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“To promote the Progress of Science and useful Arts”

Report to the Librarian of Congress

by the Register of Copyrights

THE COPYRIGHT OFFICE

Efforts to obtain a general revision of the U.S. copyright law, which go back more than 40 years, passed another milestone in fiscal 1967, but as the year ended it was clear that a lot of hard traveling lay ahead. Passage of the bill by the House of Representatives was an undeniable achievement, but the satisfaction one could take in a hard-won and not unqualified victory was tempered by the knowledge that some major problems remained unsolved.

As the year began, the House Judiciary Subcommittee on Patents, Trademarks, and Copyrights under the chairmanship of Representative Robert W. Kastenmeier of Wisconsin, was in the middle of a series of 51 executive sessions devoted to detailed examination and redrafting of the bill. These sessions continued into September 1966, and the bill as revised by the subcommittee was reported unanimously to the full House Judiciary Committee on September 21, 1966.

Meanwhile, on August 2, 1966, the Senate Judiciary Subcommittee temporarily resumed hearings on the bill. Under the acting chairmanship of Senator Quentin N. Burdick of North Dakota the sole issue considered at this series of hearings was the liability of community antenna television systems (CATV) for copyright liability. This immensely difficult, economically important, and politically explosive question was also the subject of

pending litigation and was closely related to a controversial program of CATV regulation adopted by the Federal Communications Commission. The issue of CATV liability had occupied a great deal of the House subcommittee's time and had produced a compromise proposal, which came to be known as the "Kastenmeier proposal," generally making the extent of liability of a CATV system depend on its impact on the copyright proprietor's market. This proposal was discussed at length during the Senate hearings and, while some progress was made, it was obvious that much more work remained to be done.

On October 12, 1966, the full House Committee on the Judiciary reported the revised bill without further amendment. House Report No. 2237 (89th Cong., 2d sess.), which comprises 279 pages including 141 pages of explanatory text, is an unusually valuable addition to the legislative history of the general revision bill. It examines virtually every provision of the bill in detail, recording the committee's reasoning behind its decisions on substantive issues and the intention behind its choice of statutory language. In a statement printed in the *Congressional Record* on October 19, 1966, Representative Richard H. Poff of Virginia, the ranking minority member on the subcommittee, stated:

The Judiciary Committee is proud of its work on H.R. 4347 and the time, deliberation, and careful

consideration given every issue and argument regarding every component part of the proposed new copyright law. But those of us who are involved in the legislative phase of this program are particularly appreciative of the work of the Copyright Office: the 6 years of studying the past revision efforts and present and future needs of a new law; the forum and climate provided by the Copyright Office for the 3 years of debating and discussing the innumerable proposals for revision and continuing efforts of the Copyright Office to find consensus on issues of controversy. We are appreciative of the Copyright Office's contribution to our subcommittee's executive deliberations in presenting objective analysis of every position on every issue to the subcommittee and providing the subcommittee with the expertise of almost 100 years of administering the copyright laws.

The 89th Congress adjourned less than two weeks after the bill was reported, but in its revised form it was introduced in the 90th Congress by Senator John L. McClellan (S. 597) and by Representative Emanuel Celler (H.R. 2512). It was considered by the newly constituted membership of the House Judiciary Subcommittee, again chaired by Representative Kastenmeier, in executive sessions on February 20, 24, and 27, 1967, and some further revisions were agreed upon. The bill was reported unanimously to the full committee on February 27, and was again reported to the House on March 2, 1967. Report No. 83 runs 254 pages, including 144 pages of detailed analysis; it also includes minority views by Representatives Byron G. Rogers of Colorado and Basil L. Whitener of North Carolina devoted to the jukebox issue and an additional dissent by Mr. Whitener on the bill's treatment of CATV.

It was becoming increasingly apparent, as the bill moved toward the House floor, that unreconciled conflicts on the issues of jukebox performances and CATV transmissions remained, and that there was danger that one or both of these issues could defeat the bill. The bill was considered by the House Rules Committee on March 8, 1967, and although full debate on the House floor was authorized,

the tenor of the arguments forecast trouble on the floor.

Consideration by the House of Representatives of H.R. 2512 started at 10 a.m. on Thursday, April 6, 1967. Throughout the long day the House considered the complex and technical bill. The lengthy debate, acrimonious at times, and the endless quorum calls, focused on the two unresolved issues: jukeboxes and community antenna systems. It was clear that these important, unresolved, economic issues were blocking consideration of the entire bill on its merits, and at 7 p.m. the managers of the bill made the decision to take the bill off the floor, and the House recessed. The revision program had come close to disaster.

It was obvious that there was no point in resuming debate unless the issues of April 6 could be reconciled. In the next four days several crucial compromises were reached in direct negotiations, and on Tuesday, April 11, an amended bill was passed by the House after mild debate with the remarkable vote of 379 yeas to 29 nays. Fairly radical changes were made in three areas: jukebox, CATV, and instructional broadcasting. There were drastic revisions in the compulsory licensing provisions establishing copyright liability for jukebox performances; the provisions dealing with community antenna transmission were dropped entirely, theoretically leaving CATV systems fully liable for copyright infringement; and the exemptions for instructional television were considerably broadened. On the other hand, the structure and content of the bill had remained substantially intact, and there was reason to hope that at least some of the compromise solutions would stick.

Meanwhile, the Senate Judiciary Subcommittee had resumed full-scale consideration of the bill, under the joint chairmanship of Senators McClellan and Burdick, on March 15, 1967. The record of the 1967 Senate hearings, which lasted 10 days and ended on April 28, 1967, nearly equals that of the House hearings in size and content. The Senate subcommittee did not consider CATV in its 1967

hearings since it had already heard testimony on the issue several months earlier.

Of the several other areas that emerged as full-blown issues at the Senate hearings, by far the most important was the problem of the use of copyrighted works in automatic information storage and retrieval systems. The "computer problem" could well turn out to be the most important issue in the history of the copyright law, but the Senate hearings and other extensive discussions of the question during fiscal 1967 made clear that a legislative solution is not at hand.

As the 20th-century technological revolution continues relentlessly to reshape and expand the availability and efficiency of methods of communication, new groups arise to challenge the exclusive rights that authors have traditionally been given under the copyright law. Two years ago the most significant problems in copyright law revision came from jukebox performances and educational copying, today they come from community antenna television systems and computers, and two years from now there may well be new interests whose future will be directly affected by the copyright law. This acceleration makes the enactment of a revised copyright statute increasingly difficult at the very time that the act passed in 1909 is proving increasingly inadequate.

The present law is essentially a 19th-century copyright statute, based on assumptions concerning the creation and dissemination of authors' works that have been completely overturned in the past 50 years. A 20th-century copyright statute is long overdue in the United States, and the present need for a revised law that will anticipate the 21st century is undeniable. Yet again and again it has seemed that abstract agreement on this need for complete revision gives way to concrete disagreement on particular provisions to appear in the new statute. As time goes on the problems become increasingly complex, the economic and political power of the special interests becomes greater, and the conflicts

on particular issues become more intense. It was obvious as the fiscal year ended that a great deal more patience, acumen, and hard work would be demanded before the goal of the general revision program can be attained.

The Year's Copyright Business

The 2-percent decrease in copyright registrations in fiscal 1966, the result of a fee increase in the middle of the year, was more than recovered during fiscal 1967. A total of 294,406 registrations were made, marking an increase over the previous year of 2.6 percent and an alltime Copyright Office record.

The overall increase in registrations was reflected in the three largest classes of material, all of which showed substantial gains. Registrations for periodicals and books both increased by nearly 5 percent, and those for music by over 3 percent. There was a substantial decline in renewal registrations (almost 8 percent), caused in large part by the doubling of renewal fees in late 1965. There were declines in the art classes, notably commercial prints and labels, but for some reason map registrations increased by 47 percent.

Foreign registrations rose by over 4 percent, and while the number of assignments and similar documents recorded dropped by about 6 percent, there was a rise in notices of use, and the number of notice of use titles recorded increased by almost 25 percent.

Of the 323,000 applications for registration and documents for recordation received during the year, 83.7 percent were acted upon without correspondence. Rejections amounted to 2.8 percent, and the remaining 13.5 percent required correspondence before final action could be taken. The Service Division processed over 678,000 pieces of mail, 334,000 incoming and 344,000 outgoing. It conducted 55,000 searches in connection with pending material, prepared and filed 260,000 cards related to material in process, and filed over 158,000 correspondence case files. Fees earned for registrations and related services again

broke all records. The total of \$1,812,000, which represents an increase of nearly \$342,000 or 23 percent over the previous year, results from the 1965 fee increase, which was fully felt for the first time in fiscal 1967.

The Cataloging Division prepared and distributed roughly 1.9 million catalog cards. Of these 700,000 were added to the Copyright Card Catalog, 205,000 were sent to subscribers to the Cooperative Card Service, 75,000 were furnished to the Library of Congress, and 922,000 were used to produce copy for the semiannual issues of the printed *Catalog of Copyright Entries*. Over 7,000 pages were composed for the *Catalog* during the year, and 22 issues were delivered to the Government Printing Office.

Over 12,000 reference searches were made in connection with nearly 116,000 titles, representing increases of 8 percent and 11 percent over the corresponding figures in 1966. Thanks in part to the fee increase, reference search fees rose approximately 170 percent to a total of over \$61,000. In addition to a number of bibliographic searches, including a particularly interesting one covering the works of William Somerset Maugham, the Reference Search Section completed what is believed to be the largest single search it has ever done. This resulted in a 1,025-page report for the American Play Company regarding works on which motion pictures had been based.

Official Publications

Although the Copyright Office brought out no publications of its own during the year dealing with general revision of the copyright law, it collaborated with counsel of the House Judiciary Subcommittee in the preparation of the two committee reports already mentioned.

In addition to its publication of the regular issues of the *Catalog of Copyright Entries*, the Office also published a revised edition of its Bulletin No. 14, the pamphlet edition of

"The Copyright Law of the United States of America (Revised to January 1, 1967)." This pamphlet, for sale for 35 cents by the Superintendent of Documents, U.S. Government Printing Office, includes not only the text of Title 17 of the United States Code but also the text of the Copyright Office regulations. The revised edition also includes the text of two of the acts temporarily extending the duration of copyright protection, the recently amended rules of the Supreme Court for practice and procedure in copyright actions, a section on international copyright relations, and the Universal Copyright Convention.

Copyright Contributions to the Library of Congress

In 1967 over 474,000 articles were deposited for copyright registration, an increase of about 4 percent and an alltime record. Some 269,000 articles, representing books, periodicals, music, and maps issued by American publishers during the year, were transferred to the Library of Congress for its collections or for disposal through its Exchange and Gift Division.

Partly as the result of questions concerning Copyright Office policy raised by several television production companies, efforts were reactivated during the year to renegotiate the existing Library of Congress agreement under which most motion pictures are deposited for copyright registration. Considerable progress was made and, if a new agreement can be attained, it should improve the Library's motion picture collections.

Administrative Developments

At the beginning of the fiscal year substantial backlogs were building up in most of the Office's operations. This situation was inevitably creating additional problems of control and correspondence and was affecting the efficiency and morale of the staff. As a result of a concerted effort in the Service and Examining Divisions, both of them were

maintaining substantial currency by the end of the year, and the Office had reached its goal of a two-week period between receipt of an application and dispatch of the certificate of registration. One key to this achievement was a new workflow report form which facilitated the pinpointing of bottlenecks and problem areas. Related to it, and equally successful, was a project to reduce the number of pending cases, some of them going back several years, in which the Office had been unable to take final action for one reason or another. By the end of the year the backlog in these cases had been almost entirely eliminated.

