

THE LIBRARY OF CONGRESS

COPYRIGHT OFFICE

**THIRTY-FOURTH
ANNUAL REPORT**

OF THE

REGISTER OF COPYRIGHTS

FOR THE FISCAL YEAR

ENDING JUNE 30

1931



UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON : 1931

PUBLICATIONS OF THE COPYRIGHT OFFICE

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Copyright in Japan. Law of March 3, 1899, and copyright convention between the United States and Japan, May 10, 1906, together with the text of earlier enactments. v+50 pp. 8°. 1906.

BULLETIN No. 14.

The Copyright Law of the United States of America, being the Act of March 4, 1909 (in force July 1, 1909), as amended by the Acts of August 24, 1912, March 2, 1913, March 28, 1914, December 18, 1919, July 3, 1926, and May 23, 1928, together with Rules for Practice and Procedure under Section 25, by the Supreme Court of the United States. 80 pp. 8°. 1931.

BULLETIN No. 16.

Copyright in England. Act 1 and 2 Geo. 5, ch. 46. An Act to amend and consolidate the law relating to copyright, passed December 16, 1911. 54 pp. 8°. 1914.

BULLETIN No. 17. Cloth, 50c.

Decisions of the United States courts involving copyright. 1909-1914. Second enlarged edition. vi, 279 pp. 8°. 1928.

BULLETIN No. 18. Cloth, 60c.

Decisions of the United States courts involving copyright. 1914-1917. ix, 605 pp. 8°. 1918.

BULLETIN No. 19. Cloth, \$1.

Decisions of the United States courts involving copyright. 1918-1924. xi, 477 pp. 8°. 1926.

DRAMATIC COMPOSITIONS COPYRIGHTED IN THE UNITED STATES, 1870-1916. [Over 60,000 titles alphabetically arranged, with complete index to authors, proprietors, translators, etc.] 1 p. l., v. 3547 pp. 4°. 1918. 2 vols. Cloth, \$4.

INFORMATION CIRCULAR. No. 4 A.—International Copyright Convention. Revised text, Berlin, 1908. 10 pp. 4°. No. 4 B.—Additional protocol to the International Copyright Convention of Berlin, November 13, 1908, signed at Berne, March 20, 1914. 2 pp. 4°. No. 4 C.—International Copyright Convention. New revision, signed at Rome, June 2, 1928. French text, with English translation. 14 pp. 4°.

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**REPORT OF THE REGISTER OF COPYRIGHTS
FOR THE FISCAL YEAR 1930-31**

WASHINGTON, D. C., July 9, 1931.

SIR: The copyright business and the work of the Copyright Office for the fiscal year July 1, 1930, to June 30, 1931, inclusive, are summarized as follows:

RECEIPTS

The gross receipts during the year were \$312,865.41. A balance of \$25,127.65, representing trust funds and unfinished business, was on hand July 1, 1930, making a total sum of \$337,993.06 to be accounted for. Of this amount the sum of \$7,197.66 was refunded as excess fees or as fees for articles not registrable, leaving a net balance of \$330,795.40. The balance carried over to July 1, 1931, was \$21,381.10 (representing trust funds and total unfinished business), leaving fees applied during the fiscal year 1930-31 and paid into the Treasury, \$309,414.30.

The annual applied fees since July 1, 1897, are:

		<i>Fees, 1898 to 1931.</i>
1897-98.....	\$55,926.50	1915-16..... \$112,986.85
1898-99.....	58,267.00	1916-17..... 110,077.40
1899-1900.....	65,206.00	1917-18..... 106,352.40
1900-1901.....	63,687.50	1918-19..... 113,118.00
1901-2.....	64,687.00	1919-20..... 126,492.25
1902-3.....	68,874.50	1920-21..... 134,516.15
1903-4.....	72,629.00	1921-22..... 138,516.15
1904-5.....	78,058.00	1922-23..... 149,297.00
1905-6.....	80,198.00	1923-24..... 162,544.90
1906-7.....	84,685.00	1924-25..... 166,909.55
1907-8.....	82,387.50	1925-26..... 178,307.20
1908-9.....	83,816.75	1926-27..... 184,727.60
1909-10.....	104,644.95	1927-28..... 195,167.65
1910-11.....	109,913.95	1928-29..... 308,993.80
1911-12.....	116,685.05	1929-30..... 327,629.90
1912-13.....	114,980.60	1930-31..... 309,414.30
1913-14.....	120,219.25	
1914-15.....	111,922.75	
		Total..... 4,361,840.40

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This is the first year since the end of the World War to show a falling off in the copyright fees. The obvious reason for it seems to be the general depression which has affected all lines of business.

EXPENDITURES

Salaries, 1930-31. The appropriation made by Congress for salaries in the Copyright Office for the fiscal year ending June 30, 1931, was \$233,140. The total expenditure for salaries was \$233,133.39. The expenditure for supplies, including stationery and other articles and postage on foreign mail matter, etc., was \$1,444.52. The total expenditures were therefore \$234,577.91. This sum deducted from \$309,414.30 fees received and turned into the Treasury, shows a profit of \$74,836.39 to the credit of the Copyright Office.

Stationery and sundries.

Copyright registrations and fees, 1897-1931. During the period of 34 years (1897-1931) the copyright business, as evidenced by the applied fees, increased nearly sixfold, from \$55,926.50 to \$309,414.30. During these 34 years since the organization of the present Copyright Office the copyright fees applied and paid into the Treasury have amounted to a grand total of \$4,361,840.40, and the total copyright registrations have numbered over four millions (4,315,615). The fees earned (\$4,361,840.40) were larger than the appropriations for salaries used during the same period (\$3,591,626.05) by \$770,214.35.

Excess of fees over salaries.

Value of copyright deposits. In addition to this direct profit, the large number of over 7,000,000 books, maps, musical works, periodicals, prints, and other articles deposited during the 34 years were of substantial pecuniary value and of such a character that their accession to the Library of Congress through the Copyright Office effected a large saving to the purchase fund of the Library equal in amount to their price.

COPYRIGHT ENTRIES AND FEES

Entries and fees, 1930-31. The registrations for the fiscal year numbered 164,642. Of these, 26,522 were registrations for unpublished works at \$1 each; 129,672 were registrations for published works at \$2 each; 2,450 were registrations of photographs without certificates at \$1 each. There were also 5,998 registrations of renewals at \$1 each. The fees for these registrations amounted to a total of \$294,314.

REPORT OF THE REGISTER OF COPYRIGHTS 3

Summary of copyright business

Balance on hand July 1, 1930.....	\$25, 127. 65	<i>Copyright bus-</i>
Gross receipts July 1, 1930, to June 30, 1931.....	312, 865. 41	<i>ness.</i>
<hr/>		
Total to be accounted for.....	337, 993. 06	
Refunded.....	7, 197. 66	
<hr/>		
Balance to be accounted for.....	330, 795. 40	
<hr/>		
Applied as earned fees.....	\$309, 414. 30	
Balance carried over to July 1, 1931:		
Trust funds.....	\$18, 582. 32	
Unfinished business.....	2, 798. 78	21, 381. 10
		<hr/>
		330, 795. 40
		<hr/>

Fees for fiscal year

Fees for registration of published works, at \$2 each.....	\$259, 344. 00
Fees for registration of unpublished works, at \$1 each.....	26, 522. 00
Fees for registration of photographs without cer- tificates, at \$1 each.....	2, 450. 00
Fees for registration of renewals, at \$1 each.....	5, 998. 00
<hr/>	
Total fees for registrations recorded.....	294, 314. 00
Fees for certified copies of record, at \$1 each.....	\$1, 577. 00
Fees for recording assignments.....	12, 160. 00
Searches made and charged for at the rate of \$1 for each hour of time consumed.....	629. 00
Notice of user recorded (music).....	490. 00
Indexing transfers of proprietorship.....	244. 30
	<hr/>
	15, 100. 30
<hr/>	
Total fees for the fiscal year 1930-31.....	309, 414. 30

Entries

Number of registrations.....	158, 644
Number of renewals recorded.....	5, 998
<hr/>	
Total.....	164, 642
Number of certified copies of record.....	1, 577
Number of assignments recorded or copied.....	3, 631

COPYRIGHT DEPOSITS

The total number of separate articles deposited in compliance with the copyright law which have been registered during the fiscal year is 262,690. The number of these articles in each class for the last five fiscal years is shown in Exhibit E.

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Works claiming copyright. It is not possible to determine exactly how completely the works which claim copyright are deposited, but in response to inquiries received during the year from the card division, the accessions division, law division, and the reading room in regard to 802 books supposed to have been copyrighted but not discovered in the Library, it was found that 74 of these works had been received and were actually in the Library, 19 books had been deposited and were still in the Copyright Office, 86 works were either not published, did not claim copyright, or for other valid reasons could not be deposited, while in the case of 63 works no answers to our letters of inquiry had been received up to June 30, 1931. Copies were received of 560 works in all in response to requests made by the Copyright Office during the period of 12 months for works published in recent years.

Disposal of deposits. Our copyright laws have required the deposit of copies for the use of the Library of Congress, and the act in force demands a deposit of two copies of American books. The act provides, however, that of the works deposited for copyright, the Librarian of Congress may determine (1) what books or other articles shall be transferred to the permanent collections of the Library of Congress, including the law library; (2) what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange; or (3) be transferred to other governmental libraries in the District of Columbia for use therein. The law further provides (4) that articles remaining undisposed of may upon specified conditions be returned to the authors or copyright proprietors.

Transferred to Library of Congress. During the fiscal year a total of 115,979 articles deposited have been transferred to the Library of Congress. This number included 35,566 books, 64,481 periodical numbers, 8,507 pieces of music, 5,197 maps, and 2,228 photographs and engravings.

Transfers to other libraries. Under authority of section 59 of the act of March 4, 1909, there were transferred during the fiscal year to other governmental libraries in the District of Columbia "for use therein" 10,224 books. Under this transfer, up to June 30, 1931, the following libraries have received books as indicated below since 1909:

Department of Agriculture, 3,935; Department of Commerce, 20,173; Navy Department, 1,862; Treasury

Department, 1,496; Bureau of Education, 18,668; Federal Trade Commission, 17,053; Bureau of Standards, 2,094; Surgeon General's library, 7,464; Walter Reed Hospital, 2,608; Engineer School, Corps of Engineers, 3,153; Soldiers' Home, 1,599; Public Library of the District of Columbia, 49,984. A number of other libraries have received a smaller number of books, under 1,000 volumes. In all, 149,656 volumes have been thus distributed during the last 22 years.

The copyright act of 1909 authorizes the return to copyright claimants of such deposits as are not needed by the Library of Congress or the Copyright Office, after due notice as required by section 60. In response to special requests, 9,511 motion-picture films and 80,765 deposits in other classes have been so returned during the fiscal year.

Return of deposits to copyright claimants.

INDEX AND CATALOGUE OF COPYRIGHT ENTRIES

All copyright entries are promptly indexed. The index cards are ultimately inserted into the great card indexes covering all classes of copyright entries from 1897 to date and now numbering more than 7,000,000 cards. These cards are first used as copy for the printed Catalogue of Copyright Entries, the current numbers of which bind up, with annual indexes, to cover for each class all the entries made for the calendar year. The annual volumes for 1930 are all completed.

Copyright catalogue.

Beginning with the year 1928 the copyright entries for dramas and motion pictures make a separate part of the catalogue (part 1, group 3) printed in monthly numbers.

By the Act of Congress approved May 23, 1928, the subscription price for the catalogue was increased, the complete catalogue for the year to \$10 and the separate parts as follows:

Subscription prices.

Part 1, group 1, books proper, \$3; part 1, group 2, pamphlets and maps, \$3; part 1, group 3, dramatic compositions and motion pictures, \$2; part 2, periodicals, \$2; part 3, musical compositions, \$3; part 4, works of art, photographic prints, and pictorial illustrations, \$2; single numbers (except book leaflets), 50 cents; annual indexes, each, for complete calendar year, \$2; all parts for complete calendar year, \$10.

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CORRESPONDENCE

Correspondence. A large part of the business of the Copyright Office is done by correspondence. The total letters and parcels received during the fiscal year numbered 207,550, while the letters, parcels, etc., dispatched numbered 266,638.

ACCOUNTS

Condition of current work. On July 6, 1931, the books of the Copyright Office were balanced for June, the accounts for the fiscal year closed and the financial statements completed for the Treasury Department, showing that all earned fees to June 30 had been paid into the Treasury.

COPYRIGHT OFFICE PUBLICATIONS

Copyright Office publications. The copyright law of the United States now in force was reprinted during the year as Bulletin No. 14 of the Copyright Office as usual.

Other than this and the Catalogue of Copyright Entries printed periodically the office has published nothing during the year, but has now ready for publication a further volume of compiled decisions of the courts relating to copyright which it is hoped will soon be printed to continue the series published in previous years.

COPYRIGHT BILLS IN CONGRESS

Copyright bills in Congress. The third session of the Seventy-first Congress ended on March 4, 1931, without enacting any copyright measures. It opened on December 1, 1930, with the copyright general revision bill (H. R. 12549¹) on the House Calendar as unfinished business and the design copyright bill (H. R. 11852,² passed by the House July 2) in the hands of the Senate Committee on Patents.

DESIGN COPYRIGHT

Design copyright. Public hearings on the design bill were held by the Senate Committee on Patents on December 16, 1930, and January 8, 1931. The first of these was devoted to hearing from the proponents of the bill. Senator Copeland, of New York, though not a member of the committee,

¹ See text of the bill printed in full in the Annual Report of the Register of Copyrights for the fiscal year ending June 30, 1930.

spoke in favor of the bill, and Mr. Sylvan Gotshal organized the program and called upon a number of speakers. The pressing need for this legislation was again demonstrated pretty much as it had been brought out at the hearings of the House committee in the previous February.

At the following hearings on January 8 the opponents of the Vestal design bill had their innings before the Senate committee. A good deal of opposition was developed and some strong arguments were presented. There were those who, while willing to accept the principles of the bill in substance, believed that it would work an injustice in imposing hard conditions upon many industries where little or no complaint of piracy is heard. And there were those who feared abuse of the privilege of registration by unscrupulous designers who would register anything regardless of originality and then proceed to injunctions and suits for infringement. Many thought that some one besides the applicant should pass upon the question of originality.

Among the speakers were Isaac Lande and Kenneth Collins for the National Retail Dry Goods Association; Charles W. Johnson for the Botany Worsted Mills; Milton Tibbets, of the Packard Motor Car Co., for the National Automobile Chamber of Commerce; Allen Sinsheimer for the National Association of Retail Clothiers and Furnishers; Henry W. Carter for the Illinois Glass Co.; Thomas E. Robertson, Commissioner of Patents; and a number of patent attorneys.

Arguments in rebuttal came from Frederick H. Knight, of the Susquehanna Silk Mills; Miss Mary Bendelari; Thorvald Solberg, former register of copyrights; and others.

The design copyright bill was reported out from the Committee in the Senate on February 14, with a majority report by Senator Hebert (Report No. 1627) and a minority report by Senator Dill (Report No. 1627, part 2) on February 19. The bill was considerably changed by important amendments.² The committee, for example, limited the application of the measure to five specific classes of products as follows:

- (1) Textiles, lace and embroideries of all kinds. (2) *Classes of designs.*
Furniture. (3) Lamps and lighting fixtures. (4)

² See full text of the amended bill as reported out in the Senate, and of the reports, on pages 19, 31, and 39 of this report.

Shoes or other footwear. (5) Jewelry or articles manufactured from gold, silver, platinum or other precious metals.

The bill as amended further provides as follows:

SEC. 26. Design patents for designs for manufactured products specified in subdivision (c) of section 1 of this act obtained prior to the effective date of this act under sections 4929, 4930, 4931, and 4934 of the Revised Statutes, as amended, shall remain in full force and effect, but no copyright may be secured under this act in any design for which a patent has been so obtained. On and after the effective date of this act, a design patent may be obtained for any design for any such manufactured product, but such patent shall automatically terminate upon the application of such design to or its embodiment in such manufactured product in the manner provided in this act, but nothing in this section shall be construed to prevent the securing of copyright under this act subsequent to such termination of such design patent.

*Design patent
to continue.*

This means, as explained in the report, that the author of a design is to be protected as heretofore by action in the Patent Office under the provisions of the design patent act so long as his design is not reproduced in a manufactured article. The purpose of this bill (H. R. 11852) is to afford protection by copyright of designs that are applied to certain manufactured products and to transfer the supervision of these copyrights from the Patent Office to the Copyright Office.

*Copyright for
applied designs.*

But the bill, though on the calendar, failed to come up on the floor of the Senate before March 4. It was lost in the pressure of business at the close of the session, and Congress adjourned without passing it.

GENERAL REVISION OF THE COPYRIGHT LAW

*General revision
of the
copyright law.*

The general revision bill (H. R. 12549) with a number of amendments, was passed by the House on January 13, 1931, by a vote of 185 to 34, and was sent to the Senate and referred to the Senate Committee on Patents.

At this juncture Senator King introduced a bill^a to amend the present copyright law by limiting the term of copyright to 17 years and for other purposes. This bill is printed in full on page 42 of this report.

^a 1931 (Jan. 13). A bill to amend sections 23, 25, and 28 of the act entitled "An act to amend and consolidate the acts respecting copyright," approved Mar. 4, 1909, and for other purposes. Introduced by Mr. King, S. 5687, and referred to the Committee on Patents.

Public hearings were held on the general revision bill (H. R. 12549)⁴ before the Senate Committee on Patents on January 28 and 29, 1931. The attendance was large and the interest manifested was keen, while the argument, which waxed warm at times, ranged chiefly around the new and fundamental features of the bill, viz, automatic copyright, no requirement of a notice, and adherence by the United States to the International Copyright Union.

*Public hearings
on general revision
bill.*

The opponents of the measure were heard first, the most prominent among them being the radio broadcasters and the manufacturers and operators of coin-operated machines used in drug stores and restaurants. The broadcasters emphasized the impracticability for their purposes of an unrecorded copyright dating from the creation of the work. The radio opposition was presented by William S. Hedges, chairman of the executive committee of the National Association of Broadcasters; Oswald F. Schuette, executive secretary of the Radio Protective Association; Louis G. Caldwell, counsel for the National Association of Broadcasters, and others. Eugene C. Brokmeyer, of the National Association of Retail Druggists, and H. E. Capehart, representing manufacturers of slot machines, presented the case for those interests.

Thorvald Solberg, former Register of Copyrights; H. H. B. Meyer, of the Library of Congress; and M. L. Raney, of the University of Chicago, spoke in opposition to the importation provisions of the bill. Objection to the longer term of copyright covering the life of the author and 50 years after his death was voiced by a number of speakers, among them John W. Ziegler, a Philadelphia publisher. Other speakers included A. Julian Brylawski and F. J. Rembusch, representing the motion-picture theater owners.

The second day was devoted to those who were in favor of the bill. William Hamilton Osborne, counsel for the Authors' League, led the program and marshaled the speakers, who presented strong argument in support of the measure and made earnest plea for the passage of this bill, which is the result of so many years of effort and upon the essentials of which authors, composers, publishers, and many interests dealing with copyright prop-

⁴For the text of the bill see Annual Report of the Register of Copyrights for the fiscal year ending June 30, 1930.

erty are in substantial agreement. Among the speakers were Chester T. Crowell for the Authors' League of America; Gene Buck and Louis D. Froelich for the American Society of Composers, Authors, and Publishers; Otto C. Wierum, of the New York City Bar Association; Arthur W. Weil and Louis E. Swarts for the Motion Picture Producers and Distributors of America, Frederic G. Melcher for the National Association of Book Publishers; M. J. Flynn, representing the Allied Printing Trades; and George C. Lucas, representing the newspaper and magazine publishers.

Thorvald Solberg presented a lucid statement of the three international copyright conventions, those of 1886, 1908, and 1928, and argued for adhesion to the Rome convention of 1928. He offered three amendments to the bill and the session closed with more than a score of amendments offered for the committee's consideration.

General revision bill in the Senate.

The general revision bill was reported out from the committee in the Senate February 23, 1931, with a report by Senator Hebert. (Report No. 1732.) The text of the bill as reported with committee amendments is printed on page 45 of this report, followed by Report No. 1732. It came up on the floor of the Senate on February 27 (Friday) and considerable debate ensued. It was again under debate when the Senate recessed at 3 o'clock on the morning of March 3 (Tuesday). But it had no further presentation in the crowded hours at the close of the session and Congress adjourned on March 4 without passing the bill.

On March 2, when it seemed doubtful if the general revision bill could be passed before the end of the session, a joint resolution⁵ was introduced in the Senate by Senator Davis, providing for the extension of all existing copyrights which would expire meantime to January 1, 1935. But it failed of adoption. The text of this resolution is printed on page 104 of this report.

COPYRIGHT IN CANADA

Copyright in Canada.

