

THE LIBRARY OF CONGRESS
COPYRIGHT OFFICE

FORTY-SEVENTH ANNUAL REPORT
OF THE
REGISTER OF COPYRIGHTS

FOR THE FISCAL YEAR
ENDING JUNE 30

1944



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CONTENTS

	Page
Registrations and Receipts.....	1
Copyright Deposits.....	5
Expenditures.....	7
Accounts.....	7
Correspondence.....	7
Recording, Certification, and Indexing of Copyrights.....	8
Clement L. Bouvé.....	8
Personnel.....	9
Publications.....	10
Proclamation of the President under Act of Sept. 25, 1941.....	10
Copyright Bills in Congress.....	11
Recent important decisions of the courts.....	12

THE COPYRIGHT OFFICE

REPORT TO THE LIBRARIAN OF CONGRESS BY THE REGISTER OF COPYRIGHTS

WASHINGTON, D. C., *August 28, 1944.*

SIR: The copyright business and the work of the Copyright Office for the fiscal year July 1, 1943 to June 30, 1944, inclusive, are summarized as follows:

Registrations and Receipts

The figures for the past year show a material increase in business over the preceding year. Registrations advanced from 160,789 to 169,269, or 5.6 percent, and gross receipts from \$324,300.99 to \$333,270.24, an increase of 2.7 percent. The increase in registrations applied to nearly all classes of material, but was most noticeable in musical compositions (from 48,348 to 52,087—mostly manuscript pieces) and periodicals (from 42,995 to 44,364). There was a significant increase in the number of English books registered for ad interim copyright (517 to 602) and in commercial prints and labels (5,385 to 5,953). On the other hand, "books proper," i. e. bound volumes, printed in the United States, fell from 8,658 to 7,585, maps from 737 to 494, and motion picture photoplays from 693 to 604. The decrease in registrations of American books, doubtless attributable in part to paper shortage, was compensated, statistically and in the amount of copyright business, by an increase in the registrations of other book material (pamphlets, leaflets, and contributions to periodicals). The decrease in registrations of motion picture photoplays (from 693 to 604) was overcome by the increase in registrations of other types of motion pictures (from 1,074 to 1,268). The material decrease in map registrations is perhaps due to present political and economic conditions, perhaps to other causes similar to those which reduced the number of book registrations.

The volume of copyright business has been in the past a fairly accurate barometer of business conditions generally. The figures for the fiscal year 1944 would indicate that the trough of war-caused dislocation of business has been passed and that the normal steady increase in the number of registrations is again taking place. Registrations for the past five years are shown in the table which follows:

Registration by subject matter classes for the fiscal years 1940 to 1944,
inclusive

Class	Subject matter of copyright	1944	1943	1942	1941	1940
A	Books:					
	(a) Printed in the United States:					
	Books proper.....	7,585	8,658	10,377	12,735	11,976
	Pamphlets, leaflets, etc.....	27,683	27,558	33,620	31,187	34,687
	Contributions to newspapers and periodicals.....	4,730	3,868	5,119	5,845	13,926
	Total.....	39,998	39,784	49,116	49,767	60,589
	(b) Printed abroad in a foreign language.	82	156	651	1,558	2,504
	(c) English books registered for ad interim copyright.....	602	517	509	565	958
	Total.....	40,682	40,457	50,276	51,885	64,051
	B	Periodicals (numbers).....	44,364	42,995	45,145	42,207
C	Lectures, sermons, addresses.....	1,126	629	963	1,362	1,276
D	Dramatic or dramatico-musical compositions.	4,875	3,687	4,803	5,010	6,450
E	Musical compositions.....	52,067	48,348	50,023	49,135	37,975
F	Maps.....	494	737	1,217	1,398	1,622
G	Works of art, models, or designs.....	1,743	1,649	2,110	2,187	3,061
H	Reproductions of works of art.....	173	221	321	343	445
I	Drawings or plastic works of a scientific or technical character.....	1,957	1,911	2,086	2,399	2,817
J	Photographs.....	1,270	1,042	1,502	2,411	2,590
KK	Commercial prints and labels.....	5,953	5,385	7,162	7,162	-----
K	Prints and pictorial illustrations.....	2,426	2,317	2,917	3,068	4,699
L	Motion picture photoplays.....	604	698	871	822	800
M	Motion pictures not photoplays.....	1,268	1,074	1,348	976	811
RR	Renewals of commercial prints and labels.....	44	20	27	19	-----
R	Renewals of all other classes.....	10,203	9,630	11,461	10,323	10,207
	Total.....	169,269	160,789	182,232	180,647	176,997

