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REGISTER OF COPYRIGHTS

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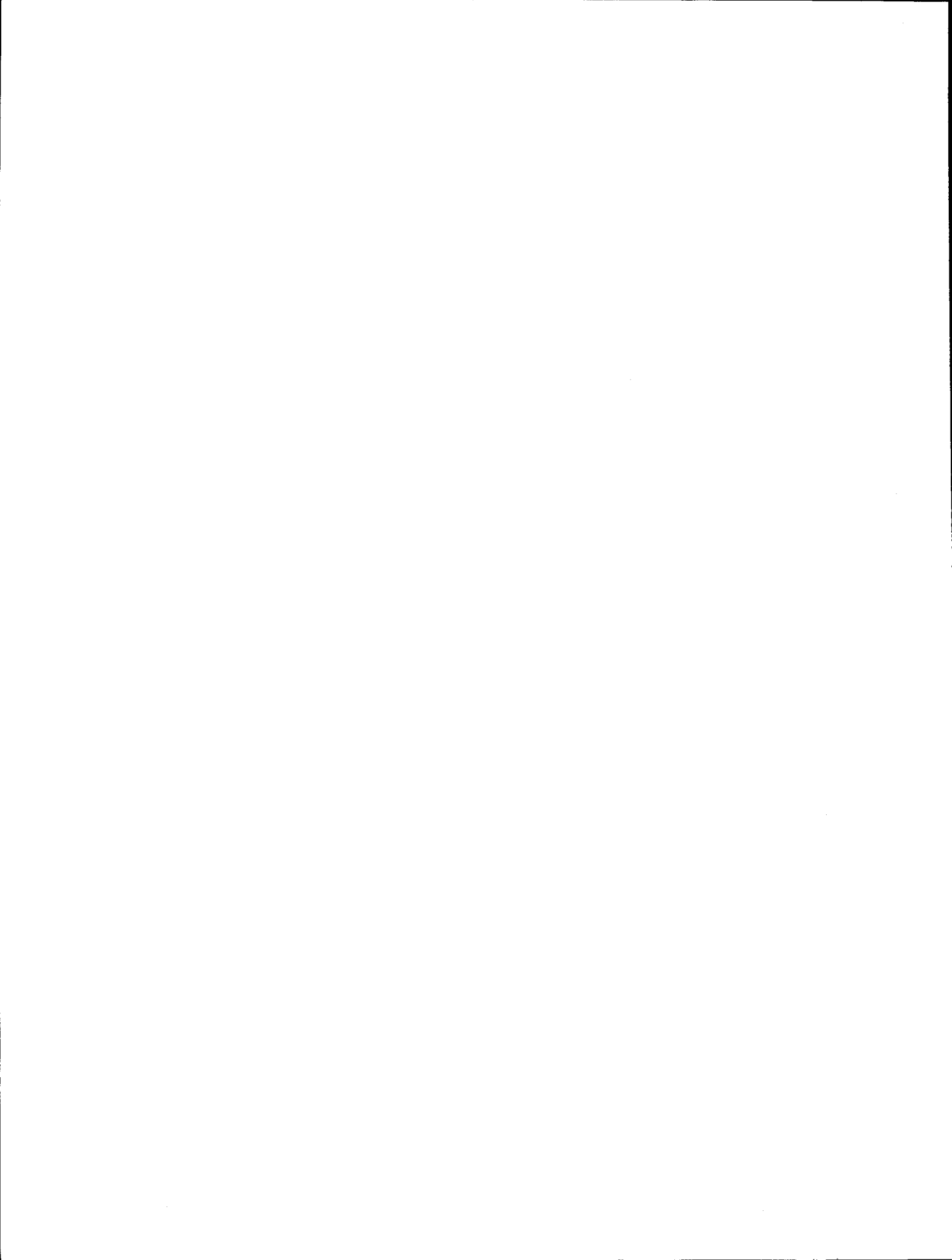
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**“To promote the Progress of Science and useful Arts. . . .”**



# *Report to the Librarian of Congress by the Register of Copyrights*

## THE COPYRIGHT OFFICE

### **OVERVIEW: A YEAR OF IMPROVED PUBLIC SERVICE**

The Copyright Office improved service dramatically during Fiscal Year 1991, thanks to support from Congress and continued hard work from a bolstered staff. Congress allowed the Office to use some of the additional revenue generated by the January 1991 increase in fees for copyright services to hire additional employees and to restore services. Register of Copyrights Ralph Oman told the House Subcommittee on Intellectual Property and Judicial Administration that the Office is "redeeming the promises that were made at the outset of the fee increase debate to restore the services that were scaled back because of the budget cuts in earlier years." Veteran employees who had coped with understaffing for years inspired the 35 new staff members. Together, they halved the processing time for a routine copyright claim from 12 weeks to six and registered 662,476 claims to copyright—more than during any previous year. Making this achievement all the more remarkable is the fact that the new employees did not join the staff until the middle of the fiscal year, and, at year's end, were not yet fully trained.

The copyright industries—the motion picture industry, the computer software industry, the music industry, and all those authors, artists, and composers who rely on the copyright registration system—were especially pleased.

"Intellectual property continues to be a shining star in our economy," Oman testified at an oversight hearing in March 1991 before the 102nd Congress. At home and abroad, U.S. copyright industries remained potent economic assets. These industries generate \$25 billion in foreign sales, and they account for six percent of the U.S. Gross National Product. These figures are all the more impressive as the country struggles through a recession.

The Office, with congressional approval, took a giant step into the future on September 30, 1991, when a vendor was selected to design, develop, and install an optical disk system. Once this system comes online, handstamping and microfilming applications and manual photocopying of registration certificates will become part of the past. Such repetitive, time and labor-intensive tasks will be turned over to a new generation of machines, boosting the efficiency with which the Office processes nearly 700,000 applications each year. The system will automate the numbering of registrations, production of certificates of registration, storage of applications, and the retrieval of information by the public and Copyright Office searchers. Maintaining its commitment to Consultative Management, the Office developed the Request for Proposals for the optical disk storage system by consulting with a working group composed of managers, affected staff, the Library's technical staff, and a union representative.

The influence of the computer, now ascendant in our society, extended beyond the optical disk program, and reached every division in the Copyright Office. Divisions utilized new software and hardware or found themselves coping with the implications of computer-related intellectual property. The Office continued to study changing technologies and adapted policies to meet new challenges—computer programs, user interfaces, digital audio broadcasts, digital audio tape, satellite master antennas, and satellite home dishes.

The Office pushed for international copyright protection, which appeared to be at a critical point in its evolution. Officials of the Office met with copyright officials from other nations as part of a coordinated campaign with the United States Trade Representative, the Department of Commerce, and the Department of State to increase the level of copyright protection worldwide. Implementation of the Berne Convention, which the United States joined in 1989, continued apace. The Office partici-

pated in U.S. efforts to attain new protection standards responsive to technological and marketing changes, working through meetings of the World Intellectual Property Organization (W.I.P.O.) and the General Agreement on Tariffs and Trade (GATT), and on the negotiations for bilateral trade and investment agreements.

Here at home, the umbrella of copyright protection opened wider this year. Certain works of architecture gained coverage. The umbrella may open wider still; the Office asked the public for comments about protection for costume designs and computer programs that digitize typefaces.

#### **OFFICE OF THE REGISTER OF COPYRIGHTS**

The Register and his staff engaged in a wide range of domestic and international activities this year, including testifying before Congress, participating in international conferences and bilateral negotiations with foreign countries, and conducting a training seminar in Spanish through its International Copyright Institute. The International Copyright Institute also conducted a seminar for officials and judges from the People's Republic of China. The Register, with U.S. Trade Representative Carla Hills, celebrated the centennial of the Chace Act, the first U. S. Copyright Act to grant foreign authors copyright protection in this country.

The Register added three new members to his staff: Tish Lister was appointed Secretary/Executive Assistant to the Register, and Audrey Marcus and Kathleen Mordini were appointed as Legislative Liaison Specialists. In the Office of the General Counsel, Senior Attorneys Charlotte Douglass and Kent Dunlap were promoted to the new position of Principal Legal Advisor.

Assisting Congress remained a principal responsibility of the Copyright Office. The Register testified seven times before Congress this year on the following subjects: fair use of unpublished works, devices for preventing the copying of motion pictures, automatic renewal, industrial de-

sign protection, government ownership of software, semiconductor chip design, and general trade issues affecting intellectual property. The Register was also the co-chairman of a U. S. delegation to the United Arab Emirates and Saudi Arabia seeking to improve the protection of intellectual property in the Persian Gulf. He also travelled to Sri Lanka, where he participated in a training course on intellectual property for developing countries in Asia and the Pacific hosted by the W.I.P.O., and to Vietnam for another W.I.P.O. seminar on intellectual property. In May, he turned his attention to Africa, where he participated in a National Copyright Workshop in Lagos, Nigeria.

The Register participated in a W.I.P.O. symposium on artificial intelligence held at Stanford University, following which he, his Policy Planning Advisors, and other Copyright Office staff members conducted a one-day seminar on current Copyright Office practices regarding computer software and databases. The Register was also the featured speaker at the annual meeting of the American Bar Association in Atlanta, at the annual meeting of the Copyright Society of the U.S.A. in Lake George, New York, at the Copyright Society's annual midwinter meeting in Nashville, Tennessee, at Prentice-Hall seminars on the *Feist* decision and international issues, and at numerous other copyright programs, including "The Copyright Office Speaks."

Policy Planning Advisor Eric Schwartz participated in bilateral negotiations with officials of the Soviet Union, Poland, Czechoslovakia, Bulgaria, and Mexico, represented the Office in interagency Special 301 trade consultations, and, as counsel to the National Film Preservation Board, continued to assist Librarian of Congress James H. Billington with the work of the Board. Policy Planning Advisor Marybeth Peters assisted the State Department and the Office of the U. S. Trade Representative with bilateral negotiations with the People's Republic of China and Taiwan. Policy Planning Advisor Lewis Flacks worked extensively with the Office of the U. S. Trade Representative on issues



concerning the General Agreement on Tariffs and Trade, the European Economic Community's harmonization efforts, and with the State Department on a possible protocol to the Berne Convention. Policy Planning Advisor William Patry began the initial work on the Copyright Office's congressional study on artist's resale royalty rights, and assisted the U. S. Trade Representative on bilateral negotiations with Middle Eastern countries.

### FEE INCREASE FOR COPYRIGHT SERVICES

On January 3, 1991, fees were raised for copyright registration and copyright services. This was the first across-the-board increase since 1978.

When the Register asked Congress to approve an increase, he stressed that "... it is a plea to restore the level of service to what it once was." Because of the fee increase, revenues rose from about \$7 million in 1990 to about \$12 million in 1991. The revenues would have been greater had the increase taken effect at the beginning of the fiscal year. Revenue from the fee increase, some of which Congress permitted the Office to use, combined with the hiring of additional staff members that the extra revenue allowed, resulted in the restored service that the Register promised.

Hiring 35 new employees has allowed the Office to cut pendency time—that is, the time it takes to process a routine claim. The first stage of the optical disk system project, which will wed computer technology with the processing of copyright registrations, was funded with \$400,000 provided by the fee increase. Because of budget constraints, the Office had ceased providing a free copy of the Copyright Law upon request; we have now restored that service.

The fee increase presented an administrative challenge and posed difficult questions. Because many remitters would be unaware of the new fee, the Office expected to receive thousands of applications and deposits with "short" fees. Should they be returned to remitters—an expensive option meaning delay? Or should the Office hold the

applications and deposits and write for the additional fee—an option that would cause a backlog in the workflow?

A Fee Increase Task Force recommended a third option, which was endorsed by the Register. This option allowed the Office to maintain near normal processing for short-fee applications. The Office sent the application and deposit along the normal processing and examining route, and wrote to the remitter to request the extra fee. The Register decided that if the claim were registered, it would receive the same effective date of registration it normally would and the certificate of registration would be mailed to the remitter. The Office later verified that the remitter had sent the additional money. If the balance due had not been sent, the Office cancelled the registration.

Although every division and section was affected by the consequences of the fee increase, the Receiving and Processing Division was most affected. Comprehensive planning by the task group included a new Short Fee Unit in the Division to process short fee cases exclusively. Five workers and two supervisors from a local nonprofit agency assisted with the operation. By the end of the year, the Short Fee Unit had produced almost 70,000 letters to remitters.

The Short Fee Unit and overall planning for the consequences of the fee increase proved successful. The copyright registration process proceeded smoothly.

### BERNE IMPLEMENTATION

In 1989, the United States became a member of the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris in 1971. To amend the Copyright Act to conform it to the treaty's requirements, Congress passed the Berne Implementation Act of 1988. After reviewing its regulations, the Office determined that the Implementation Act required only minimal, non-substantive changes. These changes primarily concern copyright notice and deposit and the jukebox

compulsory license of section 116.

The Berne Convention made use of a section 401 copyright notice voluntary for works first published on or after March 1, 1989. All works published on or after that date in which copyright is claimed are therefore subject to deposit in the Library of Congress, whether or not they bear a copyright notice. This means, for example, that contributions to periodicals published after March 1, 1989, need no longer bear separate copyright notice. Notice of copyright is no longer relevant to copying off the air and retention of published transmission programs by the Library of Congress. Although notice is no longer mandatory, its methods of affixation when it is used are still governed by section 201.20, which remains unchanged. On June 13, 1991, the Office also corrected an error in regulations governing copyright notice requirements issued in light of the Berne Implementation Act.

In the Berne Implementation Act, Congress encouraged representatives of authors and composers and the representatives of the jukebox operators to negotiate licenses or submit to arbitration in lieu of a compulsory license. On March 28, 1990, the Copyright Royalty Tribunal announced suspension of the jukebox compulsory license through December 31, 1999, based on a finding that a negotiated license is in effect. No compulsory licenses were issued in calendar year 1990.

Under the agreement between the Amusement Music Operators of America (representing the jukebox operators) and the three performing rights societies, jukebox operators now must obtain a license from the copyright owner or from ASCAP, BMI, or SESAC. A new section 116A has been added to the Copyright Act to reflect this change. The license fee will be adjusted for 1991 and subsequent years under a formula that takes account of the number of jukeboxes licensed in relation to the "benchmark" royalty pool agreed to by the parties.

The Office is amending section 201.16 of the regulations to make clear that the compulsory

license is suspended. The regulations continue to govern procedures for jukebox operators belatedly seeking to comply with the compulsory license for calendar year 1989 and earlier.

### **Copyright Automation Group**

As the Copyright Office increased its use of computers, the support of the Copyright Automation Group increased in value. Automation Group projects completed and ones underway this year helped the Office cope with the processing problems of the January 1991 fee increase and promised to improve major components of the registration and recordation processes.

