Announcement

from the Copyright Office, Library of Congress, Washington, D.C. 20559

MATERIAL ON COPYRIGHT REVISION BILL

Pages H 10872 through H 10911 of the CONGRESSIONAL RECORD, Volume 122, Number 144 (daily edition, September 22, 1976), concerning the bill for the general revision of the copyright law (S. 22, Union Calendar No. 759), on the floor of the House of Representatives are set forth below.

COPYRIGHT LAW REVISION

Mr. MURPHY of Illinois. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1550 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1550

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 22) for the general revision of the copyright law, title 17 of the United States Code, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. No amendment to said amendment shall be in order except amendments offered by direction of the Committee on the Judiciary and germane amendments printed in the Congressional Record at least three calendar days prior to the start of the consideration of said bill for amendment, but said amendments shall not be subject to amendment except those offered by direction of the Committee on the Judiciary. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. MURPHY of Illinois. Mr. Speaker, I yield the usual 30 minutes for the minority to the distinguished gentleman from Mississippi (Mr. LOTT). Pending that I yield myself such time as I may consume.

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Speaker, House Resolution 1550 provides for a modified open rule providing for 1 hour of general debate on S. 22, the copyright law revision. The rule provides that the committee substitute, now printed in the bill, be in order as an original bill for the purpose of amendment. House Resolution 1550 further provides that only amendments offered by the Judiciary Committee and germane amendments printed in the CONGRESSIONAL RECORD 3 calendar days prior to the consideration of the bill for amendment, will be in order. Amendments printed in the RECORD can only be amended by the Judiciary Committee.

House Resolution 1550 waives section 402(a) of the Congressional Budget Act to permit the consideration of this bill. S. 22 is in violation of the Budget Act since the bill was not reported from the House Judiciary Committee by May 15 but contains an authorization effective in fiscal year 1977. The Judiciary Committee will amend the bill on the floor eliminating the fiscal year 1977 authorization to conform to the provisions of the Budget Act.

S. 22 provides for the first comprehensive revision of the copyright law—title 17 of the United States Code—since 1909. This bill extends copyright liability to two previously exempted groups: The operators of jukeboxes and of cable television systems.

The bill also extends the length of copyright protection to the life of the creator plus 50 years. Existing works would receive an extension of 75 years.

S. 22 further provides that in 1981 the requirement that all copyrighted books and materials be printed in the United States be terminated.

Among other provisions of the bill, a three-member commission, appointed by the President, would determine copyright royalty rates, distribute royalty fees, and settle disputes.

Guidelines for copying materials by schools and libraries are also outlined. This bill allows the reproduction and distribution of one copy or phonorecord if the following conditions are met: No direct or indirect commercial gain is realized, the library is open to the public, and a notice of copyright is on the reproduction.

Copyright infringement and remedies are also provided in the bill.

The Copyright Act of 1909 has been outdated by new technological developments in the areas of motion pictures, recording, and photocopying. There is a need to revise this law to reflect these changes. I urge the adoption of House Resolution 1550 that we may discuss and debate S. 22.

Mr. Speaker, I yield to the gentleman from Mississippi (Mr. LOTT).

Mr. Speaker, I move the previous question.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, as the gentleman has explained, House Resolution 1550 is the rule making in order the consideration of S. 22, a bill providing for a general revision of the copyright laws. The rule waives section 402(a) of the Congressional Budget Act, which requires authorizations to be reported by May 15 preceding the beginning of the fiscal year in which they are to become effective. This waiver is necessary because this legislation was reported after May 15, 1976, and contains an authorization for fiscal year 1977. In this connection, it is my understanding that the Budget Committee will not oppose the waiver, since the Judiciary Committee has agreed to offer an amendment to the bill to delay the authorization until fiscal year 1978.

Pursuant to the terms of the rule, the bill may be debated for 1 hour and will be read for amendment under the 5-minute rule. The committee amendment in the nature of a substitute is made in order as an original bill for purposes of amendment. No amendment to the committee amendment in the nature of a substitute will be in order except amendments offered by the direction of the Judiciary Committee and germane amendments printed in the CONGRESSIONAL RECORD at least 3 calendar days prior to the start of consideration of the bill for amendment. These amendments, however, will not be subject to amendment except those offered by direction of the Judiciary Committee.

S. 22 provides for a general revision of the U.S. copyright law, title 17 of the United States Code. This measure passed the Senate on February 19 of this year by unanimous consent vote. After hearing 100 witnesses and holding 22 days of markup, the Judiciary Committee reported the bill to the House on September 3, 1976.

The estimated cost of the legislation for the first fiscal year is $1 million. Thereafter, no Federal expenditures are expected for the next 4 years.

Mr. Speaker, I believe this is a fair rule; and I urge its adoption so that we may proceed to consider this extremely important legislation.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, I ask for this time to inquire from whomever might be able to answer, perhaps the chairman of the Judiciary Committee, what the program plans are for the rest of this evening. Are we going to finish this bill or not? It is 8 o'clock. I have heard it might take 3 hours. The Members might like to know what the plan is.

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, soon after we go into the Committee of the Whole, I would think Members desiring to speak on this bill might limit their remarks to about 30 or 40 minutes at the most.

As far as the amendments are concerned, I know of at least five that will be offered en bloc and having talked to some of the Members I do not think the debate will be extensive. Therefore, I would predict that after we go into the Committee of the Whole, we should take about 1½ hours to 2 hours, but not more than that.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for that explanation.

Mr. MURPHY of Illinois. Mr. Speaker, I have no further requests for time and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 22) for the general revision of the copyright law, title 17 of the United States Code, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER).

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 22, with Mr. SMITH of Iowa in the chair.

The Clerk read the title of the Senate bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from Wisconsin (Mr. KASTENMEIER.)

Mr. KASTENMEIER. Mr. Chairman, I yield such time as he may consume to the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO).

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Chairman, today is a proud day for the Copyright Subcommittee and for its parent Judiciary Subcommittee as we present to the House—unanimously by the subcommittee and with one sole dissent in the full committee—the bill S. 22 for general revision of the copyright law, with a committee amendment in the nature of a substitute.

When one considers the extended background of this legislation and the difficulties that have been overcome in the process, the reason for our pride is not hard to see. Under the chairmanship and gifted guidance of our colleague BOB KASTENMEIER of Wisconsin and the unflagging cooperation of the ranking minority member of the subcommittee, TOM RAILSBACK of Illinois, our subcommittee undertook and has brilliantly brought to conclusion an enormous task.

The present copyright law is essentially as enacted in 1909. The technological and communications developments since that time have rendered that law obsolete and inadequate. It is the purpose and effect of the copyright bill which we bring you today to provide for a general revision of the copyright law.

The first American copyright law was enacted by the First Congress in 1790, in exercise of the constitutional power:

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Comprehensive revisions were enacted, at intervals of about 40 years.

Since 1909 significant changes in technology have affected the operation of the copyright law. Motion pictures and sound recordings had just made their appearance in 1909, and radio and television were still in the early stages their development. During the past half century a wide range of new techniques for capturing and communicating printed matter, visual images, and recorded sounds have come into use, and the increasing use of information storage and retrieval devices, communications satellites, and laser technology promises even greater changes in the near future. The technical advances have generated new industries and new methods for the reproduction nad dissemination of copyrighted works, and the business relations between authors and users have evolved new patterns.

Against this background of need for revision and after extended hearings and study, the committee in 1967 brought forth and the House enacted a comprehensive revision bill. The Senate, however, was unable to enact this measure Not until 1974 did the Senate pass a copyright bill. Reintroduced in 1975, the measure became the basis for S. 22 and the House companion bill, H.R. 2223.

During 1975, the House Judiciary Subcommittee conducted extensive hearings at which nearly 100 witnesses were heard. Following some 22 days of public markup sessions in 1976 the House subcommittee favorably reported S. 22, by a unanimous vote, on August 3, 1976, with an amendment in the nature of a substitute. The Committee on the Judiciary now reports that bill, as amended, without change.

In reporting S. 22, the committee has deleted and held over for further consideration in the 95th Congress title 2 of the bill that would create a new system of protection for ornamental designs of useful articles.

The legislation before us now contains a number of complex and important provisions. These include: Increased term, fair use, exemptions related to the handicapped, royalitv fees for cable television systems, mechanical royalties, and compulsory license for public broadcasting. The bill eliminates the so-called manufacturing clause which has performed a tariff function in the guise of copyright.

Mr. Chairman, it is with the most profound respect that I urge my colleagues to vote to enact this monumental revision.

(Mr. KASTENMEIER asked and was given permission to revise and extend his remarks.)

Mr. KASTENMEIER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, at the outset, I would like to compliment the Members of the subcommittee who worked so hard on this particular legislative endeavor; the gentleman from Illinois (Mr. RAILSBACK); the gentleman from California (Mr. WIGGINS); and on our side, the gentleman from California (Mr. DANIELSON); the gentleman from Massachusetts (Mr. DRINAN); the gentleman from New York (Mr. BADILLO); and the gentleman from New York (Mr. PATTISON); as well as the other gentlemen, the gentleman from California (Mr. EDWARDS); the gentleman from Michigan (Mr. HUTCHINSON); who 10 years ago served on the

subcommittee and worked on the project at that time.

Mr. Chairman, the Committee on the Judiciary has reported favorably the bill, S. 22, revising the copyright code of the United States.

The existing Copyright Code was enacted in 1909 and has remained basically unchanged since that time even though the intervening years have witnessed revolutionary technological developments which have totally changed the nineteenth century assumptions upon which that law was based.

Attempts to modernize the law began over 50 years ago, in 1924. Before World War II, revision bills twice passed one House of Congress only to be stymied in the other. The efforts which resulted in the committee bill before you today began in August 1955 when Congress authorized what was to become a 6-year study of needed revisions by a special committee of experts under the supervision of the Register of Copyrights.

On the basis of that study former chairman, Emanuel Celler, in 1965 introduced the general revision which is the forerunner of S. 22. It was my pleasure to chair 22 days of public hearings and 51 days of markup on that bill during the 89th Congress. The result of that effort was successful passage of a revision bill by the House in the 90th Congress in 1967. Because of a controversy over the cable TV provision, however, the bill died in the Senate.

By the 93d Congress the Senate was successful in achieving sufficient agreement to pass the bill. However, our committee received the measure far too late in that session to act, especially given the pressures of the impeachment inquiry.

Near the beginning of the current Congress the Senate quickly passed the bill a second time and our committee began work in earnest to produce a bill that would balance the competing interests of the various affected economic groups and at the same time serve the general public interest. The Subcommittee on Courts, Civil Liberties, and the Administration of Justice held a total of 17 days of hearings at which testimony was received from 99 different witnesses. These hearings were followed by 25 days of markup which resulted in the bill before you this morning.

Much of the bill is merely a restatement of existing law, both statutory law and the judicial doctrines which over the years have grown up around the 1909 code. However, the bill does contain a number of significant changes.

First, copyright protection is changed from the current maximum term of 56 years to the life of the author plus 50 years. This is in keeping with the standard recognized throughout the world, and will enable the United States to more easily reach reciprocal agreeemnts on copyright matters with other nations. All copyrights presently in existence would be valid until 75 years from the date of publication.

Secondly, the bill extends copyright protection to two areas which are not presently covered—performance of copyrighted musical works by jukeboxes and retransmission of copyrighted works by cable television systems. However, the committee has greatly softened the impact of this extended copyright coverage by providing that jukebox operators and cable television systems will be entitled to compulsory licenses at very reasonable fees which are provided in the bill. The bill contains special provisions for small cable systems which require them to make only a nominal payment.

In addition, the bill raises the so-called mechanical royalty from the current 2 cents per pound to 2¾ cents or 6/10 cents per minute of playing time, whichever is greater. The mechanical royalty is the minimum payment which must be made to the copyright owner by record companies for the right to produce a recording of a work which has already been recorded.

In order that Congress itself will not be required to review periodically the rates of the various compulsory licenses established in the bill, a three member Copyright Royalty Commission is established to review royalty rates and settle disputes among parties claiming statutory royalties.

Another important reform contained in S. 22 is the phasing out of the archaic manufacturing requirement, a feature of the 1909 law which requires that virtually all copyrighted books be printed in the United States. The bill provides for the termination of this provision in 1981.

Finally, the legislation establishes for the first time a national television archive in the Library of Congress so that, through the copyright deposit system, a national archive of television programs may be maintained.

Mr. Chairman, although the bill provides for the creation of a copyright royalty commission and a national television archive it is not expected that any additional costs to the United States will be incurred because the revenue from fees authorized under the bill will more than offset costs. As you can see from the cost estimate on p. 184 of the report, revenue from fees during the next 5 years will actually exceed costs.

S. 22 is basically economic legislation which affects a variety of industries and interest groups. Of course, it is impossible to draft a copyright bill which will meet with the approval of every interested party. I believe that we have been successful in writing a bill which resolves the conflicts among the various parties as successfully as is humanly possible.

Three issues in the bill were most troublesome for the committee. These were: Photocopying by public libraries, the copyright liability of cable television systems, and the Senate attempt to create a new type of copyright portection for ornamental design.

I believe that we have successfully balanced the needs of libraries against the rights of copyright proprietors by providing that libraries may photocopy copyrighted material, including for purposes of interlibrary loans, as long as such photocopying is not systematic and a substitute for purchase or subscription.

On the cable TV issue, the Subcommittee had the benfit of an agreement reached by two of the three interested parties, the copyright proprietors and the National Cable Television Association. The third major group is the National Association of Broadcasters. We have endeavored to include in the bill provisions which, short of dictating communications policy, will protect the interest of broadcasters. An example is section 501 which permits local radio and television broadcasters to act as "private attorneys general" by granting them the right to sue cable systems which violate the terms of the compulsory license in the bill even though they have not been directly injured by a cable system's alteration of their own signals. I was disappointed to learn that very recently the Community Antenna Television Association—CATA—has raised several questions about the provisions of the bill dealing with importation of foreign signals from Mexico and Canada, powers of the Copyright Royalty Commission to change cable royalties on the basis of changes in FCC rules governing sports programing, the definition of local service area, and the requirement of the bill that all cable systems, even those retransmitting local signals, pay some copyright royalty.

The Members of the House should know that during the 22 markup sessions on the bill, many of which were attended by representatives of CATA, none of these points was raised. However, the Committee did make special efforts to accommodate the needs of the small cable systems which CATA represents by providing for substantially lower copyright royalty payments for cable systems with gross receipts of less than $160,000. The Senate version had only provided special treatment for systems with gross receipts of less than $80,000. To acquiesce to the further demands of CATA at this time would, in all likelihood, result in a substantial reduction of the total royalty fees available to copyright owners under the bill and; therefore, bring about their opposition to the bill.

The final major area of controversy is title II of the Senate bill which provides for a new form of protection for ornamental designs which cannot be identified separately from the useful articles of which they are part. This "no mans land" between copyright and patent law presents difficult public policy questions. The Department of Justice strongly opposed the creation of this new form of intellectual property on the grounds that no need for it had been demonstrated. Because sufficient information was not available to enable the subcommittee to resolve the issue at this time, we deleted title II from the bill with the understanding that the subject would be considered in depth during the next Congress.

For the most part, affected industries and groups are satisfied with the compromises reached in the bill. I believe that the fact that the bill was approved by the committee on a vote of 27 to 1 testifies vividly to this fact.

Mr. Chairman, before concluding my remarks I would like to discuss several questions which have been raised concerning the meaning of several provisions of S. 22 as reported by the House Judiciary Committee and of statements in the committee's report, No. 94-1476. One of these questions involves the mean-

ing of the concept of "publication" in the case of a work of art, such as a painting or statue, that exists in only one copy. It is not the committee's intention that such a work would be regarded as "published" when the single existing copy is sold or offered for sale in the traditional way—for example, through an art dealer, gallery, or auction house. On the other hand, where the work has been made for reproduction in multiple copies—as in the case of fine prints such as lithographs—or where multiple reproductions of the prototype work are offered for purchase by the public—as in the case of castings from a statue or reproductions made from a photograph of a painting—publication would take place at the point when reproduced copies are publicly distributed or when, even if only one copy exists at that point, reproductions are offered for purchase by multiple members of the public.

Another question involves the reference to "teacher" in the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" reproduced at pages 68–70 of the committee's report No. 94–1476 in connection with section 107. It has been pointed out that, in planning his or her teaching on a day-to-day basis in a variety of educational situations, an individual teacher will commonly consult with instructional specialists on the staff of the school, such as reading specialists, curriculum specialists, audiovisual directors, guidance counselors, and the like. As long as the copying meets all of the other criteria laid out in the guidelines, including the requirements for spontaneity and the prohibition against the copying being directed by higher authority, the committee regards the concept of "teacher" as broad enough to include instructional specialists working in consultation with actual instructors.

Also in consultation with section 107, the committee's attention has been directed to the unique educational needs and problems of the approximately 50,000 deaf and hearing-impaired students in the United States, and the inadequacy of both public and commercial television to serve their educational needs. It has been suggested that, as long as clear-cut constraints are imposed and enforced, the doctrine of fair use is broad enough to permit the making of an off-the-air fixation of a television program within a nonprofit educational institutional for the deaf and hearing impaired, the reproduction of a master and a work copy of a captioned version of the original fixation, and the performance of the program from the work copy within the confines of the institution. In identifying the constraints that would have to be imposed within an institution in order for these activities to be considered as fair use, it has been suggested that the purpose of the use would have to be noncommercial in every respect, and educational in the sense that it serves as part of a deaf or hearing-impaired student's learning environment within the institution, and that the institution would have to insure that the master and work copy would remain in the hands of a limited number of authorized personnel within the institution, would be responsible for assuring against its unauthorized reproduction or distribution, or its performance or retention for other than educational purposes within the institution. Work copies of captioned programs could be shared among institutions for the deaf abiding by the constraints specified. Assuming that these constraints are both imposed and enforced, and that no other factors intervene to render the use unfair, the committee believes that the activities described could reasonably be considered fair use under section 107.

Further, on pages 70 and 71 of the committee report Guidelines for Educational Uses of Music under section 107 are set forth. Those guidelines represent the understanding of the Music Publishers' Association of the United States, Inc., the National Music Publishers Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision as expressed in a joint letter to me dated April 30, 1976.

The report, as printed, does not reflect a subsequent change in the joint guidelines which was described in a subsequent letter to me from a representative of the above named organizations. Subsection A.2. of the guidelines should be changed to read as follows: "2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a selection, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil."

In addition, Mr. Speaker, the paragraph beginning at the bottom of page 97 and concluding at the top of page 98 is intended to mean that, in one instance, specific additional payments are to be made for carrying specific additional programs. Where a cable system, at its own discretion, deletes certain programs and substitutes other, live, programs, an additional payment is to be made; this identifiable payment is intended to be distributed to the specific program source, that is, owners of live programs.

Finally Mr. Chairman, I would like to observe that the House bill differs from the Senate bill in its treatment of public broadcasting, especially regarding use of nondramatic literary works. We did not feel justified in going as far to guarantee arrangements for public broadcasters as they would have liked. Our preference was to encourage private negotiations, and, particularly in nondramatic literary works, we established a framework which we believe will be helpful in such private negotiations. We provided for an antitrust exemption so that publishers and authors could get together with public broadcasters in establishing standard terms, rates, and clearance mechanisms without running afoul of the antitrust laws. We also provided for a report to Congress in 2 years so that the outcome of such private arrangements could be made known to us. I am advised that indeed publishers and authors and public broadcasters are talking together this very week in an effort to set up suitable common rates and practices for public broadcasters. I am very encouraged by this report, and I hope they will come to a successful conclusion before our conference on this bill with the Senate.

Mr. Chairman, because of the complexity of this bill and the delicate balances which it creates among competing economic interests, the committee will resist extensive amendment of this bill. On behalf of the committee I would urge all of my colleagues to vote favorably on S. 22.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I am happy to yield to my friend, the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I thank my friend, the gentleman from Wisconsin, for yielding.

Mr. Chairman, I have received a great deal of mail from the schoolteachers in my district who are particularly concerned about section 107—fair use—the fair use of copyrighted material. Having been a former schoolteacher myself, I believe they make a good point and there is a sincere fear on their part that, because of the vagueness or ambiguity in the bill's treatment of the doctrine of fair use, they may subject themselves to liability for an unintentional infringement of copyright when all they were trying to do was the job for which they were trained.

The vast majority of teachers in this country would not knowingly infringe upon a person's copyright, but, as any teacher can appreciate, there are times when information is needed and is available, but may be literally impossible to locate the right person to approve the use of that material and the purchase of such would not be feasible and, in the meantime, the teacher may have lost that "teachable moment."

Did the subcommittee take these problems into consideration and did they do anything to try and help the teachers to better understand section 107?

Have the teachers been protected by this section 107?

Mr. KASTENMEIER. Mr. Chairman, in response to the gentleman's question and his observations preceding the question, I would say, indeed they have.

Over the years this has been one of the most difficult questions. It is a problem that I believe has been very successfully resolved.

Section 107 on "Fair Use" has, of course, restated four standards, and these standards are, namely: The purpose and character of the use of the material; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

These are the four "Fair Use" criteria. These alone were not adequate to guide teachers, and I am sure the gentleman

Kansas (Mr. SKUBITZ) understands ... as a schoolteacher himself.

Therefore, the educators, the proprietors, and the publishers of educational materials did, at the committee's long insistence, get together. While there were many fruitless meetings, they did finally get together.