The fees actually applied for registrations of copyright amounted to \$301,110. Total earnings from these and other fees (for recording assignments, certifying documents, etc.) were \$319,466.30. The table which follows gives a summary account.

Summary of Copyright Business, Fiscal Year 1944

Balance on hand July 1, 1943.....		\$55,569.50
Gross receipts July 1, 1943 to June 30, 1944.....		333,270.24
Total to be accounted for.....		388,839.74
Refunded.....	\$17,347.97	
Checks returned unpaid.....	81.00	
Deposited as earned fees.....	297,075.10	
Balance carried over to July 1, 1944:		
Fees earned in June 1944 but not de-		
posited until July 1944.....	\$28,140.30	
Unfinished business balance.....	9,996.19	
Deposit accounts balance.....	36,199.18	
	<u>74,335.67</u>	
		<u>388,839.74</u>

Fees Received

Registrations for prints and labels.....	5,953 at \$6	\$35,718.00
Registrations for published works.....	101,856 at \$2	203,712.00
Registrations for published photographs without cer-		
tificates.....	418 at \$1	418.00
Registrations for unpublished works.....	50,795 at \$1	50,795.00
Registrations for renewals of prints and labels.....	44 at \$6	264.00
Registrations for renewals, all other classes.....	10,203 at \$1	10,203.00
Total number of registrations.....	169,269	
Fees for registrations.....		301,110.00
Fees for recording 4,354 assignments.....	\$12,523.00	
Fees for indexing 19,063 transfers of proprietorship.....	1,906.30	
Fees for 1,449 certified documents.....	1,449.00	
Fees for 215 notices of user recorded.....	215.00	
Fees for searches made at \$1 per hour of time consumed.....	2,263.00	
		<u>18,536.30</u>
		<u>319,466.30</u>

Since July 1, 1897, the date of organization of the Copyright Office, the total registrations have been 6,406,555 and the total receipts for fees \$8,221,540.70. The figures, year by year, appear in the following table:

Statement of Gross Cash Receipts, Yearly Fees, Number of Registrations, Etc.,
for 47 Fiscal Years

