian Government concerning the application to the German Democratic Republic (East Germany) of the Bern Copyright Convention as revised in 1928.

402. *Germany (Democratic Republic, 1949- )*

Erklärungen Ungarns, Japans und Schwedens über die Anwendbarkeit der in Rom am 2. Juni 1928 revidierten Berner Übereinkunft auf die sowjetische Besatzungszone Deutschlands.

*Blatt für Patent-, Muster-, und Zeichenwesen, vol. 59, no. 3 (Mar. 1957), pp. 101-102.*

Notifications received by the Swiss Government from Hungary, Japan and Sweden concerning the application to the German Democratic Republic (East Germany) of the Bern Copyright Convention as revised in 1928.

403. *Greece.*

Note der Schweizerischen Regierung an die Regierungen der Verbandsländer über den Beitritt Griechenlands zu der Brüssel am 26 Juni 1948 revidierten Fassung der Berner Übereinkunft zum Schutze von Werken der Literatur und Kunst.

*Blatt für Patent-, Muster- und Zeichenwesen, vol. 59, no. 4 (Apr. 1957), p. 135.*

Notification of Dec. 6, 1956, by the Swiss Government to Bern Union member countries, of the adherence of Greece to the Brussels revision of the Bern Copyright Convention, effective Jan. 6, 1957. [Translated from the French version published in *Le Droit d'Auteur*, vol. 70, no. 1 (Jan. 1957), p. 5.] See 4 BULL. CR. SOC. 90, Item 234.

404. *International Copyright Union.*

Übersicht über den Stand der Internationalen Union am 1. Januar 1957.

*Blatt für Patent-, Muster-, und Zeichenwesen*, vol. 59, no. 3 (Mar. 1957), pp. 102-104.

Translation from the French of the Report of the Bern Bureau, with tables showing application of the Convention and its revisions, including reservations, as of Jan. 1, 1957. See 4 BULL. CR. SOC. 90, Item 236.

405. *Italy.*

Scambio di note tra l'Italia e la Norvegia relativo alla proroga dei termini di protezione delle opere letterarie ed artistiche.

*Gazzetta Ufficiale*, no. 324 (Dec. 27, 1956), p. 4636.

Exchange of notes between Italy and Norway confirming an agreement for reciprocal application of decrees extending terms of copyright protection for their respective nationals.

406. *Straschov, G.*

The two draft conventions for the protection of ancillary rights.

*E. B. U. Bulletin*, vol. 8, no. 43 (May-June 1957), pp. 273-279.

The development and philosophy of the Rome and Monaco drafts, and an attempt by comparison to explain the fundamental reasons underlying their divergencies.

## PART III.

**JUDICIAL DEVELOPMENTS IN LITERARY  
AND ARTISTIC PROPERTY**

## A. DECISIONS OF U. S. COURTS

## 1. Federal Court Decisions

407. *Bar's Leaks Western, Inc., et al. v. Pollack et al.*, 148 Supp. 710 (D.C.N.D. Cal., Jan. 24, 1957).

Action for copyright and trademark infringement, and unfair competition. Defendants moved to dismiss the complaint on various grounds.

*Held*, motion to dismiss denied as to some defendants and granted as to others.

Plaintiffs alleged jurisdiction of the Court over the subject matter both on diversity of citizenship and "federal question" grounds. There was no requisite diversity; "the lack of a sufficient basis for diversity jurisdiction is, however, on the other hand, obviated by a Congressional willingness to provide a federal forum for copyright, trade-mark and unfair competition actions by virtue of the provisions of Title 28 U.S. C.A. §1338(a) and (b) . . . Both the trade-mark and the copyright claims are 'substantial,' and they are 'related' to the claim for unfair competition within the meaning of §1338(b), supra, by virtue of the fact that the grounds supporting the unfair competition claim are common to both the asserted trade-mark and asserted copyright infringement claims."

A defendant corporation domiciled in Pennsylvania bottled and distributed products involved in this action through another defendant in California (the forum state), who was an independent contractor. The Court dismissed the action as to the Pennsylvania defendant for lack of jurisdiction, but refused to dismiss the action entirely. "In copyright, trade-mark and unfair competition actions under federal law, *all* persons participating in the actionable conduct are jointly and severally liable, 15 U.S.C.A. §1114 and 17 U.S.C.A. §101. Since even agents under certain circumstances may be subjected to individual liability, it follows, *a fortiori*, that an independent contractor may be required to defend the action alone."

408. *Puente v. President and Fellows of Harvard College et al.*, 149 F. Supp. 33 (D.C. Mass., Feb. 26, 1957).

Action for damages caused by defendants' use of plaintiff's idea for a foreign tax law service. After a correspondence between the parties, defendants started work on such a service without plaintiff's participation. Two counts alleged that defendants converted plaintiff's idea as disclosed to them, and the other two counts that defendants deceived plaintiff into disclosing his plans.

*Held*, defendants' motion for summary judgment granted.

Defendants based their motion on five grounds, but the Court reached only the first one, to the effect that plaintiff disclosed nothing novel and therefore had no proprietary rights in the matters disclosed. "An idea may be a property right. However, when the author of an idea voluntarily submits to another the information contained in his idea, no promise by the recipient to pay for its use can be implied if the elements of novelty and originality are absent since the property right in an idea is based upon these two elements." By his own admission plaintiff had characterized his volume as "a loose-leaf tax service . . . along the lines of Tax Services published by Prentice-Hall or Commerce Clearing House," and uncontradicted affidavits stated that at the time the action accrued foreign tax services were on the market.

409. *Fisher et al. v. Edwin H. Morris & Co., Inc.*, 113 U.S.P.Q. 251 (D.C.S.D. N.Y., Mar 8, 1957).

Action for declaratory judgment and injunction based on an assignment of copyright renewal rights. Plaintiff's late husband copyrighted his musical compositions. In 1945 he and plaintiff signed an agreement assigning the copyright renewal rights to defendant and providing for certain royalties. Plaintiff contended the agreement is unenforceable, even though she admitted she signed it and knew it had to do with copyrights, because there was no consideration, its terms were uncertain, incomplete, illusory and unfair, and she did not understand its meaning.

*Held*, judgment for defendant.

The agreement in and of itself provided for a consideration. "The terms of the agreement are certain and provide for definite royalty payments. It is not for the Court to decide whether the terms of the royalty agreement are fair or unfair. Those are matters which must be decided by the individuals themselves and are not matters which can be litigated in the court in the absence of fraud or over-reaching, and

there is no competent proof of fraud or over-reaching presented in this case." No question was raised by the pleading, and the Court did not express an opinion, "as to the effect of an assignment of renewal copyright by the widow to one publisher and by the children to another publisher or as to whether under such circumstances either or both of such assignments are valid assignments of the renewal copyrights"; this question was left open by the Supreme Court in *De Sylva v. Ballentine*.