Office of Alien Property

The beginning of fiscal 1967 marked the end of an era with the closing of the Justice Department's Office of Alien Property (OAP) as an organizational entity. Government activity in this area had stemmed essentially from the Trading With the Enemy Act of 1917, which in amended form became effective again at the time of World War II. The purpose of the law, and of the regulations and executive orders issued under it, was "to lessen the enemy's and increase the American ability to wage war successfully." In pursuit of this purpose, control was assumed over a considerable amount of property in the United States, including a great many copyrights and the royalties from them.

Although all copyrights held by OAP have been divested or transferred, questions concerning copyrights formerly vested are sure to arise for years to come. A small staff in the Civil Division of the Justice Department still carries on the work remaining when OAP ceased to exist, and the Copyright Office maintains a file of vesting orders and related correspondence. In addition, information about certain vested works can be obtained from the Copyright Office card catalogs, particularly from the indexes to assignments and related documents.

Freedom of Information Act

Public Law 89-487, the Freedom of Information Act, took effect on July 4, 1967, just after the end of the fiscal year. On June 26, 1967, the Copyright Office implemented the act by publishing in the *Federal Register* (volume 32, page 9314) a change in its regulations dealing with the inspection and copying of Office records and other documents. Under the new regulations correspondence and related material dealing with completed registration, which had formerly been available on a restricted basis, are opened to public inspection. The Office also made its staff manual, the Compendium of Office Practices, available in the Copyright Office for public inspection and copying. The Compendium is still incomplete, and as the year ended an effort was being made to reorganize, supplement, and complete it with the goal of eventual publication in looseleaf form.

Legislative Developments

The program for general revision of the copyright law overshadowed all other legislative activities in the copyright field during fiscal 1967. The opening of the 90th Congress brought with it reintroduction of several bills from previous Congresses, but no significant action was taken on any of them. These included Representative Celler's jukebox bill, introduced as H.R. 2774 on January 18, 1967; the bill for protection of ornamental designs, introduced as H.R. 2886 by Representative Gerald R. Ford on January 18, 1967, as H.R. 3542 by Representative John J. Flynt, Jr., on January 24, 1967, as H.R. 6124 by Representative William L. St. Onge on February 27, and as H.R. 7870 by Representative Herbert Tenzer on April 3, 1967; and the bill barring copyright infringement suits covering "any sound reproduction recording made to be provided to blind or quadriplegic residents of the United States," which had been introduced in the 89th Congress by former Representative

John V. Lindsay and was introduced as H.R. 1016 on January 10, 1967, by Representative Richard L. Ottinger.

The fate of the design bill was particularly poignant, since it had passed the Senate at the beginning of the fiscal year. On July 22, 1966, the full Senate Judiciary Committee acted favorably on the bill and submitted it to the Senate with a report by Senator Philip A. Hart (S. Rept. 1404, 89th Cong., 2d sess.) and with amendments "primarily intended to clarify" its provisions. One of the amendments "would exclude from protection designs that are composed of three-dimensional features of shape and surface with respect to men's, women's and children's apparel, including undergarments and outerwear." The bill, as amended, was passed by the Senate on July 27, 1966, and sent to the House, but no further legislative action was forthcoming.

On July 28, 1966, H.R. 8664, the bill to implement the Agreement on the Importation of Educational, Scientific, and Cultural Materials (the Florence Agreement of 1950), was favorably reported with amendments by the House Ways and Means Committee (H. Rept. 1779, 89th Cong., 2d sess.). The bill was enacted on October 14, 1966 (Public Law 89-651), and H.J. Res. 688, implementing the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (the Beirut Agreement of 1948), was enacted on October 8, 1966 (Public Law 89-634). On November 2, 1966, Ambassador Goldberg formally deposited with the United Nations the instrument of U.S. ratification of the Florence Agreement, and the following day President Johnson issued a proclamation (31 Fed. Reg. 14381) fixing February 1, 1967, as the effective date of removal of U.S. tariff duties on books, music, maps, atlases and charts, and other items. Although they removed duties, neither the Florence Agreement nor the act implementing it had any effect on copyright restrictions. The Copyright Office collaborated with the Bureau of Customs

in drafting a new circular, issued to customs officers on January 31, 1967, explaining their continued responsibilities with respect to English-language books subject to import restrictions under the copyright law.

Tax legislation enacted on November 13, 1966 (Public Law 89-809), contained provisions affecting domestic authors and nonresident alien copyright proprietors. Title II of the Foreign Investors Tax Act of 1966 made significant changes in the income tax treatment of the contributions that self-employed individuals such as authors make to qualified pension and profit-sharing plans. In the foreign investment provisions of Title I, several amendments relieve nonresident aliens of U.S. tax liability on transactions involving intangible property like a copyright, and gifts of intangible property by nonresident aliens are no longer subject to the U.S. gift tax.

The Public Broadcasting Act of 1967 (Public Law 90-129) authorizes the Secretary of Health, Education, and Welfare to undertake a comprehensive study of instructional television and radio. The study, which necessarily has copyright overtones, will include consideration of the educational usefulness of media "such as instructional television fixed services, closed circuit, two-way communication of data computer links and community antenna television services."

On August 8, 1966, Representative George P. Miller introduced a revised version of his bill "to provide for the collection, compilation, critical evaluation, publication and sale of standard reference data." The new bill, H.R. 16897, specifically authorizes the Secretary of Commerce to "secure copyright and renewals thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this Act," and gives him discretion to "authorize the reproduction and publication thereof by others." The bill was favorably reported on August 11, 1966 (H. Rept. 1836, 89th Cong., 2d sess.), and passed the House on August 15, 1966.

No action was taken in the Senate, and companion bills were again introduced in the 90th Congress (S. 998 by Senator Warren G. Magnuson on February 16, 1967, and H.R. 6279 by Representative Miller on February 28, 1967). On May 15, 1967, while the Senate Commerce Committee was hearing testimony on the bill, the House Committee on Science and Astronautics reported H.R. 6279 without amendment (H. Rept. 260, 90th Cong., 1st sess.). The House Report makes it clear that copyright protection is sought only to protect the Government against competing sellers; it states that "the committee expects the Secretary to abide by the most liberal construction of the 'fair use doctrine' which may be consistent with the purposes of the bill," and notes testimony of Commerce officials "that they do not seek to prohibit the copying of the data per se but rather the copying for resale." The bill passed the House after the end of the fiscal year.

On January 10, 1967, Representative Abraham J. Multer introduced H.R. 916 to amend the Communications Act by making it unlawful for a broadcaster to make unauthorized deletions in program material, and Senator Margaret Chase Smith sponsored an amendment of the patent law that would permit issuance of patents beyond the allowable period after publication of descriptive matter, if the description was copyrighted and included a notice of intention to obtain patent protection. No action has been taken on these measures.

A new effort to obtain enactment of a Federal law of unfair competition opened with Senator McClellan's introduction on August 2, 1966, of S. 3681, a bill drafted by the National Coordinating Committee on Trademark and Unfair Competition Matters. The purpose of the bill, as stated by Senator McClellan, is "to create a Federal statutory law of unfair competition affecting interstate commerce, within the framework of the Lanham Trademark Act of 1946," and it contains broad language intended to create protection

possibly paralleling or overlapping that accorded under the copyright law. The bill was reintroduced on March 2, 1967, by Senator McClellan (for himself and Senator Hugh Scott) as S. 1154, but no action has been taken on it.

The Patent Reform Bill, based on recommendations of a Presidential Commission appointed in 1965, was transmitted by the President to Congress on February 21, 1967. The Administration bill, which was introduced by Senator McClellan as S. 1042 on February 21, 1967, and by Representative Kastenmeier as H.R. 5924 on February 21, 1967, would deny patents to computer programs. Opposition to certain important features of the bill led to introduction of a completely new draft prepared by the American Bar Association. This bill, introduced as S. 2597 by Senator Everett M. Dirksen on October 30, 1967, and as H.R. 13951 on November 9, 1967, by Representative Poff, would permit patents to be issued on computer programs, and the same is true of another revision bill, S. 1691, introduced by Senator Thomas J. Dodd on May 4, 1967.

The keen anticipation aroused by press reports of a forthcoming copyright bill has led to disappointment. Although *Time* on January 27, 1967, reported that Senator William B. Spong, Jr., had announced plans to join with colleagues in sponsoring a bill to combat Asian music piracy, so far no "Long-Fong-Spong-Hong-Kong Song Bill" has been introduced.

Judicial Developments

During the year there were significant developments in the two current actions in which the Register of Copyrights was a party. The litigation in *Public Affairs Associates, Inc. v. Rickover*, which began in 1959, had reached the Supreme Court in 1962, but the case had been remanded to the district court on the ground that the record was not sufficiently full-bodied. Thereafter the Register of Copyrights

and the Librarian of Congress, as well as the Secretary of the Navy, the Secretary of Defense, and the Atomic Energy Commissioners, were added as defendants. The case finally reached the district court again in 1967 and on May 10, 1967, after a long trial, Judge Smith handed down his decision dismissing the complaint, 268 F. Supp. 444 (D.D.C. 1967). With respect to the Government defendants, the court held that it lacked jurisdiction to grant declaratory relief; since the actions in question represent duties "requiring the exercise of judgment and discretion," the courts have no power to interfere with them. Speaking specifically of the Register of Copyrights, the court said that "registration of a copyright application calls for executive judgment" and is not "within the power of this court to control." An appeal from this decision was filed shortly after the end of the fiscal year, but was later dismissed.

The other action against the Register, *Hoffenberg v. Kaminstein*, Civil Action No. 1044-65 (D.D.C. June 7, 1967), *aff'd*, 157 U.S.P.Q. 358 (D.C. Cir. 1968), involved an effort by one of the coauthors of the novel *Candy* to compel the Copyright Office to issue a certificate of copyright registration covering the work as a whole, including the bulk of the text as it was first published in France. The authors of the work, who are both American citizens, wrote *Candy* in the English language, and the first edition of the novel consisting of their English-language text was manufactured and published abroad in 1958. In 1965 an effort was made to obtain registration for the text of *Candy* as first published. The Copyright Office refused to make registration on the ground that the time limits for ad interim registration had expired.

It is the Office's position that, in the case of an English-language book by American citizens manufactured and first published abroad, compliance with the ad interim provisions of sections 22 and 23 of the copyright law is a mandatory condition of copyright. One of the authors of *Candy* challenged this

position, arguing that the ad interim requirements of the statute are permissive rather than obligatory. In his action against the Register the plaintiff also argued that, since copyright law is not extraterritorial, first publication of a work abroad does not affect the right to secure copyright in this country, even if statutory conditions for securing copyright have not been met. A third issue was whether the Register has authority to refuse registration in a case such as this.

Extensive trial briefs were exchanged exploring the complex legislative history and case law bearing on these issues, and both sides moved for summary judgment. Oral arguments were heard on May 16, 1967, and on June 7 Judge McGarraghy ruled in favor of the Register of Copyrights and dismissed the action without a written opinion. This decision was affirmed by the Court of Appeals after the end of the year.

Exclusive Rights of the Copyright Owner

As in the previous year, the leading copyright case of fiscal 1967 was *United Artists Television, Inc. v. Fortnightly Corp.*, 377 F. 2d 872 (2d Cir.), *cert. granted*, 389 U.S. 969 (1967). In an extensive opinion written by Chief Judge Lumbard, the Court of Appeals for the Second Circuit unanimously affirmed Judge Herlands' 1966 decision holding that the activities of community antenna television systems constitute an infringement of copyright. These CATV activities consist of picking up licensed telecasts of copyrighted motion pictures and sending them on to paying subscribers over wires.

As stated in Judge Lumbard's opinion, there were two basic issues in the case: (1) whether the defendant's CATV activities "infringed the exclusive right of plaintiff . . . to perform its copyrighted motion pictures in public," and (2) "whether, if defendant's CATV systems did perform plaintiff's copyrighted motion pictures in public, they had a license implied in law to do so." The court

assumed that all of the defendants' transmissions were "for profit," although it noted in passing that "a public performance of a copyrighted motion picture which is not a photoplay protected by 17 U.S.C. § 1(d) . . . does not infringe the copyright unless it is for profit."