In June the Parliament at Ottawa passed an act to amend the copyright act of Canada, which was assented to and became the law on June 11, 1931. As described

⁵ 1931 (Mar. 2). Joint resolution extending the duration of copyright protection in certain cases. S. J. Res. 204. Introduced by Mr. Davis and referred to the Committee on Patents.

in the notes accompanying it, the bill was not intended to revise generally the copyright act (R. S. C. 1927 C 32) but to amend that act only in so far as is necessary to bring Canadian copyright legislation into conformity with the provisions of the Rome convention and to insure that the new methods of dissemination and performance introduced by recent inventions shall be covered by the act.

It provides, among other things, that "The Governor in Council may take such action as may be deemed necessary to secure the adherence of Canada to the revised convention for the protection of artistic and literary works which was signed at Rome the second day of June, 1928."

One of the new provisions is in paragraph 10 which regulates the conduct of those organizations that acquire copyrights of musical or dramatico-musical works, or of performing rights therein, and issue licenses for the performance, in Canada, of such works. It further provides that the fees, charges, and royalties shall be subject to revision by the Governor in Council, in certain eventualities.

Provision is made for the author's right to restrain acts prejudicial to his honor or reputation. Provision is made, too, for the performance without infringement of any musical work by any church, college, or school or by any religious, charitable, or fraternal organization, whenever such performance is given without private profit for religious, educational, or charitable purposes, including performance at any agricultural exhibition or fair which is held under Dominion, Provincial, or municipal authority.

The term of copyright is the life of the author and for a period of 50 years after his death, and the act to amend provides that in the case of a work of joint authorship copyright shall subsist during the life of the author who dies last, and for a term of 50 years after his death.

INTERNATIONAL COPYRIGHT

It is now (July 27, 1931) reliably reported that the following countries have declared adherence to the convention of Rome of 1928: Bulgaria, Canada, Finland, Great Britain, India, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, and Yugoslavia. *International copyright.*

The convention creating an International Union for the Protection of Literary and Artistic Works, signed at Berlin November 13, 1908; revised and signed at Rome June 2, 1928, provides (art. 28):

(1) The present convention shall be ratified, and the ratifications shall be deposited at Rome not later than July 1, 1931.

(2) It will go into effect between the countries of the union which have ratified it one month after that date. However, if, before that date, it has been ratified by at least six countries of the union it will go into effect as between those countries of the union one month after the deposit of the sixth ratification has been notified to them by the Government of the Swiss Confederation and, for the countries of the union which shall later ratify, one month after the notification of each such ratification.

(3) Countries that are not within the union may, until August 1, 1931, enter the union, by means of adhesion, either to the convention signed at Berlin November 13, 1908, or to the present convention. After August 1, 1931, they can adhere only to the present convention.

Meantime the adherence of the United States to the International Copyright Union has been deferred by the failure of passage in the last Congress of the copyright bill which provided (among other things) for the entry of this country into the union.

No new copyright proclamations have been issued within the period covered by this report extending copyright privileges in the United States to nationals of other countries in exchange for protection accorded to American authors in those countries.

Respectfully submitted.

WILLIAM L. BROWN,
Acting Register of Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

EXHIBITS

EXHIBIT A

Statement of gross receipts, refunds, net receipts, and fees applied for fiscal year ending June 30, 1931

Month	Gross receipts	Refunds	Net receipts	Fees applied
1930				
July.....	\$28,413.53	\$568.96	\$27,850.57	\$25,098.40
August.....	20,999.30	446.80	20,552.50	24,427.60
September.....	26,193.45	366.92	25,826.53	25,405.10
October.....	27,101.28	534.20	26,567.08	27,915.90
November.....	24,304.56	439.20	23,865.36	25,197.20
December.....	31,341.81	591.98	30,759.83	27,290.70
1931				
January.....	30,457.37	590.98	29,866.39	27,186.30
February.....	22,901.00	494.15	22,406.85	23,915.20
March.....	25,061.45	513.45	24,548.00	26,246.80
April.....	26,603.13	1,760.57	24,842.56	26,513.60
May.....	23,074.87	437.25	22,637.62	24,628.80
June.....	26,413.66	458.20	25,960.46	25,588.70
Total.....	312,865.41	7,197.66	305,667.75	309,414.30

Balance brought forward from June 30, 1930.....	\$25,127.56
Net receipts July 1, 1930, to June 30, 1931:	
Gross receipts.....	\$312,865.41
Less amount refunded.....	7,197.66
	305,667.75
Total to be accounted for.....	330,795.40
Copyright fees applied July 1, 1930, to June 30, 1931.....	\$309,414.30
Balance carried forward to July 1, 1931:	
Trust funds.....	18,582.32
Unfinished business.....	2,796.78
	20,379.10
	330,795.40

REPORT OF THE REGISTER OF COPYRIGHTS

EXHIBIT B.—Record of applied fees

Month	Registrations of published works, including certificates		Registrations of unpublished works, including certificates		Registrations of published photos, no certificate		Registrations of renewals		Total number of registrations	Total fees for registrations
	Number	Fees at \$2	Number	Fees at \$1	Number	Fees at \$1	Number	Fees at \$1		
1930										
July.....	10,563	\$21,126.00	2,181	\$2,181.00	433	\$433.00	407	\$407.00	13,584	\$24,147.00
August.....	10,168	20,336.00	2,378	2,378.00	168	168.00	365	365.00	13,069	23,237.00
September.....	11,031	22,062.00	2,133	2,133.00	227	227.00	57	57.00	13,448	24,479.00
October.....	11,588	23,176.00	2,042	2,042.00	273	273.00	967	967.00	14,870	26,458.00
November.....	10,253	20,506.00	2,043	2,043.00	154	154.00	786	786.00	13,236	23,489.00
December.....	11,905	23,810.00	2,007	2,007.00	156	156.00	271	271.00	14,339	26,244.00
1931										
January.....	11,289	22,578.00	2,227	2,227.00	297	297.00	554	554.00	14,367	25,656.00
February.....	9,949	19,898.00	2,376	2,376.00	129	129.00	445	445.00	12,899	22,848.00
March.....	10,901	21,802.00	2,586	2,586.00	250	250.00	445	445.00	14,182	25,063.00
April.....	11,232	22,464.00	2,291	2,291.00	130	130.00	559	559.00	14,212	25,444.00
May.....	9,845	19,690.00	2,180	2,180.00	124	124.00	661	661.00	12,810	22,655.00
June.....	10,948	21,896.00	2,083	2,083.00	114	114.00	481	481.00	13,626	24,574.00
Total.....	129,672	259,344.00	26,522	26,522.00	2,450	2,450.00	5,998	5,998.00	164,642	294,314.00
Month	Copies of record		Assignments and copies		Indexing transfers of proprietorship		Notices of user		Search fees	Total fees applied
	Number	Fees at \$1	Number	Fees	Number	Fees at \$0.10	Number	Fees		
1930										
July.....	62	\$62.00	251	\$734.00	244	\$24.40	47	\$73.00	\$58.00	\$25,098.40
August.....	80	80.00	285	994.00	46	4.60	22	32.00	80.00	24,427.60
September.....	108	108.00	257	722.00	331	33.10	20	28.00	35.00	25,405.10
October.....	125	125.00	403	1,190.00	179	17.90	45	63.00	62.00	27,915.90
November.....	137	137.00	455	1,442.00	262	26.20	34	35.00	68.00	25,197.20
December.....	128	128.00	234	840.00	177	17.70	21	11.00	50.00	27,290.70
1931										
January.....	261	261.00	361	1,156.00	173	17.30	48	53.00	43.00	27,186.30
February.....	83	83.00	276	866.00	202	20.20	50	53.00	45.00	23,915.20
March.....	206	206.00	316	850.00	278	27.80	40	42.00	38.00	26,246.80
April.....	81	81.00	315	890.00	146	14.60	30	36.00	48.00	26,513.80
May.....	175	175.00	214	1,688.00	178	17.80	38	39.00	54.00	24,628.80
June.....	131	131.00	284	788.00	227	22.70	20	25.00	48.00	25,588.70
Total.....	1,577	1,577.00	3,631	12,160.00	2,443	244.30	415	490.00	629.00	306,414.30

EXHIBIT C

Statement of gross cash receipts, yearly fees, number of registrations, etc., for
54 fiscal years

Year	Gross receipts	Yearly fees applied	Number of registrations	Increase in registrations	Decrease in registrations
1897-98.....	\$81,099.56	\$55,928.50	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	92,351		2,447
1901-02.....	68,405.08	64,687.00	92,978	627	
1902-03.....	71,533.91	68,874.50	97,979	5,001	
1903-04.....	75,302.83	72,629.00	103,130	5,151	
1904-05.....	80,440.56	78,058.00	113,374	10,244	
1905-06.....	82,610.92	80,198.00	117,704	4,330	
1906-07.....	87,384.31	84,685.00	123,829	6,125	
1907-08.....	85,042.03	82,387.50	119,742		4,087
1908-09.....	87,085.53	83,816.75	120,131	389	
1909-10.....	113,662.83	104,644.95	109,074		11,057
1910-11.....	113,661.52	109,913.95	115,198	6,124	
1911-12.....	120,149.51	116,685.05	120,931	5,733	
1912-13.....	118,968.26	114,980.60	119,495		1,436
1913-14.....	122,636.92	120,219.25	123,154	3,659	
1914-15.....	115,594.55	111,922.75	113,193		7,961
1915-16.....	115,663.42	112,986.85	115,967	774	
1916-17.....	113,806.51	110,077.40	111,438		4,529
1917-18.....	109,105.87	106,352.40	108,728		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.....	141,199.33	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	162,694	13,748	
1924-25.....	173,971.95	166,909.55	165,848	3,164	
1925-26.....	185,038.29	178,307.20	177,635	11,787	
1926-27.....	191,375.16	184,727.60	184,000	6,365	
1927-28.....	201,054.49	195,167.65	193,914	9,914	
1928-29.....	322,135.82	308,993.80	161,959		31,955
1929-30.....	336,980.75	327,629.90	172,792	10,833	
1930-31.....	312,865.41	309,414.30	164,642		8,150
Total.....	4,528,478.74	4,361,840.40	4,315,615		

REPORT OF THE REGISTER OF COPYRIGHTS

EXHIBIT D

Number of registrations made during the last five fiscal years

Class	Subject matter of copyright	1926-27	1927-28	1928-29	1929-30	1930-31
A	Books:					
	(a) Printed in the United States—					
	Books proper.....	10,649	13,401	13,501	15,221	14,175
	Pamphlets, leaflets, etc.....	32,019	30,585	25,205	26,135	27,143
	Contributions to newspapers and periodicals.....	29,335	26,986	13,574	14,587	12,698
	Total.....	72,003	70,972	52,280	55,943	54,016
	(b) Printed abroad in a foreign language.....	3,777	4,405	3,868	4,664	4,339
	(c) English books registered for ad interim copyright.....	1,356	1,704	1,466	1,228	1,198
	Total.....	77,136	77,081	57,614	61,835	59,553
	B	Periodicals (numbers).....	41,475	47,864	44,161	43,939
C	Lectures, sermons, addresses.....	302	389	348	567	563
D	Dramatic or dramatico-musical compositions.....	4,475	4,473	4,594	5,734	5,784
E	Musical compositions.....	25,282	26,897	27,023	32,129	31,488
F	Maps.....	2,677	2,862	2,232	2,554	2,940
G	Works of art, models or designs.....	2,575	3,152	2,486	2,734	2,551
H	Reproductions of works of art.....	0	0	0	0	0
I	Drawings or plastic works of a scientific or technical character.....	1,229	1,705	1,511	1,687	1,993
J	Photographs.....	7,415	7,968	4,850	4,311	3,618
K	Prints and pictorial illustrations.....	14,833	14,272	9,873	9,170	5,813
L	Motion-picture photoplays.....	1,271	1,288	1,087	890	940
M	Motion pictures not photoplays.....	644	1,016	1,232	1,305	966
R	Renewals.....	4,686	5,447	4,948	5,937	5,998
	Total.....	184,000	193,914	161,969	172,792	164,642

REPORT OF THE REGISTER OF COPYRIGHTS

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EXHIBIT E

Number of articles deposited during the last five fiscal years

Class	Subject matter of copyright	1926-27	1927-28	1928-29	1929-30	1930-31
A	Books:					
	(a) Printed in the United States—					
	Books (proper).....	21,580	26,802	27,002	30,442	28,350
	Pamphlets, leaflets, etc.....	65,723	61,170	50,582	51,996	54,348
	Contributions to newspapers and periodicals.....	29,232	26,986	13,574	14,587	12,698
	Total.....	116,535	114,958	91,158	97,025	95,396
	(b) Printed abroad in a foreign language....	3,777	4,405	3,689	4,664	4,339
	(c) English works registered for ad interim copyright.....	1,356	1,704	1,466	1,228	1,198
	Total.....	121,668	121,067	96,313	102,917	100,933
	B	Periodicals.....	81,826	94,728	87,926	87,992
C	Lectures, sermons, etc.....	298	389	336	555	563
D	Dramatic or dramatic-musical compositions.....	5,117	5,156	5,205	6,604	6,502
E	Musical compositions.....	35,573	37,654	37,051	41,183	39,040
F	Maps.....	5,296	5,724	4,452	4,947	5,809
G	Works of art, models or designs.....	2,580	3,152	2,569	2,993	2,636
H	Reproductions of works of art.....	0	0	0	0	0
I	Drawings or plastic works of a scientific or technical character.....	2,350	2,783	2,428	2,837	3,121
J	Photographs.....	14,379	15,414	9,337	8,032	6,666
K	Prints and pictorial illustrations.....	21,171	19,652	14,012	12,887	8,761
L	Motion-picture photoplays.....	8,665	2,552	2,196	1,779	1,846
M	Motion pictures not photoplays.....	1,040	1,633	2,379	2,688	1,923
	Total.....	299,963	310,209	264,204	275,214	262,690

ADDENDA

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I. An act amending the Statutes of the United States to provide for copyright registration of designs (H. R. 11852), in the Senate February 14, 1931, with amendments.....	19
II. Senate report No. 1627 to accompany H. R. 11852 (design copyright).....	31
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III. A bill to amend sections 23, 25 and 28 of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, and for other purposes (S. 5687).....	42
IV. An act to amend and consolidate the acts respecting copyright and to permit the United States to enter the Convention of Berne for the Protection of Literary and Artistic Works (H. R. 12549) in the Senate February 23, 1931, with amendments.....	45
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VI. Joint resolution extending the duration of copyright protection in certain cases (S. J. Res. 264).....	104

ADDENDUM I

[71st Cong., 3d sess. H. R. 11852. Report No. 1627. In the Senate of the United States. July 3, 1930]

[NOTE: The text included between black brackets is struck out and the matter in italics is added.]

AN ACT Amending the Statutes of the United States to provide for copyright registration of designs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a citizen of or domiciled in the United States, or who is a citizen or subject of a foreign State or nation with which the United States shall have established reciprocal copyright relations, and who is the author of any design as hereinafter defined, or the legal representative or assignee of the author of such a design, may secure copyright therein upon compliance with the provisions of this act.

Within the meaning of this act—

(a) An author is one who originates a design and in so doing contributes intellectual or artistic effort to the composition thereof.

(b) [A design is a pattern applied to, or a shape or form of, a manufactured product which is not of itself a work of art, and shall include dies, molds, or devices by] *A design is a pattern applied to, or a shape or form of, any manufactured product included in any class enumerated in the following paragraph, which is not of itself a work of art, and shall include dies, molds, or devices by which such a pattern, shape, or form, may be produced, original in its application to or embodiment in such manufactured product, by reason of an artistic or intellectual effort, and which produces an artistic or ornamental effect or decoration, but shall not include patterns or shapes or forms which have merely a functional or mechanical purpose.*

(c) *The manufactured products to which this act shall apply are the following:*

(1) *Textiles, lace, and embroideries of all kinds, whether the designs are woven into or applied to the*

surfaces of, or incorporated into the substance or fiber of the fabric;

- (2) Furniture;*
- (3) Lamps and lighting fixtures;*
- (4) Shoes or other footwear;*
- (5) Jewelry or articles manufactured from gold, silver, platinum, or other precious metals.*

SEC. 2. The owner of a design copyright shall have, within all the territory which is under the jurisdiction and control of the United States, for the periods and subject to the limitations hereinafter prescribed, the right to exclude others from selling or distributing manufactured products which embody or contain copies of or colorable imitations made by copying the copyrighted design or any characteristic original feature thereof, if such manufactured products are in the same class as, or are similar to, the product to which the copyrighted design has been applied or in which it has been embodied.

SEC. 3. As prerequisites to copyright protection under this act the author or his legal representative or his assignee must (1) actually cause the design to be applied to or embodied in the manufactured product; (2) mark such product in the manner specified in section 5 of this act; (3) introduce such product to the public in territory under the jurisdiction and control of the United States, by selling it or offering it for sale; and (4) within six calendar months of the time when such manufactured product was first actually so introduced to the public, file an application in the copyright office in the form prescribed under authority of section 21 of this act, and in such application state under oath (a) that he is the author of the design for which he solicits registration or (b) that he is the assignee or legal representative of such author and verily believes the author named in the application to be the originator of such design. Such application shall include the prescribed number of copies of a photograph or other identifying representation of the design as applied to or embodied in the said manufactured product and shall give the date when such manufactured product was so introduced to the public; and copyright shall be secured upon and from the date of such introduction of the manufactured product to the public, subject to the provisions of this act: *Provided, however,* That such application is filed within six cal-

endar months of any sale in any country of such manufactured product and of any publication not under copyright protection in any country of such design, if such sale or such publication is made by or with the consent of the author, his assignee, or legal representative.

SEC. 4. Upon each entry of a claim for copyright in any design made subject matter of copyright by this act, the person recorded as the claimant of copyright shall be entitled to a certificate of registration under the seal of the copyright office, which shall state the name, citizenship, and address of the author of the design and of the owner of the copyright in such design, if other than the author; the name or designation of the class of manufactured product in which the design has been embodied or to which it has been applied; the date when the application for registration was filed in the copyright office; the date when copyright was secured as provided in section 3 of this act; and such marks as to class designation and entry number as shall fully identify the entry of the claim of copyright. Said certificate shall be prima facie evidence of the facts stated therein. A duplicate certificate under the seal of the copyright office shall be supplied to any person requesting the same upon payment of the fee. When a design actually embodied in or applied to one manufactured product is in substantially the same form to be embodied in or applied to a set of manufactured products of the same general character ordinarily on sale together or intended to be used together, a single application for registration and one certificate of registration shall suffice.

SEC. 5. It shall be the duty of the owner of a design in which copyright is secured under this act or his licensee to give notice to the public that the design is protected under this act by affixing to the manufactured product the mark "Design copyrighted" and by adding thereto with reasonable promptness after registration the number of the registration entry. When the nature of the product will not permit the affixing of these marks in full it shall be sufficient to use the abbreviation "D. copr." or the letter "D" inclosed within a circle, thus © with or without the registration number.

When such abbreviation or symbol is used, or when the product itself will not permit the affixing of any of these marks, it shall be sufficient and necessary to attach a label or tag to the product or to the package or cover

containing the product in which the design is embodied or to which it is applied, containing the name of the manufactured product and plainly marked with the words "Design copyrighted," to which must be added with reasonable promptness after registration, the registration number.

In the case of any manufactured product in which the design is repeated, such as [wall paper or] textiles, one marking on the manufactured product embodying or containing the design, shall suffice.

In any action or suit for infringement by a party failing to comply with the above-stated provisions of this section no recovery shall be adjudged the plaintiff and no injunction shall be granted except on proof that the failure to mark was merely occasional and inadvertent: *Provided, however,* That there shall be no recovery against an innocent infringer who has been misled by the omission of the notice, and in such case no permanent injunction shall be had unless the copyright owner shall reimburse to the innocent infringer his reasonable outlay innocently incurred, if the court, in its discretion, shall so direct.

SEC. 6. Copyright secured under this act shall initially endure for a term of two years from the first sale or offer for sale of the manufactured product to which the design is applied or in which it is embodied. At any time before the expiration of the two-year term an extension of the copyright may be registered for a further period of eighteen years to secure a total period of protection of twenty years upon filing an application for such extension and paying the fees prescribed in section 22 of this act.

SEC. 7. Every copyright secured under the provisions of this act, or any interest therein, shall be assignable in law by an instrument in writing; and the copyright owner may, in like manner, grant and convey an exclusive right under such copyright for the whole or any part of the United States.

Such assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the copyright office within three calendar months after its execution in the United States, or within six calendar months after its execution without the limits of the United States, or prior to such subse-

quent purchase or mortgage. If such assignment, grant, or conveyance be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any dependencies of the United States, or before any officer authorized to administer oaths in the United States or its dependencies and the Panama Canal Zone or the Philippine Islands, or any clerk or commissioner of any United States district court, or before a secretary in the diplomatic service or a diplomatic or consular officer of the United States authorized by law to administer oaths or perform notarial acts, or before any notary public, judge, or magistrate of any foreign country authorized to administer oaths or perform notarial acts in such country, whose authority shall be proved by the certificate of a secretary in the diplomatic service or a diplomatic or consular officer of the United States, the certificate of such acknowledgment or the record thereof in the copyright office, when made, shall be prima facie evidence of the execution and delivery of such assignment, grant, or conveyance.