Mr. Chairman, I will draw the gentleman's attention to pages 65 through 74 in the report which contain extensive guidelines for teachers. I am very happy to say that there was an agreement reached between teachers and publishers of educational material, and that today the National Education Association supports the bill, and it has, in fact, sent a telegram which at the appropriate time I will make a part of the RECORD and which requests support for the bill in its present form, believing that it has satisfied the needs of the teachers:

NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., September 10, 1976.

National Education Association urgently requests your support of the Copyright Revision bill, H.R. 2223, as reported by the Judiciary Committee. This compromise effort represents a major breakthrough in establishing equitable legal guidelines for the use of copyright materials for instructional and research purposes. We ask your support of the committee bill without amendments.

JAMES W. GAREN,
Assistant Director for Legislation.

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, then the NEA is satisfied with the language in the bill as it now stands; is that correct?

Mr. KASTENMEIER. The gentleman ... correct.

Mr. SKUBITZ. Mr. Chairman, I thank ... gentleman.

Mr. RAILSBACK. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. HUTCHINSON), the ranking minority member.

(Mr. HUTCHINSON asked and was given permission to revise and extend his remarks.)

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of S. 22, the general revision of the copyright law. Today marks a special day as the House considers and, I am confident, enacts the first general revision of the Nation's copyright laws in over 65 years. I would like to commend the members of the subcommittee who spent just countless hours working on this legislation. I can appreciate what they went through because I had the same experience when this bill went through the House in 1967.

Mr. Chairman, the first chapter of the bill defines the bundle of intangible property rights which inure in an original work of authorship which make up this statutory scope of copyright. That first chapter then proceeds to impose limitations upon those rights.

The second chapter of this bill deals with the ownership of those rights and how they may be transferred.

Now, Mr. Chairman, I propose to take up the consideration of chapter 3, concerned with the duration of those rights. Therefore, I shall be talking about sections 301 through 305 of the bill, sections to be found on pages 125 through 133 thereof.

Mr. Chairman, the constitutional grant of authority under which Congress considers this bill, is to be found in section 8 of article I of the original Constitution, wherein we are charged with the duty "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Mr. Chairman, for the purposes of chapter 3, the essential phrase in the constitutional grant contains three words—"for limited times."

Mr. Chairman, whatever copyright law the Congress enacts must limit the duration of the exclusive rights it secures. All works of authorship must eventually fall into the public domain. We are without power to vest those rights in an author in perpetuity.

Still, Mr. Chairman, notwithstanding our inability to create any perpetual exclusive rights in an author, there is another law of copyright—in the common law—and under that law an author's rights in the nature of copyright may be perpetual. These common law rights are unlimited as to time. But the common law must yield to statutory law, wherever statutory law is applicable. So, wherever our statute law reaches, whatever it covers, the common law of rights of unlimited duration in an author is displaced by the congressional law of termination.

Mr. Chairman, our statutory law of copyright draws the line where the common law of unlimited duration ceases, and the present and all prior statutes have drawn that line at the point of publication.

If a work is published, it then loses its common law protections and becomes a subject for copyright. Upon publication, if requisite statutory procedures are followed, the exclusive rights of the author are secured for the statutory time otherwise they fall immediately into the public domain.

Mr. Chairman, under our present statute, the author of a copyrighted work enjoys his exclusive right for a term of 28 years, and he is permitted to renew his copyright for one additional term of 28 years. So, if a valid copyright exists, it is valuable to the author for at least 28 years but never more than 56 years.

At the end of that time, the work falls into the public domain. In all cases, this time is measured from the date of publication under the present law. If the author of a work or his heirs choose not to publish it, they retain it as their exclusive right indefinitely under the common law.

The bill we are now considering will change that law. It will change it by measuring the time of copyright from the time of creation of a work rather than from the time of its publication. The time of creation is determined by the act of fixation of the work in a tangible form. Thus, when an author completes his manuscript the work is fixed in a tangible form, and the copyright term begins. The effect of this rather far-reaching change in the law is to bring under statutory copyright unpublished as well as published works.

The next important change in the law on the duration of copyright is a longer term. After January 1, 1978, when this bill will go into effect, a work within the copyright statute would be copyrightable for the lifetime of the author plus 50 years. There would be no renewable term available. Thus all the works of an author will fall into the public domain and become public property at the same time. The present complexity where the earlier works of an author become freely available before his later works—that present complexity will be done away with. Present-day records of vital statistics including records of death are now so complete and so available that it will be easy to determine when an author dies and 50 years after that date all of his works will fall at the same time into the free use of the public. Thus, the last works of an author will probably enjoy no longer term of protection that they would under the present law of 56 years. His earlier works may be protected for a longer period of time under the bill than under the present law, but if a man creates something of value, it is his property, and he ought to have the right to enjoy it for his lifetime. In no case would the heirs of an author have any rights beyond 50 years after his death.

The committee was persuaded to make this change in duration from the present maximum of 56 years after publication to the lifetime of the author plus 50 years, measuring the copyright from the creation of the work for the following reasons:

First, life expectancy has increased considerably since the present 56-year maximums were written into law in 1909.

Second, the tremendous growth in communication media has substantially lengthened the commercial life of a great many works. A short term is particularly discriminatory against serious works in music, literature, and art, whose value might not be recognized until after many years.

Next, although limitations on the term of copyright are publicly and constitutionally necessary, too short a term harms the author without giving any special benefit to the public. The public frequently pays the same for works in the public domain as it does for copyrighted works, and the only result is a commercial windfall to certain users at the author's expense.

In some cases the lack of copyright protection actually restricts the dissemination of the work since publishers and other users do not want to risk investing in the work unless they can be assured of some exclusive rights for a limited time.

The present system of measuring copyright from the date of publication is confused by the vagueness of the term "publication". The death of an author is a definite determinable event, and it would be the only date that a potential user would have to be concerned with under this new law.

All of an author's works, including those successively revised by him, would fall into the public domain at the same

time, thus avoiding the present problems of determining a multitude of publication dates, and of distinguishing old and new matter in later editions.

The problem of determining when a relatively obscure author died is resolved by establishing a registry of the dates of death of authors in the copyright office. A presumption is written into the law that after 75 years following the first publication of the work or 100 years after its creation, whichever expires first, any person who obtains a certificate from the copyright office that the register has no evidence that the author is living or that he died less than 50 years before, may presume that the author has been dead for at least 50 years so his work has fallen into the public domain.

The committee was also persuaded that the present system requiring renewal of copyright in order to extend its protection beyond the original term of 28 years is a substantial burden and expense. It is highly technical and in a number of cases the renewal requirement has been the cause for the loss of copyright. The life-plus-50-year term provided in the bill provides no renewal term.

The longer term is also justified, we believe, because we subject unpublished works to the copyright law, thus denying them the unlimited exclusive common law rights the author and his heirs have enjoyed in them, including works that have been widely disseminated by means other than publication. It is possible to make a wide dissemination of some kind of works without them ever having been technically or legally published. The life-plus-150-year-term rule in the present bill is fair recompense to authors for the loss of perpetual rights which they have heretofore had in unpublished works.

Lastly, the life-plus-50-year term which authors would have in works created after the effective date of this bill, would conform our law to the copyright law of many foreign countries. In these times of instant communication throughout the world, there is increasing need for some uniformity in the field of copyright. A very large number of countries have already adopted a copyright term of the life of the author and 50 years after his death.

American authors are today frequently protected longer in some foreign countries than in the United States, and some resentment has occasionally been provoked because of this disparity in the duration of the term. Copyrighted materials move across national borders faster than virtually any other economic commodity, and with the techniques now in common use this movement has become instantaneous and effortless in many cases. The need to conform the duration of U.S. copyright to that prevalent throughout the rest of the world is increasingly pressing in order to provide certainty and simplicity in international business dealing.

To this increased term of life plus 50 years, with no renewal term provided, the committee has devised a method by which an author or his heirs may enjoy a right of reverter after 35 years in any copyright sold. This would permit an author to renegotiate with publishers after 35 years in order to protect him against sales which he may have made or some arrangement he could have made with a publisher long before the value of the work was known.

This right of reverter will also afford an author an opportunity to find some other method to exploit his work if during the original 35 years his original publisher has not vigorously promoted the work.

A joint work under the law would enjoy copyright measured by the life plus 50 years of the last survivor of the authors.

If you have more than a single author, several authors joining together in a work, the duration of the copyright would be measured by the death of the last of the surviving authors. An anonymous or pseudonymous work would enjoy copyright for only 75 years from publication or 100 years from creation. A work for hire, where you employ someone to write a literary work for you would be copyrightable for 75 years from publication or 100 years from creation, whichever is earlier. The bill extends existing copyrights so that they may benefit from the longer term. Those in the original 28-year term may at the end of that time be extended for another 47 years, making a total of 75 years. Those in their renewal term will be extended an additional 19 years, to provide the same 75-year coverage.

There is another major provision in chapter 3 which I want to briefly touch upon and that is the doctrine of Federal preemption in the field of copyright. The bill proposes to take under jurisdiction of the Federal law the whole law of copyright. Since the bill would bring within its ken unpublished as well as published works of authorship which have been fixed in tangible form, the area for State regulation in this field will be greatly reduced anyway, and the bill proposes to supersede State law on the subject.

One of the purposes behind the copyright clause in the Constitution was to achieve a uniformity of the copyright law throughout the country and to avoid the difficulty of enforcing an author's rights under the differing laws of the several States.

The intention of section 301, which is the Federal preemption section is to preempt and abolish any rights under the common law or the statutes of a State that are equivalent to copyright and that extend to works coming within the scope of the Federal copyright law.

On the other hand, this bill does not reach works that have not been fixed in any tangible means of expression. Such works would include such things as extemporaneous speeches or original works of authorship communicated solely through conversations or live broadcasts, or a dramatic sketch or a musical composition which has been improvised or developed from memory and without having been recorded or written down. Since these are not subject to copyright, they would continue to be subject to State law and common law until fixed in some tangible form.

In summary, Mr. Chairman, the committee has worked long and hard to bring this piece of legislation before you and the membership of the House and I urge the Members to support the enactment of S. 22.

Mr. RAILSBACK. Mr. Chairman, I yield myself 5 minutes.

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Chairman, I rise in support of Senate bill S. 22. This is the first general copyright revision legislation since 1909.

S. 22 is the first general copyright revision legislation since 1909. I believe it would be appropriate to first pay tribute to the Judiciary Subcommittee members who labored long and hard putting together this rather difficult and complex legislative package. I would especially like to commend our subcommittee chairman for his thoroughness, his fairness and his leadership throughout the consideration of this measure.

I want to pay tribute to the distinguished Register of Copyrights, the Honorable Barbara Ringer and her counsel, John Baumgarten and their staff. In all the rolls of our civil service, I believe, you will find no servants of the public who surpass in knowledge and the talent of these individuals. The Congress and the public are indebted to them for their intellectual labor.

The Congress has been struggling with this legislation for more than 10 years. The concept of general revision has been under study more than 50 years. The present copyright law was enacted in 1909, and, of course, makes no mention of radio, television, cable television, computer information storage, et cetera. It is a credit to what the Congress did in 1909, that such a copyright law has been able to function at all in this day of electronic mass communication.

The courts have pleaded, in case after case, for Congress to reform and update the copyright law. Well, here it is, and it is the closest we have ever come to having a general revision. And what you do here in the next couple of hours will determine whether there will be a new copyright law this year or ever, for that matter.

We have endeavored to balance the many competing interests. Teachers, librarians, and broadcasters, for good reason, are interested in making the most of the latest technologies with the least possible restrictions. Authors, composers, publishers, and the motion picture industries, on the other hand, are interested in protecting their work product. Their livelihood depends on such protection. This bill has more support now, than it has ever had. There is no way to satisfy all the parties who have an interest in this legislation. A good compromise is probably one that satisfies no one, but is acceptable to everyone, and its been said that this bill is a compromise of compromises.

In my opinion, these interests and that of the public have been fairly well balanced. This balance, however, is a delicate one. A change in any one sentence may tilt that balance in such a way so as to unravel the entire bill. For example

one of the most important sections of the bill is section 107, the Fair Use of Copyrighted Works.

Teachers were uncomfortable with this section because of its vagueness. The doctrine of fair use as it has been developed by the courts is purposely vague, since it would be difficult to prescribe precise rules to cover many varied situations. The Judiciary Committee Subcommittee made some slight changes which satisfied the teachers, without unsettling the authors and publishers. In addition, since the subcommittee's action, the two parties have agreed upon guidelines on how this section will work in practice. This agreement, in and of itself, is an amazing development to those of us close to the problem. These parties have rarely agreed upon anything. It is my purpose to support this measure in full and to resist those amendments which I feel, in a substantive way, alter the purpose and intent of this legislation.

This legislation is unlike any processed by the Judiciary Committee. It involves money, big money; it involves special interests, many special interests; and most importantly, it involves the public interest. And the interest best served by the expeditious consideration of S. 22 will be the public's interest.

Copyright involves the process by which one protects his personal, intellectual labor. Copyright has to do with the craft of the author, the craft of the composer and the craft of the artist. The purpose of copyright is to stimulate creativity and by so doing benefit the public. The granting of exclusive rights under the proper terms and conditions confers a public benefit that in my opinion outweighs the evils of this temporary, kind of monopoly. Copyright is not a monopoly in the sense that a patent is a monopoly. Copyright secures only the property right in the manner and content of the expression. Facts and ideas recited or systems and processes described by the author are freely available to the public at large, and the author has no power under copyright to prescribe their use. For example, a photographer's copyright empowers him to prohibit the copying and use of his original photograph. However, it gives him no power to prevent another photographer from standing on the same spot and taking a picture of the same object with the same lighting, focus, and shutter speed, even if the second picture is identical to the first. Copyright is a constitutional right, even though the word is found nowhere in the U.S. Constitution.

Mr. Chairman, I shall not undertake, except in response to specific questions, to deal at any great length with the technical aspects of the legislation at this time. Rather, I would like to discuss generally an overview of the bill and in particular several of its more controversial provisions.

S. 22 is the complete revision of present copyright law which can be found in title 17, U.S.C., sections 1–201. The legislation is divided into eight chapters with general subject headings. Chapter 1 covers almost all the testimony received by the subcommittee, the vast majority of which covers sections 106 through 118. The subject matter of copyright, that is, the scope of the copyright law in terms of the works it covers, as distinguished from the rights it gives, is covered by chapter 1, sections 102 through 105. Section 106 is a very fundamental provision of the bill in that it lays out the exclusive rights of the copyright owner in general terms. Sections 107 through 118 are the limitations or qualifications on those exclusive rights, and it is these sections which are the ones most talked about.

Section 105 is the same as that of section 8 of the present law, that is, works produced for the U.S. Government by its officers and employees should not be subject to copyright. A more difficult question is whether the definition should be broadened to prohibit copyright in works prepared under U.S. Government contract or grant. As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee to secure copyright in works prepared in whole or in part, with the use of Government funds. In this case, copyright can be used as an incentive to creation and dissemination, if necessary.

The subcommittee amended Section 105 at the request of the Department of Commerce to provide for a very limited exception to the rule precluding copyright protection in works of the U.S. Government. I offered that amendment which would have the effect of permitting the Secretary of Commerce to secure for a limited term, not to exceed 5 years, in any National Technical Information Service publication. Mr. Chairman, I believe this provision is justified for the following reasons:

First. The Secretary of Commerce must select publications for copyright and such protection is for no more than 5 years, it may be less. This is much less than the regular copyright terms of life of the author, plus 50 years;

Second. No broad Government copyright is claimed. Authority is granted for the highly specialized NTIS publications—scientific, technical, and engineering information. It would not give Government monopoly over the dissemination of Government information.

Third. NTIS by statute (15 U.S.C. Sec. 1151–7) must be self-sustaining. It exists without congressional appropriations of the taxpayers' money. It must survive by virtue of the income derived from public sales. Therefore, it is unreasonable and illogical to argue that NTIS would withhold any publication from sale.

Fourth. In the absence of explicit U.S. copyright protection, NTIS has tried to invoke the "national treatment" clause of the Universal Copyright Convention. Under this clause, each nation grants to authors of other nations copyright protection equivalent to that which the nation gives to its own authors in similar categories of works. Since government publications in nearly every other nation are copyrighted, theoretically, U.S. Government publications should receive copyright protection in other nations. NTIS has been unsuccessful in this endeavor because of the clear U.S. prohibition against copyright in government publications.

The significance of this is the loss of foreign sales income to NTIS, and thereby loss of opportunities to keep down prices to U.S. buyers. For example, several Japanese firms have estimated sales of copied-in-Japan NTIS publications at about $3,000,000 annually, compared to $150,000 received by NTIS. This is information pirated at our taxpayers' expense and it is wrong!

Fifth. Lastly, Mr. Chairman, in a letter from NTIS, dated March 26, 1976, they indicated that of the 64,000 publications by that agency in 1975, only 40 would have been even susceptible to a NTIS copyright.

Section 108 makes clear that the library photocopying exemption applies to the making of a single photocopy by librarians operating without any profit motive, open to the public or to outside researchers. Libraries are subject to the "fair use" doctrine of section 107. Subsection (F)(3) contains the so-called Vanderbilt University exception originally put in the legislation by Senator BAKER. For a number of years, Vanderbilt University has been providing a public service by attempting to record for history, major news events, especially the nightly newscast of the major networks. Vanderbilt felt that this was an important part of this country's oral history which, prior to their effort was being lost. S. 22 continues to recognize this special exemption which is intended to cover local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events.

Section 110 deals with performances and exhibitions that are now generally exempt under the "for profit" limitation and which are specifically exempted from copyright liability under this legislation. Section 110 is intended to set out the conditions under which performances or displays in the course of instructional activities are to be exempted from copyright. This clause covers all types of works. A teacher or student would be free to perform or display anything in class as long as the conditions are met.

One issue in these sections concerned 110(5) and the Twentieth Century Music Corp. against Aiken, decided by the U.S. Supreme Court in June 1975. The defendant in that case was the owner and operator of a fast-service food shop in downtown Pittsburgh who had "a radio with outlets to four speakers in the ceiling," which he turned on throughout the business day. Lacking any performing license, he was sued for copyright infringement by two ASCAP members. He lost in the district court, won a reversal in the Third Circuit Court of Appeals, and prevailed by a margain of 7 to 2 in the U.S. Supreme Court.

The Senate, without changing the language in the bill, added new language in the report that copyright licensing would be required under the revised copyright law in factual situations like that in the Aiken case. The subcommittee amended section 110(5)(B) to reflect the holding of the Aiken case and reverse what was intended by the Senate. That is, the fact situation in the Aiken case would not be an infringement of copy-

right. However, anything beyond what was done in the Aiken case may well be an infringement.

Section 111 primarily covers cable television. The subcommittee completely rewrote this section to reflect a compromise between Motion Picture Association of America and National Cable Television Association, the primary parties of interest. This section has been, by far, the most controversial section of the entire copyright bill and has been the primary reason for the delay in enacting the copyright revision bill. All parties are now satisfied with section 111, except the National Association of Broadcasters. They were not a party to the compromise because they are not a major party of interest, but the subcommittee amended the compromise to reflect some of their concerns among others. For the most part, the section is directed at the operation of cable television systems and the terms and conditions of their liability for the retransmission of copyrighted works. However, other forms of secondary transmission are also considered, including apartment house and hotel systems, wired instructional systems, common carriers, nonprofit "boosters" and translators and secondary transmissions of primary transmissions to controlled groups.

Another chapter of S. 22 which is very related to section 111 is chapter 8. This chapter creates a Copyright Royalty Commission for the purpose of periodically reviewing and adjusting statutory royalty rates for use of copyrighted materials pursuant to compulsory licenses provided in sections 111, 115, 116, and 118. Under section 801(b)(2)(B), the Commission may adjust the rates established in section 111(d)(2)(B) if the rules and regulations of the FCC—Federal Communications Commission—are amended at any time after April 15, 1976, to permit the carriage of additional distant signals. The subcommittee spent considerable time discussing factors which the Commission should consider in adjusting rates for new additional distant signals. In determining the reasonableness of such rates, the Commission should consider, among other factors: the economic impact that such adjustment may have on copyright owners and users, including broadcast stations and the effect of such additional distant signal equivalents, if any, on local broadcasters' ability to serve the public. On page 176 of the House Report No. 94-1476, we intended to delete the last sentence on that page, but due to a mix-up at the printing office, it was not deleted. The reason for its deletion is because it is confusing and would be misunderstood. I would like to make clear for the record, since the language in the report is reflecting my amendment, that the Federal Communications Commission and the Copyright Royalty Commission are two entirely separate commissions with entirely separate jurisdiction, proceedings, and functions.

In closing, Mr. Chairman, I believe that the committee has accomplished a remarkable task in reconciling many conflicting interests as fairly, as justly, and as constructively as possible. I urge the Members to support the enactment of S. 22.

Mr. KASTENMEIER. Mr. Chairman, I yield so much time as he may consume to the gentleman from California (Mr. DANIELSON).

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. DANIELSON. First of all, Mr. Chairman, I wish to associate myself fully with the comments of my subcommittee chairman, the gentleman from Wisconsin (Mr. KASTENMEIER) and my colleagues, the gentleman from Illinois (Mr. RAILSBACK) and the gentleman from Michigan (Mr. HUTCHINSON). I will not retraverse the ground that they have tread. I want to add two encomiums anyway to the list so far, and that is my appreciation and deep respect to Herb Fuchs and Bruce Lehman of our staff, who did an unbelievable amount of work in the last 2 years in putting this bill together.