Year	Gross receipts	Yearly fees applied	Number of registrations	Increase in registrations	Decrease in registrations
1897-98	\$61,090.56	\$55,926.50	75,545		
1898-99	64,185.65	58,267.00	80,968	5,423	
1899-1900	71,072.33	65,206.00	94,798	13,830	
1900-1901	69,525.25	63,687.50	92,551		2,441
1901-2	68,405.06	64,687.00	92,978	627	
1902-3	71,533.91	68,874.80	97,979	5,001	
1903-4	75,302.83	72,629.00	103,130	5,151	
1904-5	80,440.56	78,058.00	113,374	10,244	
1905-6	82,610.92	80,198.00	117,704	4,330	
1906-7	87,884.31	84,085.00	123,829	6,125	
1907-8	85,042.03	82,887.50	119,742		4,087
1908-9	87,085.53	83,816.75	120,131	399	
1909-10	112,662.83	104,644.95	100,074		11,057
1910-11	113,661.52	109,913.95	115,198	6,124	
1911-12	120,149.51	116,085.06	120,631	5,433	
1912-13	118,985.26	114,960.60	119,499		1,436
1913-14	122,636.92	120,219.25	123,154	3,659	
1914-15	115,594.55	111,922.75	115,193		7,961
1915-16	115,653.42	113,969.85	115,967	774	
1916-17	113,808.51	110,077.40	111,438		4,529
1917-18	109,106.87	106,862.40	106,728		4,710
1918-19	117,518.96	113,118.00	113,003	6,275	
1919-20	132,371.37	126,492.25	126,562	13,559	
1920-21	141,190.33	134,516.15	135,280	8,718	
1921-22	145,398.26	138,516.15	138,633	3,353	
1922-23	153,923.62	149,297.00	148,946	10,313	
1923-24	167,705.98	162,544.90	162,894	13,748	
1924-25	178,971.95	168,909.55	165,848	3,154	
1925-26	185,088.29	178,307.20	177,635	11,787	
1926-27	191,375.16	184,727.80	184,000	6,365	
1927-28	201,064.49	195,167.65	193,914	9,914	
1928-29	222,125.82	205,993.80	161,959		31,955
1929-30	236,980.75	227,629.90	172,792	10,833	
1930-31	312,865.41	309,414.30	164,642		8,150
1931-32	294,719.20	289,964.00	151,735		12,907
1932-33	254,764.69	250,966.30	137,424		14,311
1933-34	258,829.53	251,691.50	139,047	1,623	
1934-35	269,345.51	259,881.70	142,031	2,984	
1935-36	263,149.82	265,206.90	156,962	14,931	
1936-37	295,313.24	280,641.40	154,424		2,538
1937-38	326,326.67	298,799.60	166,245	11,824	
1938-39	330,466.37	306,764.40	173,135	6,887	
1939-40	341,061.55	320,082.90	176,997	3,862	
1940-41	347,125.35	347,430.00	189,647	3,650	
1941-42	376,906.63	351,158.10	182,232	1,585	
1942-43	324,300.99	308,636.70	160,739		21,443
1943-44	333,270.24	319,466.30	169,269	8,480	
Total	8,591,551.63	8,221,540.70	6,406,555		

Copyright Deposits

The total number of separate articles deposited in compliance with the copyright law, which were registered during the fiscal year, is 260,338. The number of articles in each class for the last five fiscal years is shown in the table which follows:

Number of articles deposited during the fiscal years 1940 to 1944, inclusive

Class	Subject matter of copyright	1944	1943	1942	1941	1940
A	Books:					
	(a) Printed in the United States:					
	Books proper.....	15,170	17,316	20,754	25,470	23,952
	Pamphlets, leaflets, etc.....	55,366	55,116	67,240	62,276	60,374
	Contributions to newspapers and periodicals.....	4,746	3,568	5,119	5,888	13,926
	Total.....	75,282	76,000	93,113	93,634	107,252
	(b) Printed abroad in a foreign language.....	82	166	651	1,553	2,505
	(c) English works registered for ad interim copyright.....	602	517	509	565	958
	Total.....	75,966	76,673	94,273	95,752	110,715
B	Periodicals.....	68,736	85,990	90,290	84,214	80,356
C	Lectures, sermons, etc.....	1,126	629	963	1,363	1,277
D	Dramatic or dramatico-musical compositions.....	5,275	4,190	5,468	5,645	7,052
E	Musical compositions.....	61,060	57,343	60,098	59,369	48,152
F	Maps.....	977	1,462	2,402	2,524	3,242
G	Works of art, models, or designs.....	2,419	2,277	2,583	2,964	4,014
H	Reproductions of works of art.....	319	393	380	552	647
I	Drawings or plastic works of a scientific or technical character.....	2,514	2,698	2,891	3,302	3,681
J	Photographs.....	1,863	1,655	2,543	4,173	4,408
KK & K	Prints, labels, and pictorial illustrations.....	16,508	15,329	20,026	20,068	7,136
L	Motion picture photoplays.....	1,208	1,386	1,743	1,625	1,663
M	Motion pictures not photoplays.....	2,334	2,098	2,576	1,884	1,533
	Total.....	260,338	252,123	266,436	253,737	272,041

During the last fiscal year 1,666 works were received in response to requests addressed to delinquent copyright owners, and in addition 20 works were received within the demand period where official demands were made, making a total of 1,686.