SEC. 8. Infringement shall include unlicensed copying of or colorable imitation by copying the copyrighted design or any characteristic original feature thereof in manufactured products in the same class, or any similar product, for the purpose of sale or public distribution; or selling or publicly distributing or exposing for sale or public distribution any such product embodying or containing such a copy or colorable imitation: *Provided, however,* That if such sale or public distribution or exposure for sale or public distribution is by anyone other than the manufacturer or importer of the copy or colorable imitation, it shall be unlawful only as to goods purchased after written notice of a restraining order or preliminary injunction, or of an order granting a preliminary injunction, or of a decree by any court having jurisdiction in the premises, in any action brought under this act by the copyright owner for infringement of such copyright, or of any order or decision in such an action in which the court, although refusing injunctive relief, states that in its opinion, based on the affidavits or testimony submitted, such copyright is for an original design and otherwise valid, and in the absence of such notice the remedies and penalties provided for in section 10 of this act shall not apply; the words "manufacturer" and "importer" as used in this section shall be con-

strued as including anyone who induces or acts in collusion with a manufacturer to make, or an importer to import, a colorable imitation or an unauthorized copy of a copyrighted design, but purchasing or giving an order for purchase in the ordinary course of business shall not in itself be construed as constituting such inducement or collusion: *Provided, however,* That to obtain the benefit of this exemption a prompt and full disclosure must be made to the copyright owner upon request as to the source and all particulars of the purchase of the goods, and the evidence thereof must be given if requested in any suit or action against the manufacturer or importer.

SEC. 9. The following shall not be held infringing acts:

(a) Repairing manufactured articles protected under this act, or making or selling parts of manufactured articles, whether individually protected or not, for use as repair parts;

[(b) Making and/or illustrating or selling patterns for dressmaking, or making a garment from such a pattern or embodying a copyrighted design for the individual use of the maker or a member of the family of the maker, or having such a garment made by an individual employee for the use of the employer or a member of the family of the employer;]

[[c]b) Illustrating designs by pictorial representation, or publicly distributing or exhibiting such illustrations or pictorial representations of designs;

[[d]c) Making any reproduction, copy, use, sale, or public distribution of any design copyrighted under this act in any motion picture, and in whatever form used in connection with the advertisement, distribution, or sale or other disposition of motion pictures: *Provided, however,* That none of the acts specified in this section shall affect the force or validity of any copyright in any design under this act.

SEC. 10. Anyone who shall infringe any copyrighted design shall be liable—

(a) To an injunction restraining such infringement;

(b) To account for and pay the profits and damages resulting from the infringement, which in the discretion of the court may be trebled.

The court may dispense with an accounting—

(1) In cases where the plaintiff may so request, or where from the record it is apparent to the court that an accounting would not find damages or profits to exceed \$2,500 where defendant is a manufacturer or importer and \$100 in any other case. In any such case where the defendant is a manufacturer or importer, the defendant shall be held liable to pay to the plaintiff not less than \$2,500, and in any other such case the defendant shall be held liable to pay the plaintiff not less than \$100, as compensation and not as a penalty.

(2) In cases where the copying complained of was without knowledge or notice of the copyright.

The court may order to be delivered up and destroyed or otherwise disposed of, as shall be just as between the parties, all infringing articles, products, or parts, and all dies, models, and devices useful only in producing the infringing article or product, and all labels, prints, or advertising matter relating to the infringing article or product.

SEC. 11. No relief shall be granted where an infringement has continued with the knowledge of the owner of the copyright for a period of two years prior to the commencement of the suit or action; and in no event shall there be a recovery of profits or damages for acts of infringement committed more than three years prior to the commencement of the suit or action.

SEC. 12. When registration has been made in the copyright office of any design as provided in this act, written, printed, or photographic copies of any papers, drawings, or photographs relating to such design preserved in the copyright office shall be given to any person making application therefor and paying the fees required by this act, and such copies when authenticated by the seal of the copyright office shall be evidence of the same force and effect as originals.

SEC. 13. In an action or suit for infringement of copyright in a design registered under this act there shall be a presumption of originality in the registered design and of validity in the registration thereof; and a presumption of copying may in the discretion of the court be held to arise from substantial resemblance to the registered design in defendant's design.

SEC. 14. The district and territorial courts of the United States and its insular possessions, including the courts of first instance of the Philippine Islands, the district court of the Canal Zone, and the Supreme Court of the District of Columbia, shall have original jurisdiction, and the Circuit Courts of Appeals of the United States, the Court of Appeals of the District of Columbia, and the Supreme Court of the Philippine Islands shall have appellate jurisdiction of proceedings respecting designs protected under the provisions of this act.

SEC. 15. Writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this act in the same manner as provided in the Judicial Code as amended by the act of February 13, 1925.

SEC. 16. After adjudication and entry of a final decree by any court in any action brought under this act, any of the parties thereto may, upon payment of the legal fees, have the clerk of the court prepare a certified copy or copies of such decree, or of the record, or any part thereof, and forward the same to any of the designated courts of the United States, and any such court to which such copy or copies may be forwarded under the provisions of this section shall forthwith make the same a part of its record; and any such record, judgment, or decree may thereafter be made, as far as applicable, the basis of an application to that court for injunction or other relief; and in the preparation of such copies the printed copies of the record of either party on file with the clerk may be used without charge other than for the certificate. When the necessary printed copies are not on file with the clerk either party may file copies which shall be used for the purpose, and in such cases the clerk shall be entitled to charge a reasonable fee for comparing such copies with the original record before certification and for certifying the same.

SEC. 17. If the copyright in a design shall have been adjudged invalid and a judgment or decree shall have been entered for the defendant, the clerk shall forward a certified copy of such judgment or decree to the register of copyrights, who shall forthwith make the same a part of the records of the copyright office.

SEC. 18. (a) Any person who shall register a design under this act, knowing or having reason to know that the design is not an original work of authorship of the person named as author in the application for registra-

tion, or knowing or having reason to know that the ownership of the copyright therein is falsely stated in the application for registration, shall be guilty of a misdemeanor punishable by a fine of ~~[\$2,500]~~ \$1,000, or such part thereof as the court may determine.

(b) Any person who shall bring an action or suit for infringement of a design alleged to be protected under this act, and known by the plaintiff to be not an original work of authorship of the person alleged to be the author of said design, shall, upon due showing of such knowledge, be liable in the sum of ~~[\$2,500]~~ \$1,000, or such part thereof as the court may determine, as compensation to the defendant to be charged against the plaintiff and paid to the defendant in addition to the customary costs.

(c) Any person who shall, because of notice given under section 8 of this act by the owner of a copyright secured under this act, or by his licensee, discontinue the purchase, sale, or distribution of products alleged by such owner or licensee to be an infringement of such copyright, shall recover from such owner and/or licensee such damages as he shall have sustained by reason of compliance with such notice, if such owner or licensee knew, or had reason to know, that the design alleged to be protected under this act was not an original work of authorship of the person alleged to be the author of said design.

(d) Any person who, with fraudulent intent, marks one or more manufactured products which are not protected by design copyright, so as falsely to indicate that they are so protected, shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding \$500.

SEC. 19. Nothing in this act shall be construed to impair, limit, or annul the right of an author of a design, or the legal representative or assignee of such author, prior to the copyrighting of such design under this act, to prevent unauthorized application or embodiment of such design or any characteristic original feature thereof, to or in any manufactured product, and the exposure for sale or public distribution, or the sale or public distribution of such manufactured product, as a result of the confidential disclosure of such design, and to recover the profits and damages arising therefrom by suit in equity or action at law; and the marking upon a drawing

or other representation of such design of the name of the author and the words "design copyright reserved" is hereby authorized as reserving the right to have the design copyrighted under this act as and when applied to or embodied in a manufactured product and introduced to the public pursuant to this act.

SEC. 20. Registration under this act shall not constitute any waiver or abandonment of any trade-mark rights in the design registered.

SEC. 21. The register of copyrights shall be authorized, [for convenience of copyright office administration, to determine and designate the different classes of manufactured products under which registration may be made, and,] subject to approval by the Librarian of Congress, to make rules and regulations for [such] registration *under this act*, and for the form of the required certificate [: *Provided, however,* That such classification shall not be held to limit or extend the rights of the author of the design or his legal representative or assignee].

SEC. 22. The register of copyrights shall receive, and the persons to whom the services designated in this act are rendered, shall pay the following fees: (1) For the registration for the first term of two years under this act, \$3; (2) for the registration of the extension of the period of protection to twenty years, as provided herein, \$20; and the payment of the said fees shall include, in each case, the certificate provided for in this act; (3) for a duplicate certificate of any registration made, \$1; (4) for recording any document in the copyright office, as provided in section 7 of this act, or for furnishing certified copies of any such document, \$1 for each copyright office record-book page or fraction thereof up to five pages, and 50 cents for each such page or fraction thereof beyond five pages; (5) for copies of any registration made, or of drawings or photographs or other identifying reproductions filed in relation to any design registered, and for comparing such copies with the originals before certification, a reasonable fee and 50 cents additional for certification of each such copy under seal of the copyright office.

[SEC. 23. All designs registered for the first term of two years shall be listed in the Catalogue of Copyright Entries prepared and printed under the provisions of the act of March 4, 1909, and shall be further identified by a representation of the design, and each extension

registration shall be listed in said catalogue. The periodic issues of said catalogue may be subscribed for upon application to the Superintendent of Public Documents, at a price to be determined by the register of copyrights for each part of the catalogue, not exceeding \$10 for the complete Catalogue of Copyright Entries provided by the act approved March 4, 1909, or \$10 for the catalogue of designs registered under this act. The Catalogue of Copyright Entries for designs shall be admitted in any court as prima facie evidence of the facts therein stated as regards any copyright registration for a design made under the provisions of this act.]

Sec. 23. The register of copyrights shall fully index all registrations and assignments of design copyrights under this act. In addition to the catalogues provided for under the act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, as amended, the register of copyrights shall print and distribute separate catalogues of all design copyright entries, which shall include representations of such designs for purposes of identification and all extension registrations of such designs. Such separate catalogues shall be of the same general character, and shall be printed and distributed at the same times and in the same manner, as the catalogues provided for under such act of March 4, 1909, as amended, and may be subscribed for upon application to the Superintendent of Public Documents, at a price to be determined by the register of copyrights. The current catalogues of design copyright entries and the indexes in connection therewith shall be admitted in any court as prima facie evidence of the facts therein stated as regards any copyright registration for a design made under the provisions of this act.

SEC. 24. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for clerical services, office rental and equipment, stationery and supplies, for carrying into effect this act for the fiscal year ending June 30, 1931, \$100,000, or so much thereof as may be necessary, the same to be available immediately upon the approval of this act, and thereafter such sums as Congress may deem necessary, to be expended by the Librarian of Congress.

SEC. 25. The Librarian of Congress shall annually submit estimates in detail for all expenses of carrying this

act into effect, and he is hereby authorized to appoint such subordinate assistants to the register of copyrights as shall be necessary for the prompt and efficient execution of the work involved.

[SEC. 26. The following sections of the United States Revised Statutes are hereby repealed: Section 4929, as amended by the act of May 9, 1902; sections 4930 and 4931; and section 4934, as amended by the acts of February 18, 1922, and February 14, 1927, is further amended by striking out the words "except in design cases" wherever they appear, and also by striking out the following words: "In design cases: For three years and six months, \$10; for seven years, \$15; for fourteen years, \$30": *Provided, however,* That design patents issued under the sections herein repealed shall have full force and effect as if said sections were still in effect: *And provided further,* That notwithstanding the six months' limitations in section 3 of this act, an applicant who has duly filed in the Patent Office an application for a design patent, and whose application has not become abandoned when this act goes into effect, or his assigns and legal representatives may within six months after this act goes into effect elect either to demand a design patent which may be granted him and have full force and effect as if the section herein repealed were still in effect, or to abandon said application for a design patent and secure copyright protection under this act by complying with the provisions of this act, so far as applicable, and upon payment of the fee or fees prescribed in section 21 of this act, filing an application for registration of said design under this act, or two or more applications in different classes, if the design as disclosed in said application is entitled to registration in such different classes, the initial term of such copyright protection under this act to commence with the sale or offer for sale of manufactured products to which the design has been applied or in which it is embodied, marked in the manner specified in section 5 of this act. No design copyright under the provisions of this act shall be valid to an author or to the legal representative or assignee of such author to whom shall have been issued a design patent in this country for the same design.]

Sec. 26. Design patents for designs for manufactured products specified in subdivision (c) of section 1 of this act obtained prior to the effective date of this act under

sections 4929, 4930, 4931, and 4934 of the Revised Statutes, as amended, shall remain in full force and effect, but no copyright may be secured under this act in any design for which a patent has been so obtained. On and after the effective date of this act, a design patent may be obtained for any design for any such manufactured product, but such patent shall automatically terminate upon the application of such design to or its embodiment in such manufactured product in the manner provided in this act, but nothing in this section shall be construed to prevent the securing of copyright under this act subsequent to such termination of such design patent.

SEC. 27. This act shall go into effect on [January] July 1, 1931, and may be cited as the design copyright act of 1931.

ADDENDUM II

[71st Cong., 3d sess. Senate Report No. 1627]

COPYRIGHT REGISTRATION OF DESIGNS

(February 14, 1931.—Ordered to be printed)

Mr. Hebert, from the Committee on Patents, submitted the following report to accompany H. R. 11852:

The Committee on Patents, to which was referred H. R. 11852, to provide copyright registration of designs, having had the same under consideration, reports the bill to the Senate with the following amendments and recommends that the same do pass.

Section 1 (b) to be amended to read as follows:

A design is a pattern applied to, or a shape or form of, any manufactured product included in any class enumerated in the following paragraph, which is not of itself a work of art, and shall include dies, molds, or devices by.

Subsection 1 (c) to be added, enumerating the products covered as follows:

(c) The manufactured products to which this act shall apply are the following:

1. Textiles, lace and embroideries of all kinds, whether the designs are woven into or applied to the surface of, or incorporated into the substance or fibers of the fabric.
2. Furniture.
3. Lamps and lighting fixtures.
4. Shoes or other footwear.

5. Jewelry or articles manufactured from gold, silver, platinum, or other precious metals.

Section 5, line 25, on page 5 of the bill, the words "wall paper" to be deleted.

Section 9 be amended by striking out the whole of subsection (b).

Section 18 be amended, in subsection (a) line 10, and subsection (b) line 17, by substitution of a penalty of \$1,000 in lieu of penalty of \$2,500.

Section 21, delete lines 8, 9, and 10 to word "sub," also word "such" in line 12. In line 12 after the word "registration," add the words "under this act." Delete line 13 beginning with word "*Provided*", and lines 14, 15, and 16, so that section 21, as amended, will read as follows:

SEC. 21. The register of copyrights shall be authorized, subject to approval by the Librarian of Congress, to make rules and regulations for registration under this act, and for the form of the required certificate.

Section 23 to be amended so as to read as follows:

SEC. 23. The register of copyrights shall fully index all registrations and assignments of design copyrights under this act. In addition to the catalogues provided for under the act entitled "An act to amend and consolidate the act respecting copyright," approved March 4, 1909, as amended, the register of copyrights shall print and distribute separate catalogues of all design copyright entries, which shall include representations of such designs for purposes of identification and all extension registrations of such designs. Such separate catalogues shall be of the same general character, and shall be printed and distributed at the same time and in the same manner, as the catalogues provided for under such act of March 4, 1909, as amended, and may be subscribed for upon application to the Superintendent of Public Documents, at a price to be determined by the register of copyrights. The current catalogues of design copyright entries and the indexes in connection therewith shall be admitted in any court as prima facie evidence of the facts therein stated as regards any copyright registration for a design made under the provisions of this act."

Section 26 to be amended so as to read as follows:

SEC. 26. Design patents for designs for manufactured products specified in subdivision (c) of section 1 of this act obtained prior to the effective date of this act under sections 4929, 4930, 4931, and 4934 of the Revised Statutes, as amended, shall remain in full force and effect, but no copyright may be secured under this act in any design for which a patent has been so obtained. On and after the effective date of this act, a design patent may be obtained for any design for any such manufactured product, but such patent shall automatically terminate upon the application of

such design to or its embodiment in such manufactured product in the manner provided in this act, but nothing in this section shall be construed to prevent the securing of copyright under this act subsequent to such termination of such design patent.

Section 27 to be amended so as to make the effective date July 1, 1931, instead of January 1, 1931.

CONSTITUTIONAL PROVISION APPLIED

Paragraph 8 of section 8 of the Constitution provides:

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.

In pursuance of said provision Congress established certain instrumentalities to effectuate these purposes, including the Patent Office and the Bureau of Copyright, and has from time to time enacted legislation to protect the productions of writers, musicians, artists, and inventors.

Under the copyright act approved March 4, 1909, works of art and models or designs for works of art were enumerated and under this section there have been copyrighted all kinds of original designs, though no provision was made for the protection of reproductions of designs when applied to manufactured products.

Under the patent law of 1887 (R. S. title X-1) as amended May 9, 1902 (R. S. title L-X, secs. 4929, 4930, 4931, and 4933), designs for commercial reproduction in manufactures are enumerated. Said sections read as follows:

SEC. 4929. Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of invention or discoveries covered by section forty-eight hundred and eighty-six, obtain a patent therefor.

SEC. 4930. The commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs.

SEC. 4931. Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

Sec. 4933. All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this title shall apply to patents for designs.

Act of February 4, 1887:

Be it enacted, etc., That hereafter, during the term of letters patent for a design, it shall be unlawful for any person other than the owner of said letters patent, without the license of such owner, to apply the design secured by such letters patent, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or to sell or expose for sale any article of manufacture to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied. Any person violating the provisions, or either of them, of this section, shall be liable in the amount of two hundred and fifty dollars; and in case the total profit made by him from the manufacture, or sale, as aforesaid, of the article or articles to which the design, or colorable imitation thereof, has been applied, exceeds the sum of two hundred and fifty dollars, he shall be further liable for the excess of such profit over and above the sum of two hundred and fifty dollars; and the full amount of such liability may be recovered by the owner of the letters patent, to his own use, in any circuit court of the United States having jurisdiction of the parties, either by action at law or upon a bill in equity for an injunction to restrain such infringement.

Sec. 2. That nothing in this act contained shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any owner of letters patent for a design, aggrieved by the infringement of the same, might have had if this act had not been passed; but such owner shall not twice recover the profit made from the infringement.

By a construction placed upon said sections it is held that an original design may be copyrighted, but that the application thereof to a manufactured product has to be patented. It follows that the author of a design is protected at the present time under the provisions of the patent law, so long as his design is not reproduced in a manufactured article. The purpose of this bill is to afford protection by copyright of designs that are applied to certain manufactured products, and to transfer the supervision of these copyrights from the Patent Office to the Copyright Office.

The reasons for this change become apparent upon an analysis of the functions of patents and of copyrights respectively. A copyright is precisely what its name indicates, that is, a right to prohibit the making of a copy of an original design by any other person than

the author of it, and in order to prohibit the production of a design which is copyrighted, it must appear that the alleged infringement is a copy.

On the other hand, a patent applies to inventions and creations of new forms and principles not previously in use. While there may be a marked degree of artistic merit and originality of treatment in design, there is very little which can be designated as invention, and what is sought to be protected in the case of designs is not invention, but rather the prohibition of the copying of another person's artistic production embodying symbols and forms which may appear in everyday life, but which in no case apply to principles or instrumentalities.

DELAYS IN SECURING PATENTS

Copyright issues immediately, whereas a patent, of necessity, requires search to determine whether the principle embodied in the invention has been covered in some other form or class. As a result of this fundamental difference, the securing of a patent requires a very considerable lapse of time for its issuance, often a year or more. This is not necessary and should not be required in the case of copyrighting of designs.

It is to be noted that under the practice which now obtains in the Patent Office, originality of design has not infrequently been denied because of the lack of inventive features, even in those cases where there is no question as to the merit and originality of the design itself or of its application.

Moreover, the expense incident to procuring a patent has been prohibitive in the case of many articles of manufacture, where some special design has been incorporated therein. This is particularly true of such products, the demand for which is relatively brief, such as those which have relation to fashion and seasonal use.

The officials of the Patent Office and of the Copyright Office are agreed that the present patent law is a dead letter so far as a very large number of manufactured products are concerned, even though such products are entitled to protection, and that very likely such products would be protected if the law were made more practical in its application.

The necessity for such a change as is embodied in the present bill is amply borne out by the testimony pre-

sented at the hearings before committees of both the House and the Senate.