410. *Rolland v. Henry Holt & Co., Inc., et al.*, 113 U.S.P.Q. 253 (D.C.S.D.N.Y., Mar. 21, 1957).

Action for breach of contract. Plaintiff, Romain Rolland's widow, alleged that defendants intruded upon her rights by publishing in the U.S.A. an abridgement of Rolland's "Jean Christophe." Allegedly under French law the author retained control of the publication except to the extent he released it by contract; a contract with a British publisher required the translation to be one "conforming to the original edition," and defendant "obtained" its rights from the British publisher.

*Held*, motion to dismiss complaint granted.

"It is apparently the plaintiff's contention that the contract between the author and the English publisher restricts the actions of the defendants, although there is no allegation that they never [sic] agreed to be so restricted. This claim, of course, does not spell out a right of recovery for a breach of contract. Neither does it establish a claim for interference with any other right of the plaintiffs. In the absence of some right by contract or copyright, whatever right the author may have retained under the French law did not prevent the publication of his work in this country after it had been published in France . . . Publication protected only by foreign copyright statutes, releases the work for general duplication here. The statutory rights of authors do not extend beyond the sovereignty of their origin."

The only apparently valid copyright was in the translator of the English version, but he was not a party to this action. "Whatever rights he may have are not available to the plaintiff. Contrary to the plaintiff's view, a trust upon the translator's copyright will not be implied in favor of the author."

411. *Artia v. Colosseum Records Inc. et al.*, 150 F. Supp. 550 (D.C.S.D.N.Y., March 22, 1957).

Action for damages and injunction based on reproduction of recorded musical performances. The complaint alleged that plaintiff was

the assignee of all rights in recordings made by artists engaged by a Czechoslovak corporation, and that defendants sold records of these performances without authority, and also injured plaintiff's sales by the inferior quality of their records. Plaintiff moved to dismiss four defenses interposed by defendants.

*Held*, motion granted in part and denied in part.

The first defense was that the complaint did not state a cause of action. Plaintiff did not state whether or not the recorded compositions were in the public domain, or where defendants are selling the reproductions. "Under the modern liberal rules of pleading, however, if plaintiff could recover if the compositions were in the public domain under the law of any one of the possible jurisdictions, then the complaints should not be dismissed." The defense was therefore stricken.

The second defense alleged that plaintiff's recordings were not copyrighted and are in the public domain. "If defendant is correct, plaintiff is out of court. Plaintiff is certainly entitled to a further statement to apprise plaintiff of the basis for defendant's claim that the recordings are in the public domain, but that has no tendency to weaken the defense itself if it can be established." Consequently this defense was allowed to stand.

The third defense stated that the property was nationalized in Czechoslovakia in 1948 and the Republic of Czechoslovakia is an indispensable party, but did not state when the original recordings were made. However, "the fact, if it be fact, that Czechoslovakia's title could be proved under a denial, does not make the allegation of Czechoslovakia's title any less effective when treated as a defense." The defense was also allowed to stand.

The fourth defense alleged that the right of action did not accrue within six years before the commencement of this action. The complaint indicated that defendants were presently engaged in the acts complained of, though some acts may have taken place more than six years prior to the action. "Thus it seems to me that defendant ought to be permitted to interpose the defense, provided that the six year statute, Civil Practice Act N. Y. §48, was the proper one to apply. That is very difficult to determine in view of the wide latitude of proof permitted under modern pleadings. It seems to me that I ought to let the defense stand unless I could say that, under no possible state of facts which would be admitted in evidence on behalf of a plaintiff who had pleaded as this plaintiff has, would the six year statute of limitations be applicable. I certainly cannot say that, so I will permit the defense to stand."

412. *S. A. Hirsh Manufacturing Co. v. Childs et al.*, 113 U.S.P.Q. 331 (D.C. W.D. Pa., May 2, 1957).

Action for unfair competition. Plaintiff developed in 1940 a system for store shelving, consisting primarily of a steel upright with a support bar and holes spaced  $1\frac{1}{2}$  in. apart. The upright had a unique appearance and became known as plaintiff's product. Plaintiff developed some trade symbols, including 2 illustrations of shelving, a numbering system and a trademark "Hirsh," and advertised nationally. From 1951 to 1954 defendant was a factory distributor for plaintiff, buying and selling on his own account. After 1954 defendant went into competition with plaintiff, copied the plaintiff's products, copied plaintiff's illustrations in his "new" Childs catalog, used plaintiff's 2 illustrations and photos of plaintiff's shelving in his advertising, advertised a different numbering system but permitted plaintiff's system to be used in warehousing his uprights, and told customers that his uprights were interchangeable with plaintiff's. Defendant did not put his name or numbers on his uprights but permitted his public warehousemen to put plaintiff's style numbers on them (though plaintiff's uprights bore no numbers).

*Held*, defendant restrained from using in his literature any picture or illustration appearing in plaintiff's literature and any numbers or numbering system there used. Also, defendant ordered to place a label at least 1 x 2 in. with his name in prominent type and secured with waterproof glue on all uprights and parts therefore sold separately.

Copying of the unpatented goods was not unfair competition, but using the illustrations and copying others from plaintiff's catalog was. However, any damages resulting therefrom were de minimis. The use of similar model numbers for corresponding parts was not unfair competition but should be discontinued since it may confuse the public. "Palming off" was not proven, but the labeling did not clearly distinguish defendant's uprights from plaintiff's and might also confuse the public.

Plaintiff offered a 15% discount to its old customers to show that defendant was no longer representing it and to meet defendant's special services; this did not violate the Robinson-Patman Act.

Defendant was not guilty of unprivileged imitation since he did not obtain plaintiff's goods by improper means nor on a promise not to copy them. Furthermore, "in order to be an unprivileged imitation, it is also necessary that the copied features be non-functional, or if functional he must take reasonable steps to inform prospective purchasers

that the goods which he markets are not those of the other. Here, the important feature of this shelving is the manner of its construction and its design. It appears to this Court that the features of these goods are functional for they primarily affect the purpose, action, performance, the facility, and economy of processing, handling, or using them."

The Court concluded that "the briefs show the result of hours of concentrated work and effort, but the net result is that the mountain labored and brought forth a mouse."

## 2. State Court Decisions

413. *Winer et al v. Glaser*, 158 N.Y.S.2d 1016, 3 A.D.2d 1656 (N.Y.S.Ct., App. Div. 1st Dept., Jan. 29, 1957).