The number of works received in response to requests for copies sent to delinquent copyright owners again shows a decrease over the preceding fiscal year. This is due to the fact that fewer requests have been sent out, since fewer cases of delinquency have been called to the attention of the Copyright Office by the Card Division, and

through other channels of information; it encourages the hope that the efforts of the Office to secure compliance with the law in this respect are meeting with some success. However, as observed in previous Annual Reports, there is good reason to believe that there are still many cases in which works are published with copyright notice, of which neither the Copyright Office nor any other department of the Library can possibly have a complete knowledge and in connection with which the copyright owner makes no attempt whatsoever to meet the requirements of Section 12 of the Copyright Act.

During the fiscal year a total of 164,741 current articles deposited have been transferred to the collections of the Library of Congress. This number included 40,747 books, 103,200 periodical numbers, 17,631 pieces of music, 908 maps, and 2,255 photographs and engravings.

Under authority of Section 59 of the Act of March 4, 1909, 1,830 books were transferred during the fiscal year to other governmental libraries in the District of Columbia. Under this transfer, up to June 30, 1944, the following libraries have since 1909 received the total number of books indicated below:

Department of Agriculture, 4,717; Department of Commerce, 23,076; Navy Department, 1,879; Treasury Department, 1,496; Office of Education, 22,855; Federal Trade Commission, 35,075; Bureau of Standards, 2,094; Army Medical Library, 10,723; Walter Reed Hospital, 2,884; Engineer School, Corps of Engineers, 3,202; Soldiers' Home, 1,600; Public Library for the District of Columbia, 64,147. A number of other libraries have received a smaller number of books. In all, 196,366 volumes have been thus distributed during the last 35 years.

The Copyright Act authorizes the return to copyright claimants of deposits not transferred to the collections of the Library, and for many years a large amount of material was thus disposed of. For some time past a different policy has prevailed and no deposits have been returned except motion picture films. These it has been found undesirable to retain because of their inflammable character and the present inadequacy of storage facilities. They are therefore returned to their depositors on the day of their receipt, after the necessary examination and recording. During the fiscal year 1944, 3,311 motion picture films, most of them consisting of several reels each, were thus withdrawn. Under an agreement with their producers, referred to in previous Annual Reports, one copy of each such film is subsequently made available upon demand for permanent retention by the Library of Congress.

Section 12 of the Copyright Act provides for deposit of copies of published works promptly after publication. Because of the need of the Library of Congress for the earliest possible deposit, a procedure was adopted in September 1940, by which copies may be deposited in advance of publication, one copy being immediately turned over to the Library for processing, while the other copy is held in the Copyright Office to be registered when the date of publication arrives. The total number of titles received by pre-publication deposit since the plan was adopted is 5,526, an average of 120 a month. Efforts to increase the participation of publishers in the plan have not been very successful, and the average number of titles thus deposited during the past year has been only 106 a month, the majority coming from six leading publishers.

Expenditures

The total expenditure for salaries in the Copyright Office during the fiscal year was \$302,915.38. Expenditures for stationery, postage, and transportation amounted to \$1,487.65. The cost of printing the *Catalog of Copyright Entries* and bulletins of decisions of the courts, so far as it can now be determined on the basis of bills paid and estimates where bills have not yet come from the Public Printer, is placed at \$18,688.99. The cost of "Printing and Binding, General," for the use of the Copyright Office, was approximately \$6,222.49. The total of all these expenditures is, therefore, to be estimated at \$330,002.80.

Accounts

On July 7, 1944, the books of the Copyright Office were balanced for June, the accounts for the fiscal year were closed, and the necessary financial statements completed for the Treasury Department.

Correspondence

The volume of work under this head showed an increase corresponding, of course, to the increase in the number of registrations, as copyright business is transacted almost entirely through the mails. Incoming letters and parcels were 210,974 as against 206,375, and outgoing letters and parcels 232,974 compared with 228,672 for the preceding year.