SPREAD OF DESIGN PIRACY

It was disclosed at these hearings that many industries in the country suffer grievously from the evils of what has come to be known as design piracy, and these evils have increased tremendously within the past year, especially since the ruling of the courts in the case of Cheney Brothers *v.* The Doris Silk Company, which was heard in the United States Circuit Court of Appeals for the Second Circuit, and in which an appeal for review to the Supreme Court was refused. In that case the court held that no relief was to be had against the copying of original designs under existing law, and suggested the advisability of securing an amendment to the copyright law to meet the difficulty. While your committee was very much impressed by the evils that exist in the field of industry, so far as the piracy and copying of designs is concerned, in some instances so grave as to threaten the very existence of certain industries, they feel that the pending bill as enacted by the House of Representatives, and which covers practically all fields of activity in manufacture, might in practice work hardships which can not be foreseen, and might also be difficult of administration; therefore the operation of the provisions of the bill has been limited to five general lines of industry which are specifically enumerated in section 1 (c).

EXPLANATION OF AMENDMENTS

In line 25, section 5, page 5 of the bill, the words " wall paper " have been deleted, since wall paper is not included within the provisions of the bill under the committee's amendment to section 1 (c).

The elimination of subsection (b) of section 9 is made necessary because of the limitation in the application of the provisions of the bill to certain industries. In the light of this limitation, said subsection is unnecessary for the reason that patterns, dresses, and garments to which it applies are not included in the list of manufactured articles to which the bill will apply.

The penalty provided in paragraphs (a) and (b) of section 18 has been reduced from a minimum of \$2,500

to a minimum of \$1,000, this latter sum being deemed sufficient to make the law effective.

Section 21 is amended so as to read as follows:

Sec. 21. The register of copyrights shall be authorized, subject to approval by the Librarian of Congress, to make rules and regulations for registration under this act and for the form of the required certificate.

The amendment to said section 21 is made necessary because of the limited application of the bill as provided in the amendment to section 1 (c) thereof.

Section 23 has been amended to read as follows:

Sec. 23. The register of copyrights shall fully index all registrations and assignments of design copyrights under this act. In addition to the catalogues provided for under the act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, as amended, the register of copyrights shall print and distribute separate catalogues of all design copyright entries, which shall include representations of such designs for purposes of identification and all extension registrations of such designs. Such separate catalogues shall be of the same general character, and shall be printed and distributed at the same times and in the same manner as the catalogues provided for under such act of March 4, 1909, as amended, and may be subscribed for upon application to the Superintendent of Public Documents, at a price to be determined by the register of copyrights. The current catalogues of design copyright entries and the indexes in connection therewith shall be admitted in any court as prima facie evidence of the facts therein stated as regards any copyright registration for a design made under the provisions of this act.

Your committee is of the opinion that the better practice will be to require that a separate index of all registrations and assignments of design copyrights shall be maintained by the register of copyrights and that such charge may be made for copies thereof as in the opinion of the register shall be deemed fair. In this way the law affecting the catalogues of copyright entries heretofore in force remains unchanged.

Section 26 is amended so as to read as follows:

Sec. 26. Design patents for designs for manufactured products specified in subdivision (c) of section 1 of this act obtained prior to the effective date of this act under sections 4929, 4930, 4931, and 4934 of the Revised Statutes, as amended, shall remain in full force and effect, but no copyright may be secured under this act in any design for which a patent has been so obtained. On and after the effective date of this act, a design patent may be ob-

tained for any design for any such manufactured product, but such patent shall automatically terminate upon the application of such design to or its embodiment in such manufactured product in the manner provided in this act, but nothing in this section shall be construed to prevent the securing of copyright under this act subsequent to such termination of such design patent.

PROTECTION OF DESIGNS NOT APPLIED TO MANUFACTURED
PRODUCTS

In the bill as it passed the House of Representatives, no provision is made for the protection of designs unless and until they are applied to a manufactured product. Your committee believes that some protection should be afforded to those who create designs, notwithstanding they are not applied to manufactured products. Therefore, by this amendment to section 26 it is provided that a design patent may be obtained for any design for a manufactured product, just as under existing law, but that such design patent shall automatically terminate upon the application of such design to or its embodiment in a manufactured product. In this way protection is afforded to designs either under the provisions of this bill or under the provisions of the design patent law, depending upon whether or not such designs have been applied to manufactured products.

Generally speaking, the bill does not alter or change the general copyright law, though it does modify its phraseology. It will be noted that under the provisions of section 8 an exemption is provided in the case of the distribution or exposure for sale of manufactured articles the design of which has been copyrighted by others than the manufacturer or importer, where articles have been purchased prior to the receipt of a notice of injunction or restraining order. The provisions of said section further provide that in order to come under said exemption the owner or holder of such merchandise must upon demand give evidence as to the source from whence it was received. This exemption will allow a retailer to dispose of merchandise purchased by him prior to such court order.

All other modifications of existing law are designed to facilitate the securing of copyrights and the application for them and the general conduct of the Copyright Office as it affects the articles enumerated in the bill.

[71st Cong., 3d sess. Senate Report No. 1627. Part 2]

MINORITY VIEWS

[To accompany H. R. 11852]

(February 19, 1931.—Ordered to be printed)

Mr. Dill, from the Committee on Patents, submitted the following:

This bill proposes an entirely new kind of copyright legislation. Whenever in the past Congress has provided copyright protection it has been for intellectual or artistic concepts only. The general copyright law expressly declares that copyright, as such, is distinct from the property in the material object that is copyrighted. This bill not only fails to provide any such distinction, but specifically requires that as a prerequisite to securing copyright protection the design to be copyrighted must have been previously applied to a manufactured product. Thus, this copyright can not be granted on the design itself, but only upon the manufactured product including the design.

If this bill becomes a law, it will not "promote progress of science and the useful arts," the purpose for which the Constitution authorizes Congress to provide copyright and patent protection by encouraging intellectual and artistic creations, so much as it will assist manufacturers to create and maintain monopolies in industrial rights. The consuming public will be compelled to pay for these monopolies and all the numerous suits resulting from such copyrights in industry in the form of added costs for the products which the monopolies control. Thus this bill, as now written, should be entitled a bill to prohibit unfair trade practices rather than a copyright bill.

At present designers can secure protection for designs used in connection with manufactured products by means of design patents. The proponents of this bill, appearing before your committee, argued that it takes too long to secure a design patent. They stated it takes an average of from six months to a year and that before they can secure such a patent the design covered by the patent has lost its popularity and the patent is worthless. They argued that they must therefore have the protection afforded by copyright, because a copyright begins

immediately upon the filing of the application with the register of copyrights.

But this bill does far more than give such protection as is afforded by design patents. To secure a design patent a designer must prove both novelty and originality. This bill does not require novelty. All that is necessary to secure a copyright under this bill is for the applicant to sign an affidavit that he is the author of the design. The bill requires only that the design shall be original with the designer.

What will be the practical operation of this cheap and universal copyright in commerce and industry? Under this bill manufacturers will be able to copyright anything and everything they desire, regardless of whether there is anything novel about it or not. Having secured a copyright, by simply filing an application, they can then secure an injunction and an accounting by the courts against anybody using that design or anything sufficiently similar that copying might be presumed.

This bill will multiply injunction suits by the thousands. Under this bill a design copyright is *prima facie* valid. The same design may be copyrighted over and over again, so long as the author claims he originated it and such copyright will be valid as long as a defendant can not show that the author knowingly copied the design.

It makes no difference under this bill how old the design may be, or how similar it may be to other designs long used in industry and commerce. Why should Congress prohibit anybody from making and selling anything that is old? Why should Congress give anybody a monopoly on an old design just because somebody files an application and pays \$3 to the register of copyrights? Such an abuse of copyright protection has never previously been known or proposed in this country. It does not come within the purpose of the provision of the Constitution which authorizes Congress to grant copyrights "to promote the progress of science and the useful arts."

If it be desirable to remedy the weaknesses of the design patent law, Congress can amend that law by making it more liberal in its requirements and by providing for more speedy action on design patent applications. There is neither reason nor defense for a law that permits anything and everything in industry to be copy-

righted regardless of its novelty or its contribution to science and the arts.

If this bill becomes a law, manufacturers state they will be compelled to copyright literally thousands of designs each year to be certain of protection for the designs that may prove popular. Unless they do copyright all the designs proposed by them, somebody else may prepare similar designs and get them copyrighted first.

The majority of your committee admit they are fearful of the hardships that the adoption of this principle into law will work in industry and commerce, as is shown by the amendments made and the report submitted. The majority report states that the House bill "might in practice work hardships which can not be foreseen, and might also be difficult of administration." The majority therefore selected five lines of industry for purposes of experiment. No reason is given why these particular industries were chosen to bear the "hardships" in this period of general business depression throughout the country. To make a law apply arbitrarily to certain industries and have no application to other industries is certainly class legislation, if ever such legislation were written.

In any event, even if the law should be declared constitutional, the effect will be to create monopolies where, under existing law, there is now not even a property right. No copyright should be granted giving a monopoly of an industrial property right upon a commercial article except it be both original and new in its application to the manufactured product. Without the requirement of novelty, the courts will be helpless in attempting to determine, with any degree of justice, the validity of a design copyright secured under this bill. Such a grant should not be given either without examination and scrutiny by somebody other than the applicant.

This bill is revolutionary in principle, dangerous to established business, and of doubtful constitutionality. It should not be permitted to pass unless amended to restrict copyright of designs embodied in manufactured products to those designs which are both original and new in their application by the designer.

C. C. DILL.

E. D. SMITH.

ADDENDUM III

[71st Cong., 3d sess. S. 5887. In the Senate of the United States.
January 13, 1931]

Mr. King introduced the following bill; which was read twice and referred to the Committee on Patents:

A BILL To amend sections 23, 25, and 28 of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 23, 25, and 28 of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909 (U. S. C., title 17, secs. 23, 25, and 28), be, and the same are hereby, amended so as to read as follows:

"Sec. 23. The copyright secured by this title shall endure for seventeen years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name.

"Sec. 25. If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable (a) to an injunction restraining such infringement; (b) 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, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated; but in case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of \$200 nor be less than the sum of \$50, and in the case of the infringement of an undramatized or nondramatized work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of \$100; and in the case of an infringement of a copy-

righted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of \$5,000 nor be less than \$250, and such damages shall in no other case exceed the sum of \$5,000 nor be less than the sum of \$250, and shall not be regarded as a penalty. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this Act, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

“First. In the case of a painting, statue, or sculpture, \$10 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

“Second. In the case of any work enumerated in section 5 of this title, except a painting, statue, or sculpture, \$1 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

“Third. In the case of a lecture, sermon, or address, \$50 for every infringing delivery;

“Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, \$100 for the first and \$50 for every subsequent infringing performance; in the case of other musical compositions, \$10 for every infringing performance;

“(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

“(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order.

“(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section 1, subsection (e) of this title: *Provided*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section 1, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid: *Provided, however*, That such damages as the copyright owner may have suffered due to the infringement, as well as such profits as the infringer shall have made from such infringement, shall be levied against and collected from the person or persons actually infringing the copyright and not against the owner or owners of the place or instrumentality in which or by which the infringement occurs, unless the copyright owner has previously to such infringement furnished the owner or owners of the place or instrumentality in which or by which the infringement occurs with a list of the copyright subjects owned by him and the conditions and limitations under which such copyright may be produced: *Provided, however*, That the provisions of this section shall not apply to the production of programs by churches, educational institutions, or charitable organizations where such programs are not produced for profit.

"Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States (March 4, 1909, ch. 320, par. 25, 35 Stat. 1081; August 24, 1912, ch. 356, 37 Stat. 489).

"Sec. 28. Any person who willfully and for profit shall infringe any copyright secured by this title, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not exceeding six months or by a fine not exceeding \$500, or both, in the discretion of the court: *Provided, however,* That the provisions of this section shall not apply to the production of programs by churches, educational institutions, or charitable organizations where such programs are not produced for profit."

Section 24 of the act entitled "An act to amend and consolidate the act respecting copyright," approved March 4, 1909, is hereby repealed.

ADDENDUM IV

[71st Cong., 3d sess. H. R. 12549. Report No. 1732. In the Senate of the United States. January 21, 1931]

[Note: The text included between black brackets is struck out and the matter in italics is added]

AN ACT To amend and consolidate the acts respecting copyright and to permit the United States to enter the Convention of Berne for the Protection of Literary and Artistic Works

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That copyright throughout the United States and its dependencies is hereby secured and granted to authors, subject to the provisions of this act, without compliance with any conditions or formalities whatever, from and after the creation of their work and for the term hereinafter provided, in all their writings, published or unpublished, in any medium or form or by any method through which the thought of the author may be expressed, and such copyright includes the exclusive right—

To copy, print, reprint, publish, produce, reproduce, perform, render, or exhibit the copyright work in any form by any means, and/or transform the same from any of its various forms into any other form, and to

vend or otherwise dispose of such work; and shall further include (but not by way of limitation because of the specific enumeration of the subject matter hereafter stated) the exclusive rights—

(a) To translate said work into other languages or dialects, or to make any other version thereof;

(b) To make any form of record in which the thought of an author may be recorded and from which it may be read, reproduced, performed, exhibited, or represented;

(c) To dramatize [or] *and/or* make a motion picture with or without sound and/or dialogue of said work if it be a nondramatic work; or to convert said work into a nondramatic or dramatic work expressed in words [or physical action] if it be a dramatic work in the form of a motion picture with or without sound and/or dialogue; or into a novel or nondramatic work, [or] *and/or* motion picture with or without sound and/or dialogue, if it be a drama expressed in words [or physical action];

(d) In the case of a musical composition, to arrange or adapt said work, to perform said work publicly for profit or to make any arrangement or setting thereof or of the melody thereof in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read, broadcast, produced, *reproduced*, performed, exhibited or represented: *Provided, however*, That the provisions of this act, so far as they secure copyright controlling the parts of instruments, being the instruments referred to in subsection (e) of section 1 of the act of March 4, 1909, as amended (U. S. C., title 17, sec. 1 (e)), serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the musical compositions of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen, grants, either by treaty, convention, agreement or law, to citizens of the United States, similar rights: *And provided further*, That nothing in this act shall be construed to prohibit the performance of copyright musical works by churches, schools, and/or fraternal organizations, provided the performance is given for charitable or educational or religious purposes: *And provided further*, *That the use of a machine, instrument, or instruments serving to reproduce mechanically and/or electrically such work or works shall not be deemed a public per-*

formance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs;

(e) To complete, execute, and finish said work;

(f) To deliver or authorize the delivery of said work in public if it be a lecture, sermon, or address prepared for oral delivery;

(g) To have communicated said work for profit to the public by radio broadcasting, rebroadcasting, wired radio, telephoning, telegraphing, television, or by any other methods or means for transmitting or delivering sounds, words, images, or pictures whether now or hereafter existing: *Provided*, That the provisions of this act shall not apply to the reception of such work by the use of a radio-receiving set or other receiving apparatus unless a specific admission or service fee is charged therefor by the owner or operator of such radio-receiving set or other receiving apparatus;

(h) To produce, reproduce, perform, represent, or exhibit said work publicly if it be a dramatic or dramatico-musical work *or motion picture* in any manner or by any means or methods whatsoever: *Provided further*, That the provisions of this act shall not apply to the reception of such work or works by the use of a radio-receiving set or other receiving apparatus unless a specific admission or service fee is charged therefor by the owner or operator of such radio-receiving set or other receiving apparatus.

SEC. 2. Such copyright shall extend to all published and unpublished works of authors who are citizens of the United States, not in the public domain on the date when this act takes effect and all works of such citizens hereafter created and to the works of alien authors in the event that:

(a) Such work is first published in the United States or a foreign country adhering to the Convention of Berne for the Protection of Literary and Artistic Works described in section 59 of this act; or

(b) Such work, if unpublished, is created by a national of a foreign country adhering to said Convention of Berne for the Protection of Literary and Artistic Works; or

(c) Such author is a national of a foreign country not adhering to said Convention of Berne for the Protection of Literary and Artistic Works, which country

by treaty or international agreement grants to citizens of the United States copyright on the same basis as to its own nationals; or

(d) Such author is a national of a foreign country not adhering to said Convention of Berne for the Protection of Literary and Artistic Works, but is residing at the time of the creation of such work in a country adhering to the Convention of Berne for the Protection of Literary and Artistic Works.

The existence or cessation of the reciprocal conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time, as the purposes of this act may require.

In the event that the United States shall at any time after adherence withdraw from said Convention of Berne for the Protection of Literary and Artistic Works, then the provisions of this section referring to said Convention of Berne for the Protection of Literary and Artistic Works shall thenceforth have no force and effect, but the other provisions of this section shall remain in full force and effect.

[SEC. 3. Where any work, except a dramatico-musical or musical work, is created by an employee within the scope of his employment, his employer shall, as author, be the owner of the copyright in such work, in the absence of agreement to the contrary; but this provision shall not apply to works created on special commission where there is no relation of employer and employee, unless the parties shall agree otherwise.]

Sec. 3. In the absence of agreement to the contrary where any work is created by an employee within the scope of his employment his employer shall, as author, be the owner of the copyright in such work; but this provision shall not apply to works created under special commission where there is no relation of employer and employee, unless the parties agree otherwise.

SEC. 4. Copyright secured by this act shall extend to any work subject thereto to the extent to which it is original, notwithstanding it is based in part upon, or incorporates in whole or in part some previously existing work: *Provided, however,* That such use shall not extend the copyright, if any, in such previously existing work nor re-create copyright therein and the enjoyment and exercise of such copyright shall be subject and without prejudice to the rights of the owner of the copyright, if

any, in the previously existing work, and/or of anyone deriving or who has derived any right or rights from said owner. This section shall not apply to works referred to in section 5 of this act: *Provided, That nothing in this act shall prevent the fair use of quotations from copyright matter, provided credit is given to the copyright owner, unless the copyright owner has expressly prohibited such quotations from the copyright work in whole or in part.*

SEC. 5. Any compilation, abridgment, adaptation, arrangement, or dramatization of a dramatico-musical or musical work, if the same be a work in the public domain, or of a copyright dramatico-musical or musical work when produced with the consent of the proprietor of the copyright in such work, shall be regarded as a new work subject to copyright under the provisions of this act; but [the publication] *such copyright* of any such new work shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works; nor shall copyright exist in the original text of any work which is in the public domain.

SEC. 6. The copyright is distinct from the property in any material reproduction of the work, and the sale or conveyance, by gift or otherwise, of the material reproduction shall not of itself constitute a transfer of the copyright, nor shall the assignment or license of the copyright constitute a transfer of the title to the material reproduction unless expressly stipulated; except in the case of photographic portraits made for hire or on commission, in which case, in the absence of written agreement to the contrary, the copyright shall vest in the person whose portrait is reproduced or his legal representatives. Nothing in this act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyright work the title to which has been lawfully obtained.

SEC. 7. If the United States Government reprints and distributes any copyright work or part thereof it shall secure the consent of the copyright owner and shall append thereto a reference as to such work, but such use shall not in any way authorize the use elsewhere of such copyright material or prejudice or limit the rights of the

copyright owner. Subject always to the foregoing, no copyright shall subsist in any report or other publication of the United States Government. *Whenever any copyrighted work or part thereof shall hereafter be used, reprinted, copied, or distributed by or for the United States without license of the owner of the copyright or lawful right, such owner's remedy shall be by suit against the United States in the Court of Claims for the recovery of his reasonable and entire compensation therefor: Provided, That in any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by any defendant in an action for infringement: Provided further, That the benefits of this action shall not inure to any copyright owner who, when he makes such claim, is in the employment or service of the Government of the United States or the assignee of any such author, nor shall this section apply to any matter originated by the author during the time of his employment or service by the Government of the United States.*

SEC. 8. The copyright of a work of architecture shall cover only its artistic character and its design and shall not extend to processes or methods of construction, nor shall it prevent the making, exhibiting, or publishing of photographs, motion pictures, paintings, or other illustrations thereof, which are not in the nature of architectural drawings or plans, and the owner of the copyright shall not be entitled to obtain an injunction restraining the construction, substantially begun, or use, of an infringing building, or an order for its demolition or seizure.