Action based on (1) false representations preventing plaintiff from consummating a contract, (2) tortious interference with a business relationship, (3) contributory infringement of copyright and (4) breach of confidential relationship. The lower court (4 BULL. CR. SOC. p. 98, item 251, containing the facts of the case) denied a motion by defendant to dismiss these causes of action, and defendant appealed.

*Held*, causes of action (2), (3) and (4) dismissed with leave to replead.

The second cause could not rest on the theory of interference with a contract since at the time of the alleged interference the contract had already expired. Therefore it had to be based on defendant preventing a renewal of the contract by false representations. Allegations of specific misrepresentations were made, and also that defendant defeated plaintiff's opportunity "through representations now unknown" to plaintiff. The Court held that "since the complaint does not allege the misrepresentations relied upon, it is insufficient."

The third cause, alleging presumably contributory copyright infringement, was confusing by its suggestion of a fraud claim and of breach of trust. "And if it is a claim of contributory infringement which is intended to be stated, the allegations are insufficient to state a cause of action because the facts of defendant's alleged participation in the infringement are not stated. The allegation that defendant 'encouraged and abetted' the infringement is a conclusory statement lacking factual support in the pleading."

The fourth cause, apparently charging breach of trust or confidential relationship, stated the relationship but not the facts of the breach. "All that is alleged in this particular is that defendant contracted with the producer and substituted himself for plaintiff as a party to receive 50% of the price. How this was done is not indicated. Some specification of what defendant did would be necessary to state a cause of action."

414. *Thompson v. California Brewing Co. et al.*, 310 P.2d 436 (Dist. Ct. App., Cal., Apr. 26, 1957).

Action for reasonable value of novel idea for advertising and promoting beer by selling two kinds of beer, one a "man's beer" and the other for the "feminine and home consumption trade." A demurrer to the three counts of the amended complaint and a plea of the statute of limitations were sustained by the lower court without leave to amend, and plaintiff appealed.

*Held*, the three counts were sufficient but the third count was barred by the statute of limitations.

The first count alleged that at defendants' special instance plaintiff disclosed and offered his idea orally and in writing, and that defendants expressly and orally agreed to pay its reasonable value if used, that it was so used but defendants refused to pay. "Clearly, this is a statement of facts which constitutes a cause of action for the breach of an express oral contract."

The second count restated the same facts, except it alleged an implied-in-fact rather than an express contract. "If the distinction between express and implied contracts is only a matter of proof [citations omitted], it would seem that the promise to pay could also be proved by conduct."

The final count pleaded a violation of confidence reposed in defendants. The letter transmitting the idea did not by itself indicate confidence in the relationship, but neither did it negative an understanding between the parties that the idea was submitted to defendants and accepted by them "in confidence and upon the understanding that they would not use the idea without plaintiff's consent." The Court said: "If the evidence should show they were looking for 'ideas' and that plaintiff undertook to supply several such upon the condition that they be not disclosed or used without his consent, why should there not ensue a duty to that effect?"

Certain ads based on this idea were ordered attached to the complaint by the lower court, and they had been published about six weeks before two years prior to the filing of the complaint. "Thus it appears from the complaint that defendants made use of the 'idea' more than two years prior to the filing of the complaint and that the action is barred by section 339(1) of the Code of Civil Procedure unless, as plaintiff claims, the running of the advertisement mentioned did not in fact constitute a 'use' of the 'idea' within the meaning of the contract." Plaintiff claimed unsuccessfully that Sec. 426 of the Code of Civil Procedure, pursuant to which the ads were ordered attached to the complaint, did not apply because an 'idea' is not an 'intellectual production,' and also that it cannot furnish a basis for raising the statute of limitations. But plaintiff also contended that the ads were merely 'test' advertising, and that the actual use of the idea did not commence until later. The Court found this claim had 'possibilities' except as to the breach of confidence (third) count, because "test advertising to the extent of displays appearing in one Sacramento newspaper on eleven different days . . . and in one San Diego newspaper [on two days] . . . appears to us to be quite as complete a breach of 'confidence' as would a more extended period of advertising."

415. *Seroff v. Simon & Schuster, Inc.*, 162 N.Y.S.2d 770, 113 U.S.P.Q. 388 (N. Y. Sup. Ct., N. Y. County, May 9, 1957).

Action in tort in the nature of libel. Plaintiff was the author of "Rachmaninoff," a biography commissioned by defendant publisher. In addition to the publishing rights in English, the contract granted to defendant *inter alia* translation rights, all revenue from the sale of such latter rights to be shared equally by plaintiff and defendant. Defendant sold the exclusive publishing rights in French through an agent to Editions Robert Laffont, a French publisher. The latter hired a translator and published the book in French. Defendant did not participate in the translation or publication in French. When plaintiff was furnished with a French copy, he protested to defendant the "complete distortion . . . and . . . flagrant falsification" of the original version, as well as the omission of a foreword and index. Plaintiff insisted defendant recall the French books already sold and correct the new copies. Defendant forwarded the letter to Laffont and offered to pay plaintiff part of the cost of negotiating with Laffont directly, as well as to assign to plaintiff whatever claims defendant had against Laffont. Plaintiff rejected this offer as inadequate and brought this suit. Defendant moved for dismissal of the complaint.

*Held*, motion granted.

Upon a review of the translation, the Court found that "despite the favorable French reviews, it appears to the Court that sufficient has been shown to establish such substantial alteration as would warrant the granting of some relief to an author who was entitled to and interested in the preservation and integrity of his work, if the parties responsible for the alteration of his work were before the Court." It then discussed the absence of protection for "moral rights" of an author, but "nevertheless, a right analogous to 'moral right,' though not referred to as such, has been recognized in this country and in the common law countries of the British Commonwealth so that in at least a number of situations the integrity and reputation of an artistic creator have been protected by judicial pronouncements. The express grounds on which common law protection has been given include libel, unfair competition, copyright, and the right of privacy, with some groping toward what Roeder has called 'a tort theory of a personal sui generis nature.' "

But such protection depends on the contract between the parties. From a reading of the contract, as well as from the practice in the trade with which plaintiff was familiar, the Court found that the parties were joint venturers as to the translation, defendant also acting as agent for both. There was no trade practice of American publishers supervising foreign translations. "Accordingly, there is no merit to plaintiff's contention that Simon & Schuster were remiss in their duty to him in failing to make provision in the sales contract with Laffont for the submission of a copy of the proposed French edition prior to its publication." Laffont being an independent publisher, "whatever the rights plaintiff may have against Laffont or the French translator, it is clear that he may not succeed against Simon & Schuster in this action to recover damages for injury to his reputation produced by the French version."

416. *Directory Publishing Corp. v. Suburban Classified Directory Corp.*, 161 N.Y.S.2d 466 (N. Y. Sup. Ct., Kings County, Feb. 19, 1957).