Recording, Certification, and Indexing of Copyrights

On July 1, 1940 a new system of recording and certifying copyrights was introduced, as explained in my predecessor's Annual Report for that fiscal year. The form of certificate then adopted was based on a Patent Office form which, while acceptable to attorneys, has been criticized by some publishers on account of its size and typography. A smaller form is in process of gradual adoption, which will save about one-third in the amount of paper used and may be more satisfactory in appearance.

The number of index cards made and filed during the fiscal year was 551,712 and of applications filed 157,694. The large increase in the first of these figures (over 100,000 above the preceding year) is attributable to the number of titles of copyrighted works contained in vesting orders of the Alien Property Custodian, which of course have to be indexed in some way to permit adequate searching. The total number of such titles now comes to the formidable figure of 185,102 since the filing of the vesting orders began. Until recently these were indexed under authors as well as under titles and claimants so that two or three cards were required for each title. It now seems possible to eliminate all but the title cards, and this is being done, but there are at present 146,690 titles to be indexed and vesting orders continue to be received from the Alien Property Custodian, so that it will be very desirable to overcome the arrearage by the use of temporary employees, if they can be secured.

It is also desired to resume, as soon as possible, active work on the consolidation of the old copyright indexes. Little has been done on this during the past year because of lack of labor. The work of consolidating the indexes for book entries, comprising approximately 2,300,000 cards, was completed about a year ago except for a residue of problem cases, calling for a final clean-up, which will not take long. Some work has also been done on the indexes for periodicals. It is desired, however, to proceed next with consolidation of the indexes for music registrations, as this is the largest and most important class, except for books. Additional clerical service will be needed for this task.

Clement L. Bouvé

Colonel Bouvé retired from the position of Register of Copyrights on December 31, 1943. He died suddenly on January 14, 1944. His distinguished career before his appointment on August 1, 1936 is de-

scribed in the *Information Bulletin* of the Library of Congress for January 18, 1944, and additional details regarding his life and work are to be found in the notice of his death in the *Washington Sunday Star* of January 16, 1944 and in "Who's Who in America, 1942-1943." Special Order No. 71 of January 6, 1944 also deals briefly with the character of Colonel Bouvé's service.

Colonel Bouvé's administration of the Copyright Office was notable both for improvements which he made in the organization of the Office and for his constant and energetic endeavor to obtain strict compliance with the conditions and formalities laid down by the copyright statutes for securing and maintaining copyright. Colonel Bouvé's predecessors in office were actuated in great degree by a desire to promote a sense of literary property and a respect for the rights of authors; his own guiding principle was that of the trained and conscientious lawyer who feels that the provisions of the statutes should be always borne in mind and obeyed. Among the improvements introduced by Colonel Bouvé in the administration of the Office may be mentioned the creation of an organized legal staff, the establishment of an Examining Section to pass in the first instance upon all applications for copyright registration in accordance with specific rules and instructions, and the formation of a Revisory Board composed of attorneys and other experienced employees to act finally on applications initially rejected or those presenting unusual problems of law or procedure. The result of these improvements in organization has been to standardize the practice of the Office and to establish a body of precedents looking toward a more careful and consistent application of the provisions of the copyright law and of the rules for registration.

Personnel

Richard C. DeWolf, sometime Assistant Register of Copyrights, was appointed Acting Register of Copyrights to succeed Colonel Bouvé on January 1, 1944. The position of Assistant Register thus left vacant was filled by the promotion of Herbert A. Howell, who returned to duties which had been efficiently performed by him for several years before his retirement in the latter part of 1941. Following Mr. Howell's promotion, Simon Lasica assumed the position of Associate Attorney, formerly filled by Mr. Howell.

Other important changes in personnel have been the retirement on December 1, 1943 of Maud C. Brady and the appointment on March 1, 1944 of William P. Siegfried as Executive Assistant.

Mrs. Brady entered the service of the Copyright Office on November 16, 1914 and was advanced to positions of much responsibility, including in turn Chief of the Certificate Division, Chief of the Index and Cataloging Division, Chief Coordinator, and Special Assistant to the Register of Copyrights, including membership of the Revisory Board. Mrs. Brady's long service was characterized by marked executive ability and conscientious attention to detail. The employees who served under her owe much to the high standards of accuracy and industry which she always urged upon them.