ASSIGNMENT OF COPYRIGHT

SEC. 9. The author or other owner of any copyright secured under this act or of any copyright heretofore secured under any previous act of the United States may, to the extent of his interest therein, by written instrument signed by him or his duly authorized agent, executed after this act goes into effect, assign, mortgage, license, or otherwise dispose of, the entire copyright or any right or rights comprised therein, either wholly or separately, either generally or subject to limitations, for the entire term of such copyright or for a limited time, or for a specified territory or territories, and may bequeath the same by will. *But no assignment, mortgage,*

license, or other disposition of said copyright or any right or rights comprised therein shall be valid except as between the parties thereto, unless it is in writing signed by the owner of the right in respect of which such instrument is made, or, except in the case of a will, by his duly authorized agent. The author or other owner of any copyright or any person or persons deriving any right, title, or interest from any author or other owner as aforesaid, may each, separately, for himself, in his own name as party to a suit, action, or proceeding, protect and enforce such rights as he may hold, and to the extent of his right, title, and interest is entitled to the remedies provided by this act. *Provided, That no assignment by the author, where the author is an individual, of the copyright in any work and no grant by him of any right or rights comprised therein (otherwise than by will), after the passage of this act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-eight years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest, shall be null and void.*

SEC. 10. [Assignments, grants, licenses, and mortgages of copyright or of any separate right therein, or any other instrument or paper writing relating to or affecting a copyright or rights therein, may be recorded in the Copyright Office at any time after execution. A failure so to record shall not affect the validity of any such instrument:] *Every assignment of copyright or any right or rights comprised therein shall be recorded in the Copyright Office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded: Provided, That no unrecorded assignment, grant, license, mortgage, or other instrument shall be valid or of any effect against any previously recorded assignment, grant, license, mortgage, or instrument to a*

purchaser, licensee, or other transferee for value and without notice, whether such unrecorded instrument be prior in date of execution or not, and whether subsequently recorded or not. Such proviso, however, shall not apply to unrecorded instruments by which periodical and/or newspaper publication rights are assigned or conveyed; but if, in addition thereto, such instruments also assign or convey other rights, and/or refer or pertain in any way to any other rights, then such instruments to the extent of the provisions or agreements contained therein relating to such other rights shall be subject to such proviso.

After the effective date of this act, upon the purchase of a part, but not all, of the rights of the author in or under a copyright, unless the instrument assigning such rights by its terms expressly includes the right of first publication, the purchaser shall be deemed to have knowledge, at the time of such purchase, of the existence of such first publication right in or under such copyright, having priority as to time of publication over any right or rights so purchased: *Provided*, That rights of first publication shall be deemed to have expired by lapse of time as against a purchaser of any other rights in or under the same copyright if not exercised by commencement of publication within one year of the date of delivery of the entire copyright work to the purchaser of such right of first publication, unless within such period the purchaser of such right of first publication shall have recorded in the Copyright Office a notice or instrument of assignment signed by the author, or his agent duly authorized for the purpose, showing the name of the author, the name of the assignor if other than the author, the name of the assignee and the duration and general nature of such right of first publication. As between two or more innocent purchasers of right of first publication in the same copyright work, that one who shall have first recorded the notice or instrument of assignment as herein provided shall prevail, anything in this section 10 of this act to the contrary notwithstanding, and notwithstanding any provision hereinabove contained as to unrecorded instruments conveying periodical and/or newspaper rights: *Provided, however*, That for this purpose, where such notice or instrument or assignment is mailed by registered mail properly addressed to the Copyright Office in Washington, the date of such

mailing shall be deemed the date of record]. All assignments, grants, licenses, mortgages, and other instruments, notices or paper writings hereinabove referred to, when recorded in the Copyright Office, shall be indexed in the name of the author and the assignor, licensor, or mortgagor, and in the name of the assignee, licensee, or mortgagee, and under the title of the copyright work.

SEC. 11. Instruments referred to in [section 10 executed] *sections 9 or 10 executed or acknowledged before any notary public of the several States or Territories or the District of Columbia or any commissioner or any other officer of the United States for any district or Territory or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section 1750 of the Revised Statutes. This certificate of such acknowledgment under the hand and official seal or other officer shall be prima facie evidence of the execution of such instrument. Such instruments when executed in a foreign country may be acknowledged or subscribed and sworn to by the assignor, licensor, or mortgagor before a diplomatic or consular officer of the United States authorized by law to administer oaths or perform notarial acts, or before any notary public, judge, or magistrate of any foreign country authorized to administer oaths or perform notarial acts in such country and whose authority shall be proved by certificate of a diplomatic or consular officer of the United States. Such certificate shall be prima facie evidence of the execution of the instrument, and the instrument and certificate shall be admissible as evidence in any action or proceeding brought under this act.*

TERM OF COPYRIGHT PROTECTION

SEC. 12. The term for which copyright is secured by this act shall [be for the life of the author, if living, and for a period of fifty years after his death, except that where the author is not an individual, the term shall be fifty years from the date of completion of the creation of the work; and except that in the case of a work by joint authors the copyright shall terminate at the expiration of fifty years from the date of the death of the joint author who first dies, or shall exist during the life of the author who dies last, whichever period is longer: *Provided*, That where the work is based in

whole or in part upon a previously existing work in which a longer copyright term may endure, then the copyright in said work shall endure for a term equal to that of said previously existing works, or for the term of fifty years aforesaid, whichever term is longer: *endure for seventy years from the date of copyright: Provided, [further]* That the term of copyright shall not in any case exceed the term granted in the country of the origin of the work.

SEC. 13. The copyright subsisting in any work when this act goes into effect shall be continued [at the end of the subsisting term] until the expiration of [fifty years beyond the author's death: *Provided, That in no case shall such copyright terminate before the expiration of fifty-six years*] *seventy years* from the date of [first publication] *copyright. [Such continuation of the copyright to the extent of any extension over and above the term of twenty-eight years subsisting on the date when this act takes effect and any renewal thereof registered prior to said date shall vest in the following persons: (a) If an application for renewal of the copyright shall have been duly registered prior to the date when this act takes effect, then such continuation shall vest in the person or persons who under the act heretofore in force were entitled to said renewal and extension of the copyright in such work; and (b) in all other.] In all cases such [continuation] copyright shall vest in the author, if living, and if the author be not living, then in the author's executors or testamentary trustees, as the case may be, or, if there be no such executors or trustees, in a duly appointed administrator with the will annexed, and, in the absence of a will, then in the administrators or other legal representatives of said author's estate: Provided, That where, prior to the date when this act takes effect, the author or, if he be not living, the person or persons who upon his death became entitled thereto shall have parted with any or all of the author's rights for the first term under the act heretofore in force, and shall have agreed to part therewith or shall have parted therewith for the renewal term under said act, on a royalty basis, the assignee or licensee of such right or rights shall be entitled thereto throughout the full term provided by this act, upon condition that he pay royalties at the agreed rate and in the agreed manner to the author, if living, or if dead, to the person or*

persons in whom the continuation of the copyright shall vest as above specified, during the full term provided by this act; but this proviso shall not apply unless the said assignee or licensee shall have substantially fulfilled his contract with said author and/or with the person or persons (if any) who succeeded to said author's rights: *Provided further*, That where, prior to the date when this act takes effect, there has been an outright purchase of any right or rights (for a lump sum paid and not on royalty) for said first term and the author or, if he be not living, the person or persons who upon his death became entitled thereto have agreed to part therewith or have parted therewith for said renewal term, the assignee or licensee of such right or rights shall be entitled thereto throughout the remainder of the term provided by this act upon performance by him of such conditions as may be determined by an agreement between the purchaser and the author, if he be living, or his assignees or representatives, if he be dead, entered into at least six months before the expiration of the subsisting term, or, in the absence of such agreement, as may be determined by a court of competent jurisdiction, as justice may require: [*Provided further*, That in the case of any work the subsisting copyright of which was first secured by an employer for whom such work was made for hire or by a corporate body (otherwise than as assignee or licensee of the individual author) the copyright shall terminate fifty-six years from the date of first publication.] *Provided further*, That where a royalty is reserved or agreed to be paid in any contract for the sale or assignment or for a license of any copyright, such sale or assignment or license shall be deemed a personal contract in the absence of agreement to the contrary.

INFRINGEMENT OF COPYRIGHT AND REMEDIES

SEC. 14. If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable—

(a) To an injunction restraining such infringement except as otherwise provided in this act: *Provided, however*, That no temporary restraining order shall be issued which would prevent the publication of a newspaper or periodical: *And provided further*, That in case of a newspaper or periodical reproduction of a copyrighted photograph no injunction shall issue.

(b) To pay such damages to the owner of the right infringed as he may have suffered due to the infringement, as well as all or such part of the profits which the infringer shall have made from such infringement as the court may decree to be just and proper; and in proving profits the plaintiff shall be required to prove only sales, rentals, license fees and/or any other revenue derived from any disposition of an infringing work, and the defendant shall be required to prove every element of cost which he claims;

[(c) To pay, at the option of the owner of the right infringed, in lieu of actual damages and profits, such statutory damages as to the court shall appear to be just: *Provided*, That such statutory damages, in the case of an unauthorized dramatic performance, or of an unauthorized motion-picture exhibition with or without sound and/or dialogue, or the unauthorized performance for profit of a musical work, shall not exceed the sum of \$10,000 nor be less than \$250; and in the case of an unauthorized newspaper or periodical reproduction of a copyrighted photograph, shall not exceed the sum of \$200 nor be less than \$10; and in any other case shall not exceed the sum of \$5,000 nor be less than \$100; and such damages shall in no case be regarded as a penalty.]

(c) To pay, at the option of the owner of the right infringed, in lieu of actual damages and profits, such statutory damages as to the court shall appear to be just: Provided, That such statutory damages in the case of unauthorized dramatic or dramatico-musical performance or performances or of unauthorized motion-picture exhibition or exhibitions, with or without sound and/or dialogue, or unauthorized performance or performances for profit of a musical work, shall not exceed a total sum of \$10,000 nor be less than \$100 for all infringement of a copyright up to the date of institution of suit, and in the case of unauthorized newspaper or periodical reproduction of a copyrighted photograph, shall not exceed the sum of \$200 nor be less than \$10 for all infringement up to the date of suit, and in any other case shall not exceed the total sum of \$5,000 nor be less than \$100 for all infringement up to the date of suit; and such damages shall in no case be regarded as a penalty.

(d) In any action for infringement of copyright in any work, covered by the provisions of this act, if the

defendant prove that at the time of the alleged infringement, either (a) the copyrighted work had not been registered with the register of copyright, or (b) no notice of the copyright had been affixed thereto, or to the newspaper or periodical containing the same, the plaintiff shall not be entitled to any remedy other than an injunction.

[(d)] (e) In any action for infringement of copyright in any work, if defendant prove that he [was not aware that he was infringing or] has been subjected to fraud or substantial imposition by any third person or persons other than one of said defendant's employees and in either case that such defendant has acted in good faith, the plaintiff shall not be entitled to any remedy against such defendant other than to recover *for all infringements up to date of institution of suit*, an amount equivalent to the fair and reasonable value of a license, but not less than \$50 nor more than \$2,500: *Provided, however*, That this subsection shall not apply, in the event of registration of copyright or recordation of an instrument relating to or affecting the same or any right therein, prior to such defendant entering into or upon the undertaking which results in such infringement, or if the work alleged to have been infringed be a published work published with authority from the copyright owner, if notice of copyright be affixed thereto; or if the work alleged to have been infringed be a dramatic or *dramatico-musical* work, other than a motion picture, if such work has had a first-class public production in the United States of America of at least one week in a town of not less than one hundred thousand population.

[(e)] (f) In case of the infringement of any creation of an author [(except a *dramatico-musical* or *musical* composition)] by any person or corporation engaged solely in printing, binding, or manufacturing the same in printed form, (*the word "printing" as used in this section is defined to include photo-engraving, electrotyping, stereotyping, photogravure, gravure lithographing, or other processes used in the reproductive manufacture of same in printed form, as well as all forms and methods of printing*), where such infringer shall show that he was not aware that he was infringing and that he was acting in good faith, and that such infringement could not have been reasonably foreseen, the person aggrieved

shall be entitled only to an injunction against future printing, binding, and manufacturing the same in printed form, and to the delivery up of all such printed, bound, and manufactured material, and shall not be entitled to any profit made by such infringer from his contract or employment to print, bind, or manufacture in printed form, nor to damages, actual or statutory, against such infringer: *Provided*, That in case such printer is also the publisher, distributor, or seller of such creation, or in partnership or regularly engaged in business with such publisher, distributor, or seller, or is in any wise directly or indirectly interested in the publication, distribution, sale, or exploitation of such creation (other than as derived solely from his contract or employment merely to print, bind, or manufacture the same in printed form) or in any profits to be derived from such publication, distribution, sale, or exploitation, then the person aggrieved shall be entitled to all the remedies provided by this act, and the immunity granted by this subsection [(e)] (f) shall not apply: *Provided*, That any injunction against a newspaper publisher shall lie only against the continuation or repetition of such infringement in future issues of such newspaper, but not against the completion of the publication and distribution of any issue of such newspaper where actual printing of such issue has commenced; nor, where such actual printing has commenced, shall any order be granted to sequester, impound, or destroy the issue containing such infringing matter.

[(f)](g) In the event that any advertising matter of any kind carried by a newspaper or periodical shall infringe any copyright work, where the publisher of the newspaper or periodical shall show that he was not aware that he was infringing and that such infringement could not reasonably have been foreseen, the person aggrieved shall be entitled to an injunction only before work of manufacture of the issue has commenced and only against the continuation or repetition of such infringement in future issues of such newspaper or periodical, but shall not be entitled to any profit made by such publisher from his contract or employment to carry such advertising matter, nor to damages, actual or statutory, against him: *Provided, however*, That no injunction shall lie against the completion of the publication

and distribution of any issue of such newspaper or periodical containing alleged infringing matter where work of manufacture of such issue has commenced: *Provided further*, That this clause shall in no wise limit the remedies of the person aggrieved against the advertiser, advertising agency, or the person or corporation responsible for the infringement: *Provided further*, That if the publisher of the newspaper or periodical is in anywise interested in the commodity or subject matter advertised, or is the advertiser or advertising agency, or engaged in business with the advertiser or advertising agency, in such wise that the publisher is entitled to any profits or benefit from the sale of the subject matter advertised, or from the handling or placing of such advertising matter (other than profits derived by the publisher merely from his contract or employment to run such advertising matter in his newspaper or periodical), then the immunity granted by this subsection [(f)] (g) shall not apply.

SEC. 15. Except as otherwise provided in this act, the infringer shall further be liable:

(a) To deliver up, on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright or any right comprised therein;

(b) To deliver up, on oath, for destruction, as the court may order, all the infringing copies, records, rolls, and other contrivances or devices, as well as all plates, molds, matrices, or other means for making such infringing copies.

SEC. 16. In any action against publishers, distributors, or sellers of periodicals or newspapers for infringement of copyright, the plaintiff shall not be entitled to enjoin the alleged infringement as to any matter claimed to infringe such copyright when any part of such material has theretofore been included in any issue of such periodicals or newspapers upon which the work of manufacture has actually begun or to sequester, impound, or destroy any issue containing such alleged infringing matter, or the means for publishing such issue except upon proof to the satisfaction of the court that the manufacture of the issue containing such alleged infringing matter or the first installment thereof was commenced with actual knowledge that copyright subsisted in the

work alleged to have been infringed: *Provided, however,* That the foregoing provision shall not apply as to a right of injunction asserted against the publication of subsequent installments of a serial in issues on which the work of manufacture has not actually begun, where the copyright material alleged to have been infringed has theretofore been published in a magazine or newspaper of general circulation in the United States.

SEC. 17. All actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the district courts of the United States, the district court of any Territory, the Supreme Court of the District of Columbia, the district courts of Alaska, Hawaii, Panama Canal Zone, and Porto Rico, and the courts of first instance of the Philippine Islands, and any court given jurisdiction under this section may proceed in any action, suit, or proceeding instituted for violation of any provision of said laws to enter a judgment or decree enforcing the remedies provided by this act.

SEC. 18. Any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, including (but not by way of limitation) any person referred to in section 9 of this act, whether such person's rights were acquired heretofore or hereafter, to grant injunctions, except as provided in sections 14 and 16 of this act, to prevent and restrain the violation of any right secured by this act, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any such injunction may be served upon the parties against whom it may be granted anywhere in the United States and its dependencies, and shall be operative throughout the United States and its dependencies and be enforceable by proceedings in contempt or otherwise by any court or judge having jurisdiction of the defendants.

SEC. 19. The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

SEC. 20. The proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, records, rolls, and other contrivances or devices,

plates, molds, matrices, and so forth, aforementioned, may be united in one action.

Sec. 21. In all actions, suits, or proceedings under this act, except when brought by or against the United States, or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

Sec. 22. In any action for infringement, where the plaintiff seeks an accounting of profits, or statutory damages, where any party shows that some third person or persons may claim to be entitled to said profits or statutory damages or some part thereof, by reason of alleged infringement of the same copyright or some right thereunder, or in case it shall appear to the satisfaction of the court that a complete determination can not be had in the absence of other persons claiming or having rights or interests in or under the copyright or some part thereof, the court, on application of such party or on its own motion or on petition of such third person or persons, shall give notice to such person or persons of the pendency of such action and permit him or them to appear therein, and may make such provision with reference to such profits or statutory damages by way of division or otherwise, and adjudicate the respective rights and interests of the several parties to the action as justice may require. The court may require that notice of pendency of the action be given in such manner as the court shall direct to any and all persons of record in the copyright office who may claim to be assignees or licensees or the owners or holders of any rights in or under the copyright in connection with which action may be brought, if the instruments under which such persons claim are registered in the copyright office, or if a claim to the copyright be so registered. The failure of any party directed to be brought in, to appeal in the action or suit, or to participate therein, shall not delay the judgment to which the plaintiff is entitled nor debar the plaintiff from prosecuting his suit to a final determination nor from recovering profits or damages to which he may be entitled: *Provided*, That nothing herein contained shall in any way prejudice or delay the rights, if any, of the plaintiff to injunctive relief or any other remedy given under this act, other than for profits or statutory damages as aforesaid.

SEC. 23. Civil actions, suits, or proceedings arising under this act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found: *Provided, That no civil proceeding shall be maintained under the provisions of this act unless the same is commenced within three years after the cause of action arose.*

SEC. 24. The orders, judgments, or decrees of any court mentioned in section 17 of this act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

SEC. 25. The Supreme Court of the United States shall prescribe such rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement under the provisions of this act.

MANUFACTURE AND IMPORTATION

SEC. 26. All copies of any copyright material created by a citizen of the United States which shall be distributed in the United States in book, pamphlet, map, or sheet form shall be printed from type set within the limits of the United States or its dependencies, either by hand or by the aid of any kind of typesetting machine, and/or from plates made within the limits of the United States or its dependencies from type set therein; or, if the text be produced by lithographic, mimeographic, photogravure, or photo-engraving, or any kindred process or any other process of reproduction now or hereafter devised, then by a process wholly performed within the limits of the United States or its dependencies; and the printing or other reproduction of the text, and the binding of said book or pamphlet, shall be performed within the limits of the United States or its dependencies. Said requirements shall extend also to any copyright illustrations, maps or charts within any book or pamphlet, or in sheet form. Said requirements shall not apply to works in raised characters for the use of the blind.

SEC. 27. That whenever manufacture is required in the United States or its dependencies under the preceding section, an affidavit under the official seal of any

officer authorized to administer oaths within the United States or its dependencies, duly made by the author himself; or by the owner of any right to print or publish such work in the United States in book, pamphlet, map, or printed sheet form; or by any agent of such author or owner duly authorized for that purpose residing in the United States or its dependencies, shall be filed in the copyright office within sixty days after such publication setting forth the manner in which compliance has been had with all requirements of the preceding section. Such affidavit shall state also the place where, and the establishment or establishments in which, such type was set and/or plates were made or where lithograph, photogravure, photo-engraving, or reproduction of any kindred process or any other process of reproduction now or hereafter devised, and/or printing and binding, were performed, and the date of completion of printing of the work or the date of publication. At any time or times when compliance with such preceding section is requisite, unless said affidavit shall be filed or the court shall find the failure to file said affidavit was due to excusable neglect, no action in respect of an infringement of copyright in said work or any right or rights therein shall be instituted or maintained by any person who, under the provisions of this section, might have filed this affidavit. But nothing herein contained shall limit or suspend the right of the assignee or licensee of the author of any right under such copyright other than those in this section specified to bring any action or proceeding for the infringement of the rights which such assignee or licensee may own.