The Automation Group, in cooperation with the Optical Disk Study Group and members of the Library's Information Technology Services (ITS), defined the requirements for the optical storage system, which is expected to revolutionize the production of copyright registration certificates, the storage of copyright applications, and the retrieval of information about copyright registrations. It is anticipated that the system will boost productivity and will improve the work product of the Receiving and Processing Division and the Information and Reference Division.

Working with the Fee Bill Task Group, the Automation Group helped to design a procedure to enable recording and tracking of short fee claims in the COINS system. These software changes helped the Office and most directly, the Receiving and Processing Division, to track and process thousands of short fee cases smoothly.

The Office worked with UNESCO in a study to develop a CD-ROM product that would contain the Copyright Laws and Treaties of the World in English, French, and Spanish. The Automation Group analyzed the software provided by UNESCO and made recommendations for creating the database.

System development and testing proceeded on

the new computer system for the Licensing Division, and a reformat program was written for the Division to facilitate processing of electronic funds transfer data. Perhaps, one day, submission of claims to copyright, as well as transfer of funds on magnetic disk, may be possible. A vendor was located who agreed to create digitized versions of all copyright application forms at no cost to the Library. The vendor will sell these digitized versions with software to enable testing of this possibility. If this proposal becomes a reality, the Examining Division and the Receiving and Processing Division, as well as the public, will benefit.

Responding to a request from the Motion Picture, Broadcasting and Recorded Sound Division (M/B/RS), the Automation Group designed a procedure to enable M/B/RS to add the contents titles from albums to the COPICS records.

Using software obtained from the Government Printing Office, the Automation Group conducted tests of transmitting information for publication from the General Counsel's Office to the *Federal Register*.

The Automation Group also worked on other projects. As an adjunct to the optical disk storage system project, the option of using the in-process number (IPN) for the registration number was restudied. Working with ITS, the Automation Group clarified requirements and tested new programs for the Exception Tracking System (ETS), and, cooperating with Office staff members, worked on ETS HELP displays and a comprehensive user's guide for the system. A Documents Processing Analysis was conducted to improve the recordation process and reduce the time that the Documents Unit must retain an original document. The support provided to the Printer Study Group helped to determine the Office's specific printer needs and identified specific printers meeting those needs. The Automation Group also assisted with the Visual Arts Registry.

In addition to these projects, the four members of the Automation Group—all systems analysts—provided day-to-day support for the employees

who use the 487 computer workstations in the Copyright Office.

### Cataloging Division

Significant among the events this year in the Cataloging Division were the overall increase in production—clearances, including documents, climbed to 686,236—and the appointment of a new chief.

William P. Collins was named Chief in January 1991. Collins came to the Copyright Office from Haifa, Israel, where he was the Director of the International Baha'i Library.

In the Documents Unit, receipts increased by 29.1 percent, yet clearances rose by 58.9 percent. In fact, clearances for the year slightly exceeded receipts, 16,920 to 16,879.

The Compliance Records Unit, charged with creating records of deposits submitted under section 407 of the copyright law, processed 317,273 newspapers and serials. In March 1991, a PC-based production system was introduced, which improved productivity and boosted morale.

The Cataloging Division Satellite Group continued the strong Consultative Management tradition in the Division. After surveying the staff in the spring, the group forwarded recommendations on ergonomics concerns to the Division office.

Several committees studied methods of streamlining cataloging rules, cross-training Catalogers to handle all classes of material, and cataloging problem registrations more quickly. In February 1991, the Streamlining Advisory Group began its mission to streamline and simplify Division cataloging rules and processing. Among the goals of the group were improving clearances and creating more concise records without reducing information. Experiments with the proposed rule changes were conducted this year.

Section Heads are working on cross-training alternatives, with a report due in October 1991. Thirteen Literary Section Catalogers volunteered

to provide cross-sectional assistance to the Division's Performing Arts, Audiovisual, and Visual Arts Sections and to the Documents Unit. Having Catalogers trained to handle all classes of material remained a long-term goal.

The Division introduced a number of the proposals of the Interdivisional Referral Task Group to expedite cataloging for registrations with missing elements.

Four parts of the *Catalog of Copyright Entries* were edited. Completed were the parts on renewal registrations from July-December of 1982, nondramatic literary works from January-March of 1982, and serials from January-June and July-December of 1990. Also, a tape of a single, but unedited, annual catalog was prepared. However, no catalogs were published because of budgetary constraints.

To ensure that the mission of the Cataloging Division is accomplished, managers and the Cataloging Division Satellite Group devised a 1991/1992 Plan to improve technology, improve the Division work product, enhance job satisfaction, and improve communication.

The Audiovisual Section received a Combined Federal Campaign Honor Award for having 70 percent or more participation and for a \$75 per employee contribution.

### **Examining Division**

An extraordinary staff effort, which reduced the backlog in the Division from 55,000 claims when the year began to 15,000 when it ended, ranked high among accomplishments during 1991. The Register had set a goal of improved public service, and the Division responded by reducing to three weeks the time a claim uncomplicated by correspondence spends here.

Division managers responded with changes in work procedures to accommodate the Architectural Works Copyright Protection Act, the U.S. Supreme Court ruling in the *Feist* case, and the Copyright Office decision to allow group registra-

tion of serials.

Staffing remained critically low during much of 1991. In midyear, 11 new Examiners joined the staff, and helped to attack the backlog while learning the complexities of examining copyright claims. Responding to their training needs, Literary Sections and Visual Arts Section Senior Examiners organized and conducted a month-long group training program, thus ensuring that training was uniform.

Pursuing the Register's mandate to improve public service, and in keeping with the Division's commitment to Consultative Management, Division managers asked staff members, "How can the Examining Division improve public service without sacrificing the quality of the registration system?" The response was enthusiastic; staff members offered many suggestions. Each suggestion was or will be reviewed.

President Bush signed legislation on December 1, 1990, protecting original designs of buildings inhabited or usable by human beings. To enjoy protection, the works had to have been unconstructed and fixed only in unpublished architectural drawings on the date of enactment. The scope of exclusive rights in architectural works has some unique features. The protected work is the design of the building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. Protection does not cover individual standard features, such as common windows or doors, nor functional elements whose design is responsive to utilitarian concerns. Copyright does not prevent the making of pictorial representations of "an architectural work that has been constructed," if the building in which the work is embodied is located in or is ordinarily visible from a public place. The owners of a building embodying an architectural work may, without the consent of the copyright owner, destroy or authorize destruction of the building.

The Chief of the Division, the Head of the Visual Arts Section, and Section members served on a task group to study and establish examining prac-

tices for architecture claims; however, the Division received fewer claims than expected—less than 125 in all.

Fact-based compilation claims had been under review for several years in the Literary Sections when the U.S. Supreme Court ruled in March 1991 that the alphabetical White Pages listings of a telephone directory are not protected by copyright law. The Court ruled that facts themselves are not protectible under copyright law in the *Feist* case and that the only aspect of factual compilations which is protectible is the selection or arrangement of data, to the extent that such selection or arrangement is original. This landmark decision reaffirmed the constitutional and statutory requirements of original, creative authorship as the touchstone of all copyright claims. The Court rejected the "sweat of the brow" and "industrious collection" doctrines which had been accepted in several judicial circuits. Writing for the Court, Justice Sandra O'Connor stated that the Copyright Act leaves "no doubt that originality, not 'sweat of the brow' is the touchstone of copyright protection in directories and other fact-based works." Industrial effort and commercial value are not determinative of a work's entitlement to protection. Justice O'Connor wrote that "originality requires... some minimal level of creativity.... Presumably, the vast majority of compilations will pass this test, but not all will." She explained that there is a "narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent."

As a result of this decision, the Division ceased registering claims in alphabetical telephone directory White Pages and similar business directories lacking originality. An Office-wide task group studied the implications of the opinion on registration practices for other fact-based compilations.

During congressional consideration of the 1991 fee increase, representatives of serial publishers urged that the Office establish a procedure for group registration of serials. They argued that the administrative costs of submitting a separate ap-

plication for each issue constitute a significant burden. On January 7, 1991, the Copyright Office began accepting group registrations of serials. Issues of serials published at intervals of a week or longer within a three-month period during the same calendar year can be grouped and registered with a single application and fee. The group registration privilege is contingent on automatic regular submission of two complimentary subscription copies of each issue for the Library of Congress and on meeting other conditions specified in the December 7, 1990, Copyright Office regulation.

The Division created guidelines for processing two new application forms, Form SE/ Group and Short Form SE/Group. With the assistance of the Information and Reference Division's Publications Section, Circular 62a, "Group Registration of Serials," was created to explain the new registration procedures. As publishers become aware that group registration is available and economical, the Division anticipates a rise in receipts. Division staff members and Copyright Information Specialists in the Public Office encouraged remitters to use the group registration option.

Recent court cases having dealt with the copyrightability of costume designs, the Copyright Office issued a Notice of Inquiry in May 1991 advising the public that practices regarding the registrability of three-dimensional garment or costume designs were being reviewed and inviting public comment. Because articles of clothing are considered "useful articles," and as such are subject to copyright protection only to the extent that the design incorporates features that can be identified separately from the useful article and that meet minimal standards of originality, the Office has generally refused to register claims to copyright in costume design. The Visual Arts Section held all claims presented in costumes pending the outcome of the inquiry. A letter explaining the delay was sent to each applicant. The Office expected to issue a policy statement soon.

The Examining Division became more involved

with computer-related intellectual property than ever before. Many applications for software, some of which raised complex technological issues, were received.

The Literary Section Database Group examined approximately 2,000 single databases and 50 group databases, and kept the *Feist* decision in mind to assure that they applied appropriate standards to these compilation claims.

Working with other service units of the Library of Congress, the Copyright Office and the Division considered the appropriate deposit for works embodied in CD-ROM format. The General Counsel drafted a regulation requiring the deposit of a print copy, if available, and the CD-ROM plus any additional software needed for an Examiner to view the work on a CD player.

In August 1991, the Office announced that it would review its policy on registration of claims in digitized typefaces and computer programs used to control the generation of digitized typefaces. A public hearing and a comment period were scheduled to learn whether new technological advances warranted modification of the policy. The hearing was to focus on the present policy that typeface designs themselves are not registrable and that original computer programs are registrable, regardless of the functional result of the program.

Processing time for applications in the Mask Works Unit took less than three weeks with a total of 1,208 registered. A new regulation allowed separate registrations for the base layers and the metal layers of a gate array chip, even when the owner of the two sets of layers is the same.

The Office and the Division studied various aspects of computer-related intellectual property, and officials and staff members attended several conferences to learn more. In October 1990, the Supervisor of the Mask Works Unit accompanied the Register and the General Counsel to Tokyo, where they met with officials of the Industrial Property Cooperation Center (IPCC), the organization charged with mask work registration in Japan. During meetings, they discussed current

issues and discrepancies between U.S. and Japanese mask works. Registration of mask works for discrete semiconductor chips was an unresolved issue. The United States holds that they may be registered if they display sufficient originality; the IPCC did not have a position on this type of semiconductor chip but agreed to study the issue with the Japanese Patent Office.

In March 1991, the Register, the Chief, and the Heads of the Literary and Performing Arts Sections attended the first international symposium on artificial intelligence, which was held in Palo Alto, California. The symposium offered insights into copyright issues that will arise during the examination process for neural network programs. The Division has registered only the most simple versions of these artificial intelligence programs.

On June 28, 1991, Congress extended section 914 of the Semiconductor Chip Protection Act until July 1, 1995. Section 914 was due to expire July 1, 1991. The provision permits the Secretary of Commerce to order the extension of mask work protection to mask works of certain foreign nationals under certain conditions specified in the Act. The Patent and Trademark Office extended the interim order for 19 countries (Japan, Sweden, Australia, Canada, Switzerland, Finland, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom). All of these countries, except Switzerland, have enacted chip protection and have extended protection to U.S. nationals and domiciliaries under those laws.

The Renewals Section registered 52,255 renewal registrations, 411 more than during 1990. For the first full year, the Section handled certain claims out of turn, instead of adhering to a strict chronological approach. The new procedure speeded processing and enabled the Reference and Bibliography Section to respond more quickly to search requests involving current renewals.

The Performing Arts Section registered 191,199 works and 36,768 sound recordings. Several sound recording trends were noticed: CD and cassette

deposits outnumbered LP deposits, and cassette singles were overtaking 45 rpm singles. Authors increased their use of computers to create music and sound recordings. Operation DESERT STORM inspired a number of works commemorating United States participation in the Persian Gulf War. One Examiner compiled a list of more than 100 song titles.

Staff members in the Motion Picture Unit cooperated with M/B/RS to implement an employee suggestion for "front-end" selection, which offered several benefits. Time was saved because, under the new procedures, data sheets need not be made for works not selected by the Library and special relief requests could be approved immediately when the Library did not want a better edition. Since the ultimate destination of the copy was known when the examining process begins, the process was shortened.

The Visual Arts Section registered 79,225 works. Examiners noticed increased use of computers to create art works. Many appeals received in the Section resulted from refusal to register claims in cases involving *de minimis* works and in cases involving useful articles lacking separable artistic features. To help reduce the correspondence resulting from unclear and unacceptable authorship descriptions, the Publications Section of the Information and Reference Division incorporated recommendations made by the Examining Division Forms Task Group into a new Form VA, which became available to the public in June 1991.

The Literary Sections registered 303,029 works, including monographs, serials, and machine-readable works.

"The View from the Other Side," the Division's long-running seminar series, continued. Speakers included Michael Remington, Counsel for the Majority of the House Subcommittee on Intellectual Property and Judicial Administration, who discussed cooperation between Congress and the Copyright Office. Nancy Freeman, a prominent artist who uses a computer to create graphics, gave a valuable lecture/demonstration.

The Examining Division Satellite Group continued its cooperation with the Receiving and Processing Division in the successful "workflow workthrough" program, which acquainted staff members with each other's duties.

As in the past, employees contributed generously to the Combined Federal Campaign. The Renewals Section won a 1990 Merit Award for a contribution level of \$50 per employee and for having at least 65 percent staff participation.

### **Information and Reference Division**

This year, the Information and Reference Division improved service to the public, to the Congress, and cooperated with the Library on projects to make better use of copyright deposits and records.

When members of the public transacted business with the Division, they discovered new services—a color photocopier, a dollar bill changer, and several strategically located FAX machines. Soon, waiting time for answers to copyright questions will be sharply reduced; the division procured an AT&T automated voice-interactive telephone system that will permit callers to select from 60 informational messages. An opposing vendor had protested the award of the contract to AT&T, but the award was upheld.