Action for unfair competition. Plaintiff, a classified directory publisher, alleged defendant simulates plaintiff's forms and literature in order to deceive the advertising public into believing that the respective directories are the same or are connected, and moved for a temporary restraining order.

*Held*, motion denied.

The Court quoted Judge Murphy in *Parade Products v. Jaysid Manufacturing & Distributing Co.*, 196 Misc. 575, 93 N.Y.S.2d 183, involving the attempt of a manufacturer of collapsible clothes hangers to enjoin a manufacturer making a similar hanger from using a motion picture similar to plaintiff's: "The product of each party being similar in design, function and use, the respective descriptions must of necessity be substantially alike. This may be unfortunate insofar as the plaintiff is concerned, especially in view of the fact that it was in business before the defendant. The fact remains, however, that the space-saver or clothes hanger of each of the parties, being so similar in every respect, requires the same type of descriptive literature in explaining to the public . . . The products are so identical that it is impossible for the court to see how simple descriptions and uses could be presented in language or style distinctly different." In the instant case, "to grant an injunction pendente lite on the mere use by a competitor of comparable common-place advertising material ordinarily employed in the commercial world would, in the opinion of this court, constitute an improvident abuse of discretion. The court must act with equal diligence to safeguard the rights of these in lawful competition as well as to protect those whose rights are threatened by unlawful competition."

#### PART IV.

### BIBLIOGRAPHY

#### A. BOOKS AND TREATISES

##### 1. United States Publications

#### 417. *U. S. Copyright Office.*

The Copyright Office of the United States of America. [2d ed., rev.]  
*Washington*, 1957. 30 p.

"The first edition . . . was devoted to a general description of the organization and functions of the Copyright Office . . . This second edition represents a somewhat expanded version, including brief answers to some common questions about copyright, a listing of important dates, a chart showing registration trends, as well as lists of Copyright Office publications and application forms."

## 418. Wincor, Richard.

How to secure copyright; the law of literary property. Rev. [2d] ed.

*New York, Oceana Publications [1957]*). 96 p.

This revised edition of a work first published in 1950 is a summary, in non-technical language, of common-law and statutory rights in literary and artistic property, with a brief chapter on international copyright and the text of the U. S. Copyright Act.

## 2. Foreign Publications

## (a) In German

## 419. Landwehr, Wilfried.

Das Recht am eigenen Bild.

*Winterthur, P. G. Keller, 1955*. 137 p.

The historical development of the protection of portraits, particularly its origin in religion and folklore, and a study of "The right in one's own picture" according to Swiss laws, with reference to laws of other countries.

## B. LAW REVIEW ARTICLES

## 1. United States

## 420. Charlow, Howard Leslie.

Descent into the market place; a survey of the subject matter of copyright.

*The Hastings Law Journal*, vol. 8, no. 2 (Mar. 1957), pp. 146-202.

The writer concludes that the concept of copyright has become almost completely commercialized and suggests the creation of "a new body of law to protect material whose prime function is commercial [e.g. plans, commercial ideas, dress designs, etc.] and to leave works that are more likely to add to the cultural and intellectual heritage of the nation in the copyright area."

421. Contracts—construction—evidence of trade usage inadmissible to vary "rule of law" vesting ownership of photographs in the photographer's customer.

*Harvard Law Review*, vol. 70, no. 3 (Jan. 1957), pp. 553-555.

A case note on the decision in *Avedon v. Exstein*. See 3 BULL. CR. SOC. 151 Item 417.

422. Evans, Hugh, Jr.

Literary property: contractual recovery for unauthorized use of ideas.

*U.C.L.A. Law Review*, vol. 4, no. 2 (Feb. 1957), pp. 296-300.

A case note on *Desny v. Wilder* (Calif. Sup. Ct., 1956).

423. Feldman, Martin L. C.

The relationship between copyright and unfair competition principles.

*Tulane Law Review*, vol. 31, no. 3 (April 1957), pp. 523-536.

This comment has been entered in the Nathan Burkan Memorial Competition. The writer makes the following recommendations: (1) the existence or non-existence of a copyright should not determine whether unfair competition is applicable; (2) the Copyright Act should not be so liberally construed as to include cases properly covered by unfair competition; (3) unfair competition should not depend on the violation of a property right; (4) intent in unfair competition should not be essential if in fact there was a wrongful appropriation of another's work or idea, and the complainant suffers damages therefrom; (5) the requirement of fraud, if used at all in a particular jurisdiction, should not be used haphazardly.

424. Gleisser, Marcus D.

Newspaper libel.

*Cleveland Marshall Law Review*, vol. 5, no. 2 (Fall 1956), pp. 132-144.

Comments on the problems facing journalism arising out of recent court decisions, prefaced by a brief outline of the law of libel.

## 425. Lerner, Max K.

[Review of] *The First Copyright Statute . . .* by Harry Ransom.  
*American Bar Association Journal*, vol. 43, no. 2 (Feb. 1957), p.  
151.

Mr. Lerner recommends this work, published by the University of Texas Press, "not only to copyright attorneys but to all interested in the history of copyright."

## 426. Nimmer, Melville B.

Copyright 1956: recent trends in the law of artistic property.  
*Reprinted from U.C.L.A. Law Review*, vol. 4, no. 3, April 1957,  
pp. 323-351.

An analytical summary of important copyright decisions of United States courts during 1956.

## 427. Sargoy and Stein.

United States Copyright Law Digest. Reprinted from Martindale-Hubbell Law Directory, 1957 Edition.

Summit, N. J., Martindale-Hubbell, Inc., 1956. 35 pp., unnumb.

## 428. Smith, Thomas A., Jr.

Torts—unfair competition—use of old fight films on television.

*Alabama Law Review*, vol. 9, no. 1 (Fall 1956), pp. 151-155.

A case note on the appellate decision in *Ettore v. Philco Television Broadcasting Corp.* See 3 BULL. CR. SOC. 93, Item 271.

## 429. Spiegel, Irwin O.

Public celebrity v. scandal magazine—the celebrity's right to privacy.

*Southern California Law Review*, vol. 30, no. 3 (April 1957), pp.  
280-312.

It is the author's opinion that "scandal magazines can and do injure reputations, can and do offend individual sensibilities, and, furthermore, are an outrage against any civilized community's standards of decency." He exhorts that "celebrities should not be required to forfeit their entire right to privacy . . . The twin-torts, called privacy and infliction of

emotional distress, also protect personal honor, self-respect and human dignity. Only a barbarous society would demand a sacrifice of those interests by the very people who have contributed most to its cultural riches."

430. Torts—libel and slander—oral extemporaneous remarks over television held libelous.

*St. John's Law Review*, vol. 31, no. 2 (May 1957), pp. 314-318.