Mr. Siegfried's many years of experience in nearly all phases of Copyright Office work and his satisfactory service as Junior Administrative Assistant qualified him for the larger responsibilities of the newly-created position of Executive Assistant which he is efficiently handling.

While the stringent labor situation produced by the war has resulted in a continued deficiency in the number of employees in the Copyright Office, averaging during the past year about 20, there has been some recent improvement, and the Office has been able in part to overtake the arrearage of work which had accumulated. The outlook for the future in this respect is more encouraging than it was at the end of the last fiscal year.

Publications

The series of Copyright Office bulletins containing decisions of the United States courts involving copyright was continued by the issuance on October 11, 1943 of Bulletin 23 containing cases decided during the second half of 1939 through 1940. This bulletin also contains two opinions of the Attorney General relating to fees to be paid for registration of prints and labels and, as an appendix, a case decided by the United States Supreme Court subsequent to the period covered by the bulletin, namely, *Fred Fisher Music Co., Inc., et al v. M. Witmark & Sons* (318 U. S. 643; 57 U. S. P. Q. 50), which was included out of its normal order because of its immediate importance. The copy for the next bulletin of copyright cases, No. 24, went to the Public Printer on June 28. This bulletin will contain cases reported during 1941 through 1943.

Proclamation of the President under the Act of September 25, 1941

This long-expected proclamation, extending on behalf of British nationals and citizens of Palestine the time for securing ad interim

copyright and renewal of copyright, was issued March 10, 1944. Its effect is to prolong indefinitely the period of 60 days provided for deposit of an English book in the Copyright Office to secure ad interim copyright and similarly to extend the period of four months within which the book must be re-manufactured in the United States. The period of one year before the expiration of the first term of copyright within which application for renewal must be made is likewise indefinitely extended. In other words, for the works to which it applies, all time limits fixed by the law for securing ad interim or renewal copyrights are abrogated until the President revokes the proclamation. The proclamation, however, does not apply to the British self-governing dominions. A British Order in Council, effective on the same date, grants reciprocal rights.

The texts of the Proclamation and of the Order in Council have been printed by the Copyright Office as *Information Circular 84*. A mimeographed circular of the same number, explaining the effect of the proclamation, has also been issued.

Copyright Bills in Congress

The following bills relating to copyright were introduced during the fiscal year, but none of them was reported out of committee:

H. R. 3672, 78th Congress, First Session. "A Bill to amend the Trading with the Enemy Act, as amended, and for other purposes." Introduced by Mr. Gearhart on November 15, 1943, and referred to the Committee on Interstate and Foreign Commerce.

This bill provides, *inter alia*, for the prompt sale by the Alien Property Custodian of enemy patents, trade-marks and copyrights vested in him, with certain exemptions, and for the regulation of fees paid for the use of such patents, trade-marks and copyrights.

H. Res. 420, 78th Congress, Second Session. A resolution to investigate the extent to which the rights of persons engaged in art, literature, science, mechanics, and the pure and useful arts in their original thoughts, conceptions, and ideas leading to invention and discovery have been and may be considered in law, equity, and common usage as property and proprietary rights, and the extent to which such persons have been or may reasonably be protected in the commercial or other use of such original thoughts, conceptions, and ideas; to report the results of such investigation, together with recommendations for necessary legislation to protect for a limited time the property and proprietary rights of such persons in their original

thoughts, conceptions, and ideas leading to invention and discovery.

Submitted by Mr. Plumley on January 27, 1944, and referred to the Committee on Rules.

H. R. 4408, 78th Congress, Second Session. "A Bill to codify and enact into absolute law title 17 of the United States Code, entitled 'Copyrights.'" Introduced by Mr. Keogh on March 14, 1944, and referred to the Committee on Revision of the Laws.

H. Res. 504, 78th Congress, Second Session. "A resolution to investigate the question of effective legal protection for property and proprietary rights and ownership in original thoughts, conceptions, and ideas in art, literature, science, mechanics, and the pure and useful arts." Substantially identical with H. Res. 420.