Staff members attacked backlogs aggressively. The Reference and Bibliography Section reduced its turnaround time for search reports to four weeks, and at year's end had lowered its on-hand workload of search requests from 440 to 67. In October 1990, the Records Maintenance Unit faced a three-month filing backlog; by December 1990, the backlog was gone and the Unit remained current the rest of the year.

As part of the Register's effort to assist Members of Congress with copyright questions from constituents, the Clerical Support Unit assembled copyright information packages for each Senator and Representative.

The Division lent support to the Register and

the Librarian of Congress with the Register's plan, Operation Treasure Trove, which would help the custodial divisions of the Library fully utilize copyright deposits and help solve the problem of lack of storage space for the deposits. In June, the Register, the Chief, and the Assistant Chief met with Acting Deputy Librarian of Congress Winston Tabb and representatives from affected divisions and set priorities for reviewing and acquiring selected deposits. From copyright deposits at the Washington National Records Center in Suitland, Maryland, a sampling of various groups of records of the 1,700 cubic feet of records from 1898-1909 were chosen to be reviewed. The Division arranged for representatives of the custodial divisions to review samples from these deposits; by the end of the year some selections were made.

The Division also assisted the Register with Operation Buried Treasure. At a meeting in June 1991, a group including the Acting Deputy Librarian, the Register, the Chief, the Head of the Information Section, and representatives from the Library's Manuscript Division and Music Division discussed fuller utilization of copyright deposits that enrich the collections. The objectives of Operation Buried Treasure are creating public awareness of the value of the unpublished dramatic works deposited for copyright registration; dramatizing the vital acquisitions link between the Copyright Office and the Library's special and general collections; and helping to reduce the arrearage in the Manuscript Division by gaining preliminary/minimal-level bibliographic control over the unpublished drama collection. The first focus was the deposits transferred from the Office to the Manuscript Division in 1988. A working group will develop a pilot project to locate these treasures and find ways to use them fully.

The Publications Section, despite being understaffed most of the year, revised Office publications to reflect the new fees. All the application forms were revised, as well as most informational circulars, and a fee flyer was created to mail to all who wrote or called the Office and requested

forms and circulars. New computer equipment allowed easier revision of Circular 92, "The Copyright Law." Work also began on updating the Copyright Office audio-visual program.

Besides decreasing response time, the Reference and Bibliography Section increased service to public visitors who consult records in the Copyright Card Catalog by installing new reference tables.

In November, a new Section Head was named for the Records Management Section, which experienced a notable year. Its Preservation Unit completed microfilming all the 1978 and 1979 applications and processed for microfilming 291,695 items—a 14 percent increase over 1990. In cooperation with the Photoduplication Service, the Unit embarked on a project to produce facsimile copies of unpublished deposits selected for the Library for its collections.

Microfilming the applications from 1978 and 1979 was planned to provide sorely needed shelf space. The Division saw that the dwindling storage space in the Record Maintenance Unit is a long-range problem and hoped that the Optical Disk Project will prove to be a solution. Staff members of the Records Maintenance Unit filed a record number—772,882—of applications for members of the public to consult. Some record volumes have deteriorated and are worn from years of public inspection. To ensure that the public has continued access to these records, the staff began the identification of books needing repair and rebinding. The Deposit Copies Storage Unit at Landover, Maryland, filed 441,571 applications this year—a 48 percent increase. Despite this accomplishment, backlogs continued because receipts increased. The critical lack of storage space at Landover worsened. Transferring some deposits to Suitland helped a little.

The staff of the Public Information Office answered 167,426 telephone inquiries and assisted 16,821 visitors. In between answering the telephone and helping an average of more than 70 visitors personally each day, the Public Informa-



tion Specialists found time to respond to 57,333 letters of inquiry, to conduct tours of the Copyright Office, to speak on copyright to various groups, and serve as representatives at the Patent and Trademark Office's "Trademark Expo" and "Inventor's Day."

The rising number of requests for expedited service received by the Certifications and Documents Section, their four percent increase in inquiry letters, and their seven percent rise in telephone calls provided evidence of increased public interest in copyright deposits. The Section responded by transferring some microfilm copies of deposits into the Section's office for use by the public and the staff, thus providing more timely access to certain deposits. With a color photocopier in the Division, requests for color copies of deposits that had cost \$45 each now cost only \$15 and the service was completed in a few days, rather than the four to six weeks required when the requests were routed to the Photoduplication Service.

For many in this Division, service to the public extended beyond work hours. The Information and Reference Division Satellite Group again sponsored a holiday clothing drive for the homeless, and two members of the Group delivered the clothing the group had collected to the nearby Community for Creative Non-Violence shelter. The Division Office received the 1990 Combined Federal Campaign President's Award for 100 percent participation and an extraordinary support of volunteerism. The Reference and Bibliography Section received an Honor Award for having 70 percent or more participation and for a \$75 per employee contribution.

### Licensing Division

The Licensing Division continued its service to copyright owners and, using new technology, became more "user-friendly" for the cable operators and satellite carriers it also serves. In cooperation with the U.S. Treasury Department and Riggs

National Bank in Washington, D.C., the Division implemented an electronic funds transfer process, which enabled cable systems and satellite carriers to submit royalty payments directly to the U.S. Treasury. This was the first such system in the Library of Congress. Truly a win-win process, electronic transfer benefitted all parties involved. Cable system operators and satellite carriers gained from the new transfer system because they could wait until the due date to transmit their royalty payments. The Division gained because the electronic funds transfers reduced paperwork and related administrative costs, improved reporting and audit control, and eliminated mail processing and collection float. For the January through June 1991 accounting period, \$29,745,311.73 was transmitted electronically—34 percent of total royalties. The largest transfer occurred on August 29, 1991, when \$11,716,381.82 was transmitted.

A Division committee evaluated a computer-generated cable statement of account form developed by an outside firm and approved its use as an option by cable operators. Some cable operators took advantage of this immediately because it provided an attractive alternative to typing the lengthy statement of account forms. The Division was hopeful that use of this form will result in fewer computational errors and resulting correspondence.

Four circulars and the cable system and satellite carrier statement of account forms were revised, and a new circular was added. The new circular explained the electronic funds transfer procedure.

In the Examining Section, a committee of Licensing Examiners, utilizing their personal computers, developed an analysis tool that permitted each Licensing Examiner to audit the complex subscriber group methods used by many cable systems to compute royalty fees. Examining Section operating procedures were revised for certain works involved in noncommercial broadcasting and the compulsory license for making and distributing phonorecords.

The Fiscal Section coordinated efforts to estab-

lish the electronic funds transfer system. Staff members were trained in this new process, which included on-line access to deposit data.

In the Licensing Information Section, IBM Wheelwriter typewriters were converted to printer/typewriters. Personal computers, attached to the new printer/typewriters, produced cable television community cross-reference cards. The result was increased production with fewer errors.

Progress was made on improving computer hardware. The Division, with the cooperation of ITS and the Copyright Automation Group, continued development of a new automated system for the Division. Personal computers were connected via a token ring network to the microcomputer where the present automated system is located and to the Library's mainframe computer. Access is now possible to a number of Library systems with the new network.

The Division continued its assistance to the Copyright Royalty Tribunal, which distributes royalty fees to copyright owners. A total of \$157,310,582.01 in cable royalties was distributed. No distributions were made under the satellite carrier license. As it had last year, the Tribunal requested special and supplemental reports of cable royalties available for distribution, and the Division complied.

The Licensing Division was proud of Licensing Examiner Donna Thacker, a staff sergeant in the District of Columbia National Guard, who served in the Persian Gulf War.

### **Receiving and Processing Division**

The Receiving and Processing Division provided processing support which enabled the Copyright Office to render timely public service. This year, the support was especially important because the increase in fees for copyright services produced a flood of copyright applications with insufficient fees. That the Office functioned smoothly in the wake of this fee increase was due

in no small part to detailed planning based upon past experience, combined with the enthusiasm and hard work of Division staff members

In anticipation of the fee increase, the Division put into place the recommendations of the Fee Increase Task Force, which was headed by Associate Register of Copyrights Michael Pew. Despite efforts by the Office to inform potential remitters that fees would rise soon, thousands upon thousands of applications with the old \$10 filing fee, instead of the new \$20 fee, began pouring into the Mail Processing and Correspondence Control Unit in early January.

Formation of the Short Fee Unit was a major recommendation of the task force. Sophisticated equipment was brought in and modifications were made to the COINS program. A contract to produce the short fee letters was awarded to The Centers for the Handicapped, a Silver Spring, Maryland, group. Planning to establish the Unit, to train personnel to process short fee cases, handle the replies, and post the fees was thorough. The Assistant Chief supervised several weeks of training and orientation for the new workers. A bank of photocopiers was procured to reproduce the specially designed short fee slip letter attachment. With the assistance of the Publications Section of the Information and Reference Division, special form letters were drafted and bright, goldenrod-colored, self-addressed envelopes were designed, enabling Mail Technicians to spot replies easily and expedite them. The months of planning paid off. By the end of the fiscal year, the Short Fee Unit produced 67,677 letters and the Office received 52,225 replies, with a compliance rate of 76 percent.

The Incoming Mail Unit, the Registered and Outgoing Mail Unit, and especially the Data Processing and Recording Unit were also affected by the fee increase. The staff of the latter Unit was trained to input data into a new COINS screen designed for entry of short fee cases. Beset by an unusual number of vacancies and the largest number of claims ever received in the Unit in one

month—71,026 in December 1990—the Unit staggered under the burden, but vacancies were filled and the short fee cases finally declined. The surge in receipts from November 1990 through early January 1991 was likely the result of remitters attempting to file applications before the increase took effect. At one point, the Data Processing and Recording Unit had 22 days of unprocessed work on hand. But as the year ended, the workload was current.

The Mail and Correspondence Control Section responded to an increased workload with customary professionalism. For most of the year, the Mail Units stayed current, and handled the end-of-year surge quite well. Postage costs, however, posed a problem; they increased from \$373,668 during 1990 to \$518,243 in 1991. The Correspondence Control Unit functioned efficiently, logging 21,167 cases as no replies, 15,890 as rejections, and 733 cases as withdrawn.

Almost every Unit in the Materials Control Section processed more work than during 1990. The Registration Numbering and Certificate Production Unit completed a record 663,883 registrations this year, despite losing five veteran clerks, and ended the year with a current workload. The Division and the Cataloging Division agreed to modify procedures for dual and triple registrations and for handling referrals and numbering errors, resulting in a smoother workflow. Planning continued for storing copyright applications, which this Unit now processes manually, on the optical disk system.

The Materials Expediting Units completed 61,603 searches this year, 7,172 more than last year. The Incomplete Claims Handling Area (ICHA) received more cases this year than last. Division managers worked with the Examining Division on procedures for transferring selected unpublished motion pictures from the ICHA to M/B/RS. For the first time, the Materials Control Section had a Missing Elements Coordinator who reconstructed and closed 700 cases in which a critical element was discovered missing after registration

was completed.

Division managers worked with managers in the Examining Division on procedures for handling Group SE applications requiring correspondence and established procedures to ensure tighter security for deposits. The Materials Control Section Head represented the Copyright Office on a Library-wide security task group.

The Receiving and Processing Division Satellite Group continued to be an asset and offered excellent suggestions for handling the short fee cases.

During the 1990 Combined Federal Campaign, members of the Division pledged \$1,000 more than in any previous year.

## COPYRIGHT OFFICE STUDIES

### Patent-Copyright Laws Overlap Study

At the request of the House Subcommittee on Intellectual Property and Judicial Administration, the Copyright Office jointly conducted a study with the U. S. Patent and Trademark Office (PTO) concerning possible overlap between the patent and copyright laws. One goal of the study was to evaluate the effectiveness of the current copyright and patent systems in handling overlapping claims for protection in the same work. Another was to explore protectibility under either system of so-called computer program "user interfaces"—screen displays and their components.

The study, issued in May 1991, concluded that there is minimal overlap between copyright and utility patent subject matter. The statutes make clear that copyright protects an author's expression, while utility patents protect inventions. With respect to computer programs, the study concluded there is no overlap in subject matter because patents cover novel and nonobvious processes, while copyright covers literary works (i.e., sets of statements that bring about a certain result in the operation of a computer). Finally, the study

concluded that, while a given design may qualify for both copyright and design patent protection, this situation has existed for many years and has not appeared to create undue problems. For these reasons, the study recommended no changes to the patent or copyright laws.

Noting, however, that the Copyright Office requires an "election" between copyright and design patent protection, while the PTO does not, the Office requested guidance if Congress determines that the election policy presents problems.

### **Digital Audio Broadcast and Cable Services Study**

Responding to a congressional request, the Office on October 24, 1990, published a Notice of Inquiry to begin to examine development of the new digital audio broadcast and cable services and the effects that implementation of such services may have on performers and owners of copyrightable works. The study is to be released in 1991.

### **Registrability of Costume Designs**

On May 2, 1991, the Office issued a Notice of Inquiry to advise the public that it is reviewing its practices regarding registrability of three-dimensional garments or costume designs and inviting public comment to assist the Office in examining the basis on which copyright protection may adhere in such works.

### **Registration of Claims to Copyright in Architectural Works**

On September 24, 1991, the Office proposed new regulations governing the registration and deposit of architectural works. The regulations are intended to implement copyright registration of this new category of copyrightable authorship and to establish the nature of the required deposit for mandatory deposit purposes.

## **CHANGING TECHNOLOGIES**

### **Definition of Cable Systems**

On October 15, 1986, the Office invited public comment on the definition of the term "cable system" as it concerns various new technologies and the operation of the compulsory licensing mechanism in section 111 of the Copyright Act. The Office issued proposed regulations on July 10, 1991, governing conditions under which satellite master antenna television (SMATV) systems will qualify as cable systems and thus be eligible for the cable compulsory license. At the same time, the Office announced a policy decision that satellite carriers are not eligible for the cable compulsory license and a preliminary policy decision that multichannel multipoint distribution services (MMDS) are not cable systems and therefore are not eligible for the cable compulsory license.

### **Electronic Funds Transfer**

The Office also amended its regulations for statements of account and filing requirements for sections 111 and 119, which provide, respectively, a compulsory license for secondary transmission by cable systems of broadcast signals and a statutory license for certain secondary transmissions by satellite carriers to satellite home dish owners. The new regulation provides the option of payment by electronic funds transfer, which should facilitate payment by cable systems and satellite carriers and lessen the Office's administrative burden.