A brief note on the decision in *Shor v. Billingsley*, 158 N. Y. 2d 476 (Sup. Ct. 1957).

431. Unfair competition — appropriation of another's labor — copying of fashion designs actionable on the ground of commercial immorality.

*Harvard Law Review*, vol. 70, no. 6 (Apr. 1957), pp. 1117-1120.

A case note on the decision in *Dior v. Milton*.

432. Whale, Arthur R.

Government rights to technical information received under contract.

*The George Washington Law Review*, vol. 25, no. 2 (Jan. 1957), pp. 289-315.

A discussion of U. S. military procurement practices with respect to acquisition of rights to technical information, existing regulations, Government proposals for revision of the regulations, and other approaches to a solution of the problem.

433. Wincor, Richard.

The seven basic program properties.

Reprinted from *The Trademark Reporter*, vol. 47, no. 4 (Apr. 1957), pp. 440-452.

A provocative discussion of the possibility of protecting so-called "program marks," i.e. characters, titles, program formats, and other elements of dramatic presentations, which resemble service marks and are not protected by either copyright or trade mark laws.

## 434. Womsley, Robert B.

Protection of styles and designs in the garment industry.

*University of Cincinnati Law Review*, vol. 26, no. 1 (Winter 1957), pp. 86-97.

A note on the question of design piracy arising out of the *Dior v. Milton* decision.

## 435. Yankwich, Leon R.

Legal protection of ideas—a judge's approach.

*Virginia Law Review*, vol. 43, no. 3 (April 1957), pp. 375-395.

"The object of this brief study is to discuss some phases of the legal protection of the proprietorship of ideas, both under common law and statutory norms, as they appear to a judge."

## 436. Yankwich, Leon R.

Unfair competition as an aid to equity in patent, copyright and trade-mark cases.

*Notre Dame Lawyer*, vol. 32, no. 3 (May 1957), pp. 438-470.

"It is the writer's conviction that the doctrine of unfair competition or unfair practices enables courts in these and other fields to achieve equitable justice when restrictive legal principles stand in the way. The present study is an attempt to justify this conviction."

## 2. FOREIGN

## (a) English

## 437. Davies, D. H. Mervyn.

The Copyright Act, 1956.

*The Conveyancer & Property Lawyer*, vol. 21, no. 1 (Jan.-Feb. 1957), pp. 25-48.

A summary of the new British Copyright Act

## 438. Leuzinger, R.

The agreement concerning international television relays.

*E. B. U. Bulletin*, vol. 8, no. 42 (Mar.-Apr. 1957), pp. 113-118.

The Secretary-General of the International Federation of Musicians (FIM) writes an introductory article followed by the English text of an agreement, effective on Feb. 1, 1957 for a period of not less than two years, between the European Broadcasting Union, on the one side and the International Federation of Actors and the International Federation of Variety Artists, on the other. This agreement "allows members of the E.B.U. situated in the European Broadcasting Zone to broadcast over the television transmitters of other countries to a much larger extent than before, television programmes involving performances by artists, both in the form of direct or deferred relays."

## 439. Obscene publications.

*The Law Times*, vol. 223, no. 5948 (April 12, 1957), pp. 189-191.

A comment on the progress of the British Obscene Publications Bill which was originally based on the recommendations of a committee appointed by the Society of Authors and introduced as a Private Member's Bill in the House of Commons on March 15, 1955. The Bill has now received a second reading and has been committed to a Select Committee.

## 440. Plaisant, Robert.

Rights concerning phonograms. Published in the August and September 1956 issues of "The Performing Artiste, the Record Manufacturer, the Broadcaster." [Translated by Guido Pignatelli].

45 p. (*Copyright Society of the U.S.A. Translation and Document Service*, 1957, no. 3a.)

A comparative study of the rights of authors, performing artists, and record manufacturers in "phonograms" which Prof. Plaisant defines as "all recordings of manifestations susceptible of aural or visual perception, made for the purpose of retaining and rendering them to a listener or a spectator by means of one or several appropriate mechanisms: phonographs, motion-picture projectors, broadcasting and reviewing sets, for image and sound."

## 441. Rubinstein, Stanley.

Copyright in the past and in the future.

*Revue Internationale du Droit d'Auteur*, no. 15 (Apr. 1957), pp. 74-107.

After a brief account of the origin of British copyright law, a case is made for considering copyright protection for elaborated ideas. Also in French and Spanish.

## (b) In French

## 442. Chavance, Louis.

Les fournisseurs de la machine.

*Inter-Auteurs*, no. 126 (1. trimestre 1957), p. 13-15.

A discussion of the problems faced by motion-picture and television authors who are described as being in an unfortunate position when compared with other creators of intellectual works, and whose most urgent task in the near future will be to preserve "the individuality of creation."

## 443. Desbois, Henri.

L'évolution législative dans les États de l'Europe orientale.

*Le Droit d'Auteur*, vol. 70, no. 3 (Mar. 1957), pp. 42-46; no. 4 (Apr. 1957), pp. 62-72.

A comparative study of the copyright laws of Eastern Europe.

## 444. Garson, Paul.

L'arrêt Bonnard et la propriété artistique.

*Revue Internationale du Droit d'Auteur*, no. 15 (Apr. 1957), pp. 37-73.

"The Bonnard judgment and artistic property"; a commentary on the moral rights problem arising from a recent French Supreme Court decision which laid down the tenet that, upon partition, all the personal estate of married couples is part of the community property, so that even an unfinished artistic creation, or one that is kept unpublished by the artist, cannot be considered as an individual belonging. (Also in English and Spanish.)

## 445. Hepp, François.

L'esprit du nouveau project de loi français sur la propriété littéraire et artistique.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 3/4 (Feb. 15, 1957) pp. 134-140.

The spirit of the general doctrine which inspired the new French Copyright Bill.

## 446. Hesser, Thorvald.

Nouvelles de Suède.

*Revue Internationale du Droit d'Auteur*, no. 15 (Apr. 1957), pp. 132-135.

A brief summary of the new Swedish draft copyright legislation.

## 447. Ioannou, Tassos.

Le droit d'auteur en Grèce après l'adhésion à la Convention de Bruxelles.

*Revue Internationale du Droit d'Auteur*, no. 15, (Apr. 1957), pp. 2-35.

"Copyright in Greece after her adhesion to the Brussels Convention"; a comparison of the Convention with the Greek domestic legislation. Also in English and Spanish.

## 448. Luzzati, Mario.

L'oeuvre d'art appliquée à l'industrie.

*Rassegna della Proprietà Industriale, Letteraria, Artistica*, vol. 19, nos. 4-6 (Jul.-Dec., 1956), pp. 251-253.