There are two subjects on which I wish to touch very briefly. One is the subject of performer's rights. I was the author of a bill which was considered in conjunction with the principal bill which would have provided royalties for performers' rights. We have not included them in the final bill for very good reason; namely, we have not had time to conduct a full study of the proposal for performers' rights, and rather than jeopardize the legislation, we decided to leave that subject out of this bill and take it up at a future time. But I want the RECORD to show what we are talking about.

Performers' rights refer to the rights of performers—musicians, and so forth—to be compensated for the commercial use of their creative efforts. Recorded music accounts for roughly three-fourths of the advertising revenues of radio and TV. Yet they pay nothing to performers or recording companies for the use of the created musical material.

The performers' royalty concept is certainly consistent with cable TV royalties. Broadcasters should pay a fee for the profitmaking use of someone else's property. Performers' royalties are recognized in nearly every other Western nation. Out of about 25,000 musicians who make recordings in this country, we find that the average earning from the work was $840 per musician in the year 1975.

I would like also to point out that organized labor, the National Endowment for the Arts, the U.S. Copyright Office, and the thousands of talented American musicians support the concept.

Lastly, the platforms of the Democratic Party and the Republican Party which were adopted just this summer each contain a plank which would support performers' royalties, and I include those two planks at this point:

DEMOCRATIC PARTY PLATFORM, 1976

THE ARTS AND HUMANITIES

We recognize the essential role played by the arts and humanities in the development of America. Our nation cannot afford to be materially rich and spiritually poor. We endorse a strong role for the federal government in reinforcing the vitality and improving the economic strength of the nation's artists and arts institutions, while recognizing that artists must be absolutely free from any government control. We would support the growth and development of the National Endowment for the Arts and Humanities through adequate funding, the development of special anti-recession employment programs for artists, copyright reforms to protect the rights of authors, artists and performers, and revision of the tax laws that unfairly penalize artists. We further pledge our support for the concept and adequate financing of public broadcasting.

REPUBLICAN PARTY PLATFORM, 1976

ARTS AND HUMANITIES

The arts and humanities offer an opportunity for every American to become a participant in activities that add fullness, expression, challenge and joy to our daily lives. We Republicans consider the preservation of the rich cultural heritages of our various ethnic groups as a priority goal.

During our Bicentennial year we have celebrated our anniversary with cultural activities as varied and colorful as our cultural heritage. The Republican Party is proud of its record of support to the arts and humanities during the last eight years. We are committed to steadily increase our support through the National Endowments for the nation's museums, theatre, orchestras, dance, opera and film centers as well as for individual artists and writers.

This upward trend in funding for the National Arts and Humanities Endowments deserves to continue but Washington's presence should never dominate; it must remain limited to supporting and stimulating the artistic and cultural lives of each community.

We favor continued federal assistance to public broadcasting which provides us with creative educational and cultural alternatives. We recognize that public broadcasting is supported mainly through private sector contributions and commend this policy as the best insurance against political interference.

In 1976, we have seen vivid evidence that America's history lives throughout the nation. We support the continued commemoration throughout the bicentennial era by all Americans of those significant events between 1776 and 1789 which contributed to the creation of this nation. We support the efforts of both the public and private sectors, working in partnership, for the historic preservation of unique and irreplaceable historic sites and buildings.

We propose safeguarding the rights of performing artists in the copyright laws, providing tax relief to artists who contribute their own talents and art works for public enjoyment, and encouraging the use of one percent of the cost of government buildings for art works.

Much of the support of the arts and humanities comes from private philanthropy. This generosity should be encouraged by government policies that facilitate charitable donations.

The last point I would like to touch upon is the so-called jukebox. In this bill we are imposing a fee of $8 per jukebox per year as a flat royalty fee. There are provisions in the bill for sharing of that royalty derived from that fee for the owners of the copyrighted works which the jukeboxes use.

Two points I think should be stressed. Whereas jukeboxes may have been a very profitable industry at one time, they have passed their prime. With the advent of television and the decay in the inner cities, with the change of our national habits, we do not go downtown and

spend the evening at the jukejoint, as it was called, any more. The number of jukeboxes has fallen off tremendously. Although they may have been able to pay a tremendous royalty at one time, it is my opinion the $8 figure which now pertains is probably very appropriate.

We have a provision in the bill that in the future the Copyright Royalty Commission will have the power to review the copyright paid by jukebox operators, but I want the RECORD to reflect the fact that in section 801(b)(1) we put in the caution that such determinations—meaning those of the Copyright Royalty Commission—shall be based upon relevant factors occurring subsequent to the enactment of this act. I think that is a very important caveat and I wish it to appear in the RECORD.

Mr. KASTENMEIER. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. DRINAN).

Mr. DRINAN asked and was given permission to revise and extend his remarks.)

Mr. DRINAN. Mr. Chairman, I want to pay tribute to the chairman of the subcommittee and the ranking minority member for their patience in the 41 sessions of the subcommittee in hearings and markup.

At this time when one sees the conclusion of a really monumental piece of work, one is troubled by some things. Let me mention only one or two that continue to concern me. One is the right to play certain music under the so-called mechanical rate. The economic data submitted to the committee seemed to justify an increase in that rate but it was not overwhelming. I am pleased that a Copyright Royalty Commission will have the right to reexamine that whole question in the near future.

The performing artists also have for too long been denied the full fruits of their labor. For example, in the manufacture and sale of the average phonograph record every contributor but the performer shares in the royalties. That is not fair and must be remedied. I hope that this subcommittee will in the near future get into those few things which we were not able to complete in this legislation.

Mr. Chairman, the authority to grant copyright is expressly given to the Congress by article I of the Constitution:

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Because copyright provides exclusive rights to reproduce specific material, it is, by definition, a form of monopoly.

The monopoly is given, because it serves to advance artistic, intellectual, and social development. Without those benefits to society as a whole, granting copyrights would be disadvantageous. In designing a fair copyright law, a proper balance must be struck between these conflicting values. Copyright as a monopolistic practice can only be justified to the extent it serves the public good. That is why the Constitution insists that it be secured only "for limited times."

As one examines this lengthy bill and even longer report, these divergent strains can be seen. The tension between competing values we all share emerges quite clearly. At every intersection the committee sought, with great diligence, to resolve the differences in a manner which would maximize artistic endeavors while protecting the public from unwarranted restrictions on access to the creative works.

Consequently the resulting revision of the copyright law is a series of compromises arrived at after much debate, examination, drafting and redrafting, reconsideration, and confirmation. In my judgment, the compromises in this bill do not represent the kind frequently associated with the legislative process: Cynical political deals worked out behind closed doors. At every step of the way, your committee developed this measure in public sessions, giving every opportunity to competing interests to present their views.

This bill emerged from that free exchange. Of necessity it strikes balances between social goals equally high in value. It is always difficult to legislate on matters in which the opponents have sound arguments. Seeking and finding accommodations of such rational views is a hard task.

In several sections of the bill, the competing interests were particularly difficult to accommodate. In sections 107 and 108, the rights of authors and publishers conflicted with the desire for free access to books and periodicals by teachers, students, and the reading public. In our judgment the Senate version did not strike the proper balance. Consequently the committee modified the Senate-passed bill to provide greater access to published materials by educators, librarians, and the citizenry.

In addition the subcommittee encouraged representatives of the competing interests to negotiate guidelines for the reproduction of copyrighted materials which would be satisfactory to all. While the bill moved forward, the parties met, discussed, and approved the "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions." The Judiciary Committee said in its report that the "guidelines are a reasonable interpretation of the minimum standards of fair use."

I should note, however, that not all the affected parties concurred in the reasonableness of those guidelines. The Association of American Law Schools and the American Association of University Professors were particularly critical of those criteria—see the excerpts from their letters to Chairman KASTENMEIER, which are inserted into the RECORD at the conclusion of these remarks.

In view of the discontent in some areas over these guidelines, I wish to stress that, as the committee report notes, they are "minimum standards." The report also expresses the hope that "if there are areas where standards other than these guidelines may be appropriate, the parties will continue their efforts to provide additional specific guidelines in the same spirit of good will and give and take that has marked the discussion of this subject in recent months." I hope the AAUP and the AALS will continue their efforts to explore additional avenues for the implementation of this critical aspect of the new copyright law.

The subcommittee also struggled to reconcile the competing interests in section 111. In that provision, the concerns of cable television owners clashed with the rights of copyright owners of programs broadcast by telephone stations. Again the subcommittee encouraged the parties to seek resolution of their differences. Through those efforts and the assistance of other affected parties—including, I should add, some very helpful comments from my constituents—the subcommittee adopted a workable and sensible formula for determining and adjusting the royalty rates and distributing the income generated by them.

I should add that initially certain small cable operators, who generally operate in rural areas, were not satisfied with the resolution preliminarily approved by the subcommittee. After additional discussion and debate, modifications were made to accommodate the concerns of those parties. In my judgment the final product is a balanced approach reconciling very divergent interests. We should keep in mind that the Copyright Royalty Commission, created under this act, may make further adjustments in the rates, and that Congress ultimately sites in judgment of the success or failure of the section 111.

A third major area involved section 118, where the public broadcasters asked us to continue their right for free access to nondramatic literary works, while authors urged us to require some payment for the public use of their creativity. Essentially the subcommittee adopted a provision which encourages, to the maximum feasible extent voluntary arrangements between authors and broadcasters. In the event of irreconciliable differences, section 118 provides for intervention by the Copyright Royalty Commission.

In sum I believe the subcommittee made extraordinary efforts in these crucial areas to achieve a negotiated settlement of differences by the affected parties. In each case, we arrived at a compromise which, in my view, represents an appropriate accommodation of the competing positions, while protecting the public interest in reasonable access to copyrighted works and in stimulating the creativity which produced them.

With all due deference to the work of our committee, for which I share responsibility, I cannot say with any certainty that we achieve that delicate accommodation in each instances. I continue to be troubled by the rate set in section 115 for the right to play recorded music, the so-called "mechanical" royalty rate.

The economic data submitted to the committee to justify an increase in that rate, frankly, was not overwhelming. It was challenged vigorously by the Consumer Federation of America as not based on sound investigation and full disclosure. Although the committee did not raise the rate as high as the recording industry would have desired, we nonetheless did increase it with an uncertain impact on record prices.

That the rate had remained constant for over 60 years in the face of rising prices at the retail level undoubtedly persuaded a majority to vote a half-cent increase. Because the bill creates a Copyright Royalty Commission which has authority to reexamine that rate at certain intervals, I am confident that any adverse impact to the consumer can be correct.

I am also not satisfied that we explored sufficiently the question of record duplicating—the so-called pirating of copyrighted sound recordings. When Congress extended the Antipiracy Act 2 years ago, I expressed my concerns at some length in dissenting views. I still do not think we have examined the economic structure of the industry adequately to determine whether ultimately consumers are benefited or harmed by forbidding piracy.

I am disappointed too, that the bill does not contain a provision granting a performance royalty. Performing artists have for too long been denied the full fruits of their labors. For example, in the manufacture and sale of the average phonograph record, every contributor but the performer shares in the royalties. That is not fair and must be remedied. I am hopeful that we can turn our attention to that inequity at the earliest possible time.

Finally, I should add that, through the efforts of the Boston Visual Artists Union and other persons interested in the fine arts, the measure approved by the committee reflects a greater appreciation for their work than the original bill. Among other things, modifications were made in the optional deposit requirements, and clarifications stated regarding "publication" for works of art. While the copyright law is not the proper vehicle to express and resolve the other concerns of fine artists, I am hopeful that the 95th Congress will examine those matters in some detail.

In view of the monumental task confronting your committee and in light of the exceptional product which resulted, I urge my colleagues to approve the committee amendment in the nature of a substitute to S. 22.

The material follows:

EXCERPTS FROM LETTER OF MAY 25, 1976, TO CHAIRMAN KASTENMEIER FROM THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

As scholars and teachers who both produce and use copyrighted materials, we appreciate and approve the recognition of the needs of the scholar and university teacher reflected in Sections 107 and 504 of S. 22 as recently amended by your Subcommittee. In Section 504, the mandatory remission of statutory damages for teachers acting in good faith constitutes a recognition of the function of the scholar and teacher. More significantly, by its references to "teaching (including multiple copies for classroom use), scholarship, or research," and in the distinction recognized between commercial and nonprofit uses, Section 107 as presently drafted is an articulate statement of the general principle of fair use on which courts and others may build a comprehensive framework for the educational uses of copyrighted material.

However, these salutary and progressive provisions in the Bill would be undermined by the proposed Guidelines if, as is apparently contemplated by the parties who submitted them to you, they were to become a significant part of the legislative history of Section 107 as a result of incorporation in your Committee Report. We recognize, of course, the right of any given groups mutually to agree upon the terms and conditions by which they, and those they actually represent, will be guided in conforming to a statute such as this. To suggest, however, that such agreements should be binding upon *other* persons or groups or should, through incorporation in a committee report, be given weight in the interpretation of the statute generally, is quite a different matter. Consequently, these Guidelines—agreed to recently by author and publisher representatives and some members of the education community but with no representation from our Association—have caused us deep dismay. They would seriously interfere with the basic mission and effective operation of higher education and with the purpose of the Constitutional grant of copyright protection, which is designed to promote, not hinder, the discovery and dissemination of knowledge. These proposed Guidelines, notwithstanding the insistence that they represent only minimum standards, and despite other disclaimers, ultimately resort to the language of prohibition (see Section III). In so doing, they contradict the basic concept of fair use and threaten the responsible discharge of the functions of teaching and research.

EXCERPTS FROM LETTER TO CHAIRMAN KASTENMEIER FROM THE ASSOCIATION OF AMERICAN LAW SCHOOLS, MAY 26, 1976

Our substantive objections to the guidelines are spelled out in the letters of Professors Raskind and Gorman to you. They are in essence that the guidelines restrict the doctrine of fair use so substantially as to make it almost useless for classroom teaching purposes. Requiring a law school teacher to meet all three tests of brevity, spontaneity and cumulative effect stifles the use of copyrighted material for classroom purposes. The draft guidelines are based on the principle, with which most people would agree, that copying should not substitute generally for purchase of a copyrighted work. The effect of the draft guidelines before you, however, is to stifle dissemination of material rather than encourage purchasing or licensing of it. The realities of classroom teaching and the economics of our students are such that they cannot purchase or pay royalties on works other than the standard text and case books that are used as the major resources in classroom teaching. Thus the teacher's choice is not between purchasing and copying; it is between copying and not using. The vague and restrictive nature of the draft guidelines leaves the teacher with no assurance of safety in the fair-use doctrine and will result in sharply curtailing the use of copyrighted works in the classroom. We would prefer that the courts be allowed to delineate, within the well-phrased current draft of the statute, where to draw the line on abuses of the fair-use doctrine.

Mr. RAILSBACK. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Chairman, I thank the gentleman from Illinois (Mr. RAILSBACK) for yielding.

I certainly want to join in the tributes that have been paid to the members of the committee and the chairman, the gentleman from Wisconsin (Mr. KASTENMEIER) and the ranking minority member, the gentleman from Illinois (Mr. RAILSBACK) for producing this legislation which, as the gentleman from Massachusetts just said, is a truly monumental revision of the present law.

I rise to express the hope however that with respect to one provision, which is section 601 of the bill, that consideration will be given by the members of this distinguished committee who will serve on the conference committee to accepting the Senate version of this legislation insofar as it pertains to the so-called manufacturing clause.

Mr. Chairman, as members of the committee know, a manufacturing clause is one that allows the Government, in effect, to say to the publishers that we will grant them a monopoly to sell and to distribute this work; but as a condition of granting the monopoly we want them to have the product produced in this country by U.S. manufacturers and U.S. workers. This has been a provision of the copyright law since 1890. Rather than phase out the manufacturing clause, as the House bill would do, it seems to me it would be far better to instead include a provision that would provide for a review within 5 years by the Registrar of Copyrights to the effectiveness and the need for that provision. In that way, it seems to me an adequate study could be made and on that we could base a proper legislative judgment.

I think that sometimes the argument is made that this is a free trade provision, that we should eliminate the manufacturing clause under the guise of permitting free trade. I happen to be one that has generally promoted the concept of free trade, but I think those that used that argument in the context of defending this provision contained in the House bill really misunderstand the concept of free trade, because granting unlimited monopoly within the United States to foreign manufactured books obtained under the Universal Copyright Convention does not really bolster free trade, because at the same time the requirement for obtaining a monopoly within the United States has been accomplished and a restraint on trade has resulted; so this is not really the classic confrontation between free trade and the domestic interests, but I am convinced on the basis of the information that has been furnished me by many printing and publishing firms in the State of Illinois, which is a very great industry in our State, that the copyrights law is the proper place for the copyright regulations; that industry does need the manufacturing clause. In fact, I am pained to say they are in very poor condition in terms of profit margin and return on investment. Production costs are high. This is a very labor-intensive industry and labor and production costs are higher than in any other industry, that is because of the labor factor.

Mr. Chairman, I want to mention just one more point briefly in concluding these remarks, that passage of the clause in its present form as it is now contained in the law is important with respect to our efforts to effect reductions in the Canadian trade barriers. I have been informed, for example, by Illinois publishers that there is in effect a 25 percent and, indeed, in some instances a 40-percent tariff charged on catalogs published here in the United States, a 40-percent tariff imposed by the Canadian Government. In addition to that, they have imposed mammoth trade bar-

that impede the free flowing of U.S. printing and publishing materials between Canada and the United States. I do not have the time to recite some of the unfair nontariff barriers and some of the adjustments in Canadian tax law, refusing to allow Canadian advertisers to deduct the business expense and cost of advertising that they put in non-Canadian periodicals and so on. The only weapon we have to use with the Canadians is this manufacturing clause and until we can get them to negotiate, this hopefully will be discussed in the second Toronto Conference that we are trying to organize, until we can get the Canadians to see the equity of our position, to get them to lower their trade barriers to the importation of American books and periodicals published in the United States, we should not give away our hole card, which is the manufacturing clause.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. RAILSBACK. Mr. Chairman, I yield 1 additional minute to the gentleman from Illinois.

Mr. Chairman, will the gentleman yield to me?

Mr. ANDERSON of Illinois. I yield to the distinguished gentleman.

Mr. RAILSBACK. Mr. Chairman, I thank the gentleman for yielding.

I want to state that I personally am aware of the so-called Toronto Agreement which took place back in 1968 and under which the printing union representatives on both sides of the border agreed to attempt to provide equality and equity.

That particular pact bound us to Canadian exemptions, but it also committed the Canadian representatives to work for eliminating strict printing and publishing trade barriers. In the event that they would not so move in compliance with their side of the agreement, I would certainly think that this country and this Congress would want to take a second look at any barriers we may decide to erect.

Mr. ANDERSON of Illinois. If I could reclaim my time, I would ask the gentleman from Illinois one question: If, in the interim, however, we have passed this law in its present form and it has been signed into law by the President, have we not given away the bargaining tool that we might otherwise use to persuade the Canadians that they ought to bring down these barriers and unfair restrictions to which the gentleman has referred?

I have a letter from a representative of the Donnelly Co. which indicates that they are well on the road to putting together a second Toronto conference that would deal with all these Canadian trade barriers, and that is the hope we have, that we can encourage freer trade between the United States and Canada, but if we phase out the present manufacturing cost, we have lost the bargaining position.

Mr. RAILSBACK. I think maybe, in any conference, that we ought to take up this subject and address it. I think that leads to a letter I received from a representative of the company the gentleman just mentioned. That is one of the suggestions.

Mr. ANDERSON of Illinois. I hope that when the gentleman goes to conference along with the others on the committee, that he and they will bear in mind what has been said this evening and see the wisdom of accepting the Senate version on this matter.

Mr. RAILSBACK. Mr. Chairman, I yield 2 minutes to my distinguished colleague from Illinois (Mr. McCLORY).

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Chairman, I rise in support of S. 22, the general revision of the copyright law. I doubt if anyone can be as informative in discussing this legislation as the members of the subcommittee who have worked so long, so hard, and so ably to produce it. I would like to commend the subcommittee for a job well done. The product of their work is monumental.

The framers of our U.S. Constitution directed the Congress "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." When the framers met in Philadelphia to consider which powers might best be entrusted to the Federal Government, there appears to have been virtual unanimity in determining that copyright should be included within the national sphere. Although the constitutional committee proceedings which considered the copyright clause, were conducted in secret, it is known that the final form of the clause was adopted without debate. Originally enacted in 1790, by the First Congress, the copyright law has been completely revised only three times since at intervals of four decades. The last revision in 1909 is essentially still the law today. In this Bicentennial Year, it is a great tribute to this country, after over 50 years of work and research, to finally update our copyright law to reflect our more modern society.

Authors and composers are competing with record manufacturers, motion picture companies, and the television industry in an effort to protect the rights to their literary and musical works. At the same time, libraries and educators want to preserve provisions comparable to the existing law which permit "fair use" of published works for research and educational purposes.

Under the new law, copyrights will be granted for the life of the author or composer plus 50 years. During this period, the copyright owner and his assignee will enjoy exclusively the right to the copyrighted works.

The interests of libraries and schools will benefit from the sections on "fair use," embodied in the new bill. This will permit reproduction of copyrighted works providing there is no commercial use or sale of the copyrighted materials. This may permit duplication of portions of copyrighted literary and musical materials without infringing on the rights of authors and composers to secure the benefits of their creativity and without injuring publishers who have invested in the right to produce and market their literary and musical works.

The legislation aims to put at rest a controversy between composers and the recording industry relating to payments for records or tapes of copyrighted musical works. Under existing law, licenses are granted to the recording industry at the rate of 2 cents for a recording of 2 minutes or less, with an additional one-half cent fee for each additional minute which is included on a record or tape. These fees were increased to 2¾ cents or six-tenths of 1 cent per minute of playing time or fraction thereof, whichever is larger.