## **COPYRIGHT OFFICE REGULATIONS**

### **Amended Litigation Statement Form**

The Office amended its Litigation Statement form to clarify Office regulations concerning requests for litigation purposes of reproductions of copies, phonorecords, or identifying material deposited in connection with copyright registration.

The Office became aware that an attorney completing the previous Litigation Statement form could generally allege that a controversy existed, when, in fact, no real controversy did exist. The form was amended to require the applicant to give more specific information regarding prospective proceedings and to include supporting documentation.

### **Special Handling and Expedited Service**

The procedures authorized under section 708(a)(10) of the Copyright Act for requesting and obtaining special handling (i.e., expedited service) in connection with registration of claims or other services remained unchanged. Effective August 7, 1991, however, the Office began accepting payment for the special handling service by personal check.

### **Statements of Account and Filing Requirements for Satellite Carrier Statutory License**

On December 4, 1990, the Office amended its regulations for statements of account and filing requirements for section 119 of the Copyright Act. Section 119 creates a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners. The revised regulations provide that statements of account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Office, and statements and fees received after the filing deadlines of July 30 or January 30, respectively, will be accepted for whatever legal effect they may have, if any.

### **Adjustment of the Syndicated Exclusivity Surcharge**

In response to reinstatement by the Federal Communications Commission (FCC) of its former syndicated exclusivity blackout rules, the Copyright Royalty Tribunal in August 1990 amended

its rules concerning the syndicated exclusivity surcharge some cable systems have paid since 1983 under the cable compulsory license provided in section 111 of the Copyright Act. The Tribunal eliminated the surcharge except in the case of a distant commercial VHF station that places its predicted Grade B contour in whole or in part over a cable system.

On December 4, 1990, the Office amended the cable compulsory license filing procedure in section 201.17 of its regulations to reflect this change.

### **Effective Date of Registration of Claims to Copyright**

When Congress increased the filing fee for registration of copyright claims in July 1990 from \$10 to \$20, effective on January 3, 1991, the Office considered a number of options for administratively processing the large number of claims expected to be submitted with the old fee of \$10. On December 4, 1990, the Office announced that it would, upon receipt of a short fee, request immediate payment of the supplementary \$10, but would simultaneously process the claim and establish the effective date of registration as the date of receipt of the original \$10 fee. If the supplementary fee is not received by the Office, registration of the copyright claim will be cancelled with the resultant loss of the effective date of registration.

The Office believed one year to be an adequate period of time to educate the public about the new fee structure. Consequently, this regulation was adopted only for calendar year 1991. In 1992, the Office will resume its policy of delaying registration of short fee cases until the proper fee is received.

### **Group Copyright Registration of Serial Publications**

On December 7, 1990, the Office adopted a new regulation permitting group registration of certain serial publications.

### **Computer Software Lending by Libraries and Copyright Warning**

The Office issued regulations on February 26, 1991, implementing section 802 of the Computer Software Rental Amendments Act of 1990, which allows lending of computer programs by non-profit libraries for nonprofit purposes without permission of the copyright owner, so long as the library affixes a copyright warning to the package containing the computer program. The new regulation specified the form and content of the copyright warning and the requirements concerning its affixation.

### **Housekeeping Amendments**

A series of housekeeping amendments was issued by the Office on February 26, 1991. The first regulatory changes dealt with refund of excess fees under section 201.6 of 37 CFR. The Office amended section 201.6 so that payments made by mistake or in excess of the statutory fee by \$10 or less will be refunded only if specifically requested. The same section was amended to provide that, in making any refund for fees remitted in payment of nonregistration services (e.g., certifications or searches of records), an administrative processing fee will be deducted from the amount remitted equivalent to one hour of service, or the minimum fee set by statute for the service. An error in the authority section of the final regulation governing refunds of excess fees was corrected on June 13, 1991.

The second set of changes dealt with the compulsory licenses for cable and phonorecords. The regulations regarding compulsory license for cable systems were amended to eliminate reference to a reporting form no longer in use and to correct a typographical error. The regulations regarding the compulsory license for making and distributing phonorecords were amended to include the mechanical royalty rates established by the Copyright Royalty Tribunal, effective January 1, 1990.

### **Mask Work Protection**

On February 26, 1991, the Office amended its regulations on mask work protection to provide an exception to the most complete form requirement. Paragraphs (c) and (e) of section 211.4 require one registration per work and that the registration cover the most complete form of the semiconductor chip product in existence. The final regulation permits separate registration of unpersonalized gate arrays and the customized mutualization layers despite the existence of a completed final form.

### **Visual Arts Registry**

On August 13, 1991, the Office issued a regulation establishing a Visual Arts Registry for the filing of statements and documentation relating to works of visual art incorporated in buildings. The regulations were in response to the Judicial Improvements Act of 1990, Public Law 101-650, which directed the Office to establish a registry to assist the owner of a building in notifying the artist of an incorporated work that the building owner intends to remove the artwork from the building, or to demolish the building.

## **PUBLIC ANNOUNCEMENTS**

### **Cable Compulsory License Specialty Station Determination**

On October 1, 1990, the Office established a final, annotated list of broadcast stations qualifying as specialty stations under the FCC's former distant signal carriage rules. As part of the public proceeding to establish the specialty station list, however, the Office received several late requests for addition to the list and therefore issued a new request for information on October 1, 1990, to update the established list.

On June 6, 1991, the Office published a list of the

stations that filed affidavits in response to its October request, and invited comment from interested parties as to whether any station listed therein fails to qualify as a specialty station.

## LEGISLATIVE DEVELOPMENTS

### Art Fraud and Plagiarism

On October 17, 1990, Rep. Mavroules introduced H.R. 5848, the Plagiarized Art Prohibition Act, which would prohibit commerce in paintings that are similar to original works of art and intended to deceive consumers as to the creator's identity. The bill was referred to the Judiciary Committee.

### Visual Artists Rights

Among copyright laws enacted in 1990 was the Visual Artists Rights Act of 1990, enacted as Title VII of the Judicial Improvements Act of 1990 and adding a new section 106A to the Copyright Act. The Act guarantees the author of "a work of visual art" certain rights of attribution and integrity. These include: 1) the right to claim authorship of the work and to prevent the use of his or her name as the author of a work he or she did not create; 2) the right to prevent the use of his or her name as author of the work in the event of distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and 3) certain rights to prevent distortion or destruction of the work.

Section 113 of the Copyright Act was also amended by the Visual Artists Rights Act of 1990. The new section 113(d), which pertains to removal of works of visual art from buildings, limits the right against destruction in certain cases, as where the work is so incorporated into the building that its very removal may cause destruction or distortion. The new section also directs the Register of Copyrights to establish a records system whereby

any author of a work of visual art incorporated into a building may record his or her identity and address with the Office.

### Architectural Works

On February 7, 1990, Rep. Kastenmeier introduced legislation to amend the Copyright Act to protect architectural works. The Architectural Works Copyright Protection Act was passed as Title VII of the Judicial Improvements Act of 1990. The law amended the Copyright Act by providing protection for architectural works.

### Computer Software Rental

The Computer Software Rental Amendments Act of 1990 was signed as Title VIII of the Judicial Improvements Act of 1990 on December 1, 1990. With exceptions for nonprofit libraries or educational institutions, the Act prohibits a person in possession of a particular copy of a computer program from renting, leasing, or lending that copy for direct or indirect commercial advantage.

Hearings were also held on computers and intellectual property on November 8, 1990, in the House Subcommittee on Courts, Intellectual Property, and the Administration of Justice.

### Fair Use

Several bills were introduced concerning the section 107 fair use provisions of the copyright law—including bills by Reps. Kastenmeier and Hughes and Sen. Simon—in reaction to *dicta* in two decisions from the U.S. Court of Appeals for the Second Circuit in New York: *Salinger* and *New Era*. On May 9, 1991, Sen. Simon introduced S. 1035 to amend section 107 of the Copyright Act to clarify congressional intent that the unpublished nature of a work be only one of several considerations courts weigh in making the fair use determination. H.R. 2372, introduced by Chairman Hughes on May 16, 1991, would similarly amend the Copy-

right Act with respect to fair use.

Hearings were held before the House Subcommittee on Intellectual Property and Judicial Administration on June 6, 1991. The Register testified in support of H.R. 2372, but noted that "the lower courts themselves seem to be fine-tuning the decisions that cause so much alarm." He emphasized that H.R. 2372 is not a panacea. Fair use questions are often "judgment calls" for biographers, historians, and their attorneys, and are "inherent in the balancing required by the fair use defense."

#### **News Monitoring as Fair Use**

On October 22, 1990, Sen. Hatch introduced S. 3229, a bill to amend the Copyright Act to clarify news monitoring as a fair use exception to the exclusive rights of a copyright owner.

#### **Cable: Mandatory Carriage of Local Signals**

On January 14, 1991, Sen. Danforth introduced S.12 to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming. H.R. 2043, introduced on April 24, 1991, by Rep. Bryant, would also amend the copyright laws to provide compulsory licenses only to those cable service providers who provide "adequate carriage" of local broadcast signals. These bills would to some extent reeffectuate the FCC's must-carry rules declared unconstitutional in 1986 and again in 1988. Sen. Danforth's bill would also restore the right of local franchising authorities to regulate cable television rates.

#### **Cable: Retransmission Consent**

On June 28, 1991, lawmakers introduced a controversial amendment to S.12 providing for retransmission consent. Retransmission consent enables broadcasters (other than those covered by the Satellite Home Viewer license) to negotiate compensation in exchange for letting a video pro-

vider retransmit their signals. Under the proposed scheme, broadcasters may grant or withhold consent for cable retransmission, or alternatively require cable carriage if the signal qualifies as a must-carry signal. On July 10, 1991, General Counsel Dorothy Schrader testified before the House Subcommittee on Intellectual Property and Judicial Administration that the Office had concluded that broadcasters' power to withhold consent makes retransmission consent the effective equivalent of copyright exclusivity, creating a conflict with the cable compulsory license of section 111 of the Copyright Act.

S. 12's retransmission consent plan would include satellite carriers, including emerging direct broadcast satellite (DBS) ventures. The Senate Commerce Committee's report on S.12, which suggested that the FCC erred in its 1959 determination that cable systems need not obtain permission from broadcasters before retransmitting their signals, provides guidelines for the FCC to use in overseeing broadcasters' choice between must-carry protection or negotiated payments for signals.

#### **Cable: Telco Entry**

The House is also considering whether telephone companies, if allowed into the cable business, should be subject to retransmission consent and entitled to a compulsory license. Rep. Boucher introduced a bill to enable independent telephone companies to operate cable systems and to own, package, and produce programming under certain safeguards.

#### **Cable: Consumer Protection**

Several consumer protection bills have been introduced to provide protection for cable subscribers. Concerned with the inherent monopolistic qualities of the cable franchise business, the bills require reasonable rates or effective competi-



tion, and prohibit price discrimination. H.R. 2439, H.R. 2547, H.R. 5267, and S. 432 would amend the Communications Act of 1934. S. 431 would amend the Clayton Act (15 U.S.C. 12).

### **Federal Copyright for Computer Software**

On January 3, 1991, Rep. Morella introduced H.R. 191. The Morella bill would amend the Stevenson-Wydler Technology Innovation Act, 15 U.S.C. section 3710 *et seq.*, to permit federal agencies to secure copyright in computer software prepared by Government employees under cooperative research and development agreements, notwithstanding the prohibition in section 105 of the Copyright Act against copyright in works created by U.S. employees. Under the bill, the agency involved would have the choice of securing a copyright or retaining a license granting all of the exclusive rights in section 106 of title 17.

On July 18, 1991, General Counsel Schrader testified in favor of H.R. 191 before the Subcommittee on Technology and Competitiveness of the House Committee on Science, Space, and Technology. Historically, the prohibition against copyright in U.S. Government works was enacted to give unlimited public access to important information and to prevent the government from exercising censorship, the General Counsel stated, but the Office now believes that extending protection to federal software will stimulate research and development and protect U.S. international interests.

On September 13, 1991, the Register testified in support of S. 1581, the Technology Transfer Improvements Act of 1991, before the Senate Committee on Commerce, Science and Transportation. The Register noted, "There is no reason to treat government authors of computer software and inventors differently. By extending protection to federal software the bill should stimulate research and development. Legislative branch agencies should also be allowed to copyright cooperatively developed software."

### **Criminal Sanctions for Violation of Software Copyright**

S. 893, introduced on April 23, 1991, by Sen. Hatch, would impose criminal sanctions for violation of software copyright by amending 18 U.S.C. section 2319(b)(1). The bill was referred to the Committee on the Judiciary.

### **Digital Audio Tape (DAT)**

Digital audio tape (DAT) recorders represent a significant technological advancement in sound recordings, but threaten copyright owner interests by facilitating near-perfect home copying without providing compensation to copyright owners. S. 2358, the Digital Audio Tape Recorder Act of 1990, was intended to protect sound recording producers and DAT recorder manufacturers, while enabling U.S. consumers access to DAT quality. The bill required DAT recorders to contain the serial copy management system (SCMS), which permits digital to digital copying but limits second and subsequent generation copying.

Two more DAT bills were introduced in August 1991. S. 1623, introduced by Sen. DeConcini on August 1, 1991, would amend the Copyright Act to implement a royalty payment system and a SCMS for digital audio recording and to prohibit certain copyright infringement actions. H.R. 3204, introduced by Reps. Brooks and Hughes on August 4, would accomplish the same purposes.

On July 11, 1991, representatives of the audio hardware and music industries, including the Electronics Industry Association, Recording Association of America, and the National Music Publishers Association, and performing rights societies, agreed to seek compromise legislation incorporating elements of both a SCMS-based and a debit/compensation-based system.

Under the agreement, manufacturers and importers of DAT equipment will make a royalty payment into a special fund based on the manufacturers' price of the recording equipment (two per-

cent) and blank media (three percent). This fund will be administered by the Copyright Office and the Copyright Royalty Tribunal and distributed to music creators and copyright owners on the basis of record sales and, in some cases, airplay. All nonprofessional consumer digital audio recorders will include the SCMS. The proposed legislation would also clarify the law to permit copying of music for private, noncommercial use by consumers, whether in digital or analog format. The Office approves this bill in principle.

### **Library Photocopying Report Requirement**

Section 108(i) of the Copyright Act directs the Register of Copyrights to submit a report every five years, after consultation with authors, publishers, librarians, and library users, on the extent to which section 108 balances the rights of creators with the needs of users. On March 22, 1991, Chairman Hughes introduced H.R. 1612 to eliminate the library reporting requirement in section 108 by striking subsection (i). A similar bill, S. 756, was introduced by Sen. DeConcini. The Copyright Office supports removing the library reporting requirement.