The problem of protection of "The work of art applied to industry"; a brief summary of Italian legislation, international conventions to which Italy adheres, and suggestions for solutions to the problem. Presented at the Amsterdam Congress of the International Literary and Artistic Association (A.L.A.I.)

## 449. Masouyé, Claude.

## Les prorogations de guerre-IV.

*Revue Internationale du Droit d'Auteur*, no. 15, (April. 1957), pp. 108-130.

The fourth in a series of articles on the problem of extension of copyright protection by reason of war, both on the French national level and in the international sphere.

## 450. Mayrand, Albert.

## Respect au titre de l'oeuvre littéraire.

*La Revue du Barreau de la Province de Québec*, vol. 17, no. 2 (Feb. 1957), pp. 49-57.

A comment, with special reference to Canadian jurisprudence, on the question, arising from a recent Paris Court of Appeals decision, whether the assignee of a literary work may use the title independently from the work without violating the moral right of the author.

## 451. Poirier, Pierre.

La protection des oeuvres des arts appliqués et des dessins et modèles; rapport général établi au nom de la Commission spéciale.

*Rassegna della Proprietà Industriale, Letteraria, Artistica*, vol. 19, nos. 4-6 (Jul.-Dec., 1956), pp. 254-262.

In a report, drawn up on behalf of a special committee, to the Amsterdam Congress of the International Literary and Artistic Association (A.L.A.I.), the writer traces the development of national legislation and international conventions for the protection of works of applied art and of designs and models, and suggests further efforts at solutions.

(c) In German

## 452. Abel, Paul.

"Der Urheber" in dem britischen Copyright Act, 1956.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 3/4 (Feb. 15, 1957), pp. 129-134.

A brief analysis of the provisions of the new British Copyright Act dealing with the owner of the copyright, i.e. the "subject" of the right.

## 453. Frieberger, Kurt.

Filmurheber und Filmhersteller.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 3/4 (Feb. 15, 1957), pp. 149-156.

The writer discusses the problem of the rights of authors and producers of motion pictures and suggests the desirability of the study group of UNESCO effecting an international diplomatic conference for the purpose of unifying national legislation and deciding upon an annex to art. 14 of the Brussels Convention and an additional protocol to the U.C.C.

## 454. Goldbaum, Wenzel.

Die urheberrechtlichen Befugnisse des Übersetzers ex lege.

*Archiv für Urheber-, Film-, Funk- und Theaterrecht*, vol. 23, no. 3/4 (Feb. 15, 1957), pp. 141-149.

A comparative analysis of the rights of the translator under American, German and international copyright laws.

## 455. Haertel, Kurt.

Die Rückgliederung des Saarlandes auf den Gebieten des gewerblichen Rechtsschutzes, des Wettbewerbsrechts und des Urheberrechts, von Kurt Haertel und Albrecht Krieger.

*Gewerblicher Rechtsschutz und Urheberrecht*, vol. 59, no. 3 (Mar. 1957), pp. 98-110.

The effect of the reintegration of Saarland in the areas of industrial property protection, unfair competition, and copyright.

## (d) In Italian

## 456. Desbois, Henri.

Il progetto di legge francese; rapporto presentato . . . al XLVII Congresso della Association littéraire et artistique internationale.

*Il Diritto di Autore*, vol. 27, no. 4 (Oct.-Dec., 1956), pp. 608-618.

An analysis, in the original French text, of the version of the French Draft Copyright Law adopted by the National Assembly in a second reading, Dec. 1956. Presented as a report to the 47th Congress of the International Literary and Artistic Association in Amsterdam.

## 457. Giannini, Amedeo.

Opere postume.

*Rivista di Diritto Industriale*, vol. 5, no. 4 (Oct.-Dec. 1956), pp. 428-439.

Prof. Giannini discusses the questions of who has the right to publish posthumous works and the term of protection for such works after publication, pointing out that there is a variance between the duration provisions of the Italian Copyright Law and the Brussels Convention to which Italy adheres.

## 458. Guglielmetti, Giannantonio.

Apparecchi fonomagnetici i riproduzione per uso personale.

*Il Diritto di Autore*, vol. 27, no. 4 (Oct.-Dec. 1956), pp. 489-497.

A discussion of the right to make reproductions of protected works for personal use by means of disk or tape recorders, and of the responsibility of sellers and distributors of such recorders. The writer points out that article 68 of the Italian Copyright Law provides that reproductions for personal use shall be free "when made by hand or by a means unsuitable for circulating or diffusing the work in public."

### C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

#### 1. United States

## 459. Authors vote "Freedom to write" declaration.

*Publishers' Weekly*, vol. 171, no. 21 (May 27, 1957), pp. 114-115.

Article on the first national assembly of the Authors League of America held in New York City during which was passed a "Freedom to write" declaration which included "the freedom of publication, distribution and performance of writings." The author's right to a greater share of the proceeds from his work, i.e. subsidiary rights, also received strong support.

## 460. City Lights Books, ACLU fight Customs' book seizure.

*Publishers' Weekly*, vol. 171, no. 17 (Apr. 29, 1957), p. 29.

Item on the launching of an attack by City Light Books, San Francisco, and the American Civil Liberties Union against the seizure by the U. S. Customs Bureau in San Francisco of "Howl and Other Poems" by Allen Ginsberg. The collector of customs is quoted as saying that the book was seized because "The words and sense of the writing is obscene."

## 461. Eleni.

Design protection parlay taking place here today.

*The Evening Star*, Washington, D.C., vol. 105, no. 119 (Apr. 29, 1957), p. B-6.

Article on a meeting of representatives from design groups and legal organizations, which was held in Washington on Apr. 29 under the chairmanship of Judge Giles S. Rich, Associate Judge of the U. S. Court of Customs and Patent Appeals, for the purpose of discussing a proposed draft bill for design protection.

## 462. Hollister Noble book cleared of infringement charges.

*Publishers' Weekly*, vol. 171, no. 17 (Apr. 29, 1957), pp. 28, 29.

Brief note on the decision in the case of *Greenbie v. Noble*.

## 463. James, Marion.

The United States and the Florence Agreement.

*The Library Quarterly*, vol 27, no. 2 (Apr. 1957), pp. 88-94.

A paper on the international UNESCO agreement providing for duty-free importation of educational, scientific and cultural materials which came into force on May 21, 1952. The writer presents the historical background of the agreement and attempts to find reasons for the absence of any movement for the United States adherence thereto, "inasmuch as removing barriers to the free flow of information is a stated goal of United States publishers, State Department representatives, librarians, and other agencies dealing with information materials."

## 464. Macneil, Neil.

Inquiry asked into setup of TV networks.