Sec. 28. During the existence of the copyright in any work when such work has been published and manufactured within the limits of the United States or its dependencies, under an assignment covering stated rights in the United States and its dependencies, or any of them, registered at the Copyright Office, and such assignment stipulates exclusive sales rights within the United States and its dependencies or any of them, the importation into the United States of any copies thereof printed or produced by any of the processes mentioned in sections 26 and 27 of this act, or of plates or mediums of any kind for making copies thereof, whether or not authorized by the author or proprietor of any foreign copy-

right, except used copies, shall be reported by the customs authorities at the port of importation to the Register of Copyrights, and if registration of a claim to copyright or rights under section 34 of this act and the deposit of two copies of the American edition shall have been accomplished prior to such importation, such imported copies, plates, or other mediums for making copies shall be subject to seizure at the instance of the assignee of publication rights in the United States. If found to be imported in violation of the terms of the contract of assignment, such copies, plates, or other mediums for making copies shall be forfeited to the assignee or otherwise disposed of at the discretion of the district court of the United States having jurisdiction of the case: *Provided, however,* That the foregoing provision shall not apply—

(a) To any work published in the country of origin with the authorization of the copyright proprietor, when imported, not more than one copy of any such work on any one invoice, for use and not for sale or hire, by and for any free public library or branch thereof, any privately owned or endowed library open to free use by the public or by scholars, or any school, college, society, or institution organized and conducted in good faith for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, and not for profit;

(b) To any work published in the country of origin with the authorization of the copyright proprietor, when imported, not more than one copy of any such work on any one invoice, for individual use and not for sale or hire, provided that within ten days prior to the date of the ordering of such copy for importation, the proprietor of the United States copyright or rights to such work, within ten days after written demand for a copy of such work specifying that such copy is desired for use and not for sale or hire, shall have declined or neglected to agree to supply the copy demanded at a price equivalent to the foreign price thereof and transportation charges, plus customs duties when subject thereto; or provided that at the date of the order of such copy for importation no such registration and deposit of such copies of the American edition shall have been made as aforesaid;

(c) To any work published in the country of origin with the authorization of the copyright proprietor when imported by the proprietor of the United States copyright or rights for the purpose of filling demands for copies thereof made pursuant to the preceding subdivision (b) or of filling orders for copies thereof received from any library, school, college, society, or institution designated in the foregoing subdivision (a): *Provided*, That every such demand or order shall specify that the work is desired for use by the purchaser and not for resale or hire;

(d) To works which form parts of libraries or private collections purchased en bloc in a foreign country for the use of any libraries, schools, colleges, societies, or institutions designated in the foregoing subdivision (a), or which form a part of the personal baggage of any person arriving from a foreign country and which are not intended for sale or hire: *Provided, however*, That no one person shall so import more than five such works at any one time;

(e) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

(f) To motion pictures and motion-picture photo-plays;

(g) To the authorized edition of a book in a foreign language or languages;

(h) To works in raised characters for the use of the blind;

(i) To works imported by the authority or for the use of the United States;

Provided further, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 29. The importation of any copies or substantial reproductions in whole or in part, of any work in which copyright exists, into the United States which if made, published, distributed, exhibited, or performed in the

United States would infringe such copyright is hereby prohibited.

SEC. 30. Any and all copies of works prohibited importation by this act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however,* That all copies of authorized editions of copyright works imported in the mails or otherwise in violation of the provisions of this act may be reexported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury in a written application that such importation does not involve willful negligence or fraud.

SEC. 31. The Secretary of the Treasury and the Postmaster General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this act, and may require notice to be given to the Treasury Department or Post Office Department, as the case may be, by copyright owners or injured parties, of the actual or contemplated importation of articles prohibited importation by this act which infringe the rights of such copyright owners or injured parties.

COPYRIGHT NOTICE, REGISTRATION OF CLAIMS TO COPYRIGHT,
AND DEPOSIT OF COPIES

SEC. 32. No notice of copyright shall be required on any work copyrighted under this act, nor after this act goes into effect, as to works copyrighted under previous acts. The omission of such notice from any work shall not be taken as evidence that no copyright is claimed therein nor affect the validity of the copyright therein. Nevertheless, a legible notice of copyright or a notice with reference to any right included in the copyright in any work may be placed on copies of the work by the owner of the copyright or an assignee or licensee. Such notice shall, if applied in the case of a book or other

printed publication, be placed upon its title-page or the page immediately following, or upon any of the first ten, or the last ten pages of text; or in the case of a contribution to a periodical, such notice shall be either placed as aforesaid or under the title or at the foot of the first page of said contribution; but any person who, with fraudulent intent, shall insert or impress any notice of copyright or words of the same purport in or upon any article in which copyright for the United States does not subsist shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$1,000, and any person who shall knowingly issue or sell any article bearing such notice or words of the same purport when copyright in such article does not subsist in the United States shall be liable to a fine of \$100.

SEC. 33. In the event that prior to the passage of this act notices of copyright were placed upon any works which were defective in form or did not contain the name of the person or persons actually entitled to copyright or contained an incorrect name or date or in which the date was lacking or in the event that the registration of any copyright works prior to the passage of this act were in any way defective, such notices and/or registrations are hereby legalized, confirmed, made valid and effectual as fully as if none of the various errors, omissions, matters, and conditions hereinabove enumerated had occurred or existed: *Provided, however,* That where any person prior to the passage of this act has taken any action whereby he has incurred any expenditure or liability which but for the enactment of this section would be lawful, nothing contained in this section shall diminish or prejudice any such action or the continuance of any enterprise lawfully undertaken pursuant to the foregoing prior to the passage of this act: *And provided further,* That if this section be held invalid for any reason that such holding shall not affect any other provision of this act.

SEC. 34. The author or other owner of the copyright in any work or any right, title, or interest therein, may, if he so desires, obtain registration of a claim to copyright in such work or in any of the rights comprised therein, as the case may be, respectively, upon the deposit in the Copyright Office at Washington of an application accompanied by the registration fee provided by this act.

and one copy of the work in which, or in connection with which, copyright is claimed, or the identifying matter prescribed in section 36 of this act.

Registration of a claim to copyright, or of any right therein, shall inure to the benefit of the author as well as all persons claiming through him or under him, as the case may be.

The Copyright Office shall have no discretion to refuse to receive any application nor to refuse to register such work upon any application being made.

If any person other than the author of any work shall apply for registration under this section, he shall at the time of making said application record in the Copyright Office any instrument or instruments under which he claims ownership of such copyright or right or rights thereunder, except that if such copyright or right or rights were acquired or contracted for by such person or by any predecessor of his in interest, other than the author, prior to the date on which this act shall take effect, he may record in the Copyright Office, in lieu of such instrument or instruments an affidavit setting forth the nature and extent of his ownership and the essential facts and circumstances upon which his claim to ownership is based: *And provided further*, That if a publisher of a newspaper or periodical shall apply for registration under this section of a claim to copyright in periodical and/or newspaper rights only in such newspaper or periodical, he may, in lieu of any instrument or instruments affecting serial rights, record in the Copyright Office an affidavit, setting forth the essential facts and circumstances upon which his claim is based. For the purposes of this section, if an instrument of assignment or license establishing the nature and extent of the rights claimed be recorded as hereinbefore provided, no other contracts or agreements relating to such transfer, assignment, or license need be recorded.

SEC. 35. The form of application for registration shall state to which of the following classes the work to be registered belongs. The classes of works enumerated below are expressly recognized as subject matter of copyright, but the following specifications shall not be held to limit the subject matter of copyright; nor shall any error in classification in such application affect any right comprised in the copyright:

(a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations, abridgments, adaptations, and translations;

(b) Periodicals, and contributions to periodicals, including newspapers, and contributions thereto;

(c) Lectures, sermons, addresses, or other matter prepared for oral delivery;

(d) Dramatic compositions, dramatizations, and dramatico-musical compositions;

(e) Musical compositions;

(f) Maps;

(g) Works of art;

(h) Reproductions of a work of art, including engravings, lithographs, photo-engravings, photogravures, casts, plastic works, or copies by any other methods of reproduction;

(i) Drawings and plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints and pictorial illustrations, including prints or labels for articles of manufacture and trade-union labels;

(l) Motion-picture photoplays, with or without sound and/or dialogue;

(m) Motion pictures other than photoplays, with or without sound and/or dialogue;

(n) Scenarios [(so-called continuities)] or *continuities* for motion pictures;

(o) Works of architecture, models, or designs for architectural works;

(p) Choreographic works and pantomimes, the scenic arrangement or acting form of which is fixed in writing or otherwise.

SEC. 36. The copy deposited for registration may either be printed, typewritten, or be in legible handwriting if the work be a book, or a dramatic, musical, or dramatico-musical composition; a scenario of a motion picture; a lecture, sermon, or address, or the acting form of a choreographic work or a pantomime. For a photograph, there shall be deposited one print from the negative; for any work of art, or for a model or design for a work of art, or a drawing or plastic work of a scientific or technical character, or any work not particularly specified in this section, a photograph or other identify-

ing reproduction; for a motion picture, the title, and a description or synopsis or prints sufficient for identification; for an architectural work, a photographic or other identifying representation of such work and such drawings as are necessary to identify it.

SEC. 37. The Register of Copyrights upon receipt of such application, and such copy or identifying matter and fee, shall make a full and complete record of the copyright claim and send a certificate of registration under the seal of the Copyright Office to the person indicated in the application.

SEC. 38. In the case of any work in connection with which application for registration of copyright is filed, where a copy thereof otherwise required or permitted which by reason of its character, bulk, fragility, or because of its dangerous ingredients, can not expediently be kept on file, the Register of Copyrights may determine that there shall be deposited with the application for registration, or on subsequent notice by registered mail, in lieu of a copy of such work, such identifying photographs or prints, together with such written, typewritten, or printed description of the work as shall be sufficient to identify it.

SEC. 39. Whenever any literary, dramatic, dramatico-musical, musical, or artistic work has been published in book, pamphlet, map, or printed sheet form, it shall be obligatory upon the publisher, except as below provided, to make a deposit in the Copyright Office or in the mail addressed to the Register of Copyrights, Washington, District of Columbia, within thirty days after the date of publication, of two complete copies of the best edition thereof then published, for the use of the Library of Congress. Registration for such work may be secured if such copies are accompanied by the application and remittance prescribed in section 34 of this act: *Provided, however,* That the deposit of copies required in this and the following two sections shall not be obligatory in case of any work whose author is a national of a foreign country which is a member of the Convention of Berne for the Protection of Literary and Artistic Works or any work which is protected by copyright in the United States under this act by reason of first publication in any country which is a member of the said union, unless and until such work, if it be a book, shall have been republished in the United States under

an assignment of the copyright for the United States or under a license to print and sell such book in the United States.

SEC. 40. That in the case of newspapers or other periodicals, when registration is desired, one copy of each issue shall be deposited within thirty days after the date of publication for the use of the Library of Congress, which may be registered if accompanied by an application and remittance as provided in section 34: *Provided*, That if several editions of said newspapers are published on one day, a deposit of any one of said editions shall be in compliance with this section.

SEC. 41. Should the copies called for by sections 39 and 40 of this act not be deposited as herein provided, the Librarian of Congress may at any time after the date of the default in depositing the work require the publisher of said work to make such deposit, and after the said demand shall have been made, in default of the deposit of a copy or copies of the work in the Library of Congress within three months from any part of the United States, except an outlying Territorial possession or dependency of the United States, or within six months from any outlying Territorial possession or dependency of the United States, the publisher of said work shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, but failure to make such deposit shall not, in any way, affect the validity of the copyright in the said work.

SEC. 42. The United States postmaster to whom are delivered the articles to be deposited as provided in this act shall, if requested, give a receipt therefor and shall mail them, together with any application for registration of copyright and remittances and any accompanying papers, to the Copyright Office without cost to the copyright claimant.

SEC. 43. Registrations and recordations under this act shall be constructive notice, as of the date of registration or record, to all persons of the rights claimed therein.

SEC. 44. In the case of each work registered for copyright the person recorded as the claimant of the copyright or of any right or rights comprised therein shall be entitled to a certificate of registration under the seal of the Copyright Office, to contain the name and address:

of said claimant, the name of the author, the country of which the author of the work is a national, and when an alien author domiciled or residing in the United States at the time of the making of first publication or first public performance of his work, a statement of that fact, including his place of domicile, business address, or residence, or that of his duly authorized representative; the title of the work for which registration is claimed; the date of the deposit of the copy or copies of such work; the date of publication or performance if the work has been reproduced in copies for sale or publicly distributed or performed; and such marks as to class designation and entry number as shall fully identify the entry. The register of copyrights shall prepare a printed form for the said certificate, to be filled out as above provided for in the case of all registrations made after this act goes into effect, which certificate, sealed with the seal of the Copyright Office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and a similar certificate shall be supplied on request in the case of all previous registrations so far as the Copyright Office record books shall show such facts. In addition to such certificate, the Register of Copyrights shall furnish, upon request, without additional fee, a receipt for the copy or copies of any work deposited under this or previous acts of the United States. Said certificate and receipt shall be admitted in any court as prima facie evidence of the facts stated therein.

SEC. 45. Subject to this act, the Supreme Court of the District of Columbia or a judge thereof, may on the application of any person aggrieved, by writ of mandamus upon due cause shown, order that any registration or record made under this act may be cancelled, annulled, and expunged or similarly order the correction of any omission, error, or any defect in any registration or record or attempted registration or record. An appeal shall lie to the Court of Appeals of the District of Columbia from any final order made under this section.

SEC. 46. The Register of Copyrights shall fully index all registrations of claims to copyright or rights therein and all assignments, grants, licenses, mortgages, or other instruments recorded, and shall print at periodic intervals a catalogue of the names of the authors, where

known, and of the titles of works deposited and registered, together with suitable indices, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries. Both the current catalogues and the complete and indexed catalogues for each class of copyright entries shall be furnished to all persons desiring them at reasonable prices.

SEC. 47. The record books of the Copyright Office, together with the indices to such record books, and all works deposited and retained in the Copyright Office, shall be open to public inspection, and copies may be taken of the entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the Register of Copyrights and approved by the Librarian of Congress.

SEC. 48. That of the articles deposited in the Copyright Office under the provisions of the previous copyright laws of the United States or of this act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 49. That of any article undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the Register of Copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the Copyright Office, and after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from January to November, inclusive, a statement of the year of receipt of such articles and a notice to permit any author, copyright owner, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years not reserved or disposed of as provided for in this act: *And provided further*, That no manuscript of an

unpublished work shall be destroyed during its term of copyright without specific notice to the copyright owner of record, permitting him to claim and remove it.

COPYRIGHT OFFICE

SEC. 50. All records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the Copyright Office, Library of Congress, Washington, District of Columbia, and shall be under the control of the Register of Copyrights, who shall, under the supervision and approval of the Librarian of Congress, perform all the duties relating to the optional registration of copyrights and shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this act and to prescribe the form of application for such registration.

SEC. 51. There shall be appointed by the Librarian of Congress a Register of Copyrights, at a salary of \$8,000 per annum, and one Assistant Register of Copyrights, at a salary of \$6,000 per annum, who shall have authority during the absence of the Register of Copyrights to attach the Copyright Office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

SEC. 52. The Register of Copyrights shall make daily deposits with the Treasurer of the United States of all money received to be applied as copyright fees, and shall make weekly transfers to the Treasurer of the United States, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters; and he shall make monthly reports to the Comptroller General of the United States and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

SEC. 53. The Register of Copyrights shall give bond to the United States in the sum of \$20,000, in form to be approved by the Solicitor of the Treasury and with sure-

ties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

SEC. 54. The Register of Copyrights shall make an annual report to the Librarian of Congress of all copyright business for the previous fiscal year, which report shall be printed promptly after the close of the fiscal year.

SEC. 55. The Register of Copyrights shall provide and keep such record books in the Copyright Office as are required to carry out the provisions of this act.

SEC. 56. The Register of Copyrights shall, upon payment of the prescribed fee, record any assignment of copyright, or any grant, license, or mortgage of any right pertaining to the copyright in any work protected under this act or any previous acts of the United States, and shall return it after recordation to the sender with a certificate of record attached under seal of the Copyright Office, and upon the payment of the fee prescribed by this act he shall furnish to any person requesting the same a certified copy thereof under said seal. The Register of Copyrights shall have no discretion to refuse to record any instrument presented to him for record as aforesaid.

SEC. 57. The Register of Copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of a claim to copyright or rights therein under the provisions of this act, \$2, which sum is to include a certificate of registration under seal: *Provided*, That in the case of any unpublished work registered under the provisions of section 34, the fee for registration with certificate shall be \$1, and in the case of a published photograph the fee shall be \$1 where a certificate is not desired. For every additional certificate of registration made, \$1. For recording and certifying any written instrument provided for in section 10 or 11 of this act, or for any copy of such assignment, grant, mortgage, or license, duly certified, \$1 for each Copyright Office record-book page or fraction thereof, up to five pages, and 50 cents for each such page or fraction thereof beyond five pages. For comparing any copy of an assignment with the record of such document in the Copyright Office and certifying the same under seal, \$2. For indexing the transfer of the ownership of copyrighted works or of any right therein, 10 cents for each title of a book or other article, in ad-

dition to the fee prescribed for recording the instrument evidencing the same. For any requested search of Copyright Office records, indices, or deposits, \$1 for each full hour of time consumed in making such search.

SEC. 58. A seal shall be used in the Copyright Office and be the seal thereof, and by it all papers issued from the Copyright Office requiring authentication shall be authenticated.

ENTRY OF THE UNITED STATES INTO THE CONVENTION OF
BERNE FOR THE PROTECTION OF LITERARY AND ARTISTIC
WORKS

SEC. 59. Copyright, as herein provided, shall subsist in the work of alien authors by virtue of adherence of the United States to the Convention of Berne for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, September 9, 1886, and revised at Berlin, Germany, November 13, 1908, and to the "Additional Protocol" to the said convention executed at Berne, Switzerland, March 20, 1914, as provided by this act, on and after the date on which the adherence of the United States to the said Convention of Berne for the Protection of Literary and Artistic Works goes into force: *Provided, however,* That the duration of copyright in the United States shall not in the case of the work of any such alien author, extend beyond the date at which such work has fallen into the public domain in the country of origin as defined by said convention, *or in the United States: And provided further,* That as to copyrights in works not previously copyrighted in the United States no right or remedy given pursuant to this act shall prejudice lawful acts done or rights in or in connection with copies lawfully made or the continuance of business undertakings or enterprises lawfully undertaken within the United States prior to the date on which the adherence of the United States to said Convention of Berne for the Protection of Literary and Artistic Works becomes effective; and the author or other owner of such copyrights or persons claiming under him shall not be entitled to bring action against any person who has, prior to such date, taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability.

SEC. 60. This act shall not apply to designs or patterns for wearing apparel, nor pictorial representations thereof, nor to any other designs capable of being patented, except designs which though capable of being so patented are not used or intended to be used as models or patterns to be multiplied by any industrial process other than the printing-press processes referred to in section 26 of this act.

SEC. 61. That the copyright provided by this act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright.

SEC. 62. The provisions of this act apply to existing copyrights save as expressly indicated in this act. All other acts or parts of acts relating to copyrights are hereby repealed, as well as all other laws or parts of laws in conflict with the provisions of this act, except that subsection (e) of sections 1 and 25 of the act of March 4, 1909, as amended (U. S. C., title 17, secs. 1 (e) and 25 (e)), shall continue in full force and effect in respect of musical compositions copyrighted subsequent to July 1, 1909, and up to January 1, 1932. Nothing in this act shall affect suits, actions, or proceedings for infringement of copyright heretofore committed now pending in the courts of the United States; but such suits, actions, or proceedings shall be prosecuted to a conclusion in the manner heretofore provided by law.

SEC. 63. That this act shall go into effect on the 1st day of ~~July~~ *June*, 1931.

Amend the title so as to read: "An act to amend and consolidate the acts respecting copyright and to enable the United States to enter the Convention of Berne for the Protection of Literary and Artistic Works."

ADDENDUM V

[71st Cong., 3d sess. Senate Report No. 1732]

REVISION OF COPYRIGHT LAW

(February 23, 1931.—Ordered to be printed)

Mr. Hebert, from the Committee on Patents, submitted the following report to accompany H. R. 12549:

The Committee on Patents, to which was referred the bill (H. R. 12549) to amend and consolidate the acts

respecting copyright, and to permit the United States to enter the International Copyright Union, having had the same under consideration, now reports the bill to the Senate with the following amendments and recommends that the bill as amended do pass:

On page 2, line 13, paragraph (c), after the word "dramatize", strike out the word "or" and insert in lieu thereof "and/or".

Also in said paragraph (c), line 16, strike out the words "or physical action".

Also in said paragraph, in line 19, strike out after the word "work" the word "or" and insert the words "and/or".

Also in said paragraph, in line 20, strike out the words "or physical action."

On page 3, paragraph (d), in line 1, after the word "produced", insert the word "reproduced".

Also in said paragraph (d), in line 17, after the word "purposes," add the following:

And provided further, That the use of a machine, instrument, or instruments serving to reproduce mechanically, and/or electrically such work or works shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs;

Amend paragraph (h), page 4, by inserting in line 9, after the word "work," the words "or motion picture."

Strike out all of section 3, on page 6, and insert in lieu thereof the following:

SEC. 3. In the absence of agreement to the contrary where any work is created by an employee within the scope of his employment his employer shall, as author, be the owner of the copyright in such work; but this provision shall not apply to works created under special commission where there is no relation of employer and employee, unless the parties agree otherwise.

Amend section 4, on page 6, by inserting in line 20, after the word "act," the following:

Provided, That nothing in this act shall prevent the fair use of quotations from copyright matter, provided credit is given to the copyright owner, unless the copyright owner has expressly prohibited such quotations from the copyright work in whole or in part.

Strike out in section 5, page 7, lines 2 and 3, the words "the publication" and insert in lieu thereof the words "such copyright".

Amend section 7 by adding after line 5, on page 8, after the word "government", the following:

Whenever any copyrighted work or part thereof shall hereafter be used, reprinted, copied, or distributed by or for the United States without license of the owner of the copyright or lawful right, such owner's remedy shall be by suit against the United States in the Court of Claims for the recovery of his reasonable and entire compensation therefor: *Provided*, That in any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by any defendant in an action for infringement: *Provided further*, That the benefits of this action shall not inure to any copyright owner who, when he makes such claim, is in the employment or service of the Government of the United States or the assignee of any such author, nor shall this section apply to any matter originated by the author during the time of his employment or service by the Government of the United States.