### **Copyright Renewal**

On March 21, 1991, Sen. DeConcini introduced S. 756 to amend the copyright renewal provisions in section 304(a) of title 17. The bill would create "automatic renewal" for works registered before January 1, 1978, and still in their first term. On June 12, 1991, the Register described the difficulties that the renewal provisions impose on creators to the Senate Subcommittee on Patents, Copyrights, and Trademarks.

On June 6, 1991, the Register testified before the House Subcommittee on Intellectual Property and Judicial Administration on H.R. 2372, Title II of which provides for automatic renewal of copyrights. The Register supported automatic renewal, pointing out that under the current system, valu-

able copyrights are inadvertently lost forever by people "not schooled in the arcane renewal system that developed under the 1909 Act."

### **Mask Works and Semiconductor Chip Protection**

The Register testified on mask work protection on May 1, 1991, before the House Intellectual Property and Judicial Administration Subcommittee. The Office supported extension on section 914 of the Semiconductor Chip Protection Act, but voiced no preference for either a temporary or an indefinite extension.

### **Motion Picture Piracy**

Motion picture videocassettes are encoded by copyright owners with an anticopying system when they are sold. Technology has been developed to override the encoding and allow copies to be made. S.1096, The Motion Picture Anti-Piracy Act of 1991, introduced by Sen. Kohl on May 16, 1991, makes the manufacture, distribution, and selling of devices designed to deactivate video copy protection systems both copyright infringement and a federal crime. The bill, which would amend the Electronic Communications Privacy Act, would prohibit the disabling of an anticopying system for any format of a motion picture and give copyright owners of audiovisual works a new right to protect their works by technological means.

The Register testified before a joint hearing of the Senate Subcommittees on Technology and the Law and Patents, Copyrights, and Trademarks in support of the bill on July 24, 1991. He stated that the bill meets the challenge of what he called "the obscure science of 'black box' technology," and is consistent with the Supreme Court's decision in the *Betamax* case that home taping of conventional broadcasts for time-shifting purposes is fair use. The Register said that the bill offered a "technically sound approach, although a minor adjustment or two may need to be made." He specified

that certain policy areas remained unaddressed by the bill: first, whether special provisions are necessary or feasible to deal with public domain pictures; second, the effect of the legislation on fair use of educational audiovisual materials.

### Film Preservation

In addition to providing for automatic renewal, Chairman Hughes' bill, H.R. 2372, would revise and extend the National Film Preservation Act of 1988 and reauthorize the National Film Registry Board. Recognizing motion pictures as a significant American art form, the act furthers preservation, restoration, and the establishment of a registry of films "that represent an enduring part of the national, historical, and cultural heritage of the United States." Librarian of Congress James H. Billington testified in favor of extension of the Act on June 12, 1991, before the House Subcommittee on Intellectual Property and Judicial Administration. Dr. Billington explained that the public perception that a work will always exist because it is available on videotape is mistaken because videotape is not a preservation medium.

### Design of Useful Articles

Rep. Gephardt introduced H.R. 1790, a bill to amend title 17 of the U.S. Code to provide for protection of industrial designs of useful articles.

### United States Competitiveness and Technology Leadership

Two bills aimed at promoting the U.S. edge in computing and technology were introduced with copyright implications. S.272, introduced by Sen. Gore on January 24, 1991, would provide a federal research program to promote U.S. leadership in high-performance computing. One concern the bill addresses is how to protect copyrights of material distributed over a research and education

network which the Act would create. S. 479, introduced by Sen. Leahy on February 22, 1991, would amend the National Cooperative Research Act of 1984.

## JUDICIAL DEVELOPMENTS

### Copyright Office Litigation

In *Oddzon Products, Inc. v. Oman*, 924 F.2d 346 (D.C. Cir. 1991), the D.C. Circuit affirmed summary judgment for the defendant in an action alleging wrongful refusal to register a claim to copyright in a soft sculpture titled "KOOSH" ball. The Register refused to register the ball since (1) it did not contain the minimal degree of creativity required for copyright, and (2) its tactility could not be taken into account since its feel was inseparable from its utilitarian function. The court ruled that the Register's refusal to make the registration was not an abuse of administrative discretion. Similarly, in *Atari Games Corp. v. Oman*, No. 88-21 (D.D.C. Aug. 13, 1991), the court granted the defendant's motion for summary judgment on the ground that a second refusal by the Register to make registration of the videogame "Breakout" was not an abuse of administrative discretion. In accordance with an order from the appellate court, the Register clarified the rejection language, emphasizing that the work as a whole lacked a certain minimum amount of creative expression.

In *Homer Laughlin China Co., v. Oman*, Civ. No. 90-3160 (D.D.C. July 30, 1991), the court considered whether the Register abused his discretion in refusing to make a registration in the chinaware design pattern "GOTHIC." The court found the Register's refusal to consider commercial sources, economic expense, and labor as elements for the test of copyrightability and registrability was not an abuse of administrative discretion.

In *Motion Picture Association of America, Inc. v. Oman*, 750 F.Supp. 3 (D.D.C. 1990), the court granted the defendant's motion for a summary

judgment in a suit seeking a declaratory judgment that a Copyright Office regulation was invalid for its failure to assess interest retroactively on late royalty payments. In upholding the Copyright Office regulation, the court held that the Copyright Act does not grant the Copyright Office retroactive rulemaking powers concerning the cable compulsory license, nor does the Act give the Register the authority to take the adjudicatory position alleged by the plaintiff. The interest regulation was issued as a rulemaking pursuant to statutory requirements, and the Register's prospective application of the interest regulation was necessary and reasonable.

### Copyright—Intangible Intellectual Property

In *U.S. v. Brown*, 17 U.S.P.Q.2d 1929 (10th Cir. 1991), the Tenth Circuit affirmed the district court's dismissal of an indictment charging the defendant with a violation of the National Stolen Property Act. The Act only applies to the appropriation of physical goods. The dismissal was affirmed since the prosecution could only prove the defendant's unauthorized copying of a computer program, which is intangible, purely intellectual property, and "as such it alone cannot constitute goods, wares, merchandise, securities or moneys which have been stolen, converted within the meaning of [the Act]." *Id.* at 1934.

### Copyrightable Authorship— Who Is The "Author?"

In *Andrien v. Southern Ocean County Chamber of Commerce*, 927 F.2d 132 (3d Cir. 1991), the Third Circuit defined an "author/creator" as the one "who translates [transforms] an idea into an expression that is embodied in a copy by himself or herself, or who authorizes another to embody the expression in a copy." *Id.* at 134. The plaintiff, a real estate agent, assembled a series of street maps and turned them over to a printer for reproduction of a composite or compilation map of the city. An

employee of the printer did the art work for the map. The appellate court reversed the district court's finding that the plaintiff was not an author. It held that he qualified as an "author" for copyright purposes since he expressly and in specific detail directed the preparation of the copy. The court noted that composition (compilation) needed "only simple transcription to achieve final tangible form." *Id.*

In *Forward v. Thorogood*, 758 F.Supp. 782 (D. Mass. 1991), the plaintiff sought declaratory judgment that he is the sole owner of the copyright in two unpublished audio tapes that were in his possession. The court found that copyright in the tapes had not been transferred to the plaintiff and that he was not an owner on the basis of authorship as he was neither an employer for hire nor a joint author. As for the latter, he failed to contribute any creative authorship; and as to the former, he was neither an employer nor a "commissioner" of the work. In *Ashton-Tate Corp. v. Ross*, 916 F.2d 515 (9th Cir. 1990), the Ninth Circuit delineated more precisely the scope of joint authorship holding that a joint authorship in the underlying work was insufficient to make one a joint author in a derivative work.

The scope of joint authorship was clarified even further in *Fisher v. Klein*, 16 U.S.P.Q.2d 1795 (S.D.N.Y. 1991). Finding that the partner who designed and sculpted jewelry was definitely the dominant creator, the court focused on what authorship the partner who marketed the jewelry might have made and the intention of the parties. The court found that the description of how to make a jewelry sculpture was a copyrightable contribution and also found that the relationship between the partners revealed that the dominant author intended to share authorship. The court ruled that where shared intention of merged contributions exists, a joint work is created.

In *Lakedreams v. Taylor*, 932 F.2d 1103 (5th Cir. 1991), the Fifth Circuit affirmed a holding that the defendant did not become an "author" of design and text by completing artwork, which merely

transposed the design and text from paper to cloth.

In *Mason v. Montgomery Data, Inc.*, 19 U.S.P.Q.2d 1393 (S.D.Tex. 1991) the court considered whether the defendant had copied the plaintiff's arrangement of information in maps instead of merely copying uncopyrightable information available in the public records. Despite the fact that the plaintiff had obtained copyright registrations in their maps, the court found that the maps involved expressed the only pictorial presentation of the underlying facts. The court then applied the "merger" of idea/expression doctrine. Since the court found the plaintiff's idea to create the maps inseparable from its expression, it held the maps were not subject to copyright protection.

### Subject Matter Of Copyright

In *Arica Institute, Inc. v. Palmer*, 761 F.Supp. 1056 (S.D.N.Y. 1991), the court denied a motion for a preliminary injunction because the plaintiff, a non-profit educational institution, failed to show that its method of using short phrases to describe various personality characteristics constituted an original work of authorship protected by copyright.

In *Feist Publications Inc. v. Rural Telephone Service Co., Inc.*, 18 U.S.P.Q.2d 1275 (U.S. 1991), drawing on the legislative history of the 1976 Copyright Act, the Supreme Court, in a landmark decision, clarified the law on telephone directories and similar factual compilations. The Court held, *inter alia*, that originality rather than the "sweat of the brow" or industriousness of efforts to develop information, is the touchstone of copyright protection in directories and other fact-based works. A compilation of factual information is thus copyrightable only to the extent that it features selection, coordination or arrangement of facts which meet the minimum standard of originality. Specifically, with respect to telephone directories, the Court held that while a telephone directory as a whole may be subject to a valid copyright because it contains some introductory text, as well as original material in its Yellow Pages advertisements,

the subscription information contained in the White Pages lacks the modicum of originality and creativity necessary to transform mechanical selection into copyrightable expression.

In *Georgia Television Co. v. TV News Clips of Atlanta, Inc.*, 19 U.S.P.Q.2d 1372 (N.D.Ga. 1991), the district court denied the defendant's motion to reconsider the court's grant of the plaintiff's notice for a preliminary injunction based on the *Feist* decision. The court noted that news broadcasts contain sufficient originality to receive copyright protection, distinguishing the facts in *Feist* from the facts in the instant case. In line with the *Feist* principle in *Bellsouth Advertising and Publishing Corp. v. Donnelly Information Publishing Inc.*, 19 U.S.P.Q.2d 1345 (11th Cir. 1991), the Eleventh Circuit found the Yellow Pages directory to be original. The acts of selection, coordination, and arrangement contribute to produce an original format compilation of the directory. The court stressed that only the original format or compilation is protected; the underlying information or facts separated from the compilation or format are not protected.

### Exclusive Rights—Exceptions

In *Edison Brothers Stores, Inc. v. Broadcast Music, Inc.*, 760 F.Supp. 767 (E.D. Mo.1991), the district court interpreted the Copyright Act's section 110(5) "homestyle exception" to the exclusive right of performance. The plaintiffs own about 2,500 retail stores, ranging in size from 850 to 1200 square feet, and provide each store with one radio receiver unit and two speakers. The defendant urged the court to focus on the number of stores instead of the radios per store. The court found this argument unpersuasive and held that the proper focus was whether each store meets the "homestyle exception." Conversely, in *Broadcasting Music, Inc. v. Jeep Sales & Service Co.*, 17 U.S.P.Q.2d 1862 (E.D. Va. 1990), the court found that the unauthorized transmission of radio music in the defendant's auto dealership over at least four recessed speak-

ers and at least four outside public address horns was a public performance. The court held that the actions of the defendant exceeded the "outer" limit of the homestyle exception.

### Copyright Renewal

In *Marascalco v. Fantasy Inc.*, 17 U.S.P.Q.2d 1409 (C.D.Ca. 1991), the court considered whether Robert A. Blackwell was a co-author and, if so, whether his renewal interest in the song "Good Golly, Miss Molly" had vested when he died. Drawing on judicial precedent and the Congressional intent behind section 304 to protect the rights of authors and their families, the court held that a copyright's renewal interest does not vest until the commencement of the copyright's renewal term. Prior to the commencement of the renewal term, an assignee merely takes an expectancy interest. If the author (assignor) does not survive to the renewal term, his assignment automatically extinguishes and the renewal copyright reverts to his successor. Since Blackwell died before commencement of the renewal term, his renewal interest passed to his heirs who had effectively assigned their interest to the plaintiff.

### Notice, Deposit, and Registration

In *Sutton Import-Export Corp. v. Starcrest of California*, 762 F.Supp. 68 (S.D.N.Y. 1991), the court denied the defendant's motion for summary judgment, holding that the copyright on a "Travel Hot Pot" was not invalid for lack of notice. Although the catalog sheet containing a photograph and information on the Hot Pot lacked copyright notice, the copies of the work itself all contained a proper notice.

In *Ford Motor Co. v. Summit Motor Products, Inc.*, 930 F.2d 277 (3d Cir. 1991) the plaintiff's failure to place a proper copyright notice on some four million copies out of 100 million was challenged. The court did not have to rule on what constituted

a small number of copies under section 405 (a)(1). However, *in dicta*, the court observed that the question "cannot be answered merely by reference to an absolute number. The question must be answered on a case-by-case basis in light of the totality of the circumstances." *Id.* at 295.

In *Folio Impressions, Inc. v. Byer California*, 18 U.S.P.Q.2d 1137 (S.D.N.Y. 1990), the defendant answered the plaintiff's charge of copyright infringement of a textile design pattern by asserting that the plaintiff's copyright was invalid on two grounds: lack of originality and failure to disclose to the Copyright Office that the textile design included material in the public domain. The court found that the background of the design was in the public domain but that the plaintiff's omission of information in the application for registration of a claim to copyright was innocent. The court noted that failure to advise the Copyright Office of facts which might result in a rejection of the application would be sufficient to hold the registration so obtained invalid.

*Ilo Marie Grundberg et al. v. The Upjohn Co.; The Upjohn Co. v. Ilo Marie Grundberg et al.*, 19 U.S.P.Q. 2d 1590; (C.D. Utah 1991), is a consolidated copyright infringement case. In a related action concerning product liability, the defendants moved to remove confidentiality and the protective order concerning a series of documents. To offset the potentially unfavorable ruling on the motion, the plaintiff registered a claim to copyright in the documents involved in the protective order in order to prevent disclosure or dissemination of the documents, including free and unrestrained use of the documents in the courtroom.