*The Washington Post and Times Herald*, vol. 80, no. 187 (June 10, 1957), pp. A1, A3.

Article on the Report of the House Antitrust Subcommittee on the television broadcasting industry. SEE Item 386 *supra*.

## 465. Pilpel, Harriet F.

"But Can You Do That?"

*Publisher's Weekly*, vol. 171, no. 17 (April 29, 1957), pp. 21-25.

Under the title of "Why, O Why, Is the Tax Law Different for Copyrights?" Mrs. Pilpel discusses *Reid v. Comm. Intern. Rev.*, 110 USPQ 145; "Oh, To Be An Inventor Now That April's Here" is a discussion of *Watkins et al. v. U. S.*, 112 USPQ 457; "A Long, Hard Winter for Idea Men" is concerned with *Curtis v. Times, Inc.*, 112 USPQ 248, 4 BULL. CR. SOC. p. 95, item 245; "Maybe the Overall Effect Is Just About Right" concerns *Cloth v. Hyman*, 112 USPQ 248, 4 BULL. CR. SOC. p. 94, item 244; and "Permission Granted for One Purpose," etc. concerns the case of *Robertson v. Batten, Barton, Durstine & Osborne*, 111 USPQ 251, 4 BULL. CR. SOC. p. 73, item 183.

*Publisher's Weekly*, vol. 171, no. 21 (May 27, 1957), pp. 111-112.

Mrs. Pilpel discusses *Lawrence v. U. S.*, 113 USPQ 29, under the title "The've Done It Again"; mentions that "Supreme Court Will Review Gaslight-Autolight case"; and discusses under the heading "You May Want to Watch and Even Be Heard" the case of *Shor v. Billingsley*, 158 N.Y.S.2d 476.

## 466. Yeager, Phil.

Too near 'Gas Light,' Benny gets burned, by Phil Yeager and John Stark.

*The Evening Star, Washington, D.C.*, vol. 105, no. 120 (Apr. 30, 1957), p. A-20.

Article on the 9th Circuit decision in the case of *Benny v. Loew's Inc.* [Note: Certiorari was granted by the U. S. Supreme Court on April 29.]

## 2. England

467. Bringing copyright up to date; a Queen's Counsel on the new Copyright Act.

*The Listener*, vol. 57, no. 1455 (Feb. 14, 1957), pp. 271-272.

A brief survey with special reference to the protection of original unpublished works, compulsory license, and transmission of broadcasts to subscribers to the relay services. In the writer's view there are three outstanding features in the new Act: the creation of a new copyright in sound and television broadcasts; in motion picture films independently of any copyright there may be in its component parts; and, the setting up of a Performing Right Tribunal.

468. FitzLyon, April.

The translator and the time-bomb: some thoughts on the moral implications of translation.

*International P.E.N. Bulletin of Selected Books*, vol. 8, no. 4 (Winter 1956), pp. 91-100.

A discussion, in English and French, of the moral responsibilities of the translator in choosing what intellectual products of one culture should be made known to another, and for accuracy in translation and faithfulness to the original author.

469. A Guide to copyright law.

*The Bookseller*, No. 2681 (May 11, 1957), pp. 1568-1569.

A review of a commentary on the new British Copyright Act by J. P. Eddy entitled *The Law of Copyright*, and published by Butterworth. The work is described as a legal textbook which will also be found invaluable by the layman.

470. How's your literary I. Q.?

*The Writer*, vol. 70, no. 4 (April 1957), p. 32.

Ten questions on copyright law that the writer "should be able to answer" without consulting his lawyer. The answers are given on page 43.

## 3. Sweden

## 471. Björkbom, Carl.

Fotokopiering och författarrätt med anledning av det nya lagförslaget.

*Tidskrift för Dokumentation*, vol. 12, no. 4 (1956), pp. 51-53.

"Photocopying and Copyright with Reference to the New [Swedish] Draft Law on Copyright."

## NEWS BRIEFS

## 472. BELGIUM—PRIVATE MEMBER'S BILL TO CREATE A "PAYING PUBLIC DOMAIN."

In the Chamber of Representatives of the Belgian Parliament a private member's Bill has been tabled to institute a "paying public domain"—the payment of a royalty on works in the public domain. Under the Bill the public performance, reproduction in any form whatsoever, sale, distribution and transfer of works that have passed into the public domain would be subject to a royalty at a rate to be determined by Royal Order, the proceeds of which, earmarked for a People's Education Fund, would be collected by the Belgian Performing Right Society and made over to a National Intellectual Production Bureau.

The National Intellectual Production Bureau would come under the Ministry of Education and would be so constituted as to give fair representation to authors, publishers, various artistic institutions and those permanently liable to pay copyright fees.

The Belgian Performing Right Society and its agencies in Belgium and the Belgian Congo would henceforward come under the authority of the new Bureau.

In the explanatory memorandum to the Bill, the sponsors suggest that the following royalties in respect of the "paying public domain" should be levied on the various uses of works in the public domain:

— broadcast performance of musical works: 1/3 of present copyright fees;

- recordings of all kinds: 5% of retail price;
  - publication of musical works: 5% of retail price;
  - transcription, arrangement and revision: 5% of copyright income;
  - literary and scientific publications: 5% of retail price;
  - deduction on all fees collected in Belgium and transferred abroad: 10% of the annual total;
  - theatrical performances; 5% of receipts.
- E. B. U. Bulletin*, vol. 8 no. 42 (Mar.-Apr. 1957), p. 169.

#### 473. DRAFT DESIGN BILL COORDINATING COMMITTEE MEETING.

A meeting of the Coordinating Committee, held in the Department of Commerce on April 29, 1957 to discuss the draft bill prepared by its Drafting Committee, was attended by some 38 individuals representing almost that many associations or organizations. Included in the group were the Commissioner and Asst. Commissioner of Patents, Robert C. Watson and Mrs. Daphne R. Leeds, the Register of Copyrights, Arthur Fisher, and the Deputy Commissioner of Patents for Australia, Carl Peterson, who was a guest of Mr. Watson.

The all-day meeting, presided over by the Chairman, Judge Giles S. Rich, resulted in a thorough discussion of the main points of the draft bill, and general agreement as to a number of modifications.

The new bill is based on copyright principles, and accordingly does not contain a novelty or search requirement. Infringement is limited to the actual copying of the protected design. Protection is achieved by registration, which is to be made within a specified time limit. Registration is to be made quickly and at a low cost.

The Register of Copyrights suggested that the test of coverage should rest upon the usefulness or non-usefulness of the article in which the design is embodied; if a work remains purely decorative, it should continue to be protected under the copyright law. Designs of useful objects should, on the other hand, be dealt with exclusively by the new Design bill.