Amend section 9, page 9, by inserting in line 2 after the word "will" the following:

But no assignment, mortgage, license, or other disposition of said copyright or any right or rights comprised therein shall be valid except as between the parties thereto, unless it is in writing signed by the owner of the right in respect of which such instrument is made, or, except in the case of a will, by his duly authorized agent.

Strike out after the word "act," in section 9, line 9, page 9, the entire proviso down to and including line 22 on page 9.

After the words "Sec. 10", on page 9, strike out the remainder of line 23, lines 24, and 25, and continuing on page 10 all of lines 1, 2, and 3 through the word "instrument", and insert the following in lieu thereof:

Every assignment of copyright or any right or rights comprised therein shall be recorded in the Copyright Office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded:

Also strike out of section 10, page 11, lines 20 to 24, both inclusive, the following:

Provided, however, That for this purpose, where such notice or instrument of assignment is mailed by registered mail properly addressed to the Copyright Office in Washington, the date of such mailing shall be deemed the date of record.

Amend section 11 by striking out in line 5, page 12, the words "section 10 executed" and inserting in lieu thereof the following:

sections 9 or 10 executed or acknowledged before any notary public of the several States or Territories or the District of Columbia or any commissioner or any other officer of the United States for any district or Territory or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section 1750 of the Revised Statutes. This certificate of such acknowledgment under the hand and official seal or other officer shall be prima facie evidence of the execution of such instrument. Such instruments when executed

Strike out in section 12, page 12, line 20 to line 8 on page 13, inclusive, the following:

be for the life of the author, if living, and for a period of fifty years after his death, except that where the author is not an individual, the term shall be fifty years from the date of completion of the creation of the work; and except that in the case of a work by joint authors the copyright shall terminate at the expiration of fifty years from the date of the death of the joint author who first dies, or shall exist during the life of the author who dies last, whichever period is longer: *Provided*, That where the work is based in whole, or in part, upon a previously existing work in which a longer copyright term may endure, then the copyright in said work shall endure for a term equal to that of said previously existing work, or for the term of fifty years aforesaid, whichever term is longer.

and insert the words "endure for seventy years from the date of copyright."

Strike out in section 13, page 13, line 12, the words "at the end of the".

Also in line 13 strike out the words "subsisting term".

Also in line 13, after the word "of", strike out the words "fifty years beyond".

Also strike out all of lines 14 and 15 and the word "years" in line 16 and insert in lieu thereof the words "seventy years".

Strike out in line 16 the words "first publication" and insert the word "copyright".

Strike out the remainder of line 16 and all of lines 17 through 25 and on page 14 line 1. Insert at the beginning of line 2, page 14, the words "In all".

Strike out in line 2 after the word "such" the word "continuation" and insert the word "copyright".

In said section 13, page 15, line 15, strike out the words "*Provided further, That*". Also strike out all of lines 16 through 21 and insert the following in lieu thereof:

Provided further, That where a royalty is reserved or agreed to be paid in any contract for the sale or assignment or for a license of any copyright, such sale or assignment or license shall be deemed a personal contract in the absence of agreement to the contrary.

Strike out of section 14, page 16, line 17, all of paragraph (c) and insert a new paragraph (c) as follows:

(c) To pay, at the option of the owner of the right infringed, in lieu of actual damages and profits, such statutory damages as to the court shall appear to be just: *Provided*, That such statutory damages in the case of unauthorized dramatic or dramatico-musical performance or performances or of unauthorized motion-picture exhibition or exhibitions, with or without sound and/or dialogue, or unauthorized performance or performances for profit of a musical work, shall not exceed a total sum of \$10,000 nor be less than \$100 for all infringement of a copyright up to the date of institution of suit, and in the case of unauthorized newspaper or periodical reproduction of a copyrighted photograph, shall not exceed the sum of \$200 nor be less than \$10 for all infringement up to the date of suit; and in any other case shall not exceed the total sum of \$5,000 nor be less than \$100 for all infringement up to the date of suit; and such damages shall in no case be regarded as a penalty.

After new paragraph (c) insert new paragraph (d) as follows:

(d) In any action for infringement of copyright in any work covered by the provisions of this act, if the defendant prove that at the time of the alleged infringement, either (a) the copyrighted work had not been registered with the register of copyright, or, (b) no notice of the copyright had been affixed thereto, or to the newspaper or periodical containing the same, the plaintiff shall not be entitled to any remedy other than an injunction.

Also in section 14, line 5, page 17, strike out "(d)" and insert "(e)".

Also in line 6, paragraph (e), formerly (d), strike out the words "was not aware that he".

In line 7 of said paragraph (d), now (e), strike out the words "was infringing or".

In said section 14, paragraph (d), now (e), page 17, line 12, insert after the word "recover" the words "for all infringements up to date of institution of suit".

In said section 14, paragraph (d), now (e), insert in line 22, page 17, after the word "dramatic", the words "or dramatico-musical".

In line 1 of page 18 strike out "(e)" and insert "(f)".

In line 2 of said paragraph strike out after the word "author" the words "(except a dramatico-musical or musical composition)".

After the word "form" in line 4 of said paragraph (e), now (f), insert the words:

(the word "printing" as used in this section is defined to include photo-engraving, electrotyping, stereotyping, photogravure, gravure, lithographing, or other processes used in the reproductive manufacture of same in printed form, as well as all forms and methods of printing),

In said section 14, paragraph (e), now (f), page 19, line 1, strike out "(e)" and insert "(f)".

In said section 14, page 19, line 11, strike out "(f)" and insert "(g)".

In said section 14, page 20, line 16, strike out "(f)" and insert "(g)".

Amend section 23, page 25, by inserting after the word "found" in line 4 the words "provided that no civil proceeding shall be maintained under the provisions of this act unless the same is commenced within three years after the cause of action arose."

In section 35, page 37, line 8, strike out the words "(so-called continuities)" and insert the words "or continuities".

In section 59, page 48, line 25, after the word "convention" insert a comma and the words "or in the United States".

Section 63, page 50, line 19, strike out the word "July" and insert the word "June".

Amend the title so as to read:

An act to amend and consolidate the acts respecting copyright and to enable the United States to enter the Convention of Berne for the Protection of Literary and Artistic Works.

The bill as amended will be found on page 45.

SCOPE OF BILL

This bill revises the existing copyright law in various particulars and provides for the entrance of the United States into the International Copyright Union, an association to which reference will be made later in this report.

The existing law regulating copyright was enacted in 1909. Since that time, because of many changes in trade practices and by reason of the coming into being of new mediums of expression, such as the moving picture and the radio, the need of additional legislation has been

seriously felt. The act of 1909 has become wholly inadequate, is antiquated and cumbersome.

The authority for this legislation is provided by the Constitution of the United States. Section 8, paragraph 8 of the Constitution provides as follows:

The Constitution shall have power * * * to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.

This bill aims to make more secure the rights of authors and composers in their literary and artistic productions.

Since the year 1909 when existing law was enacted, many changes have been wrought in the field of literature and other artistic creations.

Formerly an author who produced a writing or a book, or a play, or other literary work, disposed of his rights therein to a book publishing house and the publisher copyrighted the work and became the owner of all of the rights therein. Under modern conditions and existing trade practices the publisher of a magazine, for example, may wish to acquire what are known as serial rights in a story; a book publishing concern may desire to purchase the book right; and a moving-picture producer may wish to acquire rights which will enable him to reproduce the work upon a screen for exhibition purposes. It follows that a revision of the existing copyright law is needed, not only for the protection of authors, artists, playwrights, screen writers, composers, and lecturers, but also for certain skilled laboring classes and the employees of the various industries which purchase from authors or deal in authors' works.

Bills not unlike the one under consideration have been before the House of Representatives since the year 1926. Many hearings have been had and a large volume of testimony adduced before members of the Committee on Patents of that body, as well as to your committee during its consideration of the measure now under review. It will be noted that notwithstanding the extended consideration given to this and other measures by committees of the House of Representatives, your committee has seen fit to modify the bill as it came from the House of Representatives in many respects. The bill as now presented to the Senate is the result of all of this ex-

tensive study and consideration. It is safe to say that practically all of the industries and all of the authors and composers have united in support of this measure. The authors, playwrights, composers, and artists are in favor of its enactment. The book publishers, the motion-picture producers, the publishers of newspapers and magazines, the allied printing trade-unions, the librarians, a majority of the theater managers—all of these have appeared at one or another of the several hearings and have expressed their approval of the principles of the bill, as well as most of its provisions.

MAJOR AMENDMENTS PROVIDED BY H. R. 12549

What might be called the major amendments to the existing copyright law that are provided in this bill may be summarized under three heads as follows:

- (1) Automatic copyright, by which a copyright is conferred upon the author immediately he creates a work.
- (2) Divisible copyright, which permits the author to dispose of the several rights which he has in his creation and to enable his assignee, grantee, or licensee to protect any such right which he acquires, and this without the many complications arising under existing law.
- (3) International copyright, which guarantees to American authors the copyright of their works throughout all the important countries of the world without compliance with any formalities.

AUTOMATIC COPYRIGHT

Section 1 of the bill secures to authors without compliance with any conditions or formalities whatever copyright in their creations whether published or unpublished and sets out in detail the conditions under which such rights are acquired.

The idea of automatic copyright is by no means new for it has been recognized by common law in this country from time immemorial. Common-law copyright is the right which every author has in his unpublished works. Automatic copyright, as provided in this bill, means that without any formality whatever the author of a given work immediately upon its creation becomes the owner of it for all purposes.

Under existing law the copyright guaranteed to authors, composers, and artists arises in the case of published works only when the author complies with the provisions of the law. Section 9 of the copyright law of 1909 provides:

SEC. 9. That any person entitled thereto by this act may secure copyright for his work by publication thereof with the notice of copyright required by this act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor * * *.

Briefly, the requirements of the existing copyright law are such that before an author may secure a copyright upon his work it must be published; it must bear a notice of copyright; it must be registered in the copyright office and a copy of it must be deposited with the register of copyrights. By the provisions of the bill now under consideration all of these requirements are done away with and the author, as already stated, secures copyright immediately he has created a work, subject, however, to limitations imposed upon his rights for the protection of others having to deal with him in the purchase or sale or use of copyrighted works.

Again, as a study of the bill will disclose, automatic copyright will not operate disadvantageously or unfairly against purchasers and dealers in copyrightable material, as their interests are carefully safeguarded by provisions regulating the registration of copyright, and the recording of assignments.

The idea of automatic copyright is the mere application of the right of property inherent in all men under our forms of Government to literary works and works of art, and musical compositions, and the like. If a man design and build an artistic piece of furniture, it is his property and no one can divest him of it under the law without his consent. He is not required in order to protect his right to such property to label it as is the case with his literary productions under existing copyright law. He is not called upon to place upon it, or upon any part of it, for instance, the words "John Smith, his table" or "John Doe, his desk." The desk or the table, or any other piece of property he owns is his and he may claim title to it as against all the world. Automatic copyright is intended to operate in precisely the same manner upon literary creations or works of art. The

author is the owner of that which he creates and his ownership should be recognized in law just as is the ownership of other property and rights therein. After all, the author is the source from which all rights in creative effort are derived and his rights in his creative efforts are those which this bill is intended to protect. Automatic copyright has existed in England for 19 years and in other countries, members of the International Copyright Union, for a much longer period.

DIVISIBLE COPYRIGHT

Divisible copyright as guaranteed in this bill affects the rights of the owner in the use of his works in its various forms; for example, the copying, printing, and publishing of it; its sale or exchange; its translation into other languages; the making of any form or record of it, by which the thought of the author may be recorded and from which it may be read, reproduced, performed, exhibited, or represented. To dramatize it; the making of it into motion pictures, with or without sound; its conversion into a dramatic work, if it be a nondramatic production, or vice versa. In the case of a musical composition, its arrangement or adaptation, and its publication for profit; its delivery in public; its broadcasting through the radio, and other modes of transmission; its production through public performance.

Under the law now in force (act of 1909) there can be but one owner of a copyright. In most instances such owner is not the author and frequently he is not the person who has all the rights in the author's work. There has arisen a trade practice, well recognized by authors and publishers and dealers in copyright works, whereby the author divides his several rights in his creative productions. He may dispose of the magazine rights to one; the book rights to another; the theatrical rights to a third, and the motion-picture rights to still another, and so on. The practice has been for authors to dispose of their entire copyright and to receive back from the purchaser such of the divisible rights in his work as the purchaser does not require for his own purpose. For example, the publisher of a magazine, though by purchase he acquires all the rights of the author, has no need of any other right than that of magazine publication, and

so he retains to himself the magazine rights in the work and transfers back to the author the remaining rights therein. Instances have been called to our attention, however, where the publishers of a magazine who purchased no other than the magazine rights in a literary creation have actually exercised copyright for its publication in book form, and other instances where book publishers who have only purchased the book rights have retained the entire copyright in the work.

An author who is familiar with the law of copyright, and the protection which is afforded to him by its provisions may by contract reserve to himself those rights of which he does not wish to dispose; but the question of the infringement of those rights which are disposed of or retained is a difficult one under existing law. For example, in the case of the purchaser of moving-picture rights where there has been an infringement of his exclusive use of a given subject, he can not sue directly to obtain redress, but he must join the copyright proprietor in his action. It has happened not infrequently that the copyright proprietor was the publisher of a magazine which has discontinued publication and gone out of business, or it may be an author who has died or who is out of the country.

Under the provisions of section 9 of the bill now under consideration the author or other owner of a copyright may sell or assign or hypothecate the entire copyright, or any of his rights therein, with such limitations as may be agreed upon. And this section further provides that the person acquiring such rights may in his own name bring all proceedings for their protection.

Briefly, then, the provisions of the bill affecting the several rights of authors and composers in their works recognize existing trade practices and provide the manner in which rights may be acquired in copyrighted material.

INTERNATIONAL COPYRIGHT

We have said earlier in this report that this bill will enable the United States to enter into the International Copyright Union so that American authors, upon compliance with the provisions of the bill, may secure copyright throughout all of the important countries of the world without further formalities.

The International Copyright Union, the full name of which is The International Union for the Protection of Literary and Artistic Property, was established under a convention signed at Berne, Switzerland, in 1886. This convention was revised at Paris in 1896, and at Berlin in 1908. In 1914, a protocol was signed by 18 countries at Berne, modifying the convention in some respects. It was again revised at Rome in 1928. There are some 40 leading nations of the world members of this union under the Berlin convention of 1908, and 18 of them have signed the protocol of 1914. The testimony presented to your committee would indicate that only two countries have as yet ratified the Rome revision of 1928.

The following is a list of the countries adhering to the International Union for the Protection of Literary and Artistic Works, together with the date of their adherence to the one or the other of the several conventions, as reported in a publication of the Department of State of the United States entitled "Treaty Information Bulletin No. 11, August, 1930."

1. Original convention of Berne, September 9, 1886.

The convention of Berne of September 9, 1886, entered into force on December 5, 1887, among the following countries: Germany, Belgium, Spain, France, Great Britain, Haiti, Italy, Switzerland, and Tunisia.

The following countries adhered later: Luxemburg, June 20, 1888; Monaco, May 30, 1889; Norway, April 13, 1896; Japan, July 15, 1899; Denmark, July 1, 1903; Sweden, August 1, 1904; and Liberia, October 16, 1908.

11. Convention of Berne, revised at Berlin, November 13, 1908.

The convention as revised at Berlin entered into force on September 9, 1910, among the 12 following countries who ratified within the term fixed by the convention: Germany, Belgium, Spain, France, Haiti, Japan, Liberia, Luxemburg, Monaco, Norway, Sweden, and Tunisia.

The convention was ratified later by the four following countries: Denmark, to take effect as from July 1, 1912; Great Britain, to take effect as from July 1, 1912; Italy, to take effect as from December 23, 1914; and Sweden, to take effect as from January 1, 1920.

The revised convention was later adhered to by the 21 following countries, who up to this time had been outside the union or who had been members as British Colonies and not as contracting parties: Portugal,

March 29, 1911; Netherlands, November 1, 1912; Morocco, June 16, 1917; Poland, January 28, 1920; Austria, October 1, 1920; Greece, November 9, 1920; Czechoslovakia, February 22, 1921; Bulgaria, December 5, 1921; Brazil, February 9, 1922; Hungary, February 14, 1922; Danzig, June 24, 1922; Syria and the Republic of Lebanon, August 1, 1924; Rumania, January 1, 1927; Estonia, June 9, 1927; Ireland, October 5, 1927; Finland, April 1, 1928; British India, April 1, 1928; Canada, April 10, 1928; Australia, April 14, 1928; New Zealand, April 24, 1928; and Union of South Africa, October 3, 1928.

III. Convention as revised at Rome, June 2, 1928.

The term for the deposit of ratification ends on July 1, 1931.

IV. Additional protocol of March 20, 1914.

The protocol entered into force on April 20, 1915, among the eight following countries: Denmark, Spain, Great Britain, Japan, Luxemburg, Monaco, Netherlands, and Switzerland.

It was later ratified by the seven following countries, who were members of the union in 1914: France, to take effect as from February 2, 1916; Germany, to take effect as from October 17, 1919; Sweden, to take effect as from January 1, 1920; Norway, to take effect as from February 28, 1920; Tunisia, to take effect as from April 23, 1920; Liberia, to take effect as from September 9, 1921; and Belgium, to take effect as from November 4, 1921.

The following 17 countries have later adhered to the protocol: Poland, January 25, 1920; Union of South Africa, May 1, 1920; Morocco, May 12, 1920; Austria, October 1, 1920; Czechoslovakia, February 22, 1921; Bulgaria, December 5, 1921; Brazil, February 9, 1922; Hungary, February 14, 1922; Danzig, June 24, 1922; Canada, January 1, 1924; Greece, March 10, 1924; Syria and Republic of Lebanon, March 28, 1926; Rumania, January 1, 1927; Estonia, June 9, 1927; Ireland, October 5, 1927; Finland, April 1, 1928; and Italy, February 20, 1930.

There is no data concerning the adherence of Australia, British India, and New Zealand.

Haiti and Portugal have not yet adhered, although they were members of the union at the time of the signature of the act.

Recognition of the works of American authors and composers by the citizens of foreign countries has made clear the need of international copyright legislation for their protection. Many of the more successful American plays are now produced in European capitals and most of the American moving pictures are exhibited abroad. It is the consensus of opinion among book publishers that with adequate protection they ought to be able to establish a very considerable export business.

It is true that American authors are now able to secure protection of a kind for their works in foreign countries but the method of procuring such protection leaves much to be desired. In order to do so an American author is required to copyright his work in one of the countries adhering to the International Union and through the medium of that copyright, obtain protection in all countries members of the union. In other words, as one of the witnesses expressed it at our hearings, under existing law, the American author secures the benefits of international copyright by going in under the tent. At the convention of the union held at Berne an additional protocol was adopted, the first paragraph of which reads as follows:

When a country not belonging to the union does not protect in a sufficient manner the works of authors within the jurisdiction of a country of the union, the provisions of the convention of November 13, 1908, can not prejudice in any way the right which belongs to the contracting countries to restrict the protection of works by authors who are, at the time of the first publication of such works, subjects or citizens of the said country not being a member of the union and are not actually domiciled in one of the countries of the union.

As construed by those familiar with the operations of the International Copyright Union, this protocol provides in effect that nationals of a country not a member of the union shall not be entitled to copyright in all countries members thereof merely by securing copyright in a country which is a member of the union. Realizing that this clause and the interpretation placed upon it would affect the interests of American citizens adversely, the American delegation in attendance upon the sessions of the convention requested that the time within which the United States might adhere to the union might be extended to August 1, 1931. It is the general belief among authors and publishers and others familiar with

the copyright law generally that the failure of the United States to enter the International Copyright Union will subject American authors, publishers, and producers to retaliatory legislation in foreign countries, and this in the not-distant future.

Section 59 of the bill under consideration provides specifically for the adherence of the United States to the convention of Berne as a member and fixes the conditions upon which this country may enter that convention.

INFRINGEMENT OF COPYRIGHT AND REMEDIES

The bill provides (sec. 14) against infringements of copyright and fixes the remedies therefor. This is one of the important features of the measure. Under the existing copyright law (act of 1909) the remedies provided for infringement are: (1) Injunction, (2) payment to the owner of the copyright of the profit realized from the infringement, (3) actual damages sustained by the owner of the copyright, and (4) in certain cases statutory damages. These remedies are provided in the bill now under consideration, however, with certain limitations.

To protect the innocent infringer where, in an action for infringement of copyright of any work, the defendant proves that he has been subject to fraud or substantial imposition by any third person and that the defendant has acted in good faith, the limit of remedy is fixed in the pending bill in an amount equivalent to the fair and reasonable value of a license, but not less than \$50 nor more than \$2,500.