On the first issue the court rejected defendant's argument that "because the motion pictures were not made visible or audible within the systems, but only in the television sets owned and controlled by their subscribers," there had been no public performance. The court based its decision on "the result brought about": that is, "the simultaneous viewing of plaintiff's copyrighted motion pictures on the television sets of as many as several thousand of defendant's subscribers." It held that this result "is fairly characterized as a public performance infringing the copyrights"; although "Congress may have envisioned only what Judge Herlands termed the paradigm image of a public performance, an actor seen and heard by an audience assembled in his immediate presence," this "does not show that it meant to limit the concept of public performance to that paradigm when technological advances moved beyond it."

The court of appeals found "substantial guidance" in two cases, *Buck v. Jewell-LaSalle Realty Co.*, 283 U.S. 191 (1931) and *Society of European Stage Authors & Composers v. New York Hotel Statler Co.*, 19 F. Supp. 1 (S.D.N.Y. 1937), dealing with the wire transmission of broadcasts to guests within a hotel. According to Judge Lumbard the nub issue of these decisions was "how much did the defendant do to bring about the viewing and hearing of a copyrighted work," and the court concluded that "defendant's CATV systems did far more to bring about the viewing of television programs by their subscribers than the LaSalle Hotel and the Hotel Pennsylvania did to provide radio programs for their guests."

In judging "the magnitude of [the defendant's] contribution to the viewing of broadcast

television programs by its subscribers," the court discarded arguments that defendant did not furnish television sets, that it had no control over the content of programs, and that its operations were technologically different from those of a broadcaster. Asserting that "a fundamental purpose of the exclusive right of public performance is to protect copyright proprietors against dilution of the market for their works," Judge Lumbard's opinion states that "a CATV system making television programs continuously available in viewers' homes seems much more likely to dispel any desire to see the same copyrighted works elsewhere than a hotel which offers the same programs to a constantly changing group of guests."

In response to defendant's argument that the performance should be considered "private," the court ruled it "settled that a broadcast or other transmission of a work to the public or a cross-section of it results in a public performance although each individual who chooses to enjoy it does so in private." Judge Lumbard's opinion makes clear that the court's decision "rests upon the result which they [the CATV systems] produced and which defendant clearly intended, the simultaneous viewing of the programs by its subscribers, rather than upon the technical characteristics of the systems."

The second issue in the case, whether a CATV operator should be held to have an "implied-in-law license" to transmit broadcasts free of any copyright control, was divided into two parts. The defendant's first argument on this issue derived from a footnote in Justice Brandeis' opinion in the *Jewell-LaSalle* case implying that, where the initial broadcast has been licensed by the copyright owner, a third person might be free to pick it up from the air and retransmit it without an express license. Defendant argued that "the primary purpose of the Copyright Act is to encourage authors and artists to release their works to the public"; once the incidental and secondary aim of reward to the copyright owner has been satisfied by licensing the original broadcast,

"the Copyright Act's primary policy then requires that CATV systems . . . be allowed to transmit the broadcast signals without further payment to the copyright holder." Noting that "the question of an implied-in-law license to disseminate a radio or television broadcast is one of appellate first impression," the court ruled against the defendant, holding that a copyright owner has a right to subdivide his exclusive right of performance and to license the subdivided parts separately: "In an age of motion pictures and radio and television broadcasting, it would seem self-evident that a copyright proprietor must be allowed substantial freedom to limit licenses to perform his work in public to defined periods and areas or audiences."

However, in stating the court's conclusion on this point, Judge Lumbard added a qualifying phrase suggesting that an implied-in-law license might be found in certain limited circumstances: the fact that the work is broadcast by the original licensees "furnishes no reason to deny plaintiff the right to limit its licenses to viewers who can receive the broadcasts through normal rooftop antennas." A possible inference from the reference to rooftop antennas could be that, in a different case where the CATV subscribers could also receive the licensed broadcasts directly without special equipment, a CATV license might be implied as a matter of law.

This inference is strengthened by the court of appeals' opinion on defendant's final contention: that an implied-in-law license should be found for CATV operations because of a clash between copyright liability and the purpose of the Federal Communications Act to provide the widest possible broadcasting service to all of the people of the United States. The defendant argued "that this policy requires at least that CATV systems be free of copyright liability for transmission of a television broadcasting station's signals within the station's 'Grade B contour,'" that is, the

boundary along which acceptable service can theoretically be expected 90 percent of the time at the best 50 percent of the locations. The court refused to impose an implied-in-law license because of communications considerations, either across-the-board or within the licensed broadcaster's Grade B contour, noting that "a court cannot undertake the fashioning of detailed, carefully graduated rules, like those contained in the Federal Communications Commission's Second Report and Order . . . or in the proposed Copyright Law Revision reported by the House Committee on the Judiciary in the 89th and 90th Congresses."

Again, however, Judge Lumbard's opinion makes clear that the court is not ruling on the situation where CATV merely offers an alternative form of service to viewers who could receive the same programs off the air with ordinary equipment; "at least where defendant's subscribers could not receive the licensed broadcasters' signals satisfactorily by normal antennas, the Federal Communications Act, which lacks a comprehensive scheme of regulatory powers and private remedies, was not intended to preempt the application of the Copyright Act." Significantly the opinion adds: "A different case might be presented, which we do not decide, if a CATV system's subscribers could receive one or more of the stations carried satisfactorily by normal antennas, as it might then be contended that a copyright holder licensing a broadcast of a work over such a station must be held to have licensed their viewing of the work."

After the end of the fiscal year the Supreme Court agreed to hear the Fortnightly Corporation's appeal in the *United Artists* case, and the question of an implied-in-law license as a limitation on the exclusive rights of copyright owners has begun to figure prominently in discussions of CATV and other copyright problems. An example of the application of an implied-in-law license may be found in *Blazon, Inc. v. DeLuxe Game Corp.*, 268 F.

Supp. 416 (S.D.N.Y. 1965), an infringement action involving the copyrighted design of a hobby horse. The defendant in that case had lawfully acquired a copy of the plaintiff's horse "War Cloud" and had displayed the article in its showroom, supposedly offering the horse for sale as its own product called Thunder. The court based its decision in favor of the defendant on the "first sale" doctrine, which is regarded as a form of implied-in-law license. It held that the exclusive rights of the copyright owner to "vend" and "publish" a work become "inapplicable in the situation where the copyright owner first consents to the sale or other disposition of his work," since "at this point the policy favoring a copyright monopoly for authors gives way to the policy opposing restraints of trade and restraints on alienation." The *Blazon* decision also confirms that copyright owners have no exclusive rights of public display under the present law.

American Metropolitan Enterprises of New York, Inc., v. Warner Bros. Records, Inc., 154 U.S.P.Q. 311 (S.D.N.Y. 1967), *aff'd*, 389 F. 2d 903 (2d Cir. 1968), illustrates the sharp limitations imposed by the compulsory licensing provisions of the present law on the exclusive right to make sound recordings of copyrighted music. The defendant in the case had been licensed to record copyrighted music controlled by the plaintiffs, and when a dispute arose it stopped paying royalties but went on manufacturing and selling records. The plaintiffs sought to enjoin the defendant from continuing these activities, but the court refused to issue an injunction. It held that, "once the license was granted to the defendant, anyone could thereafter manufacture and sell records containing the compositions under the compulsory license provision of 17 U.S.C. § 1(e)," and therefore "the right sought to be protected no longer exists." This decision was affirmed on appeal after the end of the fiscal year.

Subject Matter of Copyright

The vital questions of whether a work must be "fixed" in material form to be copyrightable and of the extent of copyright protection afforded for literary characters both arose in the interesting and significant decision of the First Circuit Court of Appeals in *Columbia Broadcasting System v. DeCosta*, 377 F. 2d 315, *cert. denied*, 389 U.S. 1007 (1967). The plaintiff is a Rhode Island mechanic of Portuguese parentage with "a passion for all things western." Over a period of time he developed a character called Paladin, dressed in black and with a flat-crowned black hat to which a medal was affixed. He played this character at parades and rodeos, handing out some 250,000 business cards bearing a chess knight symbol and the words "Have Gun Will Travel—Wire Paladin." As part of his costume he wore an antique derringer strapped under his arm, and a silver copy of the chess piece on his holster. Judge Coffin observed that "this was perhaps one of the purest promotions ever staged, for plaintiff did not seek anything but the entertainment of others."

About 10 years after plaintiff had created his alter ego, an extremely popular television series entitled "Have Gun Will Travel" was produced and exhibited on the CBS network. In what the court called a case of "'coincidence' run riot," the leading figure in the series was named Paladin and had virtually all of the characteristics of costume and accoutrement that Mr. DeCosta had developed. In a jury trial "the plaintiff had the satisfaction of proving the defendants pirates," but the court of appeals was unwilling to allow him "a share of the plunder." Judge Coffin noted that "our Paladin is not the first creator to see the fruits of his creation harvested by another, without effective remedy," and "although his case is undeniably hard," allowing him to recover would "allow a hard case to make some intolerably bad law."

In reaching this conclusion the court first ruled that, if a creation is the "writing of an

author" in the constitutional sense, it can be protected, if at all, only under the Federal copyright statute; to permit perpetual protection under State law would be an anomaly. The court then went on to consider whether literary characters are "writings" within the meaning of the Constitution, and whether such "writings" must be reduced to a fixed form to qualify for protection. On the first question the decision strongly supports the potential copyrightability of some literary characters, assuming that the creation is not "so slight a thing as not to warrant protection by any law." On the issue of permanent fixation the court rejected the argument that, to be protected as a "writing" under the Constitution, a creation must be reduced to "some identifiable, durable, material form." Acknowledging that "more precise limitations on 'writings' might be convenient in connection with a statutory scheme of registration and notice," the court could "see no reason why Congress's power is so limited," and suggested the possibility for "registering 'characters' by filing pictorial and narrative description in an identifiable, durable, and material form." Since "the constitutional clause extends to any concrete, describable manifestation of intellectual creation" and since the *Paladin* character was not protected by the copyright statute enacted under the constitutional clause, it was held ineligible for any protection.

In contrast to the First Circuit's liberal treatment of literary characters in the *Paladin* case, the Seventh Circuit Court of Appeals adopted a more traditional attitude in judging an infringement action involving two plays. Judge Duffy's opinion in *Scott v. WKJG, Inc.*, 376 F. 2d 467, cert. denied, 389 U.S. 832 (1967), states that "copyright protection does not extend to ideas, plots, dramatic situations and events" and adds that "it is limited to the arrangement of words the author uses to express his ideas."

The uncomfortably vague and narrow line between a copyrightable "work of art" and an uncopyrightable "industrial design" was given a clearer definition in *Ted Arnold Ltd. v.*

Silvercraft Co., 259 F. Supp. 733 (S.D.N.Y. 1966). At issue in the case was the design of a pencil sharpener in the form of an antique telephone, and the defendant attacked its copyrightability on the ground that the work is utilitarian. In upholding the copyright in the design the court rested its decision squarely on the Copyright Office's regulations reading: "if the shape of a utilitarian article incorporates features, such as artistic sculpture, carving, or pictorial representation, which can be identified separately and are capable of existing independently as a work of art, such features will be eligible for registration."

Judge MacMahon's opinion emphasized that "the copyrighted article is the simulation of an antique telephone, not the pencil sharpener inside, and not the combination of the two." Since the telephone casing could "exist independently as a work of art," and since it is more than merely a copy of a real telephone, it is entitled to copyright protection even though the designer adapted it to fit the needs of sharpening pencils. The court added that, in any case, the article as a whole is not exclusively utilitarian in its intrinsic character; since "customers are paying fifteen dollars for it, not because it sharpens pencils uncommonly well, but because it is also a decorative conversation piece, it is "an imaginative conjunction of two objects" and therefore qualifies as a "work of art."