The Copyright Office issued a Certificate of Registration for some 90,000 pages of unpublished documents, registered under 37 C.F.R. 202.3(b)(3)(i)(B)(1990) as a single compilation of unpublished parts. The authorship line of the application stated "all documents were created by the Upjohn Company, its employees, consultants, agents or servants." By way of an attachment, the authorship statement contained an exclusionary

statement.

With the obtained certificate of registration, the plaintiff sued for copyright infringement seeking a preliminary injunction to prevent any further distribution of the documents.

The court addressed a number of important issues bearing on the case. With respect to the administrative discretion the court held:

(1) The exclusionary provision in the authorship portion of Upjohn's certificate of copyright registration fails to segregate and identify, or to provide an index or means to segregate or identify which documents are intended to be covered by the certificate. The determination by the Copyright Office in approving the exclusionary paragraph as appropriate for registering a "single unpublished collection" of works constituted both error as a matter of law and an abuse of discretion.

(2) Approval of the deposit of documents by the Copyright Office by granting special relief under 37 C.F.R. 202.20(d) constituted an abuse of discretion by the Copyright Office.

With respect to the validity of the Certificate of Copyright Registration—

(1) A valid Certificate of Copyright Registration is a condition precedent to maintaining an infringement action; and

(2) Upjohn's Certificate of Copyright Registration is invalid because the collection of documents therein includes both published and unpublished works and works for which Upjohn is not the author or copyright claimant, contrary to the requirements of the applicable statute and regulation.

### Fair Use

*Association of American Medical Colleges v. Cuomo*, 928 F.2d 519 (2d Cir. 1991). In 1979, the defendant enacted the Standardized Testing Act (STA) requiring, under certain circumstances, the disclosure of testing material administered in the State of New York. The plaintiff, a nonprofit educational association, sponsored a testing program for ad-

mission to medical schools and considered the disclosure requirements of the STA an infringement of its copyright in the tests. The lower court found that the disclosure requirement did not constitute a "fair use."

On appeal, the Second Circuit considered whether the disclosure requirement was preempted by the Copyright Act, and it concluded that a copyright owner should not be required to change its operation to make an unauthorized use of its copyrighted work a fair use. The court explained that "in considering a claim of fair use, a balance must sometimes be drawn between the benefit the public will derive if the use is permitted and the personal gain the copyright owner will receive if the use is denied." *Id.* at 525. The court concluded that this was a case where the laudable stated goals necessitated some accommodation by the copyright owner.

In *Basic Books, Inc. v. Kinko's Graphics Corp.*, 751 F.Supp 1522 (S.D.N.Y. 1991), book publishers sued a duplication business that had copied excerpts from their books without permission or payment and had compiled the misappropriated materials into university course packets which it then sold. The defendant invoked the fair use provisions maintaining that the copied material was intended for educational purposes. The court noted that the crux of the profit/nonprofit distinction is whether the user profits. The court found that the defendant's copying usurped the plaintiff's commercially valuable rights. The court also found that the defendant's commercial enterprise disqualified it from review under the "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions." "[E]ven if Kinko's copying warranted review under the Classroom Guidelines, it is excessive and in violation of the Guidelines requirement." *Id.* at 1536.

### Copyright Infringement

In *Ford Motor Co. v. Summit Motor Products, Inc.*, 930 F.2d 277 (3d Cir. 1991), the plaintiff sued for

copyright infringement of its trade dress. The Third Circuit found that the plaintiff appellant had established the elements of a copyright infringement: (1) copyright ownership of a design, (2) access to the plaintiff's design by the defendant, and (3) substantial similarity. Conversely, in *Novak v. National Broadcasting Co., Inc.*, 752 F.Supp. 164 (S.D.N.Y. 1990), the court granted the defendant's motion for summary judgment on the ground that the plaintiff failed to raise a genuine issue of fact as to the defendant's access to the copyrighted works and the question of substantial similarity necessary to prove the defendant's infringement of the plaintiff's skits by performance of comedy skits. Similarly, in *Intersong-USA v. CBS, Inc.*, 757 F.Supp. 274 (S.D.N.Y. 1991), the court dismissed the plaintiffs' suit for infringement of copyrighted songs. The plaintiffs failed to prove: (1) access to their song prior to creation of the allegedly infringing song, and (2) substantial similarity of the protectible expression contained in the copyrighted work. The court also found that the defendant's evidence was sufficient to support a finding of independent creation. Thus, even if the plaintiffs established access and substantial similarity, the "defendants could rebut an inference of copying by proving that the work was created independently of the plaintiffs' work." *Id.* at 282.

*Pasillas v. McDonald's Corp.*, 927 F.2d 440 (9th Cir. 1991). In deciding whether the defendant copied the plaintiff's Halloween mask depicting a man in the moon, the court applied a two-part test to analyze "substantial similarity." (1) The "extrinsic test" focuses on similarity of ideas and calls for an objective analysis of specific criteria. (2) The "intrinsic test" focuses on similarity of expression and asks whether the ordinary reasonable person would find "the total concept and feel of the works." *Id.* at 444. The court held that the defendant passed the "intrinsic test" as it found the copyrightable expression of the masks in question dissimilar.

In *U.S. v. Moran*, 757 F.Supp. 1046 (D.Neb. 1991), the court found that the defendant had not willfully violated copyright laws within the mean-

ing of the criminal copyright infringement statute when he made a single copy of each validly purchased videocassette, then rented the copies and retained the originals to insure against vandalism. Although the defendant was a police officer, the court took into account his lack of sophistication, legality of similar conduct, testimony that the defendant never rented both the original cassette and its copy, and the consistency of the defendant's actions with his view of the law. The court held that the defendant's conduct did not meet the statutory requirement of willful intent.

### Remedies

In *Cable News Network, Inc. v. Video Monitoring Services of America, Inc.*, 940 F.2d 1471 (11th Cir. 1991), the Eleventh Circuit reversed the district court's grant of a preliminary injunction because it found the scope of the injunction covering future and unregistered works was too expansive and overreaching. The plaintiff alleged that the defendant made unauthorized copies of the plaintiff's cable news programming and sought to enjoin the defendant from copying or selling copies of any Cable News Network programming. The court stressed that the remedy must be commensurate with the right infringed. Since copyright and its registration in the Copyright Office are the conditions precedent to its enforcement in the courts, an injunction purporting to embrace future, non-existent and existent but unregistered works, is too broad. "It is important," said the court, "to understand that while a court may enjoin the future infringement of copyrighted works, it does not follow that a court may enjoin the infringement of future works [that may or may not be copyrightable and registrable.]" *Id.* at 5064.

### Costs and Attorney Fees

In *Frost Belt International Recording Enterprises, Inc. v. Cold Chillin' Records*, 758 F.Supp. 131



(S.D.N.Y. 1990), the court denied the defendant's motion to set aside a default judgment. The court, *inter alia*, held that the prevailing party is entitled to an award of attorney fees reasonably incurred in opposing the motion upon proper proof. "Because the Copyright Act is intended to encourage suits to redress copyright infringement, fees are awarded to a prevailing plaintiff as a matter of course." *Id.* at 140.

In *Neft v. Vidmark, Inc.*, 923 F.2d 746 (9th Cir. 1991), the Ninth Circuit reversed an award of attorney's fees and costs against the plaintiffs and their counsel jointly and severally. The court explained its rationale in terms of section 505 of the Copyright Act. The latter allows the recovery of costs "by or against any party" only, and of awarding the attorney's fees "to the prevailing party."

In *Chi-Boy Music v. Charlie Club, Inc.*, 930 F.2d 1224 (2d Cir. 1991), a willful infringement of copyrighted songs warranted an award both of statutory damages and attorney fees. In affirming the district court, the Second Circuit held, *inter alia*, (1) the district court's award of damages in an amount approximately equal to three times the amount due under the past license agreement fell within the statutory scheme and was not an abuse of discretion; and (2) the award of attorney fees was particularly appropriate in light of the finding that the defendant treated copyright laws with disdain and willful disregard.

### Right Of Publicity

In *McFarland v. E & K Corp.*, 18 U.S.P.Q.2d 1246 (D.Minn. 1991), the plaintiff, a child actor, performed as the character "Spanky" in films made during the 1930s and 1940s. He continued to use the name and his own likeness, which constituted the "Spanky" character for commercial purposes. On cross-motions for summary judgment, he asserted a proprietary interest in the "Spanky" name and likenesses. In granting the motion, the court held that the plaintiff had a "right of publicity" in his name and likeness.

### Copyright—Extraterritorial Application

In *Zenger-Miller, Inc. v. Training Team, GMBH*, 757 F.Supp. 1062 (N.D. Ca. 1991). The plaintiff creates and distributes worldwide management and employee programs. He sued the defendant, a German distributor, for copyright infringement. The court held that it lacked jurisdiction over copyright infringement claims as the alleged infringements occurred in Germany. The court underscored the fundamental principle that "[a]bsent showing that an infringing act occurred in the United States, the plaintiff cannot avoid application of the general rule that the copyright laws do not have extraterritorial operation." *Id.* at 1071-1072 (citation omitted).

Respectfully submitted,  
RALPH OMAN

*Register of Copyrights and  
Associate Librarian of Congress  
for Copyright Services*

*International Copyright Relations of the United States as of September 30, 1991*

This table sets forth U.S. copyright relations of current interest with the other independent nations of the world. Each entry gives country name (and alternate name) and a statement of copyright relations. The following code is used:

- Berne** Party to the Berne Convention for the Protection of Literary and Artistic Works as of the date given. Appearing within parentheses is the latest Act<sup>1</sup> of the Convention to which the country is party. The effective date for the United States was March 1, 1989. The latest Act of the Convention to which the United States is party is the revision done at Paris on July 24, 1971.
- Bilateral** Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.
- BAC** Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.
- None** No copyright relations with the United States.
- Phonogram** Party to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974.
- SAT** Party to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, Brussels, 1974, as of the date given. The effective date for the United States was March 7, 1985.
- UCC Geneva** Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955.
- UCC Paris** Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974.
- Unclear** Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.

**Afghanistan**  
None

UCC Geneva Feb. 13, 1958  
Berne June 10, 1967 (Brussels)<sup>2</sup>  
Phonogram June 30, 1973<sup>3</sup>

UCC Geneva Dec. 27, 1976  
UCC Paris Dec. 27, 1976

**Albania**  
None

**Australia**  
Bilateral Mar. 15, 1918  
Berne April 14, 1928 (Paris)<sup>2</sup>  
UCC Geneva May 1, 1969  
Phonogram June 22, 1974  
UCC Paris Feb. 28, 1978

**Bahrain**  
None

**Algeria**  
UCC Geneva Aug. 28, 1973  
UCC Paris July 10, 1974

**Austria**  
Bilateral Sept. 20, 1907  
Berne Oct. 1, 1920 (Paris)<sup>2</sup>  
UCC Geneva July 2, 1957  
SAT Aug. 6, 1982<sup>4</sup>  
UCC Paris Aug. 14, 1982  
Phonogram Aug. 21, 1982

**Bangladesh**  
UCC Geneva Aug. 5, 1975  
UCC Paris Aug. 5, 1975

**Andorra**  
UCC Geneva Sept. 16, 1955

**Bahamas, The**  
Berne July 10, 1973 (Brussels)<sup>2</sup>

**Barbados**  
UCC Geneva June 18, 1983  
UCC Paris June 18, 1983  
Berne July 30, 1983 (Paris)<sup>2</sup>  
Phonogram July 29, 1983

**Angola**  
Unclear

**Antigua and Barbuda**  
Unclear

**Belau**  
Unclear

**Argentina**  
Bilateral Aug. 23, 1934  
BAC April 19, 1950

**Belgium**  
Berne Dec. 5, 1887 (Brussels)<sup>2</sup>

Bilateral July 1, 1891  
UCC Geneva Aug. 31, 1960

**Belize**

UCC Geneva Dec. 1, 1982

**Benin**

(formerly Dahomey)  
Berne Jan. 3, 1961 (Paris) <sup>2</sup>

**Bhutan**

None

**Bolivia**

BAC May 15, 1914  
UCC Geneva Mar. 22, 1990  
UCC Paris Mar. 22, 1990

**Botswana**

Unclear

**Brazil**

BAC Aug. 31, 1915  
Berne Feb. 9, 1922 (Paris) <sup>2</sup>  
Bilateral April 2, 1957  
UCC Geneva Jan. 13, 1960  
Phonogram Nov. 28, 1975  
UCC Paris Dec. 11, 1975

**Brunei**

Unclear

**Bulgaria**

Berne Dec. 5, 1921 (Paris) <sup>2</sup>  
UCC Geneva June 7, 1975  
UCC Paris June 7, 1975

**Burkina Faso**

(formerly Upper Volta)  
Berne Aug. 19, 1963 (Paris) <sup>2</sup>  
Phonogram Jan. 30, 1988

**Burma**

Unclear

**Burundi**

Unclear

**Cambodia**

UCC Geneva Sept. 16, 1955

**Cameroon**

Berne Sept. 21, 1964 (Paris) <sup>2</sup>  
UCC Geneva May 1, 1973  
UCC Paris July 10, 1974

**Canada**

Bilateral Jan. 1, 1924  
Berne April 10, 1928 (Rome) <sup>2</sup>  
UCC Geneva Aug. 10, 1962

**Cape Verde**

Unclear

**Central African Republic**

Berne Sept. 3, 1977 (Paris) <sup>2</sup>

**Chad**

Berne Nov. 25, 1971 (Brussels) <sup>2</sup>

**Chile**

Bilateral May 25, 1896  
BAC June 14, 1955  
UCC Geneva Sept. 16, 1955  
Berne June 5, 1970 (Paris) <sup>2</sup>  
Phonogram Mar. 24, 1977

**China** <sup>5</sup>

Bilateral Jan. 13, 1904

**Colombia**

BAC Dec. 23, 1936  
UCC Geneva June 18, 1976  
UCC Paris June 18, 1976  
Berne Mar. 7, 1988 (Paris) <sup>2</sup>

**Comoros**

Unclear

**Congo**

Berne May 8, 1962 (Paris) <sup>2</sup>

**Costa Rica** <sup>6</sup>

Bilateral Oct. 19, 1899  
BAC Nov. 30, 1916  
UCC Geneva Sept. 16, 1955  
Berne June 10, 1978 (Paris) <sup>2</sup>  
UCC Paris Mar. 7, 1980  
Phonogram June 17, 1982