There is substantial urgency for the enactment of a new copyright law with only a limited period remaining for the 94th Congress to act. Efforts by various interest groups to secure last minute changes or to gain special advantages will undoubtedly be blocked in the interest of producing the first comprehensive revision of the copyright laws in more than 50 years and the greatest advance in copyright legislation in our Nation's 200-year history.

I urge the Members to support the enactment of this legislation.

Mr. KASTENMEIER. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee (Mr. ALLEN).

(Mr. ALLEN asked and was given permission to revise his remarks.)

Mr. ALLEN. Mr. Chairman, as the representative of Music City, U.S.A., I would be remiss in my duty if I failed to rise in strong support of this legislation. Earlier in the year, if the Members will recall, I was honored to host a party at which all the Members were invited to meet artists, composers, and musicians from all areas of the United States.

Not many people realize that Nashville has come to be known as Music City, U.S.A., because it is today the largest recording center in all the Nation. We have more recording studios, and more records are made and more compositions come from that city than anywhere else.

I am delighted that this bill to amend an antiquated law that has remained on the books unchanged for nigh on to 70 years is, at long last, being brought up to date to give justice and relief to those who so badly need it among the authors, composers, and musicians across the Nation. I thank the chairman for giving me this opportunity.

Mr. FRENZEL. Mr. Chairman, I support the copyright revision bill, S. 22, although I believe that it is poor management on the part of our leadership to bring this complicated bill up for debate and vote at 10 p.m. The importance and complexity of the bill deserve better treatment.

I am particularly pleased with the "fair use" doctrine of this bill, but I wish it had been broadened to allow for more copies for libraries and archives. I hope the courts will continue to construe "fair use" as broadly as possible. I would support, if offered, the proposed amendment to increase the "fair use" copies from 1 to 10.

This bill should have been handled un-

der an open rule with at least a full day available for debate and questions. Under these circumstances, I will vote "aye," urge its passage, and fervently hope that the sections we have not discussed adequately tonight are in good shape.

Mr. KASTENMEIER. Mr. Chairman, I have no further requests for time.

Mr. RAILSBACK. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment.

No amendment to the committee amendment is in order except amendments offered by the direction of the Committee of the Judiciary and germane amendments printed in the CONGRESSIONAL RECORD at least 3 calendar days prior to the start of consideration of said bill for amendment, but said amendments shall not be subject to amendment except those offered by direction of the Committee on the Judiciary.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

S. 22

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL REVISION OF COPYRIGHT LAW

SEC. 101. Title 17 of the United States Code, entitled "Copyrights", is hereby amended in its entirety to read as follows:

TITLE 17—COPYRIGHTS

Chapter 1.—SUBJECT MATTER AND SCOPE OF COPYRIGHT

§ 101. Definitions

As used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

"Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work".

A "device", "machine", or "process" is one now known or later developed.

To "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

The terms "including" and "such as" are illustrative and not limitative.

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

"Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phono-records" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproduction, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictititous name.

"Publication" is the distribtuion of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in

the same place or in separate places and at the same time or at different times.

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".

The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

A "work of the United States Government" is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication with the purpose of use in systematic instructional activities.

§ 102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including any accompanying music;

(4) pantomimes and choreographical works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works; and

(7) sound recordings.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

§ 103. Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material employed in the work, and does not imply any exclusive right in the pre-existing material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the pre-existing material.

§ 104. Subject matter of copyright: National origin

(a) UNPUBLISHED WORKS.—The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) PUBLISHED WORKS.—The works specified by sections 102 and 103, when published, are subject to protection under this title if—

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention; or

(3) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(4) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

§ 105. Subject matter of copyright: United States Government works

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise: Provided, however, That the Secretary of Commerce may secure copyright for a limited term not to exceed five years, on behalf of the United States as author or copyright owner in any National Technical Information Service publication, which is disseminated pursuant to the provisions of chapter 23 of title 15.

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright.

(b) The rights of reproduction and distribution under this section apply to a copy

or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

(c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section—

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

(i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

(b) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

(c) The privileges prescribed by subsections (a) and (b) do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if—

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for—

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5) communication of a transmission embodying a performance of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

(A) a direct charge is made to see or hear the transmission; or

(B) the performance or display is further transmitted beyond the place where the receiving apparatus is located;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionnaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical

by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293–73.295 and 73.593–73.595); or (iv) a cable system (as defined in section 111(f)).

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) CERTAIN SECONDARY TRANSMISSIONS EXEMPTED.—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if—

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions; or

(4) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) SECONDARY TRANSMISSION OF PRIMARY TRANSMISSION TO CONTROLLED GROUP.—Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: *Provided, however*, That such secondary transmission is not actionable as an act of infringement if—

(1) the primary transmission is made by a broadcast station licensed by the Federal Communications Commission;

(2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

(c) SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection, secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not recorded the notice specified by subsection (d) and deposited the statement of account and royalty fee required by subsection (d).

(3) Notwithstanding the provisoins of clause (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: *Provided*, That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: And *provided further*, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcasting station licensed by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by section 502 through 506, if (A) with respect to Canadian signals, the community of the cable system is located more than one hundred and fifty miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) COMPULSORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall, at least one month before the date of the commencement of operations of the cable system or within one hundred and eighty days after the enactment of this Act, whichever is later, and thereafter within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system, and thereafter, from time to time, such further information as the Register of Copyrights, after consultation with the Copyright Royalty Commission, shall prescribe by regulation to carry out the purpose of this clause.

(2) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Commission, prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters; and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Commission, from time to time prescribe by regulation. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) except in the case of a cable system whose royalty is specified in subclause (C) or

(15

(D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programing of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);

(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

in computing the amounts payable under paragraphs (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter;

(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total less than $80,000, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than $80,000 but less than $160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts in excess of $80,000; and (ii) 1 per centum of any gross receipts in excess of $80,000 but less than $160,000, regardless of the number of distant signal equivalents, if any.

(3) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs, for later distribution by the Copyright Royalty Commission as provided by this title. The Register shall submit to the Copyright Royalty Commission, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (2) of this subsection.

(4) The royalty fees thus deposited shall, in accordance with the procedures provided by clause (5), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (2)(A); and

(C) any such owner whose work was included in nonnetwork programing consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(5) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the Copyright Royalty Commission, in accordance with requirements that the Commission shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws (within the meaning of section 12 of title 15), for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Copyright Royalty Commission shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Commission determines that no such controvery exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Commission finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Commission shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(e) NONSIMULTANEOUS SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—(1) Notwithstanding those provisions of the second paragraph of subsection (f) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506, unless—

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and

(B) the copyrighted program, episode, or motion picture videotapes, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; and

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system, (ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility, (iii) takes adequate precautions to prevent duplication while the tape is being transported, and (iv) subject to clause (2), erases or destroys, or causes the erasure or destruction of, the videotape; and

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting (i) to the steps and precautions taken to prevent duplication of the videotape, and (ii) subject to clause (2), to the erasure or destruction of all videotapes made or used during such quarter; and

(E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to clause (2)(C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously, except that this subclause shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, except that, pursuant to a written, nonprofit contract providing for the equitable sharing of the cost of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with clause (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, to another cable system in any of those three territories, if—

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); and

(B) the cable system to which the videotype is transferred complies with clause (1) (A), (B), (C), (i), (iii), and (iv), and (D) through (F); and

(C) such system provides a copy of the affidavit required to be made in accordance with clause (1)(D) to each cable system making a previous nonsimultaneous transmission of the same viodeotape.

(3) This subsection shall not be construed to supersede the exclusivity protection provisions of any existing agreement, or any such agreement hereafter entered into, between a cable system and a television broadcast station in the area in which the cable system is located, or a network with which such station is affiliated.

(4) As used in this subsection, the term "videotape", and each of its variant forms, means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) DEFINITIONS.—As used in this section, the following terms and their variant forms mean the following:

A "primary transmission" is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a "cable system" not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: *Provided, however,* That a nonsimultaneous further transmis-

sion by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

A "cable system" is a facility, located in any State, territory, trust territory, or possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(2), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

The "local service area of a primary transmitter", in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. The "local service area of a primary transmitter", in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

A "distant signal equivalent" is the value assigned to the secondary transmission of any nonetwork television programing carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programing. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station for the nonwork programing so carried pursuant to the rules, regulations, and authorizations of the Federal Communications Commission. The foregoing values for independent, network, and noncommercial educational stations are subject, however, to the following exceptions and limitations. Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of this Act permit a cable system, at its election, to effect such deletion and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program; where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year. In the case of a station carried pursuant to the late-night or specially programing rules of the Federal Communications Commission, or a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth above, as the case may be, shall be multiplied by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

A "network station" is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programing supplied by such networks for a substantial part of that station's typical broadcast day.

An "independent station" is a commercial television broadcast station other than a network station.

A "noncommercial educational station" is a television station that is a noncommercial educational broadcast station as defined in section 397 of title 47.

§ 112. Limitations on exclusive rights: Ephemeral recordings

(a) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(1) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it;

(2) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(3) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8), to make no more than one copy or phonorecord embodying the performance, if—

(1) the copy or phonorecord is retained and used solely by the organization that made it, and no further copies or phonorecords are reproduced from it; and

(2) the copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security.

(e) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the pre-existing works employed in the program.

§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

§ 114. Scope of exclusive rights in sound recordings

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), and (3) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords, or of copies of motion pictures and other audiovisual works, that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound

recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or stimulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, representatives of the broadcasting, recording, motion picture, entertainment industries, and arts organizations, representatives of organized labor and performers of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performances and copyright owners of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.

§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) AVAILABILITY AND SCOPE OF COMPULSORY LICENSE.—

(1) When phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work. A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use. A person may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless: (i) such sound recording was fixed lawfully; and (ii) the making of the phonorecords was authorized by the owner of copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(3) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(4) Failure to serve or file the notice required by clause (3) forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.

(c) ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—

(1) To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For the this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourth cents, or six-tenth of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

(4) If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within 30 days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty had not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.

§ 116. Scope of exclusive rights in nondramatic musical works: Public performances by means of coin-operated phonorecord players

(a) LIMITATION ON EXCLUSIVE RIGHT.—In the case of a nondramatic musical work embodied in a phonorecord, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless—

(A) such proprietor is the operator of the phonorecord player; or

(B) such proprietor refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by clause (1) (C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

(b) RECORDATION OF COIN-OPERATED PHONORECORD PLAYER, AFFIXATION OF CERTIFICATE, AND ROYALTY UNDER COMPULSORY LICENSE.—

(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Commission, shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of $8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be $4.

(B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

(2) Failure to file the application, to affix the certificate, or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.

(c) DISTRIBUTION OF ROYALTIES.—

(1) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs, for later distribution by the Copyright Royalty Commission as provided by this title. The Register shall submit to the Copyright

oyalty Commission, on an annual basis, a detailed statement of account covering all fees received for the relevant period provided by subsection (b).

(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Copyright Royalty Commission, in accordance with requirements that the Commission shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 809 of this title, the determination of the Copyright Royalty Commission in any controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws (within the meaning of section 12 of title 15), for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(3) After the first day of October of each year, the Copyright Royalty Commission shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1). If the Commission determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If it finds that such a controversy exists, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(4) The fees to be distributed shall be divided as follows:

(A) To every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement.

(B) To the performing rights socities, the remainder of the fees to be distributed in such pro rata shares as they by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights socities prove entitlement.

(C) During the pendency of any proceeding under this section, the Copyright Royalty Commission shall withhold from distributions an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(5) The Copyright Royalty Commission shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operators or proprietors of establishments in which phonorecord players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he or she has been denied the access permitted under the regulations prescribed by the Copyright Royalty Commission may bring an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.

(d) CRIMINAL PENALTIES.—Any person who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or who knowingly alters a certificate issued under clause (1)(B) of subsection (b) or knowingly affixes such a certificate to a phonorecord player other than the one it covers, shall be fined not more than $2,500.

(e) DEFINITIONS.—As used in this section, the following terms and their variant forms mean the following:

(1) A "coin-operated phonorecord player" is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An "operator" is any person who, alone or jointly with others:

(A) owns a coin-operated phonorecord player; or

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(3) A "performing rights society" is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

§ 117. Scope of exclusive rights: Use in conjunction with computers and similar information systems

Notwithstanding the provisions of sections 106 through 116 and 118, this title does not afford to the owner of copyright in a work any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Not later than thirty days following the date of publication by the President of the notice announcing the initial appointments of the members of the Copyright Royalty Commission, as provided by section 801 (c), the Chairman of the Commission shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Commission in an effort to reach reasonable and expeditious results. Notwithstanding any provision of the antitrust laws (within the meaning of section 12 of title 15), any owners of copyright in works specified by this subsection and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and many designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may, within one hundred and twenty days after publication of the notice specified in this subsection, submit to the Copyright Royalty Commission proposed licenses covering such activities with respect to such works. The Copyright Royalty Commission shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Copyrights Royalty Commission shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Commission: Provided, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Commission shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Commission. In establishing such rates and terms the Copyright Royalty Commission may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in clause (2) of this subsection. The Copyright Royalty Commission shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(4) With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1982, and at five-year intervals thereafter, in accordance with regulations that the Copyright Royalty Commission shall prescribe.

(d) Subject to the transitional provisions of subsection (b)(4), and to the terms of

(19)

any voluntary license agreements that have been negotiated as provided by subsection (b) (2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Commission under subsection (b)(3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g);

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in clause (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in clause (1), and the performance or display of the contents of such program under the conditions specified by clause (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in clause (1), and are destroyed before or at the end of such period. No person supplying, in accordance with clause (2), a reproduction of a transmission program to governmental bodies or non-profit institutions under this clause shall have any liability as a result of failure of such body or institution to destroy such reproduction: Provided, That it shall have notified such body or institution of the requirement for such destruction pursuant to this clause: And provided further, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(e) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b).

(1) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws (within the meaning of section 12 of title 15). Any such terms and rates of royalty payments shall be effective upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.

(2) On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

(f) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(g) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in clause (2) of subsection (d).

Chapter 2.—COPYRIGHT OWNERSHIP AND TRANSFER

§ 201. Ownership of copyright

(a) INITIAL OWNERSHIP.—Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) WORKS MADE FOR HIRE. In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) CONTRIBUTIONS TO COLLECTIVE WORKS.—Copyright in each separate contributions to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) TRANSFER OF OWNERSHIP.—

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) INVOLUNTARY TRANSFER.—When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by the individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title.

§ 202. Ownership of copyright as distinct from ownership of material object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

§ 203. Termination of transfers and licenses granted by the author

(a) CONDITIONS FOR TERMINATION.—In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of a right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, by his widow or her widower and his or her children or grandchildren as follows:

(A) the widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest;

(B) the author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them;

(C) the rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(b) EFFECT OF TERMINATION.—Upon the effective date of termination all rights under this title that were covered by the terminated grant revert to the author, authors, and other persons owning termination interests under clauses (1) and (2) of subsection (a), including those owners who did not join in signing the notice of termination under clause (4) of subsection (a), but with the following limitations:

(1) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(2) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of subsection (a). The rights vest in the author, authors, and other persons named in, and in the proportionate shares provided by, clauses (1) and (2) of subsection (a).

(3) Subject to the provisions of clause (4) of this subsection, a further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under clause (2) of this subsection, as are required to terminate the grant under clauses (1) and (2) of subsection (a). Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under clause (2) of this subsection, including those who did not join in signing. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this clause.

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, how ever, an agreement for such a further grant may be made between the persons provided by clause (3) of this subsection and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

(5) Termination of a grant under this section affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(6) Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.

§ 204. Executive of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if—

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

§ 205. Recordation of transfers and other documents

(a) CONDITIONS FOR RECORDATION.—Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(b) CERTIFICATE OF RECORDATION.—The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) RECORDATION AS CONSTRUCTIVE NOTICE.—Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) RECORDATION AS PREREQUISITE TO INFRINGEMENT SUIT.—No person claiming by virtue of a transfer to be the owner of a copyright or of any exclusive right under copyright is entitled to institute an infringement action under this title until the instrument of transfer under which such person claims has been recorded in the Copyright Office, but suit may be instituted after such recordation on a cause of action that arose before recordation.

(e) PRIORITY BETWEEN CONFLICTING TRANSFERS.—As between two conflicting transfers, the one executed first prevails if it is recorded in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(f) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXISTENCE LICENSE.—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if—

(1) the license was taken before execution of the transfer; or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

Chapter 3.—DURATION OF COPYRIGHT

Sec.
301. Preemption with respect in other laws.
302. Duration of copyright: Works created on or after January 1, 1978.
303. Duration of copyright: Works created but not published or copyrighted before January 1, 1978.
304. Duration of copyright: Subsisting copyrights.
305. Duration of copyright: Terminal date.

§ 301. Preemption with respect to other laws

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced before January 1, 1978; or

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106, including rights against misappropriation not equivalent to any of such exclusive rights, breaches of contract, breaches of trust, trespass, conversion, invasion of privacy, defamation, and deceptive trade practices such as passing off and false representation.

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2047. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2047. Notwithstanding the provisions of section 303, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, 2047.

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

§ 302. Duration of copyright; Works created on or after—January 1, 1978

(a) IN GENERAL.—Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and fifty years after the author's death.

(b) JOINT WORKS.—In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and fifty years after such last surviving author's death.

(c) ANONYMOUS WORKS, PSEUDONYMOUS WORKS, AND WORKS MADE FOR HIRE.—In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of seventy-five years from the year of its first publication, or a term of one hundred years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsections (a) or (d) of section 408, or in the records provided by this subsection, the copyright in the work endures for the term specified by subsections (a) or (b), based on the life of the author or authors whose identity has been revealed. Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of that person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.

(d) RECORDS RELATING TO DEATH OF AUTHORS.—Any person having an interest in a copyright may at any time record in the Copyright Office a statement of the date of death of the author of the copyrighted work, or a statement that the author is still living on a particular date. The statement shall identify the person filing it, the nature of that person's interest, and the source of the information recorded, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by

regulation. The Register shall maintain current records of information relating to the death of authors of copyrighted works, based on such recorded statements and, to the extent the Register considers practicable, on data contained in any of the records of the Copyright Office or in other reference sources.

(c) PRESUMPTION AS TO AUTHOR'S DEATH.—After a period of seventy-five years from the year of first publication of a work, or a period of one hundred years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report that the records provided by subsection (d) disclose nothing to indicate that the author of the work is living, or died less than fifty years before is entitled to the benefit of a presumption that the author has been dead for at least fifty years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title.

§ 303. Duration of copyright: Works created but not published or copyrighted before January 1, 1978

Copyright in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire before December 31, 2002; and if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2027.

§ 304. Duration of copyright: Subsisting copyrights

(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for twenty-eight years from the date it was originally secured: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall terminate at the expiration of twenty-eight years from the date copyright was originally secured.

(b) COPYRIGHTS IN THEIR RENEWAL TERM OR REGISTERED FOR RENEWAL BEFORE JANUARY 1, 1978.—The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive, is extended to endure for a term of seventy-five years from the date copyright was originally secured.

(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by the second proviso of subsection (a) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by a person or persons other than the author, termination of the grant may be effected by the surviving person or persons who executed it. In the case of a grant executed by one or more of the authors of the work, termination of the grant may be effected, to the extent of a particular author's share in the ownership of the renewal copyright, by the author who executed it or, if such author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, by his widow or her widower and his or her children or grandchildren as follows:

(A) the widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest;

(B) the author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them;

(C) the rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(6) In the case of a grant executed by a person or persons other than the author, all rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to all of those entitled to terminate the grant under clause (1) of this subsection. In the case of a grant executed by one or more of the authors of the work, all of a particular author's rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to that author or, if that author is dead, to the persons owning his or her termination interest under clause (2) of this subsection, including those owners who did not join in signing the notice of termination under clause (4) of this subsection. In all cases the reversion of rights is subject to the following limitations:

(A) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(B) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of this subsection.

(C) Where the author's rights revert to two or more persons under clause (2) of this subsection, they shall vest in those persons in the proportionate shares provided by that clause. In such a case, and subject to the provisions of subclause (D) of this clause, a further grant, or agreement to make a further grant, of a particular author's share with respect to any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under this clause, as are required to terminate the grant under clause (2) of this subsection. Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under this subclause, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this subclause.

(D) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the author or any of the persons provided by the first sentence of clause (6) of this subsection, or between the persons provided by subclause (C) of this clause, and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of this subsection.

(E) Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(F) Unless and until termination is effected under this subsection, the grant, if it does not provide otherwise, continues in effect for the remainder of the extended renewal term.

§ 305. Duration of copyright: Terminal date

All terms of copyright provided by sections 302 through 304 run to the end of the calendar year in which they would otherwise expire.

Chapter 4.—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

§ 401. Notice of copyright: Visually perceptible copies

(a) GENERAL REQUIREMENT.—Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

(b) FORM OF NOTICE.—The notice appearing on the copies shall consist of the following three elements:

(1) the symbol © (the letter C in a circle), or the word "Copyright", or the abbreviation "Copr."; and

(2) the year of first publication of the work; in the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles; and

(3) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognised, or a generally known alternative designation of the owner.

(c) POSITION OF NOTICE.—The notice shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement, but these specifications shall not be considered exhaustive.

§ 402. Notice of copyright: Phonorecords of sound recordings

(a) GENERAL REQUIREMENT.—Whenever a sound recording protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed phonorecords of the sound recording.