Several other decisions took a liberal view of what is subject to copyright protection in the field of commercial designs. The court in *Blazon, Inc. v. DeLuxe Game Corp.*, 268 F. Supp. 416 (S.D.N.Y. 1965) dismissed the contention that a hobby horse is not "entitled to copyright protection since all hobby horses flow from an effort to emulate real horses," stating that "it is no longer subject to dispute that statues or models of animals or dolls are entitled to copyright protection." A jewelry store sign consisting of "an awning-appearing design, with bright blue and white vertical stripes running from the top of the store to a marquee over the entrance" was held subject to protection in *Vic Alexander & Associates*

v. *Cheyenne Neon Sign Co.*, 417 P. 2d 921 (Wyo. Sup. Ct. 1966), partly on the basis of evidence that it would be "a very remote possibility . . . for two people working independently to come up with this particular design or a likeness of it, even if both were given a basic idea to work from." Finally, in *Hassenfeld Bros., Inc. v. Mego Corp.*, 150 U.S.P.Q. 786 (S.D.N.Y. 1966), a dispute involving "military toy figures of young men in uniform," the court ruled that plaintiff's copyright extends to the "overall-design" of the doll, "including not only the face and head, but also the body, the design of which was created through great effort, care and artistic skill and is a key factor in its success."

Several cases during the year dealt with the question of how much must be added to previously published material to constitute a "new work" capable of supporting an independent copyright. The usual rule of recent years, that "no large quantum of originality is required under the copyright laws," was confirmed in *Electronic Publishing Co. v. Zalytron Tube Corp.*, 151 U.S.P.Q. 613 (S.D.N.Y. 1966), *aff'd*, 376 F. 2d 592 (2d Cir. 1967), where a publisher's contributions in compiling, editing, and condensing material for an electronic equipment catalog were held sufficient to justify copyright protection. Similarly, in *Baut v. Pethick Constr. Co.*, 262 F. Supp. 350 (M.D. Pa. 1966), the court found the plaintiff entitled to common law copyright protection for a stained glass window design consisting of an arrangement of traditional Christian symbols including a cross and a sunburst. Chief Judge Sheridan ruled that although "plaintiff's design embodies elements long in use," this fact of itself does not "negate originality or novelty," and "the requirements of originality and novelty should be viewed in the entire context in which the elements are used."

On the other hand, the decisions in *Morrissey v. Procter & Gamble Co.*, 262 F. Supp. 737 (D. Mass.), *aff'd*, 379 F. 2d 675 (1st Cir. 1967), and *Grove Press, Inc. v. Collectors Publication, Inc.*, 264 F. Supp. 603 (C.D. Cal. 1967), suggest that a higher standard of orig-

inality may be required to support copyrights in certain types of publications. The work involved in the *Morrissey* case was "a set of rules for a sales promotional contest of the 'sweepstakes' type involving the social security numbers of the participants." One of the rules, consisting of about six sentences, had been duplicated almost word for word in the defendant's advertising. The trial court had held that "since the substance of the contest was not copyrightable . . . and the substance was relatively simple, it must follow that plaintiff's rule sprang directly from the substance and 'contains no original creative authorship.'" The First Circuit Court of Appeals, while agreeing with this conclusion, rejected the lower court's reasoning as oversimplified. Chief Judge Aldrich pointed out that "copyright attaches to form of expression" and that "there was more than one way of expressing even this simple substance." The court was nevertheless persuaded to rule the material uncopyrightable because of policy considerations. It declared that where the subject matter of a work, such as the rules of a game, is so narrow that the available forms of expression are necessarily limited, "to permit copyrighting would mean that a party or parties, by copyrighting a mere handful of forms, could exhaust all possibilities of future use of the substance." In such cases "the subject matter would be appropriated by permitting the copyrighting of its expression," and "we cannot recognize copyright as a game of chess in which the public can be checkmated."

The policy considerations underlying the *Grove Press* case were not explicitly stated in the opinion but appeared to have had considerable influence on the decision. The case involved a long Victorian pornographic work, published anonymously and surreptitiously in the late 19th century as *My Secret Life*. The original text of the book was assumed to be in the public domain, but in preparing its edition the plaintiff made some 40,000 changes from a copy owned by a German publisher. Judge Hill characterized these changes as consisting "almost entirely of elimination and

addition of punctuation, changes of spelling of certain words, elimination and addition of quotation marks and correction of typographical errors." He found the changes to be "trivial," noting that they "required no skill beyond that of a high school English student and displayed no originality." The court therefore ruled that "the Grove edition is uncopyrightable as a derivative work or otherwise."

The provocative question discussed in last year's report, involving the circumstances under which the verbal expression contained in conversations and personal dialogs can be protected as literary property, was the subject of another decision by the New York Supreme Court in *Hemingway v. Random House, Inc.*, 53 Misc. 2d 462 (Sup. Ct. 1967). This was the action by Mrs. Ernest Hemingway against the author and publisher of *Papa Hemingway*, a "biographical study" consisting, in the court's words, of "a narration of the meetings, adventures and conversations shared by Hemingway and Hotchner" over a period of 13 years.

A preliminary decision in the case had rejected the claim of literary property in Hemingway's oral conversations, partly on the ground that conversations "are inevitably the product of interaction between the parties" rather than "individual intellectual productions." In response to this argument the plaintiff urged that "Hemingway's contributions to these conversations were unique and self-sufficient, and amounted to literary compositions in themselves." Justice Schweitzer threw up his hands at this notion, pointing out the impossibility of judging "self-sufficiency" on the basis of relative volume, quality, fame, or any other criterion. "Assuming that each party to any conversation makes some contribution to it," he concluded, ". . . the only rational rule is that each party is free to publish his own version—whether verbatim or not." Since the court was dealing here with the common law "right of first publication," however, rather than the statutory right to prevent copying under the copyright law, Justice Schweitzer was careful not to rule on "the question

whether one party's written version could ever infringe upon any other's."

The court also based its decision on public policy considerations, declaring that the effect of a prohibition against publication of conversations "on the freedom of speech and press would be revolutionary. . . . Were we to limit reportage to non-verbatim accounts, the only result would be to detract from accuracy and encourage fictionalization." It made no difference that some of the materials were obtained from tape recordings, since they were used "as an occasional substitute and supplement for memory or note-taking"; in fact, Justice Schweitzer regarded the tape recorder as making possible "an increasing truthfulness and accuracy in future historical and biographical works. . . . That they were recorded does not change the nature of the utterances," the court maintained, but it "recognized that under some circumstances, such as where the speaker was in effect dictating to a passive receiver, he might have a claim to property in the recorded material," and also that, if the recordings were "unlawfully made, other considerations would arise."

The *Hemingway* decision also drew a careful distinction between "mere conversations" and "prepared lectures or speeches." The latter were involved in *Williams v. Weisser*, 153 U.S.P.Q. 866 (Cal. Super. Ct. 1967), in which the issue was "whether a college professor has literary property rights in his lectures delivered by him at a university." The enterprising defendant in the *Williams* case employed students at UCLA to register for courses as auditors and to take notes that were later published and sold to enrolled students. The plaintiff, an anthropology professor, had granted no permission for this practice in his course. The court ruled in his favor, holding that the "lecture notes" were his property, and that "an author's common law copyright may exist in lectures and other works that are performed, as well as in writings."

Some of the same tough questions involved in the *Hemingway* case—property rights in tape-recorded conversations and private com-

munications and the public's right to have free access to material of historical importance—were also presented in what was undoubtedly the best-publicized “book battle” of all time. This was, of course, Mrs. John F. Kennedy's action against the author and publishers of William Manchester's *The Death of a President*, which was settled out of court during the fiscal year. The decision in another celebrated dispute, *Public Affairs Associates, Inc. v. Rickover*, 268 F. Supp. 444 (D.D.C. 1967), involved the meaning of the statutory prohibition against copyright in publications of the United States Government as it applies to speeches written and delivered by Adm. Hyman G. Rickover, who at the time held high official positions in both the Navy Department and the Atomic Energy Commission. The court held that the basic question in the case—“May a Government employee who prepares and delivers a speech on his own time, on a subject relating to or bearing directly on his employment, claim a proprietary interest in that speech and copyright it . . . ?”—involves a determination of “whether the disputed speeches were written and delivered as a part of Admiral Rickover's official duties.” Since “the duties of a high Government official should not be narrowly interpreted,” the court felt constrained to examine the circumstances under which the speeches were prepared and delivered. On the basis of the evidence, Judge Smith found that “both speeches were handled as private business from start to finish” and dismissed as immaterial the allegations that the admiral was also performing official duties in the areas where the speeches were delivered, that he failed to put an official disclaimer on the speeches, and that he used certain Government equipment and facilities for duplicating the copies. In upholding the validity of the copyrights, the court ruled that “the copyrighting of these two speeches does not deprive plaintiff of its rights of freedom of speech and freedom of the press within the guarantees of the first Amendment to the Constitution.”

Publication

Perhaps the most significant decision of the year dealing with the concept of publication is found in the “Paladin” case discussed above, *Columbia Broadcasting System v. DeCosta*, 377 F. 2d 315, *cert. denied*, 389 U.S. 1007 (1967). An important issue in the case was whether the plaintiff's acts in appearing in public and distributing business cards and photographs of himself in costume amounted to a publication that dedicated his “character-creation” to the public domain. The court accepted the fundamental principle that public performance alone does not constitute publication but held that the additional acts of passing out cards and photographs destroyed the plaintiff's property rights in his “Paladin” character and its unique attributes. Noting that the photographs “were passed out in great quantities over the years to all who would have them,” Judge Coffin declared: “So far as his costume and menacing appearance were concerned, it was fully conveyed on the cards bearing his photograph—which also contained the chess piece, the slogan, and the name ‘Paladin.’”

Several questions of publication were also involved in the celebrated *Hemingway* case, *Hemingway v. Random House, Inc.*, 53 Misc. 2d 462 (Sup. Ct. 1967). One issue was whether the defendant had infringed plaintiff's “right of first publication” by distributing 16 copies in the form of galley proofs, some of which went to publications “for review purposes only.” These proofs were later recalled and replaced by new proofs in which some of the Hemingway material had been deleted. The court held that a common law “right of first publication” can be infringed only by the same sort of “general publication of the material which would cause it to fall into the public domain.” Since “no use of any kind was made of the original galley proofs,” their distribution was a limited publication that infringed none of plaintiff's rights.

The court was emphatic in ruling Hemingway's Nobel Prize speech in the public domain, partly because "it would be contrary to sound policy to permit any private property rights to exist in a statement delivered on such an occasion," and partly on grounds of general publication. Since the speech had been included in an uncopyrighted volume of prize winners' speeches which "is available in many public libraries," Justice Schweitzer ruled that "the manifest intention that these statements should be placed in the public domain . . . has been accomplished." He also found that there had been general publication of a personal statement about his health that Hemingway had sent to his publisher with permission to "release it to anybody, including the press."

Hardly a year goes by without a decision on the effect of distributing copies of architects' plans or of constructing buildings based on them upon rights in the designs involved. Fiscal 1967's contribution to this troubled area is found in *Vic Alexander & Associates v. Cheyenne Neon Sign Co.*, 417 P. 2d 921 (Wyo. Sup. Ct. 1966), in which it was argued that leaving blueprints and drawings in the defendant's store and construction of a sign based on them constituted a publication that destroyed plaintiff's common law rights. The court rejected this argument, noting that "the term 'publication,' as used in connection with common-law copyrights is employed to denote those acts of an author or creator which evidence a dedication of his work to the public."