In the case of infringement by a printer, if it be shown that such printer was not aware that he was infringing and that he was acting in good faith, no damages actual or statutory may be recovered, the only remedy being an injunction against future printing.

NEWSPAPER PUBLISHERS

Realizing that the publication of daily newspapers is effected under peculiar conditions, requiring a high degree of diligence, and we might say haste, and that they are under obligation to their readers and advertisers to

have their issues available to the public without delay, it is provided:

SEC. 14. If any person shall infringe the copyright in any work protected under the copyright of the laws of the United States, such person shall be liable (a) to an injunction restraining such infringement, except as otherwise provided in this act: *Provided, however,* That no temporary restraining order shall be issued which would prevent the publication of a daily newspaper.

The purpose of this provision is not to relieve the publishers of newspapers from the payment of damages where they infringe, but rather to relieve them from restraining orders or injunctions which would make it impossible to meet their contract obligations with their distributors and their advertisers, as well as the obligation which they owe to the public.

Subsection (c) of said section 14 also provides:

In case of an unauthorized newspaper or periodical reproduction of a copyrighted photograph, the statutory damages shall not exceed the sum of \$200 nor be less than \$10.

This last quoted provision is a reduction of both the maximum and minimum penalties provided in the existing law.

Section 14, subsection (f), provides further protection to newspaper publishers in case of the innocent publication of infringing advertising matter, and section 17 provides that no injunction shall issue against periodicals or newspapers where any part of the material contained in such periodicals or newspapers has been included in any issue upon which actual printing has begun.

MAGAZINE PUBLISHERS

Provision for the protection of magazine publishers has been made in the bill. The reasons for this are not unlike those which apply to the publishers of newspapers.

THEATRICAL ACTIVITIES

In the assignment of copyright section of the bill (sec. 9) otherwise known as the divisible copyright section, is a provision for the protection of all who deal with playwrights. Under the existing law (act of 1909) the playwright is usually the legal owner of the copyright, because plays are seldom if ever published by their authors, reliance being placed upon their common-law

right to prevent infringement. This common-law right does not require that the play be printed. The procedure which obtains at the present time is for the playwright to transmit to the Copyright Office, where he cares to do so, a typed copy of his work with an application for registration. If he prefers not to do this he can retain all his rights under the common law. It follows then that under the present law the playwright occupies a position of advantage which the literary author does not have, since a literary work must be printed and be publicly distributed in order to be copyrighted. Section 9 of the pending bill provides that the author or owner of a copyright may assign and otherwise dispose of the entire copyright, or of any right or rights comprised therein, for its entire term, or for a limited time, or may bequeath it by will, and the grantee or assignee of such a right may protect it by suit or other proceeding brought in his own name.

Section 9 of the bill also provides that every assignment, mortgage, license, or other disposition of a copyright shall be invalid except as between the parties thereto, unless it be in writing signed by the owner or by his duly authorized agent.

Section 10 provides that every assignment of copyright shall be recorded in the Copyright Office within a limit of time fixed in the section.

THE PRINTING TRADES

Paragraph (f) of section 14 of the bill is designed to safeguard innocent infringements in the printing of copyrighted material. American printers are protected against foreign importations by the provisions in section 28. This section is believed to be entirely satisfactory to the printing trades, and provides that the works of American authors, which are the subject of copyright in the United States, shall be printed in this country.

AMERICAN BOOK PUBLISHERS

Section 30 it is believed will afford adequate protection to American book publishers. In cases where American publishers are the owners of exclusive rights to publish works of foreign authors in America, they may maintain those rights free from the unauthorized importation into this country of competing works from abroad.

Section 30 of the bill provides that all copies of works importation of which is prohibited shall be seized in the event of importation and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue law.

PRIVILEGES TO LIBRARIES, SCHOOLS, AND COLLEGES

Under various subsections of section 28, the importation of books for individual use and not for sale, their importation by the proprietor of the United States copyright, or by any free public library, or foreign newspaper or magazine, or of motion pictures, or of foreign-language books, or books printed in raised characters for the use of the blind, or of works imported by the authority of, or for the use of the United States—in all of these cases exemption is made in the bill from the operation of the importation section.

MECHANICAL MUSICAL REPRODUCTION

Under the existing copyright law (act of 1909) it is provided as a condition of extending the copyright control to mechanical reproduction of musical works where the owner of a musical copyright permits the use of his work upon the parts of instruments serving to reproduce it mechanically, any other person may make similar use of such work upon the payment to the copyright proprietor of a royalty of 2 cents on each part manufactured. This provision applies to the reproduction upon phonograph records, talking machines, player pianos, etc. It is believed this provision for the fixing of a price to be paid to the owner of any property is unique in American legislation. There appears to be no valid reason for any distinction between the author or owner of musical composition and the author or owner, or producer of any other kind of property or work. As a result of the enactment of the provision in the law of 1909, owners of musical works are at the mercy of those engaged in mechanical reproduction with whom they have no contractual relations and who may be wholly irresponsible. The author is forced to permit the use of his work whether or not he desires to do so and at a price which is fixed by law and over which he has no control.

The provision of the bill under consideration will eliminate the 2-cent compulsory license fee heretofore fixed by law, from and after January 1, 1932, so far as the mechanical reproduction of music is concerned. Thereafter authors and composers, like other American citizens, will be free to make their own contracts upon terms mutually agreed upon. This provision will not disturb existing conditions and will not affect works other than those created subsequent to July 1, 1909, and up to January 1, 1932.

COPYRIGHT RECORDS AND TITLES

While under the provisions of the bill, authors are entitled to automatic copyright upon their works immediately they are created, there is a provision for the registration of copyright and the recording of assignments, licenses, etc. The ownership of a copyright is not made dependent upon its registration, or upon any other formality, but the bill provides that in case of failure to record a copyright, or to give notice thereof, such omission will excuse innocent infringers from the payment of any damages. In such cases the owner of the copyright is limited to a right of injunction. It is believed that the provisions of this section afford a distinct advantage to the owners of copyright. Under the act of 1909 a simple mistake in a copyright notice made by a printer's devil in a publishing house might invalidate the entire right of the author or of the publisher therein. Thus he might lose all his rights through no fault of his own. The pending bill protects the copyright under all circumstances by its automatic provision so that no one may be deprived thereof unless he wills to do so. His failure to register his claim to copyright, or to give notice of it upon the publication of it will not affect his claim, though it will under the provisions of the bill affect his right to recover damages in case of infringement. In these respects the simple requirements for recordation and notice are not unlike the laws in force in all the States in relation to land titles.

THE TERM OF COPYRIGHT

The term of copyright under existing law (act of 1909) is 28 years with a renewal term of a like period.

Under the pending bill as it passed the House of Representatives the term of copyright was extended for the life of the author and for a further period of 50 years after his death. This is the general length of term provided by the International Copyright Union.

A study of this provision by your committee has revealed some inconsistencies which in their opinion should be removed. For example, in the case of an individual author, the period of copyright would be for the life of an author, if living, and a period of 50 years after his death. The result would be that in only rare instances would copyright exist for an equal term for any two authors. For example, an author dying during the year in which copyright is secured would have a copyright in himself for a very brief period of time which would be extended in favor of his heirs or assigns for a further period of 50 years, whereas an author living 50 years after the creation of a work would be entitled to copyright for a total of 100 years. Again in the case of joint authors, the bill as it passed the House of Representatives provided that the copyright should terminate at the expiration of 50 years from the date of the death of the joint author who should first die, or, during the life of the author who should last die, whichever period might be longer.

Your committee believes that all these differences in the duration of the copyright should be eliminated from the bill and it suggests an amendment to sections 12 and 13 fixing the term of copyright to 70 years from and after the date of creation, regardless of the duration of life of the author. The question may arise, Why fix the term at 70 years? Information which comes to us indicates that the average age at which authors do most of their creative work is approximately from 35 to 45 years, and that the approximate duration of life thereafter is 20 years. Inasmuch as the International Copyright Union provides a term of 50 years of copyright from and after the death of an author, we have concluded to add this extension of 50 years to the average duration of his life after the creation of the work and have agreed upon an amendment providing for a full term of copyright of 70 years without renewal. This we believe will prove satisfactory to authors generally.

ANALYSIS OF AMENDMENTS

The following is an explanation of the changes intended to be effected by amendments proposed by your committee, together with an analysis of their effect if adopted.

Section 1 paragraph (c) has been amended by striking out wherever they occur the words "or physical action." This subsection provides for a right in the author to dramatize or make a motion picture of his work. It is our opinion that physical action in a drama, which is of necessity a passing phase, is never static and changes as often as a play is produced and can not be the subject of copyright. Therefore this amendment.

In subsection (e) of said section 1 your committee has added the following amendment:

That the use of a machine, instrument or instruments serving to reproduce mechanically and/or electrically such work or works shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs.

Under existing law (act of 1909) the owners of copyright music who have permitted the use of their works for reproduction upon records or disks, etc., otherwise known as mechanical reproduction, are limited to a fee of 2 cents for such record produced and are obliged to permit such reproduction to any manufacturer of records or disks upon the payment of this stipulated fee. This provision of the act of 1909 will, under the present bill, be repealed from and after January 1, 1932, so that henceforth the authors of copyright music will be free to contract with manufacturers of disks and records upon such terms as may be mutually agreed upon.

Under existing law perhaps in view of the limitations placed upon the amount which could be charged by the author of a musical composition as a fee for reproduction upon records, etc., courts have permitted authors and composers to charge the owners of musical instruments such as player pianos and slot machines for reproducing music, a fee for the right of reproduction in public, as for instance in restaurants and drug stores and other public places. Your committee reached the conclusion that in view of the change in existing law and the extension of the rights of composers by the elimination of the fee allowed them for reproduction of their works, there should no longer be a charge for reproducing their music

in places to which no admission is required to be paid. In this way it is thought that the confusion and in some instances the injustice worked upon the owners of mechanical musical instruments will be removed, and at the same time the composers will be amply protected since they are free to contract for the use of their compositions by manufacturers of records, upon their own terms.

Section 3 of the bill is amended so as to expressly provide that in the absence of agreement to the contrary, where any work is created by an employee within the scope of his employment, his employer shall be deemed to be the author of such work and the owner of the copyright therein.

The reason for this amendment is due to the conflicting interests which arise in the case of the production of moving pictures where authors and composers are engaged and under contract of regular employment to produce parts of a drama or a musical composition to be filmed. It is thought that under these conditions the producer of the moving-picture film should not, in the absence of agreement to the contrary, be held to answer a claim for damages by an employee who in the course of his employment composes some musical work or a drama in whole or in part, or writes for his employer what are known as scenarios or interludes. It is to be noted, however, that this amendment will not apply to work created under special commission where no relation of employer and employee exists, unless there is an agreement to the contrary. It follows then that under the provisions of this amendment an employee, notwithstanding the conditions affecting his right as author, will not operate to his detriment unless he wills it, because under all circumstances he may by contract protect himself fully and reserve his rights in his productions.

Section 4 is amended so as to permit the fair use of quotations from copyright matter, provided credit is given to the copyright owner and provided that the copyright owner has not expressly prohibited such quotation. The term "fair use" is made a part of this amendment. This term has a well-recognized meaning in law. At the present time and under existing law the publishers of newspapers and reviews make this so-called fair use of quotations. For instance, the *Literary Digest* is made up for the most part of quotations from current news items. In many instances the articles from which these

quotations are drawn are copyrighted by the publishers of newspapers, but it is our understanding that publishers do not object to the use of such quotations, provided credit is given to them as the owners of the copyright. This amendment fixes by law that which has been recognized as fair by common usage.

Section 7 has been amended to provide that where the United States without license makes use of a copyrighted article the owner of the copyright may bring suit in the Court of Claims for his reasonable and entire compensation therefor. The amendment also provides, however, that the United States may avail itself of all defenses in an action for infringement, and that the benefits of such an action shall not inure to a copyright owner who, when he makes such claim, is in the employment or service of the Government of the United States, nor to any matter originated by the author during the term or such employment or service.

This amendment is deemed by your committee to be not unfair to the Government of the United States, but, on the other hand, to afford that degree of protection to the owner of a copyright to which he is entitled. There seems to be no good reason in the minds of the members of your committee why the Government of the United States should be privileged to infringe rights which by its enactments it has given evidence of a desire to protect.

Section 9 is amended so as to provide that no assignment or other disposition of a copyright shall be valid except as between the parties unless it be in writing signed by the owner or by his agent. This, in brief, is the application to the disposition of copyrights of the ancient statute of frauds. Assignees and grantees of copyrights when they pay for a privilege are as much entitled to its enjoyment as are those who purchase any other property and their rights should be as firmly guaranteed as those of any other class of individuals. In the absence of this amendment in the bill it might well occur that the purchaser of a right would be deprived of that which he has purchased in the event the vendor should commit fraud through the prior sale of his rights and evidence of such prior sale could not be secured. Therefore, the amendment requires as a condition precedent to the validity of a transfer that except as between the parties to the transfer, it shall be recorded in the same

manner as deeds of real estate are required to be placed upon record.

Section 10 regulating the recording of assignments has been changed by a perfecting amendment which requires no extended comment. It is further amended by striking out the proviso permitting assignments transmitted to the office of the register of copyrights by registered mail to be valid from the date of mailing. This provision as it appears in the bill as it passed the House of Representatives, is deemed by your committee to be unwise, if not unworkable. It requires no stretch of the imagination to conceive of the difficulties which might arise in the event such an assignment were lost or destroyed in the mails. In such a case it might be quite impossible to prove conclusively that there had been a mailing of the instrument of assignment, and as a result the owner of the copyright might be confronted with any number of conflicting claims. Your committee believes that the rule which obtains in regard to the recordation of transfers of real estate should be made equally applicable to the registration of instruments of assignments of copyright. Of course in those cases where assignments are transmitted to the Copyright Office by mail just as in those instances where an assignment is effected by oral agreement, it will be good as between the parties thereto, but unless it reaches the Copyright Office, it will not be effective as against third parties, but will be subject to the conditions fixed by the amendment proposed by your committee in section 9 to which reference has already been made.

Section 11 has been amended so as to provide for the acknowledgment of instruments transferring copyright before notaries public of the several States, etc. This bill as it came to the Senate contained no such provision, and your committee deemed it to be essential to provide a manner for acknowledgment of documents of this nature in the United States inasmuch as the measure already provided the manner of their acknowledgment in foreign countries.

Section 12, fixing the term of copyright protection, has been amended so as to provide that a copyright shall endure for 70 years from the date thereof, in lieu of a term for the life of the author and 50 years after his death, as provided in the bill as it came from the House of Representatives. This amendment is fully discussed

and the reasons therefor are set forth elsewhere in this report.

At the end of section 13 the following proviso has been inserted:

Provided, That where a royalty is reserved or agreed to be paid in any contract for the sale or assignment or for a license of any copyright, such sale or assignment or license shall be deemed a personal contract in the absence of agreement to the contrary.

The purpose of this amendment is to protect authors and composers who enter into contracts with publishers with a reservation of royalties. Instances have been brought to our attention where publishers have secured such contracts with authors and composers who, because of their lack of financial responsibility, have failed to live up to the conditions of their agreement. In many cases such publishers have been petitioned into bankruptcy and in the disposition of the assets of the bankrupt not infrequently authors and composers have been deprived of the copyright protection which the law aims to guarantee. This amendment makes of such agreement personal contracts so that in the event of bankruptcy or receivership, the rights of the author will nevertheless be protected, and upon failure to pay the price which may have been agreed upon for the rights acquired or the royalties reserved, then the contract is at an end and the author is at liberty to enter into other agreements as he may elect.

Subsection (c) of section 14 which provides "limitation" in case of infringement of copyright has been amended in a way to clarify the intent of the statute. As this subsection was originally enacted by the House of Representatives a question arose as to whether the penalties provided therein might be recovered for every individual performance in a copyrighted work where infringement was claimed, thus making the total of the damages to be recovered a prohibitive sum which it was considered might shock the conscience of the court. The amendment provides that the damages specified in such cases of infringement by motion-picture producers or exhibitors shall be in satisfaction of all claims up to the date when suit is brought. In this same section 14, a new subsection designated as subsection (d) has been added as follows:

(d) In any action for infringement of copyright in any work covered by the provisions of this act, if the defendant prove that at the time of the alleged infringement either (a) the copyrighted

work had not been registered with the register of copyright or (b) no notice of the copyright had been affixed thereto or to the newspaper or periodical containing the same, the plaintiff shall not be entitled to any remedy other than an injunction.

It is believed that in practice in perhaps 99 per cent of all cases, authors or publishers immediately upon the publication of their works will cause to be placed thereon a notice of their claim to copyright. It is true that under the provisions of the bill (sec. 1) this formality is not required as a condition precedent to the acquirement of an exclusive right in the author since copyright is acquired automatically but it is considered to be a wise precaution to place such notice upon the copyrighted work in order to avoid all possible misunderstanding and perhaps many conflicting claims. It will be observed that this amendment will not destroy automatic copyright. It does not affect that right in any way. It goes rather to the remedies which are afforded to the owner of a copyright in case he fails to comply with the conditions of the amendment. Under the provisions of the bill, no particular form of notice is required, so that an author or composer may not be deprived of his rights because of the failure of a printer or anyone else to comply with some fixed requirement of the statute. We repeat, no particular form of notice is required. In the absence of some form of notice or of registration, however, under this amendment the owner of the right infringed is limited to an injunction and may not recover any damages for infringement. In the alternative in case no notice is given, the owner of the copyright may secure registration of it; in such case he will be entitled to recover all damages which he may have suffered.

Paragraph (e) of said section 14, which has been changed to paragraph (f) by the amendments proposed by your committee, has been amended so as to enlarge the definition of the term "printing" as used in said section, so as to include photo-engraving and the like processes.

Section 59 which provides for the entry of the United States into the International Copyright Union is amended by adding after the word "convention," in the first proviso, the words "or in the United States." As the bill passed the House of Representatives this proviso read as follows:

Provided, however, That the duration of copyright in the United States shall not in the case of the work of any such alien author

extend beyond the date at which such work has fallen into the public domain in the country of origin as defined by said convention.

In the opinion of witnesses who have familiarized themselves with the provisions of this bill and have studied the convention of Berne as it applies to copyrights of foreign authors, section 59 unamended, would permit works in the foreign public domain to be revived in this country upon the passage of the act. As an illustration, the operas of Gilbert and Sullivan are referred to. They have been in the public domain for some years. They are valuable and are still very popular. It is contended that the moment this bill is enacted into law, if the proviso quoted above be not amended, then the executors or trustees of Gilbert's estate or of Sullivan's estate may claim copyright in their works in America for 50 years. The addition of the words "or in the United States" will make this impossible, as your committee believes it should be, so that works which have fallen into the public domain in the country of origin shall continue in that state in this country.

The only remaining amendment is to change the effective date of the act from the 1st day of July to the 1st day of June, 1931. This amendment is inserted at the request of the owners of the copyright in a work in which a religious denomination has an interest, and which will expire prior to the 1st of July, 1931.

CONCLUSION

This bill has received most careful consideration by your committee. Many witnesses representing various interests have been heard. Your committee has considered scores of proposed amendments to practically every section of the bill. Many of these have been rejected because in the opinion of your committee they would destroy the very purposes of the measure. It was to be expected that a bill affecting so many interests would be the subject of much discussion on the part of those whose business is affected by it. Your committee has endeavored to give due consideration to all the suggestions which have been made. The measure in its present form, if enacted into law, may be the subject of modification in the future, but in the opinion of your committee, it meets with the general approval of those affected by its provisions.

It is safe to say that without exception, those who have made a study of copyright law and have had something to do with its enforcement are unanimously of the opinion that it will be for the very best interests of American authors and composers that provision be made within the time limit to do so to enter into the International Copyright Union. The United States is one of the few, if not the only major power, not now a member of that organization. As a result, evidence has been brought to the attention of your committee which leads us to the conclusion that American authors and composers have been at a disadvantage as compared with the authors and composers of countries which are members of the Copyright Union. This disadvantage we believe will not be minimized, but on the contrary will increase in the event of failure to pass this bill before the adjournment of the present Congress.

In the consideration of the bill your committee has had in mind its primary purpose which we conceive to be the carrying into effect of the provisions of the Constitution, as they affect the rights of authors and composers. We are convinced that this measure will correct the inadequacies of existing law and remove its oppressive and complicated features; that it will protect not only the authors and composers, but those with whom they deal; that it will clarify titles; that it will safeguard diverse interests; that it will simplify the enforcement of rights, and that it will give substantial justice to all of our citizens.

ADDENDUM VI

[71st Cong., 3d sess. S. J. Res. 264. In the Senate of the United States.
March 2, 1931]

Mr. Davis introduced the following joint resolution; which was read twice and referred to the Committee on Patents:

JOINT RESOLUTION Extending the duration of copyright protection in certain cases

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,
That in any case in which the original or renewal term of copyright subsisting in any work on the date of approval of this resolution would expire prior to January 1, 1935, such term is hereby extended from the date of such expiration to January 1, 1935.

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