(b) FORM OF NOTICE.—The notice appearing on the phonorecords shall consist of the following three elements:

(1) the symbol (℗) (the letter P in a circle); and

(2) the year of first publication of the sound recording; and

(3) the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner; if the producer of the sound recording is named on the phonorecord labels or containers, and if not other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

(c) POSITION OF NOTICE.—The notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright.

§ 403. Notice of copyright: Publications incorporating United States Government works

Whenever a work is published in copies or phonorecords consisting preponderantly of one or more works of the United States Government, the notice of copyright provided by sections 401 or 402 shall also include a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.

§ 404. Notice of copyright: Contributions to collective works

(a) A separate contribution to a collective work may bear its own notice of copyright, as provided by sections 401 through 403. However, a single notice applicable to the collective work as a whole is sufficient to satisfy the requirements of sections 401 through 403 with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owner of copyright in the collective work), regardless of the ownership of copyright in the contributions and whether or not they have been previously published.

(b) Where the person named in a single notice applicable to a collective work as a whole is not the owner of copyright in a separate contribution that does not bear its own notice, the case is governed by the provisions of section 406(a).

§ 405. Notice of copyright: Omission of notice

(a) EFFECT OF OMISSION ON COPYRIGHT.—The omission of the copyright notice prescribed by sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright owner does not invalidate the copyright in a work if—

(1) the notice has been omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or

(2) registration for the work has been made before or is made within five years after the publication without notice, and a reasonable effort is made to add notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered; or

(3) the notice has been omitted in violation of an express requirement in writing that, as a condition of the copyright owner's authorization of the public distribution of copies or phonorecords, they bear the prescribed notice.

(b) EFFECT OF OMISSION ON INNOCENT INFRINGERS.—Any person who innocently infringes a copyright, in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted, incurs no liability for actual or statutory damages under section 504 for any infringing acts committed before receiving actual notice that registration for the work has been made under section 408, if such person proves that he or she was misled by the omission of notice. In a suit for infringement in such a case the court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require, as a condition for permitting the continuation of the infringing undertaking, that the infringer pay the copyright owner a reasonable license fee in an amount and on terms fixed by the court.

(c) REMOVAL OF NOTICE.—Protection under this title is not affected by the removal, destruction, or obliteration of the notice, without the authorization of the copyright owner, from any publicly distributed copies or phonorecords.

§ 406. Notice of copyright: Error in name or date

(a) ERROR IN NAME.—Where the person named in the copyright notice on copies or phonorecords publicly distributed by authority of the copyright owner is not the owner of copyright, the validity and ownership of the copyright are not affected. In such a case, however, any person who innocently begins an undertaking that infringes the copyright has a complete defense to any action for such infringement if such person proves that he or she was misled by the notice and began the undertaking in good faith under a purported transfer or license from the person named therein, unless before the undertaking was begun—

(1) registration for the work had been made in the name of the owner of copyright; or

(2) a document executed by the person named in the notice and showing the ownership of the copyright had been recorded.

The person named in the notice is liable to account to the copyright owner for all receipts from transfers or licenses purportedly made under the copyright by the person named in the notice.

(b) ERROR IN DATE.—When the year date in the notice on copies or phonorecords distributed by authority of the copyright owner is earlier than the year in which publication first occurred, any period computed from the year of first publication under section 302 is to be computed from the year in the notice. Where the year date is more than one year later than the year in which publication first occurred, the work is considered to have been published without any notice and is governed by the provisions of section 405.

(c) OMISSION OF NAME OR DATE.—Where copies or phonorecords publicly distributed by authority of the copyright owner contain no name or no date that could reasonably be considered a part of the notice, the work is considered to have been published without any notice and is governed by the provisions of section 405.

§ 407. Deposit of copies or phonorecords for Library of Congress

(a) Except as provided by subsection (c), and subject to the provisions of subsection (e), the owner of copyright or of the exclusive right of publication in a work published with notice of copyright in the United States shall deposit, within three months after the date of such publication—

(1) two complete copies of the best edition; or

(2) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords.

Neither the deposit requirements of this subsection nor the acquisition provisions of subsection (e) are conditions of copyright protection.

(b) The required copies of phonorecords shall be deposited in the Copyright Office for the use or disposition of the Library of Congress. The Register of Copyrights shall, when requested by the depositor and upon payment of the fee prescribed by section 708, issue a receipt for the deposit.

(c) The Register of Copyrights may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories. Such regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing

(23)

practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (i) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

(d) At any time after publication of a work as provided by subsection (a), the Register of Copyrights may make written demand for the required deposit on any of the persons obligated to make the deposit under subsection (a). Unless deposit is made within three months after the demand is received, the person or persons on whom the demand was made are liable—

(1) to a fine of not more than $250 for each work;

(2) to pay into a specially designated fund in the Library of Congress the total retail price of the copies or phonorecords demanded, or, if no retail price has been fixed, the reasonable cost to the Library of Congress of acquiring them; and

(3) to pay a fine of $2,500, in addition to any fine or liability imposed under clauses (1) and (2), if such person willfully or repeatedly fails or refuses to comply with such a demand.

(e) With respect to transmission programs that have been fixed and transmitted to the public in the United States but have not been published, the Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials, establish regulations governing the acquisition, through deposit or otherwise, of copies or phonorecords of such programs for the collections of the Library of Congress.

(1) The Librarian of Congress shall be permitted, under the standards and conditions set forth in such regulations, to make a fixation of a transmission program directly from a transmission to the public, and to reproduce one copy or phonorecord from such fixation for archival purposes.

(2) Such regulations shall also provide standards and procedures by which the Register of Copyrights may make written demand, upon the owner of the right of transmission in the United States, for the deposit of a copy or phonorecord of a specific transmission program. Such deposit may, at the option of the owner of the right of transmission in the United States, be accomplished by gift, by loan for purposes of reproduction, or by sale at a price not to exceed the cost of reproducing and supplying the copy or phonorecord. The regulations established under this clause shall provide reasonable periods of not less than three months for compliance with a demand, and shall allow for extensions of such periods and adjustments in the scope of the demand or the methods for fulfilling it, reasonably warranted by the circumstances. Willful failure or refusal to comply with the conditions prescribed by such regulations shall subject the owner of the right of transmission in the United States to liability for an amount, not to exceed the cost of reproducing and supplying the copy or phonorecord in question, to be paid into a specially designated fund in the Library of Congress.

(3) Nothing in this subsection shall be construed to require the making or retention, for purposes of deposit, of any copy or phonorecord of an unpublished transmission program, the transmission of which occurs before the receipt of a specific written demand as provided by clause (2).

(4) No activity undertaken in compliance with regulations prescribed under clauses (1) or (2) of this subsection shall result in liability if intended solely to assist in the acquisition of copies or phonorecords under this subsection.

§ 408. Copyright registration in general

(a) REGISTRATION PERMISSIVE.—At any time during the subsistence of copyright in any published or unpublished work, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Subject to the provisions of section 406(a), such registration is not a condition of copyright protection.

(b) DEPOSIT FOR COPYRIGHT REGISTRATION.—Except as provided by subsection (c), the material deposited for registration shall include—

(1) in the case of an unpublished work, one complete copy or phonorecord;

(2) in the case of a published work, two complete copies or phonorecords of the best edition;

(3) in the case of a work first published outside the United States, one complete copy or phonorecord as so published;

(4) in the case of a contribution to a collective work, one complete copy or phonorecord of the best edition of the collective work.

Copies or phonorecords deposited for the Library of Congress under section 407 may be used to satisfy the deposit provisions of this section, if they are accompanied by the prescribed application and fee, and by any additional identifying material that the Register may, by regulation, require. The Register shall also prescribe regulations establishing requirements under which copies or phonorecords acquired for the Library of Congress under subsection (e) of section 407, otherwise than by deposit, may be used to satisfy the deposit provisions of this section.

(c) ADMINISTRATIVE CLASSIFICATION AND OPTIONAL DEPOSIT.—

(1) The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. The regulations may require or permit, for particular classes, the deposit of identifying material instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration for a group of related works. This administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title.

(2) Without prejudice to the general authority provided under clause (1), the Register of Copyrights shall establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under all of the following conditions—

(A) if each of the works as first published bore a separate copyright notice, and the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner was the same in each notice; and

(B) if the deposit consists of one copy of the entire issue of the periodical or of the entire section in the case of a newspaper, in which each contribution was first published; and

(C) if the application identifies each work separately, including the periodical containing it and its date of first publication.

(3) As an alternative to separate renewal registrations under subsection (a) of section 304, a single renewal registration may be made for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, upon the filing of a single application and fee, under all of the following conditions:

(A) the renewal claimant or claimants, and the basis of claim or claims under section 304(a), is the same for each of the works; and

(B) the works were all copyrighted upon their first publication, either through separate copyright notice and registration or by virtue of a general copyright notice in the periodical issue as a whole; and

(C) the renewal application and fee are received not more than twenty-eight or less than twenty-seven years after the thirty-first day of December of the calendar year in which all of the works were first published; and

(D) the renewal application identifies each work separately, including the periodical containing it and its date of first publication.

(d) CORRECTIONS AND AMPLIFICATIONS.—The Register may also establish, by regulation, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration. Such application shall be accompanied by the fee provided by section 708, and shall clearly identify the registration to be corrected or amplified. The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.

(e) PUBLISHED EDITION OF PREVIOUSLY REGISTERED WORK.—Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.

§ 409. Application for registration

The application for copyright registration shall be made on a form prescribed by the Register of Copyrights and shall include—

(1) the name and address of the copyright claimant;

(2) in the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;

(3) if the work is anonymous or pseudonymous, the nationality or domicile of the author or authors;

(4) in the case of a work made for hire, a statement to this effect;

(5) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;

(6) the title of the work, together with any previous or alternative titles under which the work can be identified;

(7) the year in which creation of the work was completed;

(8) if the work has been published, to date and nation of its first publication;

(9) in the case of a compilation or derivative work, an identification of any pre-existing work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

(10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and

(11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work

or the existence, ownership, or duration of the copyright.

§ 410. Registration of claim and issuance of certificate

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, togethher with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(d) The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

§ 411. Registration as prerequisite to infringement suit

(a) Subject to the provisions of subsection (b), no action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that issue.

(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner—

(1) serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and

(2) makes registration for the work within three monthe after its first transmission.

§ 412. Registration as prerequisite to certain remedies for infringement

In any action under this title, other than an action instituted under section 411(b), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for—

(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or

(2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

Chapter 5.—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.
501. Infringement of copyright.
502. Remedies for infringement: Injunctions.
503. Remedies for infringement: Impounding and disposition of infringing articles.
504. Remedies for infringement: Damages and profits.
505. Remedies for infringement: Costs and attorney's fees.
506. Criminal offenses.
507. Limitations on actions.
508. Notification of filing and determination of actions.
509. Remedies for alteration of programing by cable systems.

§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of sections 205(d) and 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section III, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

§ 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

§ 504. Remedies for infringement: Damages and profits

(a) IN GENERAL.—Except as otherwise provided by this title, an infringer of copyright is liable for either—

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) ACTUAL DAMAGES AND PROFITS.—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) STATUTORY DAMAGES.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than $250 or more than $10,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $50,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than $100. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting

(25)

entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

§ 505. Remedies for infringement: Costs and and attorney's fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

§ 506. Criminal offenses

(a) CRIMINAL INFRINGEMENT.—Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be fined not more than $10,000 or imprisoned for not more than one year, or both: *Provided, however*, That any person who infringes willfully and for purposes of commercial advantage or private financial gain the copyright in a sound recording afforded by subsections (1), (2), or (3) of section 106 or the copyright in a motion picture afforded by subsections (1), (3), or (4) of section 106 shall be fined not more than $25,000 or imprisoned for not more than one year, or both, for the first such offense and shall be fined not more than $50,000 or imprisoned for not more than two years, or both, for any subsequent offense.

(b) SEIZURE, FORFEITURE, AND DESTRUCTION.—All copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of subsection (a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced, shall be seized and forfeited to the United States. When any person is convicted of any violation of subsection (a), the court in its judgment of conviction may, in addition to the penalty therein prescribed, order either the destruction or other disposition of all infringing copies or phonorecords and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced. The applicable procedures relating to (1) the seizure, summary and judicial forfeiture and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeitures, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(c) FRAUDULENT COPYRIGHT NOTICE.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than $2,500.

(d) FRAUDULENT REMOVAL OF COPYRIGHT NOTICE.—Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than $2,500.

(e) FALSE REPRESENTATION.—Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

§ 507. Limitations on actions

(a) CRIMINAL PROCEEDINGS.—No criminal proceeding shall be maintained under the provisions of this title unless it is commenced within three years after the cause of action arose.

(b) CIVIL ACTIONS.—No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

§ 508. Notification of filing and determination of actions

(a) Within one month after the filing of any action under this title, the clerks of the courts of the United States shall send written notification to the Register of Copyrights setting forth, as far as is shown by the papers filed in the court, the names and addresses of the parties and the title, author, and registration number of each work involved in the action. If any other copyrighted work is later included in the action by amendment, answer, or other pleading, the clerk shall also send a notification concerning it to the Register within one month after the pleading is filed.

(b) Within one month after any final order or judgment is issued in the case, the clerk of the court shall notify the Register of it, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court.

(c) Upon receiving the notifications specified in this section, the Register shall make them a part of the public records of the Copyright Office.

§ 509. Remedies for alteration of programing by cable systems

(a) In any action filed pursuant to section 111(c)(3), the following remedies shall be available:

(1) Where an action is brought by a party identified in subsection (b) or (c) of section 501, the remedies provided by sections 502 through 506, and the remedy provided by subsection (b) of this section; and

(2) Where an action is brought by a party identified in subsection (d) of section 501, the remedies provided by sections 502 and 505, together with any actual damages suffered by such party as a result of the infringement, and the remedy provided by subsection (b) of this section.

(b) In any action filed pursuant to section 111(c)(3), the court may decree that, for a period not to exceed thirty days, the cable system shall be deprived of the benefit of a compulsory license for one or more distant signals carried by such cable system.

Chapter 6.—MANUFACTURING REQUIREMENT AND IMPORTATION

§ 601. Manufacture, importation, and public distribution of certain copies

(a) Prior to January 1, 1981, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply—

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

(2) where the United States Customs Service is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter;

(3) where importation is sought under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;

(4) where importation, for use and not for sale, is sought:

(A) by any person with respect to no more than one copy of any work at any one time;

(B) by any person arriving from outside the United States, with respect to copies forming part of such person's personal baggage; or

(C) by an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form a part of its library;

(5) where the copies are reproduced in raised characters for the use of the blind; or

(6) where, in addition to copies imported under clauses (3) and (4) of this subsection, no more than two thousand copies of any one such work, which have not been manufactured in the United States or Canada, are publicly distributed in the United States; or

(7) where, on the date when importation is sought or public distribution in the United States is made—

(A) the author of any substantial part of such material is an individual and receives compensation for the transfer or license of the right to distribute the work in the United States; and

(B) the first publication of the work has previously taken place outside the United States under a transfer or license granted by such author to a transferee or licensee who was not a national or domiciliary of the United States or a domestic corporation or enterprise; and

(C) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and

(D) the copies were reproduced under a transfer or license granted by such author or by the transferee or licensee of the right of first publication as mentioned in subclause (B), and the transferee or the licensee of the right of reproduction was not a national or domiciliary of the United States or a domestic corporation or enterprise.

(c) The requirement of this section that copies be manufactured in the United States or Canada is satisfied if—

(1) in the case where the copies are printed directly from type that has been set, or directly from plates made from such

type, the setting of the type and the making of the plates have been performed in the United States or Canada; or

(2) in the case where the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the making of the plates has been performed in the United States or Canada; and

(3) in any case, the printing or other final process of producing multiple copies and any binding of the copies have been performed in the United States or Canada.

(d) Importation or public distribution of copies in violation of this section does not invalidate protection for a work under this title. However, in any civil action or criminal proceeding for infringement of the exclusive rights to reproduce and distribute copies of the work, the infringer has a complete defense with respect to all of the nondramatic literary material comprised in the work and any other parts of the work in which the exclusive rights to reproduce and distribute copies are owned by the same person who owns such exclusive rights in the nondramatic literary material, if the infringer proves—

(1) that copies of the work have been imported into or publicly distributed in the United States in violation of this section by or with the authority of the owner of such exclusive rights; and

(2) that the infringing copies were manufactured in the United States or Canada in accordance with the provisions of subsection (c); and

(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work, the copies of which have been manufactured in the United States or Canada in accordance with the provisions of subsection (c).

(e) In any action for infringement of the exclusive rights to reproduce and distribute copies of a work containing material required by this section to be manufactured in the United States or Canada, the copyright owner shall set forth in the complaint the names of the persons or organizations who performed the processes specified by subsection (c) with respect to that material, and the places where those processes were performed.

§ 602. Infringing importation of copies or phonorecords

(a) Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. This subsection does not apply to—

(1) importation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(2) importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(3) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies or phonorecords were lawfully made, the United States Customs Service has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.

§ 603. Importation prohibitions: Enforcement and disposition of excluded articles

(a) The Secretary of the Treasury and the United States Postal Service shall separately or jointly make regulations for the enforcement of the provisions of this title prohibiting importation.

(b) These regulations may require, as a condition for the exclusion of articles under section 602—

(1) that the person seeking exclusion obtain a court order enjoining importation of the articles; or

(2) that the person seeking exclusion furnish proof, of a specified nature and in accordance with prescribed procedures, that the copyright in which such person claims an interest is valid and that the importation would violate the prohibition in section 602; the person seeking exclusion may also be required to post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law.

Chapter 7.—COPYRIGHT OFFICE

Sec.

701. The Copyright Office: General responsibilities and organization.
702. Copyright Office regulations.
703. Effective date of actions in Copyright Office.
704. Retention and disposition of articles deposited in Copyright Office.
705. Copyright Office records: Preparation, maintenance, public inspection, and searching.
706. Copies of Copyright Office records.
707. Copyright Office forms and publications.
708. Copyright Office fees.
709. Delay in delivery caused by disruption of postal or other services.
710. Reproductions for use of the blind and physically handicapped: Voluntary licensing forms and procedures.

§ 701. The Copyright Office: General responsibilities and organization

(a) All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress. The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian's general direction and supervision.

(b) The Register of Copyrights shall adopt a seal to be used on and after January 1, 1978, to authenticate all certified documents issued by the Copyright Office.

(c) The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.

(d) Except as provided by section 706(b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, chapter 5, subchapter II and chapter 7).

§ 702. Copyright Office regulations

The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title. All regulations established by the Register under this title are subject to the approval of the Librarian of Congress.

§ 703. Effective date of actions in Copyright Office

In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.

§ 704. Retention and disposition of articles deposited in Copyright Office

(a) Upon their deposit in the Copyright Office under sections 407 and 408, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the United States Government.

(b) In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of unpublished works, the Library is entitled, under regulations that the Register of Copyrights shall prescribe, to select any deposits for its collections or for transfer to the National Archives of the United States or to a Federal records center, as defined in section 2901 of title 44.

(c) The Register of Copyrights is authorized, for specific or general categories of works, to make a facsimile reproduction of all or any part of the material deposited under section 408, and to make such reproduction a part of the Copyright Office records of the registration, before transferring such material to the Library of Congress as provided by subsection (b), or before destroying or otherwise disposing of such material as provided by subsection (d).

(d) Deposits not selected by the Library under subsection (b), or identifying portions or reproductions of them, shall be retained under the control of the Copyright Office, including retention in Government storage facilities, for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. After that period it is within the joint discretion of the Register and the Librarian to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be knowingly and intentionally destroyed or otherwise disposed of during its term of copyright unless a facsimile repro-

duction of the entire deposit has been made a part of the Copyright Office records as provided by subsection (c).

(c) The depositor of copies, phonorecords, or identifying material under section 408, or the copyright owner of record, may request retention, under the control of the Copyright Office, of one or more of such articles for the full term of copyright in the work. The Register of Copyrights shall prescribe, by regulation, the conditions under which such requests are to be made and granted, and shall fix the fee to be charged under section 708 (a)(11) if the request is granted.

§ 705. Copyright Office records: Preparation, maintenance, public inspection, and searching

(a) The Register of Copyrights shall provide and keep in the Copyright Office records of all deposits, registrations, recordations, and other actions taken under this title, and shall prepare indexes of all such records.

(b) Such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office, shall be open to public inspection.

(c) Upon request and payment of the fee specified by section 708, the Copyright Office shall make a search of its public records, indexes, and deposits, and shall furnish a report of the information they disclose with respect to any particular deposits, registrations, or recorded documents.

§ 706. Copies of Copyright Office records

(a) Copies may be made of any public records or indexes of the Copyright Office; additional certificates of copyright registration and copies of any public records or indexes may be furnished upon request and payment of the fees specified by section 708.

(b) Copies or reproductions of deposited articles retained under the control of the Copyright Office shall be authorized or furnished only under the conditions epecified by the Copyright Office regulations.

§ 707. Copyright Office forms and publications

(a) CATALOG OF COPYRIGHT ENTRIES.—The Register of Copyrights shall compile and publish at periodic intervals catalogs of all copyright registrations. These catalogs shall be divided into parts in accordance with the various classes of works, and the Register has discretion to determine, on the basis of practicability and usefulness, the form and frequency of publication of each particular part.

(b) OTHER PUBLICATIONS.—The Register shall furnish, free of charge upon request, application forms for copyright registration and general informational material in connection with the functions of the Copyright Office. The Register also has the authority to publish compilations of information, bibliographies, and other material he or she considers to be of value to the public.