A question that has never been settled under the copyright law—whether publication occurs when copies are sent out or when they reach their destination—was litigated in a patent case, *Protein Foundation, Inc. v. Brenner*, 260 F. Supp. 519 (D.D.C. 1966). The purposes and consequences of the concept of "publication" are to some extent different under copyright and patent law, but Judge Holtzoff's decision that publication of a periodical takes place only upon receipt by the first addressee is of more than passing interest to copyright practitioners.

Copyright Formalities: Notice, Registration, Manufacturing Requirements

The "substantial compliance" rule, which has been adopted by an increasing number of courts in judging the validity of copyright notices, was followed in two design cases during the year. The more important of these was *Uneeda Doll Co. v. Goldfarb Novelty Co.*, 373 F. 2d 851 (2d Cir.), *petition for cert. dismissed*, 389 U.S. 801 (1967). The work in question was a small doll named "Pee Wee," bearing on the sole of its left foot a legend reading "U. D. Co., Inc. © 1965" on the sole of its right foot the inscription "Pee-Wees T. M." The doll was sold in a rather elaborate "cardboard display package" which bore a notice reading "© Uneeda Doll Co., Inc. 1966." The trial court had held that the copyright notice requirements—basically the provision that, if the copyright owner's initials are used in the notice, his name must appear "on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted"—had not been satisfied, but the Second Circuit Court of Appeals reversed this decision.

At the outset of his opinion, Judge Smith reiterated the principle that "the purpose of a copyright notice is to prevent innocent persons who are unaware of the existence of the copyright from incurring the penalties of infringers" and added that "in keeping with this purpose, courts generally, and particularly those of this circuit, have afforded protection to one who has substantially complied with sections 10 and 19." The court specifically left open the questions of whether the name "Pee-Wees" or the abbreviation "U. D. Co. Inc." "adequately identify appellant so as to qualify as a substitute for its corporate name." Instead, it based its decision on a holding that "the display on which appellant's name appears is 'the substance on which . . . [the dolls are] . . . mounted.'"

In reaching this conclusion, the court took into account "the difficulty of placing a legible . . . and complete copyright notice on a three and one half inch plastic doll without causing the disfigurement which § 19 with its short form of notice was enacted to avoid." The opinion notes that "the display package is not only an integral part of the product when it is sold but also can be used as a keeping place for the doll" and characterizes as "decidedly distinguishable" notices appearing on "a simple wrapper or container" or a detachable tag. In applying the "substantial compliance" test Judge Smith also relied on equitable considerations: "Even if . . . the copyright notice might not be sufficient for some purposes . . . the defendants, as willful infringers wholly aware of the existence of the copyright, are in no position to assert the insufficiency of the notice."

Ted Arnold Ltd. v. Silvercraft Co., 259 F. Supp. 733 (S.D.N.Y. 1966), dealt with the validity of a very small notice appearing "on the base of the brass striker between the bells on top" of a pencil sharpener in the form of an antique telephone. The defendant alleged that the notice was insufficient since it could be seen only with the aid of a magnifying glass. Judge MacMahon acknowledged that a copyright notice must "necessarily . . . be legible to the naked eye" but, "although some scrutiny is required to locate it and it is in small type," he found the notice sufficient since it is "discernible to the unaided eye." He added that legibility is all the law requires: "There is no requirement that the notice be as prominent as is feasible."

The issue before the Second Circuit Court of Appeals in *Brattleboro Publishing Co. v. Winmill Publishing Corp.*, 369 F. 2d 565 (1966), involved the rights of one newspaper publisher against another who had copied local advertising prepared and published by the first. In ruling against the plaintiff, the court found it "wholly irrelevant" that he "may have complied with the notice requirements, provided in 17 U.S.C. § 20, necessary

to protect all copyrightable material contained in the newspaper." According to Judge Kaufman, "it is clear that such notice would only protect those materials which appellant could properly copyright."

Aside from Judge Smith's decision in *Public Affairs Associates, Inc. v. Rickover*, 268 F. Supp. 444 (D.C. Cir. 1967), holding that the Register of Copyrights exercises "executive judgment" in registering claims to copyright, there were several cases dealing with the nature and consequences of copyright registration. Four decisions—*Blazon, Inc. v. Deluxe Game Corp.*, 268 F. Supp. 416 (S.D.N.Y. 1965); *Blumcraft of Pittsburgh v. Newman Bros., Inc.*, 373 F. 2d 905 (6th Cir. 1967); *Magnus Organ Corp. v. Paramount Pictures Corp.*, 265 F. Supp. 144 (C.D. Cal. 1967); and *Grove Press, Inc. v. Collectors Publication, Inc.*, 264 F. Supp. 603 (C.D. Cal. 1967)—reaffirmed the principle that "the registration certificate establishes a prima facie case of originality of the copyrighted article in the holder thereof and a prima facie presumption as to all of the facts stated therein," and that "defendants have the burden of overcoming that presumption of validity." As stated in the *Blazon* decision, "a plaintiff, in a copyright infringement action based on a statutory copyright, is entitled to a prima facie presumption of originality since among the facts to be set forth in the certificate is a statement of the author of the work and 'authorship presumptively connotes originality.'" As to the defendant's burden of overcoming this presumption, Judge Tenney affirmed that "mere denial by the defendant, unsupported by evidence, is not sufficient." In the *Grove Press* case, however, the court held that the prima facie presumption of validity "has been sufficiently dispelled."

Similarly, in *Olympia Press v. Lancer Books, Inc.*, 267 F. Supp. 920 (S.D.N.Y. 1967), the court denied a preliminary injunction because, although "the certificates of registration are admissible as prima facie evidence of validity . . . , defendants have raised a substantial

question as to the validity of plaintiff's copyrights." The works involved in the *Olympia Press* action were four volumes of a seven-volume English-language edition of *The Story of Juliette*, which, in the words of Judge Ryan, is a "noisome writing" by "the notorious and unfortunate Donatien-Aldonse-Francois, Marquis de Sade." Since the original French version of *Juliette* admittedly "has long been in the public domain," the claim of infringement was based on the unauthorized reproduction of an English translation by Austryn Wainhouse, an American citizen writing under the "fanciful pen name" of "Pierallessandro Casavini." The defense alleged that the copyrights were invalid for two reasons: failure to comply with the manufacturing requirements of the statute, and "fraudulent concealment and misstatements to the Copyright Office in order to procure the copyrights."

The court's conclusion that "there is serious question as to the validity of the copyrights" was based on both of these reasons. It noted that, since the work had been manufactured abroad and no ad interim copyright had been secured, the crux of the case was the citizenship of the statutory "author" of the translation: if the "author" was not a U.S. citizen the work would be exempted from the manufacturing requirements under the Universal Copyright Convention. The translator, Wainhouse, is an American citizen, but the applications for registration listed only The Olympia Press, a French citizen, as "author." The court held that Wainhouse was not an "employee for hire" of Olympia and that plaintiff's failure to list him as "author" on the application forms was "no innocent omission but a deliberate one because of its awareness of the provisions of the Act."

Renewal, Ownership, and Transfer of Copyright

An issue constantly in dispute is whether a work was written by an "employee-for-hire," thus enabling the present copyright owner to

claim renewal copyright, or whether it was written independently, thus entitling the author or certain of his heirs to reclaim the renewal term. Two decisions during the year defined employment-for-hire rather narrowly for this purpose and helped cast some light on what still remains a murky question. The more important, *Donaldson Publishing Co. v. Bregman, Vocco & Conn, Inc.*, 375 F. 2d 639 (2d Cir. 1967), *cert. denied*, 389 U.S. 1036 (1968), involved renewal rights in 87 compositions written by Walter Donaldson for a corporation he had formed with two associates. The district court had ruled that the songs were "made for hire," regarding as significant the use of the word "employment" in the agreement between Donaldson and the corporation and the existence of a drawing account out of which Donaldson was paid weekly checks of \$300 for several years.

The Second Circuit Court of Appeals rejected these factors as determinative of the case and reversed the decision. Judge Hays declared that "an essential element of the employer-employee relationship" is the employer's right "to direct and supervise the manner in which the writer performs his work" and found this factor lacking in the present case. This "lack of control over Donaldson's performance," in conjunction with "Donaldson's dominant role in the corporation, his freedom to engage in profitable outside activities without sharing the proceeds with defendant, the absence of any fixed salary and the language of the agreement itself," convinced the court that "Donaldson was not an 'employee' in the substantial sense required by the Copyright Act." The court also held that provision permitting a copyright proprietor to claim renewal in the case of a work "copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author)" was inapplicable, noting that it is "infrequently invoked," that its meaning "is not entirely plain," and that "its scope is quite limited."

In *Eliscu v. T. B. Harms Co.*, 151 U.S.P.Q. 603 (N.Y. Sup. Ct. 1966), the issue was whether four songs had been written in the

early 1930's by an "employee-for-hire" of R.K.O. Studios, Inc. The court discounted the words "we engage and employ you" appearing in the agreement between the parties and held that although Eliscu was a "salaried full-time employee" of R.K.O. Studios, this employment was "in an entirely different capacity, to wit, as a motion picture director." Justice Loreto found that "his engagement to write the lyrics was in the nature of a special assignment (for which pay in addition to salary was paid), necessarily entirely apart from and free of a relationship of master and servant and its implications and involvements."

Several other cases dealt with the work-made-for-hire issue outside the renewal context. In *Public Affairs Associates, Inc. v. Rickover*, 268 F. Supp. 444 (D.D.C. 1967), the issue was whether Admiral Rickover had written two speeches as part of his official duties, thus making them uncopyrightable as Government publications. In holding that the speeches had been written outside official duties the court stressed that the invitations to deliver the speeches had been tendered privately rather than through official channels, that the admiral had not consulted his superiors about them, and that their subjects, while related to his official duties, were completely separate from them. The main issue in *Williams v. Weisser*, 153 U.S.P.Q. 866 (Cal. Super. Ct. 1967), was whether a university professor retains common law literary property in his oral lectures. The court held specifically that plaintiff "did not lose his literary right to the lectures because his employment may have furnished him with the opportunity or occasion for utilizing his prior learning and education and knowledge acquired in his chosen field." An important factor underlying this decision was the disclaimer by plaintiff's employer of any property rights in the lectures.

The *Juliette* case, *Olympia Press v. Lancer Books, Inc.*, 267 F. Supp. 920 (S.D.N.Y. 1967), also turned on whether the translator was a hired writer or an independent author. There had been no written agreement be-

tween the translator and the publisher, and an affidavit of the former asserted that he had never worked on the premises of the Olympia Press, that "in the majority of the instances he proposed that a translation be made and the work published, that no editing whatsoever be done on any of his translations and that Girodias exerted absolutely no control over their style and content." Concerning payment, the translator swore that "it was, from first to last, agreed that payment in full was to be made upon submission of the finished text," and that royalty considerations were deferred. The court found the publisher's counteraffidavit, stating that he had "engaged Wainhouse and commissioned the work for hire in return for a set fee," insufficient to refute the conclusion that the translator was not an "employee for hire."

The court of appeals decision in the important test case of *Brattleboro Publishing Co. v. Winmill Publishing Corp.*, 369 F. 2d 565 (2d Cir. 1966), dealt with the rights of a newspaper publisher in advertisements published and prepared by it for local merchants. The court held that in a case of this sort the same principles applicable to works made for hire—that the employer is presumed to own the copyright "whenever an employee's work is produced at the instance and expense of his employer"—are "applicable when the parties bear the relationship of employer and independent contractor." Noting that the question "will always turn on the intention of the parties," Judge Kaufman declared that "where this intent cannot be determined, the presumption of copyright ownership runs in favor of the employer." The court took into account that the charge for the advertisements included the staff work in preparing them, and that the merchants were not warned that their ads could not be inserted in other papers. It concluded, therefore, that it would be "unfair in these circumstances to place the burden on the advertiser; it is far more equitable to require the [publisher] to provide by express agreement with the advertisers that it shall own any copyright to the advertisement."