Submitted by Mr. Arends on April 18, 1944, and referred to the Committee on Rules.

H. R. 4641, 78th Congress, Second Session. "A Bill to amend section 4 of the Act entitled 'An Act to transfer jurisdiction over commercial prints and labels, for the purpose of copyright registration, to the Register of Copyrights,' approved July 31, 1939." Introduced by Mr. Lanham on April 20, 1944, and referred to the Committee on Patents.

S. 2039, 78th Congress, Second Session. "A Bill to permit the United States Government to use certain copyright material in furtherance of the national defense; to permit the Librarian of Congress to make and furnish copies thereof for such purpose and to make and furnish any person a copy of copyrighted material for the purpose of private research; and for other purposes." Introduced by Mr. Lucas on June 23, 1944, and referred to the Committee on the Library.

Recent Important Decisions of the Courts in Copyright Cases

The decisions of Circuit Courts of Appeals and of the United States Supreme Court briefly summarized below appear in Bulletins 23 and 24 of the Copyright Office. Bulletin 23 is now available for distribution. Bulletin 24 was in the hands of the printer before the end of the fiscal year and will appear in the near future.

Taylor Instrument Companies v. Fawley-Brost Company (139 Fed. Rep. 98; in Bulletin 24). The Circuit Court of Appeals (7th Cir.) held that charts for recording temperatures were not copyrightable, and therefore not entitled to be registered as drawings of a scientific or technical character, or in any other class mentioned in the Act.

The court was of the opinion that such charts are objects of use and not explanation or instruction, being essential mechanical elements of the instruments on which they are used, and hence come within the doctrine of *Baker v. Selden*, in which the Supreme Court long ago denied copyright to blank forms essential to the operation of a system of bookkeeping. The Supreme Court declined to issue a writ of certiorari to review the case.

Shilkret v. Musicraft Records, Inc. (131 Fed. 2d 929; in Bulletin 24). Here the Circuit Court of Appeals (2d Cir.), overruling the lower court, held that the first proviso to Section 1 (e) of the Copyright Act securing copyright control of mechanical reproduction of music, published and copyrighted after July 1, 1909, applies equally to both unpublished and published musical works. Reasoning *a priori*, the court concluded that, notwithstanding the language used, it was not the purpose of the proviso to effect a discrimination between the two but merely to confine the right of mechanical reproduction to compositions copyrighted after the effective date of the Act. The Supreme Court refused to issue a writ of certiorari to review the decision.

Fred Fisher Music Co., Inc., et al v. M. Witmark & Sons (318 U. S. 643; 57 U. S. P. Q. 50; in Appendix to Bulletin 23). Under Section 23 of the Copyright Act a copyright in a musical composition lasts for 28 years, and the author can renew the copyright if he is still living, by filing an application for renewal within a year before the expiration of the first 28-year period. Under Section 42 a copyright may be assigned, whether it be the original copyright or the renewal copyright, after it has been secured. But can the author, before the renewal year arrives, bind himself by contract to assign away his interest in the renewal copyright after he has subsequently secured it? In this case the Supreme Court, affirming the Circuit Court of Appeals (2d Cir.), answered the question in the affirmative.

Sheldon v. Metro-Goldwyn Pictures Corp. (309 U. S. 390; in Bulletin 23). Section 25 (b) of the Act provides that a copyright infringer shall be liable: "To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as *all the profits* which the infringer shall have made from such infringement . . ." The Circuit Court of Appeals for the Second Circuit had held that the defendant was entitled to deduct from the profits payable to plaintiff such profits as came from their efforts and expenditures, including the selection of the actors, the preparation of scenery and costumes, the hiring of theaters, etc., etc. This resulted in reducing the profits recoverable by plain-

tiff to one-fifth of the total net profits. The Supreme Court granted certiorari and rendered an opinion affirming the judgment of the Circuit Court of Appeals.

Respectfully submitted,

RICHARD C. DEWOLF,
Acting Register of Copyrights.

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