(c) DISTRIBUTION OF PUBLICATIONS.—All publications of the Copyright Office shall be furnished to depository libraries as specified under section 1905 of title 44, and, aside from those furnished free of charge, shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

§ 708. Copyright Office fees

(a) The following fees shall be paid to the Register of Copyrights:

(1) for the registration of a copyright claim or a supplementary registration under section 408, including the issuance of a certificate of registration, $10;

(2) for the registration of a claim to renewal of a subsisting copyright in its first term under section 304(a), including the issuance of a certificate of registration, $6;

(3) for the issuance of a receipt for a deposit under section 407, $2;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document of six pages or less, convering no more than one title, $10; for each page over six and each title over one, 50 cents additional;

(5) for the filing, under section 115(b), of a notice of intention to make phonorecords, $6;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, $10 for a document of six pages or less, covering no more than one title; for each page over six and for each title over one, $1 additional;

(7 for the issuance, under section 601, of an import statement, $3;

(8) for the issuance, under section 706, of an additional certificate of registration, $4;

(9) for the issuance of any other certification, $4; the Register of Copyrights has discretion, on the basis of their cost, to fix the fees for preparing copies of Copyright Office records, whether they are to be certified or not;

(10) for the making and reposting of a search as provided by section 705, and for any related services, $10 for each hour or fraction of an hour consumed;

(11) for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.

(b) The fees prescribed by or under this section are applicable to the United States Government and any of its agencies, employees, or officers, but the Register of Copyrights has discretion to waive the requirements of this subsection in occasional or isolated cases involving relatively small amounts.

(c) The Register of Copyrights shall deposit all fees in the Treasury of the United States in such manner as the Secretary of the Treasury directs. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section; however, before making a refund in any case involving a refusal to register a claim under section 410(b), the Register shall deduct all or any part of the prescribed registration fee to cover the reasonable administrative costs of processing the claim.

§ 709. Delay in delivery caused by disruption of postal or other services

In any case in which the Register of Copyrights determines, on the basis of such evidence as the Register may by regulation require, that a deposit, application, fee, or any other material to be delivered to the Copyright Office by a particular date, would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other transportation or communications services, the actual receipt of such material in the Copyright Office within one month after the date on which the Register determines that the disruption or suspension of such services has terminated, shall be considered timely.

§ 710. Reproductions for use of the blind and physically handicapped: Voluntary licensing forms and procedures

The Register of Copyrights shall, after consultation with the Chief of the Division for the Blind and Physically Handicapped and other appropriate officials of the Library of Congress, establish by regulation standardized forms and procedures by which, at the time applications covering certain specified categories of nondramatic literary works are submitted for registration under section 408 of this title, the copyright owner may voluntarily grant to the Library of Congress a license to reproduce the copyrighted work by means of Braille or similar tactile symbols, or by fixation of a reading of the work in a phonorecord, or both, and to distribute the resulting copies or phonorecords solely for the use of the blind and physically handicapped and under limited conditions to be specified in the standardized forms.

Chapter 8.—COPYRIGHT ROYALTY COMMISSION

Sec.
801. Copyright Royalty Commission: Establishment and purpose.
802. Membership of the Commission.
803. Procedures of the Commission.
804. Institution and conclusion of proceedings.
805. Administrative support of the Commission.
806. Deduction of costs of proceedings.
807. Reports.
808. Effective date of final determinations.
809. Judicial review.

§ 801. Copyright Royalty Commission: Establishment and purpose

(a) There is hereby created a Copyright Royalty Commission.

(b) Subject to the provisions of this chapter, the purposes of the Commission shall be—

(1) to make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 115 and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118. Such determinations shall be based upon relevant factors occurring subsequent to the date of enactment of this Act;

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

(A) The rates established by section 111 (d)(2)(B) may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act: *Provided*, That if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(2)(B) shall be permitted: And *provided further*, That no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The Commission may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(2)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Commission shall consider, among other factors, the economic impact on copyright owners and users: *Provided*, That no adjustment in royalty rates shall be made under this sub-

clause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communciations Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(2)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(2)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment; and

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111 and 116, and to determine, in cases where controversy exists, the distribution of such fees.

(c) As soon as possible after the date of enactment of this Act, and no later than six months following such date, the President shall publish a notice announcing the initial appointments provided in section 802.

§ 802. Membership of the Commission

(a) The Commission shall be composed of three members appointed by the President for a term of five years each; of the first three members appointed, two shall be designated to serve for five years from the date of the notice specified in section 801(c), and one shall be designated to serve for three years from such date, respectively. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

(b) The President shall appoint a Chairman.

(c) Any vacancy in the Commission shall not affect its powers and shall be filled, for the unexpired term of the appointment, in the same manner as the original appointment was made.

§ 803. Procedures of the Commission

(a) The Commission shall adopt regulations, not inconsistent with law, governing its procedure and methods of operation. Except as otherwise provided in this chapter, the Commission shall be subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, chapter 5, subchapter II and chapter 7).

(b) Every final determination of the Commission shall be published in the Federal Register. It shall state in detail the criteria that the Commission determined to be applicable to the particular proceeding, the various facts that it found relevant to its determination in that proceeding, and the specific reasons for its determination.

§ 804. Institution and conclusion of proceedings

(a) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under section 801(b)(2)(A) and (D)—

(1) on January 1, 1980, the Chairman of the Commission shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter; and

(2) during the calendar years specified in the following schedule, any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Commission, may file a petition with the Commission declaring that the petitioner requests an adjustment of the rate. The Commission shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Commission determines that the petitioner has a significant interest, the Chairman shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with notice of commencement of proceedings under this chapter.

(A) In proceedings under section 801(b)(2)(A) and (D), such petition may be filed during 1985 and in each subsequent fifth calendar year.

(B) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, such petition may be filed in 1987 and in each subsequent tenth calendar year.

(C) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates under section 116, such petition may be filed in 1990 and in each subsequent tenth calendar year.

(b) With respect to proceedings under subclause (B) or (C) of section 801(b)(2), following an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established by the Commission, may, within twelve months, file a petition with the Commission declaring that the petitioner requests an adjustment of the rate. In this event the Commission shall proceed as in subsection (a)(2), above. Any change in royalty rates made by the Commission pursuant to this subsection may be reconsidered in 1990, 1995, and in each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be.

(c) With respect to proceedings under section 801(b)(1), concerning the determination of reasonable terms and rates of royalty payments as provided in section 118, the Commission shall proceed when and as provided by that section.

(d) With respect to proceedings under section 801(b)(3), concerning the distribution of royalty fees in certain circumstances under section 111 or 116, the Chairman of the Commission shall, upon determination by the Commission that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

(e) All proceedings under this chapter shall be initiated without delay following publication of the notice specified in this section, and the Commission shall render its final decision in any such proceeding within one year from the date of such publication.

§ 805. Administrative support of the Commission

(a) To assist in its work, the Commission may appoint a staff which shall be an administrative part of the Library of Congress, but which shall be responsible to the Commission for the administration of the duties entrusted to the staff.

(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5.

§ 806. Deduction of costs of proceedings

Before any funds are distributed pursuant to a final decision in a proceeding involving distribution of royalty fees, the Commission shall assess the reasonable costs of such proceeding.

§ 807. Reports

In addition to its publication of the reports of all final determinations as provided in section 803(b), the Commission shall make an annual report to the President and the Congress concerning the Commission's work during the preceding fiscal year, including a detailed fiscal statement of account.

§ 808. Effective date of final determinations

Any final determination by the Commission under this chapter shall become effective thirty days following its publication in the Federal Register as provided in section 803(b), unless prior to that time an appeal has been filed pursuant to section 809, to vacate, modify, or correct such determination, and notice of such appeal has been served on all parties who appeared before the Commission in the proceeding in question. Where the proceeding involves the distribution of royalty fees under section 111 or 116, the Commission shall, upon the expiration of such thirty-day period, distribute any royalty fees not subject to an appeal filed pursuant to section 809.

§ 809. Judicial review

Any final decision of the Commission in a proceeding under section 801(b) may be appealed to the United States Court of Appeals, within thirty days after its publication in the Federal Register, by an aggrieved party. The judicial review of the decision shall be had, in accordance with chapter 7 of title 5, on the basis of the record before the Commission. No court shall have jurisdiction to review a final decision of the Commission except as provided in this section.

TRANSITIONAL AND SUPPLEMENTARY PROVISIONS

SEC. 102. This Act becomes effective on January 1, 1978, except as otherwise expressly provided by this Act, including provisions of the first section of this Act. The provisions of sections 118, 804(b), and chapter 8 of title 17, as amended by the first section of this Act, take effect upon enactment of this Act.

SEC. 103. This Act does not provide copyright protection for any work that goes into the public domain before January 1, 1978. The exclusive rights, as provided by section 106 of title 17 as amended by the first section of this Act, to reproduce a work in phonorecords and to distribute phonorecords of the work, do not extend to any nondramatic musical work copyrighted before July 1, 1909.

SEC. 104. All proclamations issued by the President under section 1(e) or 9(b) of title 17 as it existed on December 31, 1977, or under previous copyright statutes of the United States, shall continue in force until terminated, suspended, or revised by the President.

SEC. 105. (a)(1) Section 505 of title 44 is amended to read as follows:

"§ 505. Sale of duplicate plates

"The Public Printer shall sell, under regulations of the Joint Committee on Printing to persons who may apply, additional or duplicate stereotype or electrotype plates from which a Government publication is printed, at a price not to exceed the cost of composition, the metal, and making to the Government, plus 10 per centum, and the full amount of the price shall be paid when the order is filed.".

(2) The item relating to section 505 in the sectional analysis at the beginning of chapter 5 of title 44 is amended to read as follows:

"505. Sale of duplicate plates.".

(b) Section 2113 of title 44 is amended to read as follows:

"§ 2113. Limitation on liability

"When letters and other intellectual productions (exclusive of patented material,

(29)

published works under copyright protection, and unpublished works for which copyright registration has been made) come into the custody or possession of the Administrative of General Services, the United States or its agents are not liable for infringement of copyright or analogous rights arising out of use of the materials for display, inspection, research, reproduction, or other purposes.".

(c) In section 1498(b) of title 28, the phrase "section 101(b) of title 17" is amended to read "section 504(c) of title 17".

(d) Section 543(a)(4) of the Internal Revenue Code of 1954, as amended, is amended by striking out "(other than by reason of section 2 or 6 thereof)".

(e) Section 3208(a) of title 39 is amended by striking out clause (5). Section 3206 of title 39 is amended by deleting the words "subsections (b) and (c)" and inserting "subsection (b)" in subsection (a), and by deleting subsection (c). Section 3206(d) is renumbered (c).

(f) Subsection (a) of section 290(e) of title 15 is amended by deleting the phrase "section 8" and inserting in lieu thereof the phrase "section 105".

(g) Section 131 of title 2 is amended by deleting the phrase "deposit to secure copyright," and inserting in lieu thereof the phrase "acquisition of material under the copyright law,".

SEC. 106. In any case where, before January 1, 1978, a person has lawfully made parts of instruments serving to reproduce mechanically a copyrighted work under the compulsory license provisions of section 1(e) of title 17 as it existed on December 31, 1977, such person may continue to make and distribute such parts embodying the same mechanical reproduction without obtaining a new compulsory license under the terms of section 115 of title 17 as amended by the first section of this Act. However, such parts made on or after January 1, 1978, constitute phonorecords and are otherwise subject to the provisions of said section 115.

SEC. 107. In the case of any work in which an ad interim copyright is subsisting or is capable of being secured on December 31, 1977, under section 22 of title 17 as it existed on that date, copyright protection is hereby extended to endure for the term or terms provided by section 304 of title 17 as amended by the first section of this Act.

SEC. 108 The notice provisions of sections 401 through 403 of title 17 as amended by the first section of this Act apply to all copies or phonorecords publicly distributed on or after January 1, 1978. However, in the case of a work published before January 1, 1978, compliance with the notice provisions of title 17 either as it existed on December 31, 1977, or as amended by the first section of this Act, is adequate with respect to copies publicly distributed after December 31, 1977.

SEC. 109. The registration of claims to copyright for which the required deposit, application, and fee were received in the Copyright Office before January 1, 1978, and the recordation of assignments of copyright or other instruments received in the Copyright Office before January 1, 1978, shall be made in accordance with title 17 as it existed on December 31, 1977.

SEC. 110. The demand and penalty provisions of section 14 of title 17 as it existed on December 31, 1977, apply to any work in which copyright has been secured by publication with notice of copyright on or before that date, but any deposit and registration made after that date in response to a demand under that section shall be made in accordance with the provisions of title 17 as amended by the first section of this Act.

SEC. 111. Section 2318 of title 18 of the United States Code is amended to read as follows:

"§ 2318. Transportation, sale or receipt of phonograph records bearing forged or counterfeit labels

"(a) Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for the first such offense and shall be fined not more than $25,000 or imprisoned for not more than two years, or both, for any subsequent offense.

"(b) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.".

SEC. 112. All causes of action that arose under title 17 before January 1, 1978, shall be governed by title 17 as it existed when the cause of action arose.

SEC. 113. (a) The Librarian of Congress (hereinafter referred to as the "Librarian") shall establish and maintain in the Library of Congress a library to be known as the American Television and Radio Archives (hereinafter referred to as the "Archives"). The purpose of the Archives shall be to preserve a permanent record of the television and radio programs which are the heritage of the people of the United States and to provide access to such programs to historians and scholars without encouraging or causing copyright infringement.

(1) The Librarian, after consultation with interested organizations and individuals, shall determine and place in the Archives such copies and phonorecords of television and radio programs transmitted to the public in the United States and in other countries which are of present or potential public or cultural interest, historical significance, cognitive value, or otherwise worthy of preservation, including copies and phonorecords of published and unpublished transmission programs—

(A) acquired in accordance with sections 407 and 408 of title 17 as amended by the first section of this Act; and

(B) transferred from the existing collections of the Library of Congress; and

(C) given to or exchanged with the Archives by other libraries, archives, organizations, and individuals; and

(D) purchased from the owner thereof.

(2) The Librarian shall maintain and publish appropriate catalogs and indexes of the collections of the Archives, and shall make such collections available for study and research under the conditions prescribed under this section.

(b) Notwithstanding the provisions of section 106 of title 17 as amended by the first section of this Act, the Librarian is authorized with respect to a transmission program which consists of a regularly scheduled newscast or on-the-spot coverage of news events and, under standards and conditions that the Librarian shall prescribe by regulation—

(1) to reproduce a fixation of such a program, in the same or another tangible form, for the purposes of preservation or security or for distribution under the conditions of clause (3) of this subsection; and

(2) to compile, without abridgement or any other editing, portions of such fixations according to subject matter, and to reproduce such compilations for the purpose of clause (1) of this subsection; and

(3) to distribute a reproduction made under clause (1) or (2) of this subsection—

(A) by loan to a person engaged in research; and

(B) for deposit in a library or archives which meets the requirements of section 108 (a) of title 17 as amended by the first section of this Act,

in either case for use only in research and not for further reproduction or performance.

(c) The Librarian or any employee of the Library who is acting under the authority of this section shall not be liable in any action for copyright infringement committed by any other person unless the Librarian or such employee knowingly participated in the act of infringement committed by such person. Nothing in this section shall be construed to excuse or limit liability under title 17 as amended by the first section of this Act for any act not authorized by that title or this section, or for any act performed by a person not authorized to act under that title or this section.

(d) This section may be cited as the "American Television and Radio Archives Act".

SEC. 114. There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act, except that no more than $500,000 shall be appropriated annually for the operations of the Copyright Royalty Commission.

SEC. 115. If any provision of title 17, as amended by the first section of this Act, is declared unconstitutional, the validity of the remainder of the title is not affected.

Mr. KASTENMEIER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

AMENDMENT OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KASTENMEIER: On page 168 delete line 16 through 19, and renumber the following section accordingly.

Mr. KASTENMEIER. Mr. Chairman, I will only take a moment to say that this amendment conforms with the agreement made with the Committee on Rules as a result of the point of order raised by the Committee on the Budget; namely, that the appropriation provision had not been authorized or approved by the deadline of May 15, of this year.

Accordingly, consistent with the agreement made, the subcommittee urges the deletion of this provision.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. KASTENMEIER).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. YATRON

Mr. YATRON. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc, and I ask unanimous consent that, since they were not properly presented in the RECORD, they be considered at this time notwithstanding that fact.

The CHAIRMAN. Is there objection to ıe request of the gentleman from Pennsylvania?

Mr. RHODES. Mr. Chairman, reserving the right to object, I did not understand what the gentleman asked for.

The CHAIRMAN. Will the gentleman from Pennsylvania repeat his unanimous consent request?

Mr. YATRON. Mr. Chairman, I understand that my amendments were not properly presented in the RECORD.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Chairman, it is my understanding that the amendments were drafted to be put into the committee print rather than the Union Calendar print, and it is this technical deficiency to which the gentleman alludes and asks unanimous consent that that error or that inconsistency be waived, together with the fact that, having five amendments, as I understand it, the gentleman from Pennsylvania (Mr. YATRON) is also asking that they be considered en bloc.

Mr. RHODES. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. McCLORY. Mr. Chairman, further reserving the right to object, will the gentleman state whether or not they are in compliance, nevertheless, with the rule and that they were filed? I think the rule requires that they be filed three days in advance, but they were merely technically filed with respect the bill and not the substitute that is now before us?

Mr. KASTENMEIER. Mr. Chairman, if the gentleman will yield to me, I will say that I know the five amendments were printed in the RECORD otherwise consistent with the rule, and it was not my intention to make a point of order on the question of insufficiency.

Mr. McCLORY. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, are these amendments now in form so that they can be presented to us as the gentleman is now going to present them? This conformity is not going to be left to the Clerk or anyone else?

Mr. KASTENMEIER. If the gentleman will yield to me, I would say to the gentleman from Maryland that it is my understanding that they are otherwise in form to be consistent with the print of the bill now under consideration.

Mr. BAUMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. YATRON: On page 102, line 3, insert a new paragraph as follows:

"(v) Where the community of the cable system is not, in whole or in part, within the local service area of three independent stations and one noncommercial educational station, the royalty fee imposed under paragraph (1) above shall include payment for a sufficient number of additional independent stations or a noncommercial educational station to provide the above complement of station signals to such cable system."

On page 106, strike lines 20 through the word "authorizations" in line 29 and substitute the following: "The 'local service area of a primary transmitter' in the case of a television broadcast station, for the purposes of this Title, comprises the area in which the primary transmitter can be or is received by the direct interception of a free space radio wave emission by such broadcast television station, provided such television station antenna is located within 120 miles from the community of the cable system."

On page 144, line 30, strike out all of clause (ii) subsection (d).

On page 159, line 14, strike out all of subparagraph (A), and reletter subparagraph (B) as (A) and subparagraph (D) on page 160 as (B).

On page 160, line 21, strike out all of subparagraph (C).

Mr. YATRON (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. YATRON asked and was given permission to revise and extend his remarks.)

Mr. YATRON. Mr. Chairman, and Members of the House, today, in the few minutes allotted to me, I want to speak on the copyright bill which we are presently considering on behalf of some 35 million viewers throughout our Nation, who will be affected by its provisions, including over 4 million or better than 27 percent of all of the Pennsylvania television viewers—none of whom up to this moment, have ever been directly informed by anyone, as to how this bill will affect them financially and otherwise in the years ahead. In my own district, this bill will affect the cable subscribers in some 106 communities or over 76,000 homes and more than one-quarter million viewers—more than half of all my constituents.

In this day of consumer concern and protection, no one in this Congress can, in good conscience, disregard the real parties in the interest of this legislation—the television viewers.

Under the copyright revision bill before the House, the basic concept is to impose copyright liability only on the reception and transmission of distant signals, and for the privilege of transmitting such signals. The accepted premise of this basic concept, is that no copyright liability should be imposed for the reception and transmission of local signals. And yet, because the bill unfortunately adopts the definition of "local" signals under the FCC rules as of April 15, 1976, its effect on cable viewers is to impose copyright fees for signals which are, in fact, local signals, received off the air.

This result comes about from the artificial application of the FCC rules defining local and distant signals, for policy purposes, to determine copyright liability. It is well recognized that many more signals can be received and are received by conventional rooftop antennas, off-the-air, than the "local" signals, under the FCC regulation.

Let me emphasize that this amendment does not affect the basic premise of the bill but, in fact, properly implements the premise. All cable television systems will still pay the basic copyright fee, including the special treatment for very small systems.

The amendment does not, in any way, affect the payment of copyright for truly distant signals, or the rate of payment for such signals.

The amendment for proper treatment of local and distant signals, will correct the definition to correspond to actual reception conditions, and result in an equality of treatment for off-the-air reception, whether by conventional rooftop antenna, or by the master antenna of a cable television system. This eliminates discrimination among television viewers in the same community, for the same reception.

Some areas of the country have available 14 different television signals, some have one, and a small area has none. Cable television can provide the means for equal television reception for all viewers. It has the capability for providing a minimum choice of signals, for television viewers.

It must be remembered that the copyright owners make use of the public airwaves, for broad dissemination of their copyright property, which greatly increases financial returns.

At the same time, the copyright owners do not pay for the use of the public airwaves, nor do they contribute to the cost of cable television facilities which are necessary in many areas, to provide satisfactory reception of broadcast signals.

The amendment proposed to section 111(d)(2)(b) would include within the basic copyright royalty fee of .00675 a minimum number of signals in order to insure a basic complement of signals to all viewers.