The *Brattleboro* decision was followed in *Electronic Publishing Co. v. Zalytron Tube Corp.*, 376 F. 2d 592 (2d Cir. 1967), *affirming* 151 U.S.P.Q. 613 (S.D.N.Y. 1966), a case involving trade catalogs for electronic parts. In holding that the plaintiff publisher had no rights in the advertisements appearing in its catalog, Judge Hays noted that the advertisers "had the authority to approve or disapprove the use of their material and the form in which it appeared," and that "they paid plaintiff for the costs of preparing the material and paid for the publication through advertising allowances."

A somewhat related question was dealt with in *Best Medium Publishing Co. v. National Insider, Inc.*, 259 F. Supp. 433 (N.D. Ill. 1966), *aff'd*, 385 F. 2d 384 (7th Cir. 1967), *cert. denied*, 390 U.S. 955 (1968), an infringement action by the publisher of one weekly tabloid against another with respect to six articles prepared by free-lance writers. As stated by Judge Robson in the lower court, "the crux of the controversy seems to be the extent of the title which plaintiff acquired when it purchased articles from free lance writers for a few hundred dollars, and published the articles in its tabloid." The court held that "where no conditions are stated at the time of the sale of an article, the law implies that there is a complete sale of the article and the publisher has full rights thereto." The court acknowledged that "there is an established custom and usage that free lance authors selling to a tabloid sell only first rights." It held on the basis of the evidence presented, however, that this custom was not followed in the present case, and that the authors must be presumed to have transferred all their rights in their articles.

The right of a copyright owner to grant exclusive licenses restricted to particular territories, rights, times, or purposes was upheld in the CATV decision in the Second Circuit Court of Appeals, *United Artists Television, Inc. v. Fortnightly Corp.*, 377 F. 2d 872, *cert. granted*, 389 U.S. 969 (1967). Chief

Judge Lumbard characterized the issue as "the divisibility of the copyright holder's exclusive right to perform" and affirmed that in an age of motion pictures and radio and television broadcasting, it would seem self-evident that a copyright proprietor must be allowed substantial freedom to limit licenses to perform his work in public to defined periods and areas or audiences." Noting that "his right to do so has apparently never been seriously challenged," the court specifically upheld plaintiff's "right to limit its licenses to viewers who can receive the broadcasts through normal rooftops antennas."

The validity of a restricted patent license was likewise upheld in *Shaw v. E. I. duPont de Nemours and Co.*, 236 A. 2d 903 (Vt. Sup. Ct. 1966), largely on the basis of copyright precedents. The defendant requested reargument on the ground that decisions on copyright licenses were inappropriate precedents for deciding a patent case. On rehearing, the court reaffirmed its decision, holding that the copyright cases were appropriate in reaffirming "what inheres in a reasonable interpretation of the common understanding of the parties to a restrictive licensing agreement." Chief Justice Holden added: "When permission is granted to operate in a restricted area, the acceptance of the privilege implies a condition that the area reserved will not be invaded. An English judge has observed,—'This seems to be common sense and not to depend upon any patent law or any other particular law.'"

The question in *Shapiro, Bernstein & Co. v. Gabor*, 266 F. Supp. 613 (S.D.N.Y. 1966), involved the effect of "relatively minor variations" from the details of the statutory compulsory licensing provisions in a recording agreement. The defendant argued that the changes, dealing with the amount of royalties, the basis, time, and manner of payment, the notice requirements, and the territory licensed, were sufficient to deprive plaintiff of his Federal statutory remedies. The court disagreed, holding that "the parties intended that their

relationship should be governed by the compulsory license provisions of the Copyright Act, and not by a private licensing agreement."

Copyright Infringement

The fundamental requirement that, to prevail in a copyright infringement action, plaintiff must prove both access and copying by the defendant was examined and refined in several cases during the year. As Judge Tenney said in *Blazon, Inc. v. Deluxe Game Corp.*, 268 F. Supp. 416 (S.D.N.Y. 1965), "direct evidence of copying is rarely available, since the cases are few wherein there is direct testimony by a witness that he saw defendant copying plaintiff's item." Thus, the courts permit copying to be established inferentially by "proof of access and substantial similarity."

On the question of access, the opinion in the *Blazon* case noted that there is a conflict between those authorities who require "actual viewing and knowledge of [the] work by the person who composed defendant's work" and those who regard a "reasonable opportunity to view as access in itself and not merely as creating an inference of access." The court accepted the latter, more liberal test in ruling that prima facie evidence of access had been established. Similarly, in *Morrissey v. Procter & Gamble Co.*, 379 F. 2d 675 (1st Cir. 1967), it was held that there is a "presumption of receipt arising from plaintiff's testimony of mailing," that "a notice to the defendant at its principal office . . . is proper notice," and that "there is at least an inference that the letter reached its proper destination." The stricter test was applied in *Scholz Homes, Inc. v. Maddox*, 379 F. 2d 84 (6th Cir. 1967), in which the court refused to infer access to architectural plans in the absence of direct evidence and discounted testimony that "it is extremely unlikely that one set could have been prepared without access to the other set" as merely "conclusory."

Even if access can be presumed, the plaintiff must still show "substantial similarity" in order to prove that his work was copied. More-

over, in *Ideal Toy Corp. v. Fab-Lu, Ltd.*, 261 F. Supp. 238 (S.D.N.Y. 1966), the court rejected plaintiff's argument that "where copying is established 'a finding of substantial similarity must be made.'" The test for substantial similarity is "whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work."

In the *Ideal Toy* case the defendant argued that, even though it set out intentionally to make a "slavish copy" of plaintiff's doll, it did not infringe the copyright because "crude workmanship defeated its intended purpose." Judge Weinfeld gave this argument short shrift, observing that it would be unfair "to allow the defendant to escape legal liability because of a minor change or because of crude craftsmanship, which did not destroy the substantial similarity of its copies to the authentic." He also ruled that, "where the basic consumer appeal is to youngsters," they cannot be excluded in applying the test of the average lay observer.

The Sixth Circuit Court of Appeals in *Blumcraft of Pittsburgh v. Newman Bros., Inc.*, 373 F. 2d 905 (1967) held that a prima facie case of substantial similarity had been proved, noting that "one cannot copy the copyrighted illustration of another's product even though it may precisely illustrate one's own product." On the other hand, the Seventh Circuit Court of Appeals in *Scott v. WKJG, Inc.*, 376 F. 2d 467, cert. denied, 389 U.S. 832 (1967), ruled that, since there had been no "direct proof of access or proof of a reasonable possibility of access," plaintiff was required to prove that the similarities "are so striking and of such nature as to preclude the possibility of coincidence, accident, or independent creation."

Although the case was decided on different grounds, the opinion in *Scholz Homes, Inc. v. Maddox*, 379 F. 2d 84 (6th Cir. 1967), contains an interesting discussion of what acts are necessary to infringe copyrighted architectural plans. Judge McCree suggests that the copyright would be ineffective if it "protected

merely against the vending of plans instead of their unauthorized use" and appears to favor broader protection either on the theory that "unauthorized construction of a building according to a copyrighted plan" is an infringement in itself, or that infringement occurs when the copyrighted plans are reproduced for construction purposes.

The doctrine of "fair use" of copyrighted material was involved in both the *Hemingway* case, *Hemingway v. Random House, Inc.*, 53 Misc. 2d 462 (Sup. Ct. 1967), and the Howard Hughes case, *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F. 2d 303 (2d Cir. 1966), *cert. denied*, 385 U.S. 1009 (1967). The court in the *Hemingway* case took the view that "particularly where one undertakes a biographical study of a famed writer, a rule which prohibited all quotation of the subject's prior writings would render effective biography impossible" and found that "a mere minor use of fragments of another's work, especially in historical, biographical, or scholarly works," is a fair use. Justice Schweitzer also rejected the claim of infringement based on "passages wherein the author has narrated material originating in letters written by Hemingway and telegrams sent by him." He held that "the literary property interest in the letters of a deceased author can adequately be protected by preventing verbatim publication."

The holding of the Second Circuit Court of Appeals in the *Rosemont* case represents one of the most significant "fair use" decisions in recent years. In reversing the lower court's holding that the defendant's copying of certain material from articles on Howard Hughes in *Look* magazine was an infringement, the court declared that the initial test of fair use involves the nature of the materials in question: "whether their distribution would serve the public interest in the free dissemination of information and whether their preparation requires some use of prior materials dealing with the same subject matter."

Judge Moore specifically rejected the lower court's conclusion that, outside the field of

academic scholarship, the scope of fair use is sharply limited, especially where the defendant has a commercial motive. He held that the nature of biographies requires a certain amount of quotation and that it is immaterial "whether an author or publisher reaps economic benefits from the sale of a biographical work, or whether its publication is motivated in part by a desire for commercial gain, or whether it is designed for the popular market." The court felt that, under the circumstances, "the public interest should prevail over the possible damage to the copyright owner" and emphatically rejected the view that "an author is absolutely precluded from saving time and effort by referring to and relying upon prior published material."

A concurring opinion by Chief Judge Lumbard in the *Rosemont* case took the position that the lower court had been wrong in granting a temporary injunction because "the plaintiff does not come here with clean hands." His view was that suit had been brought, "not with a desire to protect the value of the original writing but to suppress the Random House biography." According to Judge Lumbard: "The spirit of the First Amendment applies to the copyright laws at least to the extent that the courts should not tolerate any attempted interference with the public's right to be informed regarding matters of general interest when anyone seeks to use the copyright statute which was designed to protect interests of quite a different nature." However, counterclaim by Random House against Rosemont for malicious prosecution was later dismissed, 261 F. Supp. 691 (S.D.N.Y. 1966).

The defense of misuse of copyrights was also raised in *K-91, Inc. v. Gershwin Publishing Corp.*, 372 F. 2d 1 (9th Cir. 1967), *cert. denied*, 389 U.S. 1045 (1968), an action against the operator of a radio station in the State of Washington for unlicensed broadcasts of copyrighted music. At issue was the legality of the licensing practices of the American Society of Composers, Authors, and Publishers under the antitrust laws of the

United States and of the State of Washington. The Ninth Circuit Court of Appeals ruled in ASCAP's favor, holding that no antitrust laws had been violated and that defendant "continued its unconscionable conduct in unlawfully appropriating appellee's property without cause and without justification."

International Developments

Fiscal 1967 marked the beginning of what is probably the most important turning point in the history of international copyright. Before recounting the events leading up to the Stockholm Intellectual Property Conference of 1967, let us dispose of those facts necessary to make the record of the year complete. The number of adherents to the Universal Copyright Convention grew to 55, with the accession of Kenya, Venezuela, and the Netherlands. Italy ratified Protocol 1 of the UCC, concerning application of the convention to stateless persons and refugees, and the United Kingdom declared the UCC applicable to British Honduras. The Federal Republic of Germany ratified the Neighboring Rights Convention, effective October 21, 1966, and three Latin-American countries—Argentina, Mexico, and Uruguay—acceded to the Berne Convention. Portugal gave notification that the Berne Convention and the Portuguese copyright law have effect and are enforced in Macao and the other Portuguese overseas provinces, but that the Universal Copyright Convention has not been extended to them.

At the beginning of the fiscal year, from July 4 through July 9, 1966, an Inter-American meeting of copyright experts was convened in Rio de Janeiro under the joint sponsorship of UNESCO and the International Confederation of Authors and Composers Societies (CISAC). The expert from the United States was George D. Cary, the Deputy Register of Copyrights, who was elected First Vice Chairman and chaired several of the sessions. The purpose of the meeting was to analyze "the status of copyright legislation in the

Americas and to formulate recommendations designed to encourage the development of copyright protection therein." The prevailing philosophy at the meeting appeared to favor raising the levels of protection under domestic law, and it is significant that in less than a year after the meeting Argentina, Mexico, and Uruguay acceded to the Berne Convention and participated in the Stockholm Conference.