**Côte d'Ivoire (Ivory Coast)**

Berne Jan. 1, 1962 (Paris) <sup>2</sup>

**Cuba**

Bilateral Nov. 17, 1903  
UCC Geneva June 18, 1957

**Cyprus**

Berne Feb. 24, 1964 (Paris) <sup>2</sup>

**Czechoslovakia**

Berne Feb. 22, 1921 (Paris) <sup>2</sup>  
Bilateral Mar. 1, 1927  
UCC Geneva Jan. 6, 1960  
UCC Paris April 17, 1980  
Phonogram Jan. 15, 1985

**Denmark**

Bilateral May 8, 1893  
Berne July 1, 1903 (Paris) <sup>2</sup>

UCC Geneva Feb. 9, 1962  
Phonogram Mar. 24, 1977  
UCC Paris July 11, 1979

**Djibouti**

Unclear

**Dominica**

Unclear

**Dominican Republic** <sup>6</sup>

BAC Oct. 31, 1912  
UCC Geneva May 8, 1983  
UCC Paris May 8, 1983

**Ecuador**

BAC Aug. 31, 1914  
UCC Geneva June 5, 1957  
Phonogram Sept. 14, 1974  
Berne Oct. 9, 1991 (Paris) <sup>2</sup>

**Egypt**

Berne June 7, 1977 (Paris) <sup>2</sup>  
Phonogram April 23, 1978

**El Salvador**

Bilateral June 30, 1908, by virtue of  
Mexico City Convention, 1902  
Phonogram Feb. 9, 1979  
UCC Geneva Mar. 29, 1979  
UCC Paris Mar. 29, 1979

**Equatorial Guinea**

Unclear

**Ethiopia**

None

**Fiji**

UCC Geneva Oct. 10, 1970  
Berne Dec. 1, 1971 (Brussels) <sup>2</sup>  
Phonogram April 18, 1973 <sup>3</sup>

**Finland**

Berne April 1, 1928 (Paris) <sup>2</sup>  
Bilateral Jan. 1, 1929  
UCC Geneva April 16, 1963  
Phonogram April 18, 1973 <sup>3</sup>  
UCC Paris Nov. 1, 1986

**France**

Berne Dec. 5, 1887 (Paris) <sup>2</sup>  
Bilateral July 1, 1891  
UCC Geneva Jan. 14, 1956  
Phonogram April 18, 1973 <sup>3</sup>  
UCC Paris July 10, 1974

**Gabon**

Berne Mar. 26, 1962 (Paris) <sup>2</sup>

- Gambia, The**  
Unclear
- German Democratic Republic**  
Berne Dec. 5, 1887 (Paris)<sup>2,7</sup>  
UCC Geneva Oct. 5, 1973  
UCC Paris Dec. 10, 1980
- Germany**  
Bilateral April 15, 1892
- Germany, Federal Republic of**  
Berne Dec. 5, 1887 (Paris)<sup>2,7</sup>  
UCC Geneva Sept. 16, 1955  
Phonogram May 18, 1974  
UCC Paris July 10, 1974  
SAT Aug. 25, 1979<sup>4</sup>
- Ghana**  
UCC Geneva Aug. 22, 1962  
Berne Oct. 11, 1991 (Paris)<sup>2</sup>
- Greece**  
Berne Nov. 9, 1920 (Paris)<sup>2</sup>  
Bilateral Mar. 1, 1932  
UCC Geneva Aug. 24, 1963
- Grenada**  
Unclear
- Guatemala**<sup>6</sup>  
BAC Mar. 28, 1913  
UCC Geneva Oct. 28, 1964  
Phonogram Feb. 1, 1977
- Guinea**  
Berne Nov. 20, 1980 (Paris)<sup>2</sup>  
UCC Geneva Nov. 13, 1981  
UCC Paris Nov. 13, 1981
- Guinea-Bissau**  
Berne July 22, 1991 (Paris)<sup>2</sup>
- Guyana**  
Unclear
- Haiti**  
BAC Nov. 27, 1919  
UCC Geneva Sept. 16, 1955
- Holy See**  
(See entry under Vatican City)
- Honduras**<sup>6</sup>  
BAC April 27, 1914  
Berne Jan. 25, 1990 (Paris)<sup>2</sup>  
Phonogram Mar. 6, 1990
- Hungary**  
Bilateral Oct. 16, 1912
- Berne Feb. 14, 1922 (Paris)<sup>2</sup>  
UCC Geneva Jan. 23, 1971  
UCC Paris July 10, 1974  
Phonogram May 28, 1975
- Iceland**  
Berne Sept. 7, 1947 (Rome)<sup>2</sup>  
UCC Geneva Dec. 18, 1956
- India**  
Berne April 1, 1928 (Paris)<sup>2</sup>  
Bilateral Aug. 15, 1947  
UCC Geneva Jan. 21, 1958  
Phonogram Feb. 12, 1975
- Indonesia**  
Bilateral Aug. 1, 1989
- Iran**  
None
- Iraq**  
None
- Ireland**  
Berne Oct. 5, 1927 (Brussels)<sup>2</sup>  
Bilateral Oct. 1, 1929  
UCC Geneva Jan. 20, 1959
- Israel**  
Bilateral May 15, 1948  
Berne Mar. 24, 1950 (Brussels)<sup>2</sup>  
UCC Geneva Sept. 16, 1955  
Phonogram May 1, 1978
- Italy**  
Berne Dec. 5, 1887 (Paris)<sup>2</sup>  
Bilateral Oct. 31, 1892  
UCC Geneva Jan. 24, 1957  
Phonogram Mar. 24, 1977  
UCC Paris Jan. 25, 1980  
SAT July 7, 1981<sup>4</sup>
- Ivory Coast**  
(See entry under Côte d'Ivoire)
- Jamaica**  
None
- Japan**<sup>8</sup>  
Berne July 15, 1899 (Paris)<sup>2</sup>  
UCC Geneva April 28, 1956  
UCC Paris Oct. 21, 1977  
Phonogram Oct. 14, 1978
- Jordan**  
Unclear
- Kenya**  
UCC Geneva Sept. 7, 1966
- UCC Paris July 10, 1974  
Phonogram April 21, 1976  
SAT Aug. 25, 1979<sup>4</sup>
- Kiribati**  
Unclear
- Korea**  
**Democratic People's Republic of Korea**  
Unclear
- Republic of Korea**  
UCC Geneva Oct. 1, 1987  
UCC Paris Oct. 1, 1987  
Phonogram Oct. 10, 1987
- Kuwait**  
Unclear
- Laos**  
UCC Geneva Sept. 16, 1955
- Lebanon**  
Berne Sept. 30, 1947 (Rome)<sup>2</sup>  
UCC Geneva Oct. 17, 1959
- Lesotho**  
Unclear
- Liberia**  
UCC Geneva July 27, 1956  
Berne Mar. 8, 1989 (Paris)<sup>2</sup>
- Libya**  
Berne Sept. 28, 1976 (Paris)<sup>2</sup>
- Liechtenstein**  
Berne July 30, 1931 (Brussels)<sup>2</sup>  
UCC Geneva Jan. 22, 1959
- Luxembourg**  
Berne June 20, 1888 (Paris)<sup>2</sup>  
Bilateral June 29, 1910  
UCC Geneva Oct. 15, 1955  
Phonogram Mar. 8, 1976
- Madagascar**  
(Malagasy Republic)  
Berne Jan. 1, 1966 (Brussels)<sup>2</sup>
- Malawi**  
UCC Geneva Oct. 26, 1965  
Berne Oct. 12, 1991 (Paris)<sup>2</sup>
- Malaysia**  
Berne Oct. 1, 1990 (Paris)<sup>2</sup>
- Maldives**  
Unclear

- Mali**  
Berne Mar. 19, 1962 (Paris) <sup>2</sup>
- Malta**  
Berne Sept. 21, 1964 (Rome) <sup>2</sup>  
UCC Geneva Nov. 19, 1968
- Mauritania**  
Berne Feb. 6, 1973 (Paris) <sup>2</sup>
- Mauritius**  
UCC Geneva Mar. 12, 1968
- Mexico**  
Bilateral Feb. 27, 1896  
UCC Geneva May 12, 1957  
BAC April 24, 1964  
Berne June 11, 1967 (Paris) <sup>2</sup>  
Phonogram Dec. 21, 1973 <sup>3</sup>  
UCC Paris Oct. 31, 1975  
SAT Aug. 25, 1979 <sup>4</sup>
- Monaco**  
Berne May 30, 1889 (Paris) <sup>2</sup>  
Bilateral Oct. 15, 1952  
UCC Geneva Sept. 16, 1955  
Phonogram Dec. 2, 1974  
UCC Paris Dec. 13, 1974
- Mongolia**  
None
- Morocco**  
Berne June 16, 1917 (Paris) <sup>2</sup>  
UCC Geneva May 8, 1972  
UCC Paris Jan. 28, 1976  
SAT June 30, 1983 <sup>4</sup>
- Mozambique**  
Unclear
- Nauru**  
Unclear
- Nepal**  
None
- Netherlands**  
Bilateral Nov. 20, 1899  
Berne Nov. 1, 1912 (Paris) <sup>2</sup>  
UCC Geneva June 22, 1967  
UCC Paris Nov. 30, 1985
- New Zealand**  
Bilateral Dec. 1, 1916  
Berne April 24, 1928 (Rome) <sup>2</sup>
- UCC Geneva Sept. 11, 1964  
Phonogram Aug. 13, 1976
- Nicaragua** <sup>6</sup>  
BAC Dec. 15, 1913  
UCC Geneva Aug. 16, 1961  
SAT Aug. 25, 1979 <sup>4</sup>
- Niger**  
Berne May 2, 1962 (Paris) <sup>2</sup>
- Nigeria**  
UCC Geneva Feb. 14, 1962
- Norway**  
Berne April 13, 1896 (Brussels) <sup>2</sup>  
Bilateral July 1, 1905  
UCC Geneva Jan. 23, 1963  
UCC Paris Aug. 7, 1974  
Phonogram Aug. 1, 1978
- Oman**  
None
- Pakistan**  
Berne July 5, 1948 (Rome) <sup>2</sup>  
UCC Geneva Sept. 16, 1955
- Panama**  
BAC Nov. 25, 1913  
UCC Geneva Oct. 17, 1962  
Phonogram June 29, 1974  
UCC Paris Sept. 3, 1980  
SAT Sept. 25, 1985
- Papua New Guinea**  
Unclear
- Paraguay**  
BAC Sept. 20, 1917  
UCC Geneva Mar. 11, 1962  
Phonogram Feb. 13, 1979
- Peru**  
BAC April 30, 1920  
UCC Geneva Oct. 16, 1963  
UCC Paris July 22, 1985  
SAT Aug. 7, 1985  
Phonogram Aug. 24, 1985  
Berne Aug. 20, 1988 (Paris) <sup>2</sup>
- Philippines**  
Bilateral Oct. 21, 1948  
Berne Aug. 1, 1951 (Brussels) <sup>2</sup>  
UCC status undetermined by UNESCO. (Copyright Office considers that UCC relations do not exist.)
- Poland**  
Berne Jan. 28, 1920 (Rome) <sup>2</sup>  
Bilateral Feb. 16, 1927  
UCC Geneva Mar. 9, 1977  
UCC Paris Mar. 9, 1977
- Portugal**  
Bilateral July 20, 1893  
Berne Mar. 29, 1911 (Paris) <sup>2</sup>  
UCC Geneva Dec. 25, 1956  
UCC Paris July 30, 1981
- Qatar**  
None
- Romania**  
Berne Jan. 1, 1927 (Rome) <sup>2</sup>  
Bilateral May 14, 1928
- Rwanda**  
Berne Mar. 1, 1984 (Paris) <sup>2</sup>
- Saint Christopher and Nevis**  
Unclear
- Saint Lucia**  
Unclear
- Saint Vincent and the Grenadines**  
UCC Geneva April 22, 1985  
UCC Paris April 22, 1985
- San Marino**  
None
- São Tomé and Príncipe**  
Unclear
- Saudi Arabia**  
None
- Senegal**  
Berne Aug. 25, 1962 (Paris) <sup>2</sup>  
UCC Geneva July 9, 1974  
UCC Paris July 10, 1974
- Seychelles**  
Unclear
- Sierra Leone**  
None
- Singapore**  
Bilateral May 18, 1987
- Solomon Islands**  
Unclear
- Somalia**  
Unclear

**South Africa**

Bilateral July 1, 1924  
Berne Oct. 3, 1928 (Brussels) <sup>2</sup>

**Soviet Union**

UCC Geneva May 27, 1973  
SAT Jan. 20, 1989

**Spain**

Berne Dec. 5, 1887 (Paris) <sup>2</sup>  
Bilateral July 10, 1895  
UCC Geneva Sept. 16, 1955  
UCC Paris July 10, 1974  
Phonogram Aug. 24, 1974

**Sri Lanka**

(formerly Ceylon)  
Berne July 20, 1959 (Rome) <sup>2</sup>  
UCC Geneva Jan. 25, 1984  
UCC Paris Jan. 25, 1984

**Sudan**

Unclear

**Suriname**

Berne Feb. 23, 1977 (Paris) <sup>2</sup>

**Swaziland**

Unclear

**Sweden**

Berne Aug. 1, 1904 (Paris) <sup>2</sup>  
Bilateral June 1, 1911  
UCC Geneva July 1, 1961  
Phonogram April 18, 1973 <sup>3</sup>  
UCC Paris July 10, 1974

**Switzerland**

Berne Dec. 5, 1887 (Brussels) <sup>2</sup>  
Bilateral July 1, 1891  
UCC Geneva Mar. 30, 1956

**Syria**

Unclear

**Tanzania**

Unclear

**Thailand**

Bilateral Sept. 1, 1921  
Berne July 17, 1931 (Berlin) <sup>2</sup>

**Togo**

Berne April 30, 1975 (Paris) <sup>2</sup>

**Tonga**

None

**Trinidad and Tobago**

Berne Aug. 16, 1988 (Paris) <sup>2</sup>  
UCC Geneva Aug. 19, 1988  
UCC Paris Aug. 19, 1988  
Phonogram Oct. 1, 1988

**Tunisia**

Berne Dec. 5, 1887 (Paris) <sup>2</sup>  
UCC Geneva June 19, 1969  
UCC Paris June 10, 1975

**Turkey**

Berne Jan. 1, 1952 (Brussels) <sup>2</sup>

**Tuvalu**

Unclear

**Uganda**

Unclear

**United Arab Emirates**

None

**United Kingdom**

Berne Dec. 5, 1887 (Paris) <sup>2</sup>  
Bilateral July 1, 1891  
UCC Geneva Sept. 27, 1957  
Phonogram April 18, 1973 <sup>3</sup>  
UCC Paris July 10, 1974

**Upper Volta**

(See entry under Burkina Faso)

**Uruguay**

BAC Dec. 17, 1919  
Berne July 10, 1967 (Paris) <sup>2</sup>  
Phonogram Jan. 18, 1983

**Vanuatu**

Unclear

**Vatican City**

(Holy See)  
Berne Sept. 12, 1935 (Paris) <sup>2</sup>  
UCC Geneva Oct. 5, 1955  
Phonogram July 18, 1977  
UCC Paris May 6, 1980

**Venezuela**

UCC Geneva Sept. 30, 1966  
Phonogram Nov. 18, 1982  
Berne Dec. 30, 1982 (Paris) <sup>2</sup>

**Vietnam**

Unclear

**Western Samoa**

Unclear

**Yemen (Aden)**

Unclear

**Yemen (San'a)**

None

**Yugoslavia**

Berne June 17, 1930 (Paris) <sup>2</sup>  
UCC Geneva May 11, 1966  
UCC Paris July 10, 1974  
SAT Aug. 25, 1979<sup>1</sup>

**Zaire**

Berne Oct. 8, 1963 (Paris) <sup>2</sup>  
Phonogram Nov. 29, 1977

**Zambia**

UCC Geneva June 1, 1965

**Zimbabwe**

Berne April 18, 1980 (Rome) <sup>2</sup>

<sup>1</sup>"Paris" means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24, 1971 (Paris Act); "Stockholm" means the said Convention as revised at Stockholm on July 14, 1967 (Stockholm Act); "Brussels" means the said Convention as revised at Brussels on June 26, 1948 (Brussels Act); "Rome" means the said Convention as revised at Rome on June 2, 1928 (Rome Act); "Berlin" means the said Convention as revised at Berlin on November 13, 1908 (Berlin Act). NOTE: In each case the reference to Act signifies adherence to the substantive provisions of such Act only, e.g., Articles 1 to 21 of the Paris Act.

