Richard Crosby De Wolf, Acting Register 1944-1945

Richard Crosby De Wolf, Assistant Register of Copyrights, became Acting Register of Copyrights on Jan. 1, 1944, upon Colonel Bouvé's retirement. Mr. De Wolf was born in Des Moines, Iowa, in 1875. He studied two years at Massachusetts Institute of Technology, leaving in 1899 to serve in the U.S. Marines during the Spanish-American War. Thereafter he worked in the Orient and in the Philippine Islands. From 1904 to 1907 he wrote book, drama, and music notices and reviews for the *Boston Transcript.*

He came to the Copyright Office in 1907, received an L.L.B. degree from the George Washington University Law School in 1913, and resigned from the Copyright Office in 1918 to practice law. Among his clients was the Lithuanian Legation, which represented the newly-recognized Government of Lithuania. He also practiced before the Patent Office. He was recalled to the Copyright Office in 1923 as a legal advisor, was Assistant Register from 1934 to 1937, and then again served as legal advisor until he retired in 1941. In 1942, he was again recalled and returned, despite ill health, to assume once more the position of Assistant Register.

Mr. De Wolf was replaced as Acting Register by the new Register, Sam Bass Warner, on Feb. 1, 1945, but stayed on as a special consultant until May 31, 1945. He died at St. Augustine, Fla., on March 8, 1947.

Mr. De Wolf contributed items to literary magazines from time to time throughout his life, and was a writer whose style was especially attractive and elegant. In fact, in moving through documents and reports in the files, one can easily identify his work by its particular sparkle and grace. In addition, he made two contributions of special interest.

He conducted what was certainly one of the first college courses in copyright law, indeed perhaps the first in this country. It was taught at the School of Diplomacy, Jurisprudence, and Citizenship of American University in Washington, D.C. The course was taught as early as 1920,
the University catalog for that year noting that he was "Lecturer on the Law of Copyrights" and that his course was entitled "Copyright Laws of the United States, Statutes and Decisions."

In 1925, Mr. De Wolf's book entitled *An Outline of Copyright* was published by John W. Luce & Company of Boston. It appears that, in this work, he was the first person to put forward the interpretation of the U.S. Constitution, according to which the language "The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" was suggested to be completely disjunctive. In stating this conclusion, Mr. De Wolf wrote: "This is an example of the balanced style of composition so much used in the days of the colonial worthies. We have as the objects of promotion, science and useful arts, as the classes of persons whose rights are to be secured, authors and inventors, and as the subjects of protection, their respective writings and discoveries. If we take this phraseology disjunctively, it resolves itself into two separate statements: (1) The progress of science is to be promoted by securing to authors the right to their writings; and (2) the progress of useful arts is to be promoted by securing to inventors the right to their discoveries. Lawyers, textbook writers, and even judges sometimes seem to have the impression that the proposition is the other

way about—that science is to be promoted through patent protection and useful arts through copyright. But when the Constitution was adopted, the word "science" did not have the specific meaning which it has today—that of natural science. It meant learning in general. And on the other hand, the word "art" was not so closely associated as it now is with the fine arts. One occasionally finds references to the useful arts as being within the scope of copyright protection on account of their having been mentioned in the Constitutional provision referred to. It is doubtful, however, whether the framers of the Constitution had any such idea.

For example, Justice Holmes in his Supreme Court Opinion in 1903 in the case of *Bleistein* v. *Donaldson Lithographing Co.,* 188 U.S. 239, clearly seems to have considered that, to be copyrightable, works had to promote the progress of the useful arts, since he stated that the Constitution "does not limit the useful to that which satisfies immediate bodily needs."

It was not until 1966 that the Supreme Court, in a patent case, *Graham* v. *John Deere Co.,* 383 U.S. 1, endorsed the disjunctive reading, citing De Wolf's book. The acceptance of De Wolf 's view is of enormous practical benefit to authors, since it means that it is only necessary for their works to promote the progress of "science" (that is, knowledge or learning) to be the subject of copyright protection. They need not be "useful," a standard much harder to attain, as shown by the patent cases.

Thus Richard C. De Wolf made indelible markings in the margin of the history of American copyright.