The viewpoint on copyright evident at the Rio meeting was in sharp contrast to that prevailing at the East Asian Seminar on Copyright, convened by the United International Bureaux for the Protection of Intellectual Property (BIRPI) at the invitation of the Indian Government and held in New Delhi during the last week of January 1967. Here the general philosophy was in favor of lower levels of protection, and of broadening the reservations allowed under the draft protocol regarding developing countries which was to be considered at the Stockholm Conference for revision of the Berne Convention in June. The New Delhi seminar gave the developing countries a valuable opportunity to organize and further strengthen the position they were preparing to put forward at Stockholm.

Concurrent with development of the program to broaden the Berne Convention to accommodate the developing countries, and in obvious competition with it, efforts have been made to attract developing countries into the Universal Copyright Convention. A major obstacle to these efforts has been the "Berne safeguard clause" of the UCC, under which a country now a member of the Berne Union is prevented from denouncing the Berne Convention and relying on the UCC for protection of its works in Berne countries. At its 14th Session in October and November 1966, the General Conference of UNESCO adopted a resolution stating that the Berne safeguard clause has "consequences that are prejudicial to the interests of the States acceding to that Convention" and requesting the Director-General of UNESCO "to submit this matter as soon as possible to the competent bodies to

examine the possibility of revising the Universal Convention along the lines indicated in the present resolution." This was followed by a UNESCO inquiry to UCC members dated December 30, 1966, asking them to state whether or not they wished a revision conference convened, and requesting a reply by May 1, 1967.

Since the Stockholm Conference was scheduled to start on June 11, 1967, the Director of BRPI called an extraordinary session of the Permanent Committee of the Berne Union to consider the UNESCO moves. The committee, which met in Geneva in March 1967, agreed that any response to the proposal to revise the UCC would be premature until after the results of the Stockholm Conference were known, and the UNESCO observer announced that the May 1 date was not a deadline and that another inquiry would be sent.

The 1967 Intellectual Property Conference of Stockholm, which opened on June 11, 1967, and concluded with a signing ceremony on July 14, 1967, was the most important diplomatic conference in the fields of international copyright and industrial property law in recent years. The large U.S. delegation to the Conference was headed by Eugene M. Braderman, Assistant Secretary of State, Commercial Affairs and Business Activities,

and included three representatives from the Copyright Office: Abraham L. Kaminstein, Register of Copyrights, Barbara A. Ringer, Assistant Register of Copyrights, and Kelsey Mott, Attorney-Adviser. Since the United States is not a member of the Berne Copyright Convention, the members of the U.S. delegation served as observers during the copyright discussions.

The decisions of the Conference, especially in connection with the provisions of the protocol allowing developing countries to make certain reservations with respect to the copyright protection they grant under the convention, are of the utmost significance to the United States and to all other members of the international copyright community. Since the revised convention was not signed until after the end of the year and the repercussions from the signing came still later, a detailed consideration of Stockholm and its aftermath will be deferred to next year's report. It is enough to say here that the Stockholm Protocol Regarding Developing Countries has brought on an international copyright crisis that may take months or even years to resolve. The role of the United States in this crisis will be significant if not decisive.

Respectfully submitted.

ABRAHAM L. KAMINSTEIN
Register of Copyrights

International Copyright Relations of the United States as of April 1, 1968

This table shows the status of United States copyright relations with the 133 other independent countries of the world.

The following code is used:

UCC	Party to the Universal Copyright Convention, as is the United States.
BAC	Party to the Buenos Aires Convention of 1910, as is the United States.
Bilateral	Bilateral copyright relations with the United States by virtue of a proclamation or treaty.
Unclear	Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.
None	No copyright relations with the United States.

Country	Status of copyright relations	Country	Status of copyright relations
Afghanistan	None.	Guyana	Unclear.
Albania	None.	Haiti	UCC, BAC.
Algeria	Unclear.	Holy See (Vatican City)	UCC.
Andorra	UCC.	Honduras	BAC.
Argentina	UCC, BAC, Bilateral.	Hungary	Bilateral.
Australia	Bilateral.	Iceland	UCC.
Austria	UCC, Bilateral.	India	UCC, Bilateral.
Barbados	Unclear.	Indonesia	Unclear.
Belgium	UCC, Bilateral.	Iran	None.
Bhutan	None.	Iraq	None.
Bolivia	BAC.	Ireland	UCC, Bilateral.
Botswana	Unclear.	Israel	UCC, Bilateral.
Brazil	UCC, BAC, Bilateral.	Italy	UCC, Bilateral.
Bulgaria	None.	Ivory Coast	Unclear.
Burma	Unclear.	Jamaica	Unclear.
Burundi	Unclear.	Japan	UCC.
Cambodia	UCC.	Jordan	Unclear.
Cameroon	Unclear.	Kenya	UCC.
Canada	UCC, Bilateral.	Korea	Unclear.
Central African Republic	Unclear.	Kuwait	Unclear.
Ceylon	Unclear.	Laos	UCC.
Chad	Unclear.	Lebanon	UCC.
Chile	UCC, BAC, Bilateral.	Lesotho	Unclear.
China	Bilateral.	Liberia	UCC.
Colombia	BAC.	Libya	Unclear.
Congo (Brazzaville)	Unclear.	Liechtenstein	UCC.
Congo (Kinshasa)	Unclear.	Luxembourg	UCC, Bilateral.
Costa Rica	UCC, BAC, Bilateral.	Madagascar	Unclear.
Cuba	UCC, Bilateral.	Malawi	UCC.
Cyprus	Unclear.	Malaysia	Unclear.
Czechoslovakia	UCC, Bilateral.	Maldives Islands	Unclear.
Dahomey	Unclear.	Mali	Unclear.
Denmark	UCC, Bilateral.	Malta	Unclear.
Dominican Republic	BAC.	Mauritania	Unclear.
Ecuador	UCC, BAC.	Mauritius	Unclear.
El Salvador	Bilateral by virtue of Mexico City Convention, 1902.	Mexico	UCC, BAC, Bilateral.
Ethiopia	None.	Monaco	UCC, Bilateral.
Finland	UCC, Bilateral.	Morocco	Unclear.
France	UCC, Bilateral.	Muscat and Oman	None.
Gabon	Unclear.	Nauru	Unclear.
Gambia	Unclear.	Nepal	None.
Germany	Bilateral; UCC with Federal Republic of Germany.	Netherlands	UCC, Bilateral.
Ghana	UCC.	New Zealand	UCC, Bilateral.
Greece	UCC, Bilateral.	Nicaragua	UCC, BAC.
Guatemala	UCC, BAC.	Niger	Unclear.
Guinea	Unclear.	Nigeria	UCC.
		Norway	UCC, Bilateral.
		Pakistan	UCC.
		Panama	UCC, BAC.
		Paraguay	UCC, BAC.

Country	Status of copyright relations	Country	Status of copyright relations
Peru	UCC, BAC.	Syria	Unclear.
Philippines	Bilateral; UCC status undetermined.	Tanzania	Unclear.
Poland	Bilateral.	Thailand	Bilateral.
Portugal	UCC, Bilateral.	Togo	Unclear.
Rumania	Bilateral.	Trinidad and Tobago	Unclear.
Rwanda	Unclear.	Tunisia	Unclear.
San Marino	None.	Turkey	None.
Saudi Arabia	None.	Uganda	Unclear.
Senegal	Unclear.	United Arab Republic (Egypt)	None.
Sierra Leone	Unclear.	United Kingdom	UCC, Bilateral.
Singapore	Unclear.	Upper Volta	Unclear.
Somalia	Unclear.	Uruguay	BAC.
South Africa	Bilateral.	Venezuela	UCC.
Southern Yemen	Unclear.	Vietnam	Unclear.
Soviet Union	None.	Western Samoa	Unclear.
Spain	UCC, Bilateral.	Yemen	None.
Sudan	Unclear.	Yugoslavia	UCC.
Sweden	UCC, Bilateral.	Zambia	UCC.
Switzerland	UCC, Bilateral.		

Registrations by Subject Matter Classes for the Fiscal Years 1963-67

Class	Subject matter of copyright	1963	1964	1965	1966	1967
A	Books (including pamphlets, leaflets, etc.)	68, 445	*71, 618	*76, 098	77, 300	80, 910
B	Periodicals (issues)	69, 682	*74, 611	*78, 307	77, 963	81, 647
	(BB) Contributions to newspapers and peri- odicals	2, 535	2, 529	2, 095	1, 717	1, 696
C	Lectures, sermons, addresses	806	1, 112	848	911	996
D	Dramatic or dramatico-musical compositions	2, 730	3, 039	3, 343	3, 215	3, 371
E	Musical compositions	72, 583	75, 256	80, 881	76, 805	79, 291
F	Maps	2, 002	1, 955	3, 262	1, 933	2, 840
G	Works of art, models, or designs	6, 262	5, 915	5, 735	5, 164	4, 855
H	Reproductions of works of art	4, 003	4, 045	3, 241	2, 595	2, 586
I	Drawings or plastic works of a scientific or tech- nical character	780	893	1, 239	867	695
J	Photographs	725	995	860	677	722
K	Prints and pictorial illustrations	2, 594	3, 325	2, 927	3, 081	2, 740
	(KK) Commercial prints and labels	7, 318	7, 013	7, 509	6, 285	5, 862
L	Motion-picture photoplays	3, 207	3, 018	2, 536	1, 983	1, 771
M	Motion pictures not photoplays	1, 009	1, 089	1, 216	906	925
R	Renewals of all classes	20, 164	22, 574	23, 520	25, 464	23, 499
	Total	264, 845	*278, 987	*293, 617	286, 866	294, 406

*Adjusted figure.

Number of Articles Deposited During the Fiscal Years 1963-67

Class	Subject matter of copyright	1963	1964	1965	1966	1967
A	Books (including pamphlets, leaflets, etc.)	135, 324	141, 412	*150, 453	152, 632	159, 954
B	Periodicals	*139, 235	149, 073	156, 092	155, 382	162, 763
	(BB) Contributions to newspapers and periodicals	2, 535	2, 529	2, 095	1, 717	1, 696
C	Lectures, sermons, addresses.	806	1, 112	848	911	996
D	Dramatic or dramatico-musical compositions.	3, 127	3, 413	3, 816	3, 590	3, 780
E	Musical compositions.	92, 223	95, 287	*102, 548	97, 622	101, 071
F	Maps	4, 004	3, 910	6, 523	3, 863	5, 680
G	Works of art, models, or designs	10, 993	10, 367	10, 196	9, 123	8, 549
H	Reproductions of works of art	7, 986	8, 084	6, 482	5, 120	5, 122
I	Drawings or plastic works of a scientific or technical character	1, 148	1, 347	1, 925	1, 369	1, 075
J	Photographs	1, 221	1, 594	1, 460	1, 109	1, 186
K	Prints and pictorial illustrations	5, 184	6, 647	*5, 854	6, 162	5, 453
	(KK) Commercial prints and labels	14, 636	14, 022	*15, 017	12, 570	11, 707
L	Motion-picture photoplays	6, 338	5, 984	5, 034	3, 886	3, 469
M	Motion pictures not photoplays	1, 880	2, 049	*2, 258	1, 742	1, 725
	Total	*426, 640	446, 830	*470, 601	456, 798	474, 226

*Adjusted figure.