He expressed doubt whether the Copyright Office could support a bill which by overlapping the copyright law provided dual jurisdiction either as to works purely decorative or useful in character.

General agreement seemed to exist that, in order to prevent a multiplicity of registrations intended to monopolize the particular market, protection should not be available until after a design has been embodied in an actual useful article, although registration might be made prior to the act of "making known to the public" if the design was embodied in an article.

As to the duration of protection, the majority considered that a single, non-renewable term of five years was sufficient.

A simple form of notice was agreed upon, which is to be affixed to the work. The need for some flexibility was recognized in view of the difficulty of applying a notice to certain types of works.

The necessity for focusing public attention on the desirability of this type of protection was recognized, and to this end a subcommittee was appointed to assemble data and prepare a statement of need.

The Chairman announced that as a result of earlier comments received, the revised draft would incorporate provisions dealing with public domain designs, new versions and successive adaptations, as well as purely functional designs. The Drafting Committee will take into consideration the recommendations of the meeting and will have a new draft ready for discussion at a subsequent meeting, which will be held on July 12th in New York City. [By George D. Cary]—*American Patent Law Association Bulletin* (May 1957), pp. 143-144.

#### 474. NEIGHBORING RIGHTS.

The Neighboring Rights Panel, of which the U. S. Register of Copyrights is chairman, met in New York on May 2, and discussed the meeting of the Committee of Experts in Monaco and subsequent developments concerning neighboring rights proposals. Mr. Bogsch accompanied the Register in attendance at the meeting.

#### 475. SPAIN.

An interdepartmental committee has been appointed to draft new laws and regulations on intellectual property. Cf. *Inter Auteurs*, no. 126 (1. trimestre 1957), p. 39.

#### 476. UNESCO. FREE FLOW OF INFORMATION.

A meeting of governmental experts will be called during the next two years to discuss the application of the Agreement on the Importation of Educational, Scientific and Cultural Materials. A similar meeting will

be called in 1958 to enable experts to advise Unesco on possible measures to facilitate the international movement of persons engaged in educational, scientific or cultural activities.

The General Conference invited Member States to study a series of suggestions concerning the free flow of ideas, and these will be brought to the attention of Member States and appropriate non-governmental organisations. Two new studies will be published, one concerning copyright in the information field and the other on the free flow of information. An enquiry begun earlier on conditions governing temporary importation of technical equipment used in broadcasting will be extended to cover equipment needed by other media.—*E.B.U. Bulletin*, vol. 8, no. 43 (May-June 1957), p. 301.

#### 477. GREAT BRITAIN JOINS UNIVERSAL COPYRIGHT CONVENTION.

According to the *New York Times* of June 28, 1957, Great Britain became the twenty-seventh nation to accede to the Universal Copyright Convention in a ceremony held at Paris on June 27 at the headquarters of UNESCO.

#### 478. GREAT BRITAIN RATIFIES THE UNIVERSAL COPYRIGHT CONVENTION.

The important adherence to the Universal Copyright Convention, of Great Britain, effective September 27, 1957, has prompted the issuance by the Copyright Office of the attached new LIST OF ACCESSIONS AND RATIFICATIONS OF THE UNIVERSAL COPYRIGHT CONVENTION, as of July 22, 1957.

<i>Country</i>	<i>Effective Date</i>
Andorra	September 16, 1955
Austria	July 2, 1957
Cambodia	September 16, 1955
Chile	September 16, 1955
Costa Rica	September 16, 1955
Cuba	June 18, 1957
Ecuador	June 5, 1957
France	January 14, 1956
German Federal Republic	September 16, 1955
Great Britain	September 27, 1957
Haiti	September 16, 1955
Holy See	October 5, 1955
Iceland	December 18, 1956
Israel	September 16, 1955
Italy	January 24, 1957
Japan	April 28, 1956
Laos	September 16, 1955
Liberia	July 27, 1956
Luxembourg	October 15, 1955
Mexico	May 12, 1957
Monaco	September 16, 1955
Pakistan	September 16, 1955
*Philippines	November 19, 1955
Portugal	December 25, 1956
Spain	September 16, 1955
Switzerland	March 30, 1956
United States of America	September 16, 1955

\* 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.

## INTERGOVERNMENTAL COPYRIGHT COMMITTEE INVITES OBSERVERS TO OCTOBER MEETING

At the invitation of the United States Government, the second session of the Intergovernmental Copyright Committee, established by the Universal Copyright Convention, will meet in Washington, D.C., from October 7 to 11, 1957.

The present members of the Committee are representatives of Argentina, Brazil, France, Germany, India, Italy, Japan, Mexico, Spain, Switzerland, the United Kingdom, and the United States of America.

The provisional agenda includes items on the progress of ratifications of the Universal Copyright Convention, the interpretation of some of the provisions of that Convention, a progress report on UNESCO's activities in the field of neighboring rights, protection of news items and other press information, and international double taxation of copyright royalties.

The meeting will take place at the State Department conference headquarters, 1776 Pennsylvania Avenue, N.W., Washington, D.C., on the eleventh floor.

The Department of State has indicated that representatives of organizations and individuals interested in international copyright matters may attend the public sessions as observers.

### N O T I C E

On July 23, 1957, H.R. 8873, entitled "A bill to encourage the creation of original ornamental designs of useful articles by protecting the authors of such designs for a limited time against unauthorized copying," was introduced in the House of Representatives. This is the design bill sponsored by the Coordinating Committee of the National Council of Patent Law Associations, which has been in preparation for about three years by a committee under the chairmanship of Judge Giles S. Rich of the Court of Customs and Patent Appeals.

In view of the wide interest in this field, the Editorial Board of The BULLETIN has secured a sufficient number of copies of the design bill to send a copy thereof to every subscriber, and the bill is enclosed with this BULLETIN, in accordance with the new policy of the Society announced elsewhere in this issue.

## I N D E X

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## **COMPULSORY LICENSE PROVISIONS OF THE COPYRIGHT LAW**

Under an authorization by Congress, the Copyright Office in the Library of Congress has undertaken a program of studies looking to a general revision of the Copyright Law (Title 17, U.S.C.). These studies are first circulated, in preliminary form, to a Panel of Consultants appointed by the Librarian of Congress, for their comments and views.

The study by Professor Harry G. Henn on the **COMPULSORY LICENSE PROVISIONS OF THE UNITED STATES COPYRIGHT LAW** is the first in the series issued for general distribution.

Copies of this study, to which are attached the comments and views of the consultants, may be secured by sending a request addressed to R. G. Plumb, Head, Information and Publications Section, Copyright Office, Washington 25, D.C.

Persons and groups concerned with this problem who receive copies are invited to submit to the Copyright Office a statement of their views on the subject.