The complement would include, in addition to the national networks, three independent stations and one noncommercial educational station. This amendment avoids the creation of a discriminated segment of the viewing public, because of copyright.

Let me emphasize that this amendment does not encroach upon the regulatory authority of the FCC.

It relates only to establishing the copyright royalty fee, leaving the regulatory aspects for resolution by the FCC, or the appropriate committees of Congress

I respectfully submit to you, Mr. Chairman, that unfair and discriminatory treatment of so many of our television viewers could be removed by the adoption of my amendments.

Mr. KASTENMEIER. Mr. Chairman, I rise in opposition to the amendments.

(Mr. KASTENMEIER asked and was given permission to revise and extend his remarks.)

Mr. KASTENMEIER. Mr. Chairman, would like to compliment the gentleman

from Pennsylvania (Mr. YATRON) on his presentation in offering these amendments; but the amendments themselves are totally destructive of the bill and the purpose of the bill.

The bill, it must be remembered, is a copyright bill. What the gentleman's amendments do is this: We have established the principle of "distant" and "local" markets, for example, as the basis for the cable royalty formula of the bill. The gentleman would replace that entirely.

Furthermore, Mr. Chairman, the second amendment of the gentleman from Pennsylvania would redefine the local-service area for a primary transmitter to something far larger than the 35-mile radius which would normally be the case under existing FCC regulations.

Mr. VAN DEERLIN. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. Yes, I yield to the gentleman from California.

(Mr. VAN DEERLIN asked and was given permission to revise and extend his remarks.)

Mr. VAN DEERLIN. Mr. Chairman, of course, it is with great reluctance that I join in opposing the amendments offered by our good friend, the gentleman from Pennsylvania (Mr. YATRON), with whom I suppose I vote 95 percent of the time.

Mr. Chairman, with respect to this particular amendment, No. 2, to which the gentleman from Wisconsin (Mr. KASTENMEIER) has referred, it changes the radius of the local service area from 35 miles to 120 miles. This, of course, encroaches, as the committee was very careful not to do in the preparation of this bill, not only on the jurisdiction of the Federal Communications Commission, but also upon the jurisdiction of the Committee on Interstate and Foreign Commerce.

Mr. Chairman, the amendment would invite such ridiculous results as New York stations coming into Philadelphia as local signals or Los Angeles signals—God forbid—coming into San Diego as local signals.

Therefore, Mr. Chairman, I must join in opposing these amendments which, I understand perfectly well, are offered for a constituency which is well served by the gentleman from Pennsylvania (Mr. YATRON). It happens that these amendments would not well serve the completion of this vitally important and long-overdue copyright legislation.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I thank the distinguished chairman for yielding.

I merely want to compliment my good friend, the gentleman from Pennsylvania (Mr. YATRON), for his excellent presentation. He has a district similar to mine, which is mountainous and has to depend upon cable television, if it has any television whatever.

Furthermore, over the years, of course, the copyrights, I believe, were intended at first to last 17 years; but from time to time we have extended copyrights on down to grandchildren and great grandchildren, far and beyond the length to which they really should have been extended. I do not think they should go on forever.

Mr. Chairman, I thank the distinguished gentleman from Wisconsin for yielding.

Mr. KASTENMEIER. Mr. Chairman, to conclude the point I wanted to make, namely, that the series of five amendments offered by the gentleman from Pennsylvania would destroy the carefully worked out balance we achieved between many of the cable systems that are in total agreement with this bill, and the proprietors of copyrighted material.

I recognize that there are some cable systems which would still rather not have to pay anything at all, but I would urge that the committee realize that this bill provides royalty payments of about $8½ million for cable systems. With about 11 million viewers that is perhaps 80 cents a year per viewer for material that now costs the cable systems nothing. They essentially engage in retransmission. So that I suggest that the arrangement we have worked out is not only fair, but given the difficulties among the affected industries, the integrity of these formulas should be maintained. Accordingly, Mr. Chairman, I urge the defeat of these amendments.

Mr. DANIELSON. Mr. Chairman I rise in opposition to the amendment.

The CHAIRMAN. The Chair would advise the gentleman from California that under the rule governing the consideration of this bill, only one 5-minute speech in favor of, and one 5-minute speech in opposition to each amendment is in order. Under the rule, the gentleman could be recognized only by unanimous consent for a pro forma amendment or for a second speech in opposition to the amendment.

Mr. DANIELSON. Then, Mr. Speaker, I ask unanimous consent that I may be permitted to proceed.

The CHAIRMAN. The Chair would inquire for what length of time? I could not hear the gentleman.

Mr. DANIELSON. Mr Speaker, I ask unanimous consent that I may be recognized for 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. RAILSBACK Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. Does the gentleman from California, Mr. DANIELSON, yield for a parliamentary inquiry?

Mr. DANIELSON. Mr. Chairman, I yield.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. RAILSBACK. Mr. Speaker, I wonder if it would not be a good idea to get clear exactly the text of the rule we are proceeding under? I knew there was the requirement that the amendments be printed in the record, but I had no idea that this would limit debate to the traditional 5 minutes for the proponent and 5 minutes for the opponent.

The CHAIRMAN (Mr. SMITH of Iowa). The Chair will state that the rule reads:

No amendment to said amendment shall be in order except amendments offered by direction of the Committee on the Judiciary and germane amendments printed in the Congressional Record at least three calendar days prior to the start of the consideration of said bill for amendment, but said amendments shall not be subject to amendment except those offered by direction of the Committee on the Judiciary.

It does not make any exception for pro forma amendments, and therefore pro forma amendments are not in order. The rule also states that amendments to amendments cannot be offered by anyone other than the Committee on the Judiciary. However, the Members can, by unanimous consent, secure the right to proceed.

Mr. DANIELSON. Mr. Chairman, I am having difficulty hearing the Chair.

The CHAIRMAN. The Chair will state that the rule is as follows:

. . . said amendments shall not be subject to amendment except those offered by direction of the Committee on the Judiciary.

The rule does not make any exception for pro forma amendments. Therefore pro forma amendments are not in order.

However the Chair will state that the gentleman from California (Mr. DANIELSON) did seek and receive unanimous consent to proceed for 5 minutes.

Mr. DANIELSON. Mr. Chairman, since the 5 minutes have almost expired, may I have my time back again?

The CHAIRMAN. The gentleman from California is recognized.

Mr. DANIELSON. Mr. Chairman, I am not making a pro forma amendment, but I rose in opposition to the amendment.

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. DANIELSON. Mr. Chairman, I wish to have the record reflect that the otherwise very cogent reasons offered by the gentleman from Pennsylvania (Mr. YATRON) were considered at great length in the committee as we worked over this bill. We took them into account by providing a special, small system adjustment in the fees to be paid and we considered practically every objection. I believe we have done an equitable job of arranging for the payment of royalties.

The bill S. 22 is an exceedingly complex bill. Among many other things it would establish new rights and liabilities in the copyright liability of cable television, a subject which until now has not been covered by legislation. The subject is somewhat controversial, largely because it is new, and I feel that it requires added discussion.

At the threshold we must be aware that we are dealing with a property right. Copyright is a property right. It is often referred to as "intellectual property". It was known and honored in the common law. It was specifically recognized by the Founding Fathers in the Constitution, and the regulation of copyright was among the powers delegated to the Congress. Article I, section 8, clause 8.

As with more familiar forms of property, copyright can be bargained for, bought and sold, it can be the subject of a gift, it can be licensed for a specific use or period of time. It is subject to testamentary disposition and the laws of succession.

As a form of property, copyright is also afforded the protection of the Constitution and our laws, including the injunctions of the fifth and 14th amendments which declare that no person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation. The Constitution also provides that authors and inventors are to have the exclusive right to their respective writings and discoveries.

For more than 1½ years the Judiciary Committee has been working on the copyright revision bill. The most controversial, difficult, and extensive part of that work has been the granting of a compulsory license and the development of a formula for the imposition and allocation of copyright royalty charges placed upon the secondary transmission by cable television systems of copyrighted programing which is broadcast by television stations.

In more familiar transactions in property there is no need for Government to intervene. In the free market buyers and sellers are able to bargain for and to reach prices which are acceptable to all concerned. The same is usually true in the case of business transactions involving copyrighted properties. However, the unique character and role of cable television is such that the committee has been compelled to depart from traditional practices. The bill subjects broadcasts of copyrighted programing to a compulsory license vested in cable systems which retransmit—secondarily transmit—those broadcasts to their subscribers, it imposes a royalty charge on certain of those secondary transmissions, and provides a means for the payment and distribution of the royalty charges by the users and to the owners.

In working out this formula, the commitee has arrived at a solution which, I sumbit, is workable and is fair and equitable to both the owners and the users of copyrighted materials and which also protects and serves the public interest.

Over the years it has been decided, and it is now settled, that it is the "performance" of a copyrighted work which gives rise to the liability to pay a royalty to the owner of the copyright. It has also been decided that the broadcast of a work by radio or television constitutes a "performance" and invokes copyright liability. The vastness and anonymity of the audience, the uncontrollable public access to programing once broadcast, the inability to identify and to impose a direct charge upon the viewers, our public policy that "the airwaves belong to the public," all of these gave rise to complex royalty problems arising out of radio and television broadcasts, but most of those problems have been resolved. The advent of cable television reopened and compounded those problems, and added another. What is the nature of the service provided by a cable system? Is it a "performance" which invokes copyright liability? Admittedly its role is passive, for it does not control the original broadcast. It is argued that cable merely intercepts the signal which has already been broadcast and then carries it to the subscriber's television receiver. It is argued that cable is merely an extension of the viewer's antenna. But the copyright owners and the copyright licensees argue that the cable systems are distributing the broadcast signals to a vastly greater audience than the broadcaster could reach and that this constitutes a "performance" and should invoke a copyright liability.

Being compelled to work with the existing copyright law, which was enacted in 1909, before radio and television, let alone cable, the Supreme Court has had a difficult time deciding the cases and controversies involving copyright which have heretofore arisen between copyright owners, broadcasters and cable television systems. In the Fortnightly and Teleprompter cases the Supreme Court held that the role played by cable was not that of a performer but, rather, the passive role of the viewer and as an extension of the viewer's antenna and that since this did not constitute a "performance" copyright liability was not invoked. In my opinion those were correct decisions under the facts of those cases. If the cable system does no more than intercept a broadcast signal and deliver it to the subscriber's television receiver, within the broadcasting station's local market area, then the cable system is only an extension of the viewer's antenna, should not be considered as a "performer" of the copyrighted material and no liability to pay a royalty should attach.

Under such circumstances the copyright owner has been able to bargain for a royalty payment with the knowledge that the performance may be viewed and heard by all persons within the local market area. Also, the broadcast station which purchases the right to use the copyrighted material is in an excellent position to estimate the number of viewers/listeners who will witness the performance and is able to bargain for the mix of royalties which he pays and advertising rates which he charges which will meet his commercial needs.

Today cable is able to do more, and often does more, than merely to intercept a signal and deliver it to the subscriber's receiving set located within the local market area of the primary tranmitter. With advances in the state of the art, cable sysems are now able to transmit signals by cable, microwave and satellite, almost without limit as to distance. They are governed, as they should be, by the Federal Communications Commission and other regulatory and franchising agencies but are restricted very little by technological limitations. Cable now can, and does, transmit signals far beyond the local market area. In the bill we refer to these as "distant signals." Admittedly they serve the public interest.

The copyright laws should not limit the extent to which cable serves the public interest. Although the Founding Fathers could not contemplate the size of the geographical distribution of the audience which can be reached by cable they certainly did not contemplate an arbitrary limitation on either of those factors. And it should be remembered that they delegated to the Congress the power to regulate copyright in order "to promote the progress of science and the useful arts."

Cable has a yet unrealized capability to broaden our horizons and to bring education, information, and entertainment to people everywhere. Surely this is in the public interest and for the public benefit. The copyright laws should not be used to restirct or impair that flow of knowledge. To the extent that regulation is necessary it can be accomplished through the FCC and through State and local utility commissions and similar bodies. Such regulation is not the proper role of the copyright laws.

Remembering that copyright is a property right we must also remember that the owner cannot be deprived of his property without due process of law nor can it be taken for public use without just compensation. This is where the most difficult problems arose in working out the copyright bill. We wished to permit and encourage the broader dissemination of communications through cable while being fair and equitable to the owners and users of copyrighted materials and at the same time protecting the public interest. The committee process is now complete and the committee has presented a bill which gives cable a compulsory license to intercept and retransmit—secondarily transmit—television and radio broadcasts. It recognizes the passive, "antenna," role of cable in secondary transmissions within the local market area, and imposes no liability to pay copyright royalties for those "local" transmissions. The bill, however, recognizes that when cable secondarily transmits signals to a place beyond the local market area, then it is doing something extra, it is adding something which would not exist but for the role of the cable system. This something extra, which is distant signal transmitting, impinges upon the property rights of the copyright owner who is thereby, to some extent, deprived of his property and denied the exclusive right to his property which is guaranteed by the Constitution and our laws and he is entitled to just compensation. This "something extra" could be considered as a "performance," or as an alternative to a performance.

The bill therefore imposes a schedule of royalty charges upon the secondary transmission of distant signals. The charges which are imposed, and the manner of their imposition, is set forth in detail in the body of the committee report; so is the method by which they are to be distributed to the copyright owners. Provision is made for future adjustments to the royalty schedules because the setting of royalties is unduly burdensome for a legislative body and should not be one of the problems of the Congress.

It may seem that a compulsory license is a drastic invasion of the rights of private property. Yet, when we remember that a cable system is passive in its program selection and must intercept and distribute whatever the primary transmitter transmits then we must recognize

that it is impossible and impractical for the cable system to negotiate for a license with the copyright owner in advance of transmitting the programing. At the same time item-by-item negotiating between users and owners of copyright prior to each performance would be so burdensome as to destroy this valuable means of communication and would also effectively deny a valuable market to the copyright owners. Those facts have long since been recognized by copyright owners and the broadcast and entertainment industries which use such organizations as ASCAP and BMI as mediums through which they adjust their copyright liabilities and benefits.

I submit that the royalty fee schedule which the committee has agreed upon is fair and equitable to all concerned. There are those who disagree and feel that so-called rural cable systems are called upon to pay higher fees than urban cable systems.

It has been asserted that cable systems in nonmetropolitan areas bear the burden of royalty payments while urban systems will pay minimal fees. I respectfully disagree with this point of view.

THE SMALL SYSTEM ADJUSTMENT

Under the fee schedule proposed in this bill all systems with up to $160,000 in revenue semiannually—$320,000 annually—will pay under a sliding scale based on revenue, not on the number of distant signals carried. This small system adjustment was enacted specifically to avoid excessive impact on small, rural systems. These systems, because they are located in areas without adequate local service, import a large number of distant signals. Payment based solely on the number of distant signals would be onerous. Thus, the "adjustment".

Under the formula in this bill, systems with revenue over $320,000 per year will pay royalties based on the number and type of distant signals. Distant independent stations count as one full distant signal while distant network stations count as one-fourth of one distant signal. Among other reasons, this significantly lower cost for network stations was instituted to avoid undue burden on those larger rural systems carrying a great many distant networks. Due to the relative scarcity of independent stations, carriage of networks by rural systems usually greatly overshadows the carriage of independents.

Under current FCC regulations, urban cable systems are authorized to import a maximum of three distant independent signals. Some cable operators have argued that this limitation effectively diminishes the copyright burden on major market systems. It is vitally important to note that payment is based on both number and type of signal. Because independent signals each count as one full distant signal, an urban system will pay for three full distant signals. Rural systems will generally carry network stations, being able to carry 12 distant network signals—an unrealistic and unlikely situation—before bearing the same liability as an urban system.

LOCAL SIGNALS—THE 150-MILE PROPOSAL

It has been suggested that all signals imported from markets less than 150 miles distant should be considered local for purposes of fee determination. This change in definition would affect only those systems with annual revenue over $160,000 semiannually—$320,000 annual revenue—and therefore paying on the basis of distant signal carriage rather than the amount of revenue. The 150-mile local definition would cause several problems:

One hundred and fifty miles is considerably beyond any currently accepted or established market definition. For example, under this definition Washington, D.C., signals would be "local"—and therefore not liable for copyright—through most of southeastern Pennsylvania. Likewise, New York City would be considered local throughout much of that State.

Cable systems which are not located within 150 miles of an urban area—systems in many parts of the country—would bear an undue burden. For example, the majority of systems in Pennsylvania are located so that they are within 150 miles of either Philadelphia, New York, Washington, D.C., Baltimore, or Pittsburgh. In other areas of the country, without such a proliferation of urban centers, signals are simply not available within 150 miles.

By decreasing—for many systems—the number of signals considered distant and thus liable for copyright, the total amount of dollars paid into the copyright royalty "pot" would be greatly decreased. In order to keep the "pot" at the proposed $8.5 million, the payment burden would have to be shifted to those systems not fortunate enough to be located within 150 miles of the primary transmitter. In such cases systems located beyond 150 miles would incur a larger copyright burden.

LOCAL SIGNALS—"OFF THE AIR" PROPOSAL

The same arguments which apply to the suggestion that 150 miles be considered the cut off point between distant and local signals also apply to the suggestion that distant signals be considered as those which cannot be received "off the air." To include as "local signals" those receivable off the air by direct interception of a free space radio wave would permit signals received from over 100 miles distance using a 1,000-foot antenna to be considered "local signals" even though such places are clearly beyond the local market area of the primary transmitter.

LOCAL SIGNALS—"LOCAL SERVICE AREA" SOLUTION

The distinction between local and distant signals as used in the committee bill draws heavily on the FCC's experience in defining what should be considered local signals.

Local signals are signals received within the geographical market area to which a broadcaster directs his programing and which serves as the basis for his advertising revenues. When a copyright owner sells his work to a given broadcaster, he must assume that the work may be viewed and heard by all persons within that broadcaster's local service area and the royalty which he charges will be based upon that assumption. However, neither he nor the broadcaster can control the retransmission of his work by a cable system to a distance area wi would ordinarily constitute a separa market for his work. For this reason, the committee has provided compensation to the copyright owner for signals retransmitted—secondarily transmitted—beyond the local market area. To define the term "local signals" by accepting either the 150-mile proposal or the concept that any signal which can be received off the air by an antenna mounted atop a high tower would be purely arbitrary. It would be inconsistent with commercial practice in the broadcast and advertising industries. It would deny fair compensation to copyright owners, and would place an unfair financial burden on cable systems located distant from urban areas. For this reason, the committee has provided compensation to the copyright owner for signals retransmitted—secondary transmission—beyond the local service area.

Mr. GOODLING. Mr. Chairman, I ask unanimous consent that I may be permitted to proceed for 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. GOODLING asked and was given permission to revise and extend his remarks.)

Mr. GOODLING. Mr. Chairman, I would hope that regardless of how things are going here that the conference, if it is in the scope of the conference, at least, would certainly look into this situation, however, because anyone, I would think, who lives in a rural area would ha some real concern about this legislati because, unless the lawyers connected with cable TV are incorrect, it would appear there is going to be a tremendous increase so far as the expenses to rural people are concerned with reference to this particular provision.

I think it is important that everybody realise that the letter we received from the Cable Television Association was very misleading, because the Cable Television Association, to the best of my knowledge, only represents about 60 percent of the cable television operators. The other 40 percent seem to have some real concern about this legislation. I am also under the impression that only about 70 percent of that 60 percent that belong agree with the legislation. So it would be my hope that we look at it very carefully; otherwise, I think we are going to find out sometime later that it is going to be rather expensive for people who live in rural areas.

Mr. PATTISON of New York. Mr. Chairman, will the gentleman yield on that point?

Mr. GOODLING. I yield to the gentleman from New York.

Mr. PATTISON of New York. I thank the gentleman for yielding.

We added a special exemption for small systems. Small systems making gross revenues of approximately $320,000 or less per year pay a maximum of 1 percent of all of their revenues—1 percent of all their revenues—no matter how many signals they have, and one-half of 1 percent on the first $160,000. S it is one-half of 1 percent on the fir

$160,000 and 1 percent on the next $160,000, no matter how many signals they have. A system to be eligible for that can have about 3,000 subscribers. Most systems we are talking about have in rural areas 600, 700, or 800 subscribers. They are well within that exemption, and they will pay a minimum amount, a couple hundred dollars a year for their subscription.

So we have really taken care of those small subscribers, the small systems in the rural areas, very generously.

Mr. GOODLING. I can only say again I am not the lawyer, but some of the lawyers working on this in reading the legislation indicated, for instance, in one area in my district that the original form as it came from S. 22 in the Senate would cost them about $1,700, and the bill that we now have indicates it would cost $8,600. If there is any truth to that, then all I can say is it is going to be a tremendous increase for the users in that particular area.

Mr. PATTISON of New York. If the gentleman would yield further, if the gentleman has a saytem paying $8,600, it is not a small rural system; it is a large system with thousands and thousands of subscribers.

Mr. GOODLING. Under the new legislation?

Mr. PATTISON of New York. Under this legislation.

Mr. GOODLING. I can only say, then, that the lawyers for those cable TV companies apparently cannot understand the legislation.

Mr. PATTISON of New York. That may be true.

Mr. GOODLING. Mr. Chairman, I yield back the remainder of my time.

Mr. VIGORITO. Mr. Chairman, I move to strike the last word.

(Mr. VIGORITO asked and was given permission to revise and extend his remarks.)

Mr. VIGORITO. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Pennsylvania. I think one of the biggest difficulties with this bill is the fact that we do have a lot of attorneys working on it. I do not see what difference it makes what size a CATV is, whether it has got 200 members, 2,000 members, or 5,000 members. Does the gentleman mean to tell me if one TV owner here has a program and he gets it directly off the air, he does not have to pay anything; but the next door neighbor who is on CATV has to pay a fee indirectly or directly? It just does not make any sense.