*Number of Articles Transferred to Other Departments of the Library of Congress**

Class	Subject matter of articles transferred	1963	1964	1965	1966	1967
A	Books (including pamphlets, leaflets, etc.)	55, 742	56, 493	68, 218	68, 470	66, 046
B	Periodicals	145, 519	151, 476	162, 194	164, 522	169, 963
	(BB) Contributions to newspapers and periodicals	2, 535	2, 529	2, 095	1, 717	1, 696
C	Lectures, sermons, addresses	0	0	0	0	0
D	Dramatic or dramatico-musical compositions	316	351	356	816	394
E	Musical compositions	20, 936	25, 132	25, 081	23, 847	23, 430
F	Maps	4, 004	3, 915	6, 523	3, 994	5, 697
G	Works of art, models, or designs	63	204	204	177	234
H	Reproductions of works of art	434	729	296	545	444
I	Drawings or plastic works of a scientific or technical character	0	0	0	142	0
J	Photographs	0	2	2	8	44
K	Prints and pictorial illustrations	109	150	81	257	464
	(KK) Commercial prints and labels	22	248	9	8	57
L	Motion-picture photoplays	313	795	559	230	294
M	Motion pictures not photoplays	333	430	217	414	280
	Total	230, 326	242, 454	265, 835	265, 147	269, 043

*Extra copies received with deposits and gift copies are included in these figures. This is the reason that in some categories the number of articles transferred exceeds the number of articles deposited, as shown in the preceding chart.

Statement of Gross Cash Receipts, Yearly Fees, Number of Registrations, etc., for the Fiscal Years 1963-67

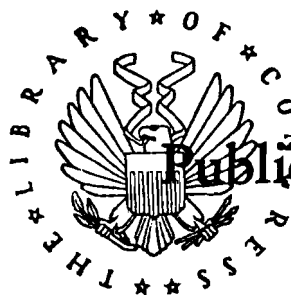
Fiscal year	Gross receipts	Yearly fees earned	Number of registrations	Increase or decrease in registrations
1963.	\$1, 123, 598. 21	\$1, 077, 747. 79	264, 845	+10, 069
1964.	1, 206, 453. 60	1, 133, 546. 57	278, 987	+14, 142
1965.	1, 274, 813. 94	1, 208, 014. 66	293, 617	+14, 630
1966.	1, 624, 081. 45	1, 470, 249. 12	286, 866	-6, 751
1967.	1, 892, 419. 54	1, 812, 036. 15	294, 406	+7, 540
Total	7, 121, 366. 74	6, 701, 594. 29	1, 418, 721	

Summary of Copyright Business, Fiscal Year 1967

Balance on hand July 1, 1966		\$436, 319. 75
Gross receipts July 1, 1966, to June 30, 1967.		1, 892, 419. 54
Total to be accounted for.		2, 328, 739. 29
Refunded.	\$79, 730. 09	
Checks returned unpaid	4, 816. 45	
Deposited as earned fees	1, 770, 243. 60	
Balance carried over July 1, 1967:		
Fees earned in June 1967 but not deposited until July 1967.	\$165, 783. 61	
Unfinished business balance	70, 413. 04	
Deposit accounts balance	234, 953. 75	
Card service	2, 798. 75	
		473, 949. 15
		2, 328, 739. 29

Summary of Copyright Business, Fiscal Year 1967—Continued

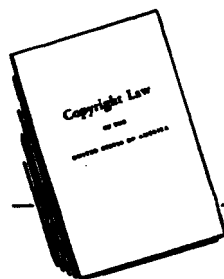
	Number of registrations	Fees earned
Commercial prints and labels at \$6 each	5,862	\$35,172.00
Published domestic works at \$4 each	551	2,204.00
Published domestic works at \$6 each	187,473	1,124,838.00
Published foreign works at \$4 each	10	40.00
Published foreign works at \$6 each	3,394	20,364.00
Unpublished works at \$4 each	47	188.00
Unpublished works at \$6 each	62,429	374,574.00
Renewals at \$2 each	32	64.00
Renewals at \$4 each	23,467	93,868.00
Total registrations for which fee paid	283,265	1,651,312.00
Registrations made under provisions of law permitting registration without payment of fee for certain works of foreign origin	11,141
Total registrations	294,406
Fees for recording assignments		45,770.00
Fees for indexing transfers of proprietorship		15,467.00
Fees for recording notices of intention to use		333.50
Fees for recording notices of use		20,540.00
Fees for certified documents		7,810.00
Fees for searches made		61,361.00
Card Service		9,442.65
Total fees exclusive of registrations		160,724.15
Total fees earned		1,812,036.15



Publications of the Copyright Office

Priced Copyright Office publications which may be obtained from Government Printing Office

Orders for all the publications listed below should be addressed and remittances made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.



COPYRIGHT LAW OF THE UNITED STATES OF AMERICA (Title 17, United States Code), Bulletin No. 14. This is a pamphlet edition of the copyright law, including the **REGULATIONS OF THE COPYRIGHT OFFICE** (Code of Federal Regulations, Title 37, ch. II). 87 pages. 1967, paper, 35 cents.

COPYRIGHT ENACTMENTS—Laws Passed in the United States Since 1783 Relating to Copyright. Bulletin No. 3 (Revised). Looseleaf in binder. 150 pages. 1963, \$2.00.

REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW. Copyright Law Revision, House Committee Print. 160 pages. July 1961, 45 cents.

COPYRIGHT LAW REVISION, PART 2—Discussion and Comments on Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law. House Committee Print. 419 pages. February 1963, \$1.25.

COPYRIGHT LAW REVISION, PART 3—Preliminary Draft for Revised U.S. Copyright Law and Discussions and Comments on the Draft. House Committee Print. 457 pages. September 1964, \$1.25.

COPYRIGHT LAW REVISION, PART 4—Further Discussions and Comments on Preliminary Draft for Revised U.S. Copyright Law. House Committee Print. 477 pages. December 1964, \$1.25.

COPYRIGHT LAW REVISION, PART 5—1964 Revision Bill with Discussions and Comments. House Committee Print. 350 pages. September 1965, \$1.

COPYRIGHT LAW REVISION, PART 6—Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill. House Committee Print. 338 pages. May 1965, \$1.

HEARINGS ON 1965 REVISION BILL. SUBCOMMITTEE NO. 3 OF THE HOUSE COMMITTEE ON THE JUDICIARY. May–September 1965. In 3 parts, including an appendix of letters and other statements, as well as a combined subject and name index. 2,056 pages. 1966. Part 1, \$2; Part 2, \$2.25; Part 3, \$2.

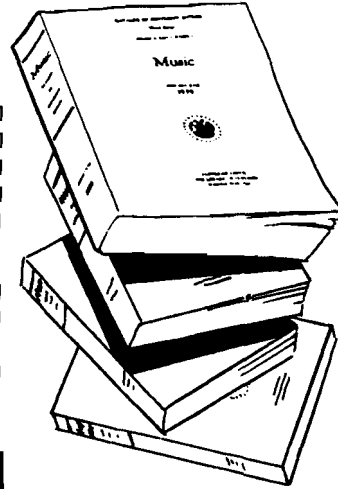
COPYRIGHT LAW REVISION. REPORT OF THE HOUSE COMMITTEE ON THE JUDICIARY. 89th Cong., 2d Sess., H. Rept. No. 2237. 279 pages. 1966. 65 cents.

COPYRIGHT LAW REVISION. REPORT OF THE HOUSE COMMITTEE ON THE JUDICIARY. 90th Cong., 1st Sess., H. Rept. No. 83. 254 pages. 1967. 60 cents.

CATALOG OF COPYRIGHT ENTRIES. Paper. Each part of the catalog is published in semiannual numbers containing the claims of copyright registered during the periods January–June and July–December. The prices given below are for the year. Semiannual numbers are available at one-half the annual price.

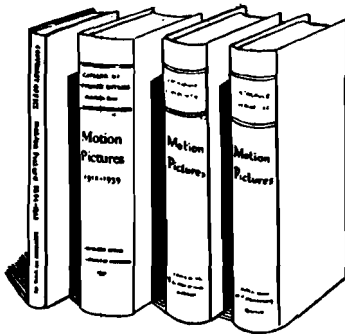
Beginning with volume 20, number 1, 1966, *Third Series* of the Catalog, the annual subscription price for all parts of the complete yearly catalog will be \$50. For the preceding 19 volumes of the *Third Series*, the annual subscription price for all parts will remain \$20. The prices given in brackets are for the issues preceding volume 20.

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These catalogs are usually available 6 months after the close of a registration period. Although orders should be addressed to the Superintendent of Documents, the Copyright Office will furnish information on catalogs prior to 1962 upon request.

Catalog of Copyright Entries, Cumulative Series



MOTION PICTURES 1894–1912. Identified from the records of the United States Copyright Office by Howard Lamarr Walls. 92 pages. 1953. Buckram, \$2.

MOTION PICTURES 1912–1939. Works registered in the Copyright Office in Classes L and M. 1,256 pages. 1951. Buckram, \$18.

MOTION PICTURES 1940–1949. Another decade of works registered in Classes L and M. 599 pages. 1953. Buckram, \$10.

MOTION PICTURES 1950–1959. *Films of the Fifties* registered in Classes L and M. 494 pages. Buckram, \$10.

These four volumes list a total of nearly one hundred thousand motion pictures produced since the beginning of the motion picture industry.

Copyright Law Revision Studies

COPYRIGHT LAW REVISION. Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate. Committee prints published by the Senate Committee, the preparation of which was supervised by the Copyright Office.

First committee print; Studies 1-4:

1. The History of U.S.A. Copyright Law Revision from 1901 to 1954

2. Size of the Copyright Industries

3. The Meaning of "Writings" in the Copyright Clause of the Constitution

4. The Moral Right of the Author.

142 pages, 1960, 40 cents.

Second committee print; Studies 5 and 6:

5. The Compulsory License Provisions of the U.S. Copyright Law

6. The Economic Aspects of the Compulsory License.

125 pages, 1960, 35 cents.

Third committee print; Studies 7-10:

7. Notice of Copyright

8. Commercial Use of the Copyright Notice

9. Use of the Copyright Notice by Libraries

10. False Use of Copyright Notice.

125 pages, 1960, 35 cents.

Fourth committee print; Studies 11-13:

11. Divisibility of Copyrights

12. Joint Ownership of Copyrights

13. Works Made for Hire and on Commission.

155 pages, 1960, 45 cents.

Fifth committee print; Studies 14-16:

14. Fair Use of Copyrighted Works

15. Photoduplication of Copyrighted Material by Libraries

16. Limitations on Performing Rights.

135 pages, 1960, 35 cents.

Sixth committee print; Studies 17-19:

17. The Registration of Copyright

18. Authority of the Register of Copyrights to Reject Applications for Registration

19. The Recordation of Copyright Assignments and Licenses.

135 pages, 1960, 40 cents.

Seventh committee print; Studies 20 and 21:

20. Deposit of Copyrighted Works

21. The Catalog of Copyright Entries.

81 pages, 1960, 25 cents.

Eighth committee print; Studies 22-25:

22. The Damage Provisions of the Copyright Law

23. The Operation of the Damage Provisions of the Copyright Law: An Exploratory Study

24. Remedies Other Than Damages for Copyright Infringement

25. Liability of Innocent Infringers of Copyright.

169 pages, 1960, 45 cents.

Ninth committee print; Studies 26-28:

26. The Unauthorized Duplication of Sound Recordings

27. Copyright in Architectural Works

28. Copyright in Choreographic Works.

116 pages, 1961, 35 cents.

Tenth committee print; Studies 29-31:

29. Protection of Unpublished Works

30. Duration of Copyright

31. Renewal of Copyright.

237 pages, 1961, 60 cents.

Eleventh committee print; Studies 32-34:

32. Protection of Works of Foreign Origin

33. Copyright in Government Publications

34. Copyright in Territories and Possessions of the United States.

57 pages, 1961, 25 cents.

Subject Index to Studies 1-34.

38 pages, 1961, 15 cents.

Bulletins

DECISIONS OF THE UNITED STATES COURTS INVOLVING COPYRIGHT. The series contains substantially all copyright cases, as well as many involving related subjects which have been decided by the Federal and State courts. Cloth.

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