<sup>2</sup>The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, did not enter into force with respect to the United States until March 1, 1989.

<sup>3</sup>The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on October 29, 1971, did not enter into force with respect to the United States until March 10, 1974.

<sup>4</sup>The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite done at Brussels on May 21, 1974, did not enter into force with respect to the United States until March 7, 1985.

<sup>5</sup>The government of the Peoples Republic of China views this treaty as not binding on the PRC. In the territory administered by the authorities on Taiwan the treaty is considered to be in force.

<sup>6</sup>This country became a party to the Mexico City Convention, 1902, effective June 30, 1908, to which the United States also became a party, effective on the same date. As regards copyright relations with the United States, this Convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

<sup>7</sup>Date on which the accession by the German Empire became effective.

<sup>8</sup>Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the UCC Geneva, effective April 28, 1956.

*Number of Registrations by Subject Matter, Fiscal 1991*

Category of material	Published	Unpublished	Total
Nondramatic literary works			
Monographs and machine-readable works .....	139,127	54,680	193,807
Serials .....	109,222		109,222
Total .....	248,349	54,680	303,029
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips .....	51,014	140,185	191,199
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied art .....	53,215	26,010	79,225
Sound recordings .....	11,227	25,541	36,768
Grand total .....	363,805	246,416	610,221
Renewals .....			52,255
Total, all copyright registrations .....			662,476
Mask work registrations .....			1,208



*Number of Registrations Cataloged by Subject Matter, Fiscal 1991*

Category of material	Total
<b>Nondramatic literary works</b>	
Monographs and machine-readable works .....	180,061
Serials .....	135,071
Total .....	315,132
<b>Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips .....</b>	
	201,131
<b>Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied art .....</b>	
	73,902
Sound Recordings .....	27,583
Renewals .....	51,568
Total, all claims cataloged .....	669,316
Documents recorded .....	16,920

*Information and Reference Services, Fiscal 1991*

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Direct reference services	
In person .....	28,263
By correspondence .....	128,632
By telephone .....	296,054
Total .....	<sup>1</sup> 452,949
Search requests received .....	8,921
Titles searched .....	175,348
Search reports prepared .....	8,239
Additional certificates .....	5,422
Other certifications .....	710
Deposits copied .....	1,432

<sup>1</sup>Includes 695 in-person services, 1,170 correspondence services and 1,852 telephone reference services provided by the Licensing Division.

*Summary of Copyright Business, Fiscal 1991*

Receipts	Fees
Copyright claims .....	\$9,852,587
Renewals .....	519,350
Group Serials .....	56,260
<b>Total fees therefrom</b> .....	<b>\$10,428,197</b>
Fees for recording documents .....	533,228
Fees for certified documents .....	92,151
Fees for searches made .....	227,105
Fees for special handling .....	465,400
Fees for expedited services .....	27,978
Fees for mask works at \$20 .....	22,560
Fees for 407 deposits at \$2 .....	1,482
Fees for other services (photocopying, etc.) .....	7,197
<b>Total fees exclusive of copyright claims</b> .....	<b>\$1,377,101</b>
<b>Total fees</b> .....	<b>\$11,805,298</b>
<b>Transfers</b>	
Fees transferred to appropriation .....	\$11,000,000
Fees transferred to miscellaneous receipts .....	1,236,000
<b>Total fees transferred</b> .....	<b>\$12,236,000</b>

*Disposition of Copyright Deposits, Fiscal 1991*

Category of material	Received for copyright registration and added to copyright collection	Received for copyright registration and forwarded to other departments of the Library	Acquired or deposited without copyright registration	Total
<b>Nondramatic literary works</b>				
Monographs and machine-readable works .....	118,088	185,701	20,644	324,433
Serials .....	0	270,142	284,411	554,553
<b>Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips .....</b>				
	174,217	54,735	567	229,519
Sound recordings .....	22,060	13,082	510	35,652
<b>Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, commercial prints and labels, and works of applied art .....</b>				
	70,490	1,199	63	71,752
Cartographic works .....	115	3,363	179	3,657
<b>Total, all deposits .....</b>	<b>384,970</b>	<b>528,222</b>	<b>306,374</b>	<b>1,219,566</b>

*Estimated Value of Materials Transferred to the Library of Congress*

	Items accompanying copyright registration	Items submitted for deposit only under 407	Total items transferred	Average unit price	Total value of items transferred
Books .....	119,992	20,644	140,636	\$35.34	\$4,970,076
Books, periodicals (for Exchange and Gift) .....	106,209	37,684	143,893	3.00	431,679
Periodicals .....	229,621	284,411	514,032	6.94	3,567,382
Motion Pictures .....	3,265	529	3,794	<sup>1</sup>	1,001,800
Music .....	39,058	38	39,096	22.00	860,112
Sound Recordings .....	8,798	510	9,308	10.00	93,080
Maps .....	3,306	179	3,485	26.00	90,610
Prints, pictures, and works of art .....	1,196	63	1,259	18.00	22,662
<b>Total .....</b>	<b>511,445</b>	<b>344,058</b>	<b>855,503</b>		<b>\$11,037,401</b>

<sup>1</sup> 3,035 Video @ \$ 80.00 = \$ 242,800  
759 Films @ \$1,000.00 = \$ 759,000  
 3,794 \$1,001,800

*Financial Statement of Royalty Fees for Compulsory Licenses for Secondary  
Transmissions by Cable Systems for Calendar Year 1990*

Royalty fees deposited .....	\$164,277,815.93	
Interest income paid on investments .....	12,673,878.75	
Gain of matured securities .....	128,444.79	
Transfers .....	84.00	\$177,080,223.47
Less: Operating costs .....	\$1,052,873.00	
Refunds issued .....	728,655.71	
Cost of investments .....	168,358,233.24	
Cost of initial investments .....	6,754,520.92	
Transfers .....	169,953.29	\$177,064,236.16
Balance as of September 30, 1991 .....		\$ 15,987.31
Face amount of securities due 2/27/92 .....		176,145,000.00
Less: Pending Refunds .....		5,070,324.03
Cable royalty fees for calendar year 1990 available for distribution by the Copyright Royalty Tribunal .....		\$171,090,663.28

*Financial Statement of Royalty Fees for Statutory Licenses for Secondary  
Transmissions by Satellite Carriers for Calendar Year 1990*

Royalty fees deposited . . . . .	\$ 3,155,636.09	
Interest income paid on investments . . . . .	173,088.23	
Gain of matured securities . . . . .	10,945.65	
		\$ 3,339,669.97
Less: Operating costs . . . . .	\$ 17,636.00	
Cost of investments . . . . .	3,291,157.77	
Cost of initial investments . . . . .	23,880.75	
		\$ 3,332,674.52
Balance as of September 30, 1991 . . . . .		\$ 6,995.45
Face amount of securities due 12/19/91 . . . . .		3,375,000.00
Satellite carrier royalty fees for calendar year 1990 available for distribution by the Copyright Royalty Tribunal . . . . .		\$ 3,381,995.45

*Copyright Registrations, 1790-1991*

	District Courts <sup>1</sup>	Library of Congress <sup>2</sup>	Patent Office <sup>3</sup>			Total
			Labels	Prints	Total	
1790-1869	150,000					150,000
1870		5,600				5,600
1871		12,688				12,688
1872		14,164				14,164
1873		15,352				15,352
1874		16,283				16,283
1875		15,927	267		267	16,194
1876		14,882	510		510	15,392
1877		15,758	324		324	16,082
1878		15,798	492		492	16,290
1879		18,125	403		403	18,528
1880		20,686	307		307	20,993
1881		21,075	181		181	21,256
1882		22,918	223		223	23,141
1883		25,274	618		618	25,892
1884		26,893	834		834	27,727
1885		28,411	337		337	28,748
1886		31,241	397		397	31,638
1887		35,083	384		384	35,467
1888		38,225	682		682	38,907
1889		40,985	312		312	41,297
1890		42,794	304		304	43,098
1891		48,908	289		289	49,197
1892		54,735	6		6	54,741
1893		58,956		1	1	58,957
1894		62,762		2	2	62,764
1895		67,572		6	6	67,578
1896		72,470	1	11	12	72,482
1897		75,000	3	32	35	75,035
1898		75,545	71	18	89	75,634
1899		80,968	372	76	448	81,416
1900		94,798	682	93	775	95,573
1901		92,351	824	124	948	93,299
1902		92,978	750	163	913	93,891
1903		97,979	910	233	1,143	99,122
1904		103,130	1,044	257	1,301	104,431
1905		113,374	1,028	345	1,373	114,747
1906		117,704	741	354	1,095	118,799
1907		123,829	660	325	985	124,814
1908		119,742	636	279	915	120,657
1909		120,131	779	231	1,010	121,141
1910		109,074	176	59	235	109,309
1911		115,198	576	181	757	115,955
1912		120,931	625	268	893	121,824
1913		119,495	664	254	918	120,413
1914		123,154	720	339	1,059	124,213



*Copyright Registrations, 1790-1991*

	District Courts <sup>1</sup>	Library of Congress <sup>2</sup>	Patent Office <sup>3</sup>			Total
			Labels	Prints	Total	
1915		115,193	762	321	1,083	116,276
1916		115,967	833	402	1,235	117,202
1917		111,438	781	342	1,123	112,561
1918		106,728	516	192	708	107,436
1919		113,003	572	196	768	113,771
1920		126,562	622	158	780	127,342
1921		135,280	1,118	367	1,485	136,765
1922		138,633	1,560	541	2,101	140,734
1923		148,946	1,549	592	2,141	151,087
1924		162,694	1,350	666	2,016	164,710
1925		165,848	1,400	615	2,015	167,863
1926		177,635	1,676	868	2,544	180,179
1927		184,000	1,782	1,074	2,856	186,856
1928		193,914	1,857	944	2,801	196,715
1929		161,959	1,774	933	2,707	164,666
1930		172,792	1,610	723	2,333	175,125
1931		164,642	1,787	678	2,465	167,107
1932		151,735	1,492	483	1,975	153,710
1933		137,424	1,458	479	1,937	139,361
1934		139,047	1,635	535	2,170	141,217
1935		142,031	1,908	500	2,408	144,439
1936		156,962	1,787	519	2,306	159,268
1937		154,424	1,955	551	2,506	156,930
1938		166,248	1,806	609	2,415	168,663
1939		173,135	1,770	545	2,315	175,450
1940		176,997	1,856	614	2,470	179,467
1941		180,647				180,647
1942		182,232				182,232
1943		160,789				160,789
1944		169,269				169,269
1945		178,848				178,848
1946		202,144				202,144
1947		230,215				230,215
1948		238,121				238,121
1949		201,190				201,190
1950		210,564				210,564
1951		200,354				200,354
1952		203,705				203,705
1953		218,506				218,506
1954		222,665				222,665
1955		224,732				224,732
1956		224,908				224,908
1957		225,807				225,807
1958		238,935				238,935
1959		241,735				241,735
1960		243,926				243,926

*Copyright Registrations, 1790-1991*

	District Courts <sup>1</sup>	Library of Congress <sup>2</sup>	Patent Office <sup>3</sup>		Total	Total
			Labels	Prints		
1961		247,014				247,014
1962		254,776				254,776
1963		264,845				264,845
1964		278,987				278,987
1965		293,617				293,617
1966		286,866				286,866
1967		294,406				294,406
1968		303,451				303,451
1969		301,258				301,258
1970		316,466				316,466
1971		329,696				329,696
1972		344,574				344,574
1973		353,648				353,648
1974		372,832				372,832
1975		401,274				401,274
1976		410,969				410,969
1976	Transitional qtr. <sup>4</sup>	108,762				108,762
1977		452,702				452,702
1978		<sup>5</sup> 331,942				<sup>5</sup> 331,942
1979		429,004				429,004
1980		464,743				464,743
1981		471,178				471,178
1982		468,149				468,149
1983		488,256				488,256
1984		502,628				502,628
1985		539,165				539,165
1986		560,212				560,212
1987		581,276				581,276
1988		565,801				565,801
1989		611,328				611,328
1990		643,602				643,602
1991		663,684				663,684
Total	150,000	23,768,586	55,348	18,098	73,446	24,065,478

<sup>1</sup> Estimated registrations made in the offices of the Clerks of the District Courts (source: pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790-1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

<sup>2</sup> Registrations made in the Library of Congress under the Librarian, calendar years 1870-1897 (source: *Annual Reports of the Librarian*). Registrations made in the Copyright Office under the Register of Copyrights, fiscal years 1898-1971 (source: *Annual Reports of the Register*).

<sup>3</sup> Labels registered in Patent Office, 1875-1940; Prints registered in Patent Office, 1893-1940 (source: memorandum from Patent Office, dated Feb. 13, 1958, based on official reports and computations).

<sup>4</sup> Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

<sup>5</sup> Reflects changes in reporting procedure.