Mr. PATTISON of New York. Mr. Chairman, will the gentleman yield?

Mr. VIGORITO. I yield to the gentleman from New York.

Mr. PATTISON of New York. I thank the gentleman for yielding.

The subscriber who is receiving a local signal will pay no rate at all, not even if he gets it off of CATV, because the local system does not pay for what it gets within the local service area. All it pays for is imported service.

Mr. VIGORITO. Does not the individual with a set not on CATV import signals?

Mr. PATTISON of New York. If the gentleman would yield further, a person who is on a set that does not get CATV cannot import a signal beyond the local service area. His antenna cannot pick up a signal beyond the local service area. One cannot have a television antenna in New York and pick up Philadelphia; he can only pick up New York stations. So the fact is that the local signal is not paid for under this system. We have exempted the local signal for the very reason the gentleman is speaking about because it is not fair.

Mr. VIGORITO. Then why are the CATV companies against it? They are claiming they are paying a tax that the individual TV owner does not have to pay.

Mr. PATTISON of New York. I can assure the gentleman that the vast majority of the CATV associations are in favor of this bill, the small and the large. There are several CATV associations which are in favor of it. There is the large one, the National Cable Television Association, which is 100 percent behind this bill. There is the Cable Television Association of America, CATA, which has not opposed this bill. Some of its members have, but CATA is basically in favor of this legislation because of the small systems exemption.

Mr. VIGORITO. Mr. Speaker, I urge the House to support the amendment offered by the gentleman from Pennsylvania.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. VIGORITO. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Chairman, I am afraid we are hung up on the word "local." That word in this instance means anyone who is within 35 miles range from the TV station. If one is beyond the 35-mile range unfortunately he is going to have to pay something.

Mr. VIGORITO. Why should they pay anything?

Mr. MYERS of Indiana. I agree with the gentleman from Pennsylvania. If one has a constituent who is living 50 miles away, he pays for living beyond that distance of 35 miles, but that little old lady in tennis shoes has to pay something extra because she lives beyond the 50 miles.

Mr. VIGORITO. The amount is immaterial. It is the principle of the thing.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania.

The question was taken; and on a division (demanded by Mr. GOODLING) there were—ayes 12, noes 30.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. ENGLISH

Mr. ENGLISH. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ENGLISH: Strike section III(c)(4) beginning on line 35, page 99 and continuing through line 13 of page 100.

Mr. ENGLISH. Mr. Chairman, in discussing the provisions of S. 22 with several of my constituents, it became clear that changes in the bill would be necessary in order for the bill to be more equitable toward CATV operators, especially in the rural areas of our Nation.

As S. 22 is currently written, cable television operators are prohibited from receiving and distributing foreign TV signals, specifically Mexican and Canadian, to their customers outside the geographical limitation set down in this section, while systems within the boundaries would be allowed to use these signals.

In many States, foreign TV signals provide a source of important educational and foreign language programing to cable systems.

The Federal Communications has clearly stated that the type of rebroadcast of foreign signals which would be prohibited by section III(c)(4) of S. 22 performs a valuable community service; and it is clear that some rural cable systems would have no realistic alternative source of this programing.

The amendment I am proposing to S. 22 would delete section III(c)(4) which would establish this unfair regulation. I urge my colleagues to mandate the continued availability of foreign programing to cable systems by supporting this amendment to S. 22.

Mr. KASTENMEIER. Mr. Chairman, I rise in opposition. The amendment proposed by the gentleman has the effect of extending the license to carry Mexican and Canadian signals throughout the entire United States. This is an entirely unacceptable resolution of the question.

The Senate bill provides for no importation of signals whatsoever from Canada or from Mexico.

Mr. Chairman, we tried to balance the competing values of preserving those cable systems who presently utilize and import signals from Canada and Mexico; but for the future what we would be doing is extending a market potential without restriction throughout the entire United States, if we accede to the gentleman's amendment.

What the committee bill does is to permit, in many cases, off the air taking of signals, in the future from Canada and Mexico. This means that the border areas will continue to have access to these signals, but certainly they will not be able to use them to penetrate the rest of the markets in the United States. We are very sensitive to this question, because potentially we have a situation where American owners of copyright materials, movies and the like, could have their materials sold in Europe or elsewhere in the world and have these materials reintroduced into the United States under a compulsory license under this particular bill.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I concur in what the gentleman has said and point out that the United States is the single largest exporter of copyrighted works in the world. If we do this, then there is every reason to think other countries would treat us the same and it would have a very adverse impact on the U.S. copyright owner.

The CHAIRMAN. The question is on

(35)

the amendment offered by the gentleman from Oklahoma (Mr. ENGLISH).

The amendment was rejected.

AMENDMENT OFFERED BY MR. ENGLISH

Mr. ENGLISH. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ENGLISH: Amend section III (c) (2) on page 98, line 39, striking "willful or repeated" and inserting "willful and repeated"; and on page 99, line 8 of Section III (c) (2), insert after the semicolon, "provided, where there is a dispute as to the permissibility of carriage of a particular signal, the transmission is actionable only after resolution of the dispute by the Federal Communications Commission."

(Mr. ENGLISH asked and was given permission to revise and extend his remarks.)

Mr. ENGLISH. Mr. Chairman, as cable television has grown over the past decade, the rules and regulations governing cable operations have become increasingly complex, making it difficult for regulators and CATV operators alike to carry out their responsibilities under the law.

I am proposing two technical changes to S. 22 which will help clarify this difficult situation. The first revision would change the test for actionable misuse of secondary broadcasts from "willful or repeated" violations to "willful and repeated" misuse. The carriage of impermissible signals need not be willful but merely repeated. The repeated violation may occur without any knowledge that the signals, due to complex syndicated rules, may not be permissible. This change would clarify an operator's responsibilities and remove the inadvertent transmission from liability.

The second revision I suggest in this amendment would allow the FCC to arbitrate disputes over the permissibility of carrying a particular secondary signal on a cable system. The language I am proposing today would prevent action from being taken in a disputed case until the FCC has determined whether or not a violation has actually occurred.

Mr. Chairman, I believe that these small technical changes will decrease the confusion which might arise in the implementation of S. 22 and I urge the adoption of this amendment.

Mr. RAILSBACK. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the phrase "willful or repeated" is described fully in the committee report on page 93. It is designed to protect a cable system from being subjected to full copyright liability for innocent or casual acts. "Willful" means intentional and "repeated" means not only more than once but denotes a degree of aggravated negligence.

Under the amendment, an intentional act would have to be repeated before it becomes actionable. This gives a cable system unlimited freedom to violate the statute. If a cable system acts willfully, it should be held accountable whether that action is only once or consists of a repeated pattern.

The second part of this amendment is similar to the amendment put forward by Congressman ROONEY. It differs only in that the cable system would pay the compulsory license fee—under Rooney there would be no payment at all—while the FCC resolves a dispute as to whether the signals are permissible under its rules. The arguments against the Rooney amendment are equally applicable here.

Mr. ENGLISH. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Oklahoma.

Mr. ENGLISH. Mr. Chairman, I would like to point out that in addition to what the gentleman has just said, and with which I agree fully, this provision would absolutely emasculate the protection we put into the copyright orders which we have been very careful about. We have been very careful to make sure that the inadvertent, mistaken use of a signal will not impose liability, but the fact is that what this amendment would do would be to allow a cable system to willfully use, for instance, a sports event, even though it did not do it repeatedly, and get away with it. The worst that could happen to it would be that ultimately it would have to pay the compulsory license, which is kind of like having the only penalty for stealing a 5-cent pack of gum, the paying a nickel.

So that, it would encourage all kinds of use of signals that are not authorized by the FCC without any copyright liability and with minimum or simply no restitution at all.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma (Mr. ENGLISH).

The amendment was rejected.

AMENDMENT OFFERED BY MR. DODD

Mr. DODD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DODD: Page 109, line 22, strike out "one copy or phonorecord" and insert in lieu thereof "ten copies or phonorecords".

Page 109, line 23, insert immediately before the comma the following: "or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8)".

Page 109, line 24, strike out "the" the first place it appears and insert in lieu thereof "any such".

Page 109, line 25, insert immediately after the comma the following: "or by a governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8),".

Page 109, line 26, strike out "and".

Page 109, line 27, strike out "the" and insert in lieu thereof "any such".

Page 109, line 29, strike out the period and insert in lieu thereof "; and".

Page 109, immediately below line 29, insert the following new paragraph:

(3) the governmental body or nonprofit organization permitting any use of any such copy or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

Mr. DODD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

(Mr. DODD asked and was given permission to revise and extend his remarks.)

Mr. DODD. Mr. Chairman, I rise for the purpose of offering an amendment to section 112(d) of S. 22, the copyright law revision. Let me first of all commend my colleague, Mr. KASTENMEIER, for the enormous amount of work that he has put into this bill in his capacity as chairman of the Subcommittee on Courts and Civil Liberties which drafted this legislation, and also for the quality of the end product which has already received great acclaim for its precision and thoroughness.

Section 110(8) of the bill that we are considering today entitles governmental bodies and nonprofit organizations to transmit performances of nondramatic literary works without first obtaining a copyright license, as long as such performances are designed specifically for the blind and other visually handicapped individuals, and as long as these performances are broadcast without intention of commercial advantage.

What my amendment does is to carry this exemption one step further in order to maximize the benefit provided to the handicapped. Very simply, it allows governmental bodies and nonprofit organizations serving the blind to make up to 10 copies of any performance of a nondramatic literary work, and to exchange such copies with its sister organizations at no charge.

It will take only a few minutes, Mr. Chairman, to present to you and to my colleagues the need for this small adjustment to the bill.

There are presently 41 cities in 18 States which have nonprofit organizations providing radio readings and information services to the blind and visually handicapped. Unfortunately, but understandably, the quality and quantity of equipment and volunteer services available in each location is very uneven. Many of these organizations suffer from acute shortages of either people or materials.

Allowing for the duplication of performances for transmission, and for their exchange, would seem to be a very easy way of surmounting some of the worst obstacles faced by these nonprofit organizations. The inestimable benefit received by the handicapped as a result of these organizations warrants making it possible for the less fortunate in funding and personnel to obtain transmission material from the larger and better equipped organizations at no cost.

In sum, my amendment is aimed at increasing the availability of broadcasts which seek to furnish the visually handicapped with a little of what they may otherwise miss. It would allow for the better use of scarce resources.

I urge all of my colleagues on the floor to support it as well. Its adoption would be deeply appreciated across the country by both nonprofit organizations and the handicapped themselves.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. DODD. I am delighted to yield.

Mr. KASTENMEIER. Mr. Chairman,

on this side we have had an opportunity to examine this amendment, and I believe we can accept it in its present form. The limitation in it makes it acceptable to us.

Mr. DODD. I thank the gentleman.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, we also have had a chance on this side to consider the amendment, and have no objection to it.

Mr. DODD. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. Dodd).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ROONEY

Mr. ROONEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Will the gentleman ask unanimous consent that his amendment be modified to reflect the proper page and line?

Mr. ROONEY. Mr. Chairman, I make that request.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The Clerk will report the amendment, as modified.

The Clerk read as follows:

Amendment offered by Mr. ROONEY: Page 94, after line 9, insert the following:

"(5) The right of a cable system to carry a particular signal or to operate in a particular community is pending in a proceeding before the Commission until 30 days after the issue is resolved against the cable system and the proceeding is no longer subject to appeal."

(Mr. ROONEY asked and was given permission to revise and extend his remarks.)

Mr. ROONEY. Mr. Chairman, the purpose of this amendment is to avoid transferring issues in pending cases before the Commission from the Commission's administrative processes to infringement actions in the courts. It would be much better to let the Federal Communications Commission settle these pending regulatory issues of the right to carry particular signals or to operate a system in a particular community under its rules than to authorize them to be decided by a court in an infringement suit.

Unless this amendment is adopted, cable systems involved in pending cases may be forced because of fear of an infringement determination under the Copyright Act by a court to abandon their right to carry a particular signal or to operate in a particular community rather than continue to seek a determination of those issues by the Federal Communications Commission under the Communications Act and the regulations adopted thereunder.

This amendment will also aid in preserving the agreement between the Commerce Committee and the Judiciary Committee entered into on April 11, 1967, to maintain the respective jurisdiction of the Judiciary and Interstate and Foreign Commerce Committees.

Mr. Chairman, I ask that this amendment be adopted.

Mr. KASTENMEIER. Mr. Chairman, I rise in opposition to the amendment.

(Mr. KASTENMEIER asked and was given permission to revise and extend his remarks.)

Mr. KASTENMEIER. Mr. Chairman, I realize that this amendment may affect a system in the gentleman's district, and I appreciate why he would suggest the amendment; nevertheless, the purpose of his amendment really is to exempt from liability the cable system which carries unauthorized signals until 30 days after the FCC either issues an order adverse to the system or until all judicial appeals have been exhausted.

In other words, this would give any system involved in some sort of litigation with the FCC a free ride for an indefinite period of time. But more importantly, Mr. Chairman, the bill itself does not go into effect until January 1, 1978. I suggest this is the end of September 1976. These particular pending matters in the gentleman's district, and elsewhere, should well be resolved by then, and we should not make the entire bill a prisoner of the problem of one or two or several cable systems that have problems with the FCC and orders relating to it, because copyright liability is quite independent of what action is pending before the FCC. The copyright liability this system is entitled to is compulsory, in any event. It cannot be denied to the system, and so the system should not be free from compliance.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. I thank the gentleman for yielding.

Mr. Chairman, I certainly agree with what the subcommittee chairman has said.

Also, let me just make the point that on page 93 of the committee report it is made very clear that, where a cable system in good faith enters into a dispute with the FCC over whether the carriage of certain signals is permissible, the cable system is not subject to full copyright liability. In other words, it is only where there is a willful or a repeated violation.

Mr. KASTENMEIER. Mr. Chairman, I urge defeat of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlemen from Pennsylvania, (Mr. ROONEY) as modified.

The amendment as modified was rejected.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman. I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OBERSTAR:

Page 97, line 16, strike out the period and insert in lieu thereof a semicolon.

Page 97, immediately below line 16, insert the following new clause:

"(9) performance of a dramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to the persons referred to in clause (8) of this section, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of any radio subcarrier authorization referred to in clause (8)(iii) of this section."

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Chairman, I, too, want to join in complimenting the chairman of the subcommittee and the members of the subcommittee for doing a splendid job and performing the detailed and laborious work involved in bringing this much needed revision of copyright legislation to the House floor.

However, the legislation is deficient in one respect, and that is what this amendment would attempt to correct. It simply and very basically would allow radio reading services for the blind and physically handicapped to air plays or dramatic readings without first securing permission from the playwright. That, we know, is a time-consuming process, and it falls short of the goal in many instances.

This amendment would conform with identical language adopted in the other body which provides that it is not an infringement of copyright to perform or produce literary work productions for broadcast purposes for the blind on noncommercial educational radio and television stations. I emphasize the words, "noncommercial educational radio and television."

We recognize that playwrights should not be deprived of royalties which are their right, but yet we feel it is reasonable to exempt the use of dramatic works by nonprofit groups which are serving blind and otherwise handicapped audiences.

Those of us who offer and who support this amendment—and I am joined in this by my colleague, the gentleman from Minnesota (Mr. FRASER)—feel that it does not make sense, just to insure that royalties are met, to retain the provisions now in the committee print.

Mr. GUDE. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Maryland.

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, I rise in support of the amendment offered by Congressman OBERSTAR, permitting the transmital of dramatic literary works by thdse organizations authorized to use a radio subcarrier authorization, such as radio reading services.

The Washington Ear, Inc., the radio reading service in the Washington, D.C., area, which transmits over the subcarrier of WETA-FM, is an excellent example of the kind of organization that this amendment would benefit. The Washington Ear is received only by those persons possessing special receivers adapted to receive this subcarrier. In order to ob-

tain such a receiver, the person desiring it must complete an application to the Washington Ear stating that that person is visually handicapped. No person having the power of sight may be in possession of such a receiver and no normal AM–FM radio can receive the Washington Ear.

This means that the audience served by the Washington Ear is a select one, consisting only of visually handicapped persons. These people, who may obtain a receiver for free, are unable to utilise the written word for their communications. Therefore, this radio reading service fills what otherwise would be a void in their lives by presenting newspapers, magazines, and books in the oral form for their appreciation.

Likewise, due to the visual handicap, these persons are unable to fully appreciate the performance of dramatic literary works: that is, plays. One might think that a play can be understood simply by listening to it, but a sighted person cannot fully appreciate how much his eyes tell him in addition to the spoken word. Visually handicapped persons cannot appreciate sets, actions, expressions. The radio reading services could, with this amendment, augment the normal script of a dramatic work to the point where the listener can fully appreciate the performance.

I am advised that finances do not enter into this question. The normal copyright laws pertaining to newspapers, magazines, and books have been waived for radio reading services, thereby enabling them to quickly reproduce these written volumes for their listeners' appreciation. No royalty payments are required by the radio reading services for this activity because of their special service nature.

Likewise, I am advised that playrights have agreed not to request royalty payments for their use of their works over radio reading services. However, there is still the requirement, without this amendment, that copyright regulations be obeyed before a dramatic work can be presented. This could seriously delay the presentation of a contemporary work to the point that it would no longer be of topical interest to the services' listeners.

Radio reading services have enough problems reaching their audience. They are primarily volunteer activities, their finances are strained to stay on the air, they have insufficient staff to comply with special requests in order to expand the programs they offer their handicapped audience.

I urge my colleagues to join in supporting this valuable amendment, which provision was previously accepted by the Senate when it considered this legislation.

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman for his support of my amendment.

Mr. FRASER. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Minnesota.

(Mr. FRASER asked and was given permission to revise and extend his remarks.)

Mr. FRASER. Mr. Chairman, I want to thank the gentleman for offering this amendment.

I think it is important to recognise that this amendment, No. 1, deals only with the blind and the physically handicapped. Second, it simply enlarges an exemption that is already written in the bill for nondramatic works. This would simply add dramatic works that could also be listened to over these closed-circuits by blind people.

Third, there is no profit here. There are no lost royalties or revenues to the playrights because these are audiences that cannot under any circumstances be expected to get to the regular places where these plays are going to be performed.

I would also make the point that for some reason the broader exemption which we seek appears to have been in the bill as we received it from the other body. They did not put the exemption of dramatic works in their bill. For some reason our committee has wanted to narrow that exemption, and there does not seem to me to be any justification for it except for some historic attachment to this very high degree of protection that dramatic works are supposed to enjoy. However, there is no reason for it in practice or in commonsense.

This enlarged exemption would bring the bill in conformity with the bill that we got from the other body. I will repeat that this is for the blind and the physically handicapped, those who are stuck in their homes. This is for closed-circuit transmissions.

Mr. Chairman, I might add that I have had the opportunity in Minnesota to visit our radio system for the blind. It is a remarkable facility. It affects a few thousand people in our State who are housebound. It is their only real source of news and information.

Mr. Chairman, I think that giving this very modest, enlarged exemption so as to bring the bill in conformity with the bill from the other body makes a lot of sense.

I hope that the committee will support this amendment by the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman very much for his very clear and forthright statement of support.

The amendment that we are offering has support from the Corporations of Public Broadcasting, the Association of Public Radio Stations, the American Foundation for the Blind; and we urge support for the 3 million blind and handicapped persons throughout the Nation.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. OBERSTAR) has expired.

Mr. FRASER. Mr. Chairman, I ask unanimous consent that the gentleman from Minnesota be permitted to speak for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

Mr. RHODES. Mr. Chairman, reserving the right to object, the hour is late. There was an agreement that we should leave at 9 o'clock at night. I am not going to object to this request, but I will object to any further extensions of time.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) is recognized for 2 additional minutes.

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman from Minnesota (Mr. FRASER) for the 2 additional minutes.

The Federal Government has taken many steps to relieve and eliminate the barriers for the physically and otherwise handicapped. We have provided for better access to Federal buildings, we have provided for better access to buses, and most of that has been initiated right here in the Congress.

What we are saying is that one more step is needed to help the blind and the other handicapped people to have a better share of and a better slice of life and a stimulation of the mind.

Mr. Chairman, that is what this amendment would give them, the opportunity to enjoy life better.

Therefore, Mr. Chairman, we urge support for this very modest and very necessary and compassionate amendment.

Mr. PATTISON of New York. Mr. Chairman, I rise in opposition to the amendment.

(Mr. PATTISON of New York asked and was given permission to revise and extend his remarks.)

Mr. PATTISON of New York. Mr. Chairman, this seems like a minor amendment. It will take care of people who need help.

The fact of the matter is that this is a very fundamental change in the law of copyright if this amendment should be adopted.

First of all, we should understand that under current law nonprofit performances of most everything are exempt except nonprofit performances of dramatic works. They have never been exempt because of the very nature of dramatic works. Dramatic works must be performed. People do not read them. The fact of the matter is that they have never been exempt in the copyright law of this country or that of any other country, nonprofit or otherwise.

Second, Mr. Chairman, the purpose of this section of the bill, to which I had an amendment which was accepted in the subcommittee, is to make certain things available in print for handicapped people, blind people, and people otherwise handicapped, newspapers, information, all kinds of things that are not of any use to anybody else. One can read. He does not listen to a newspaper being read over the air or a magazine being read over the air or even a book being read over the air unless he is blind.

Mr. Chairman, in the section that is under amendment now there is no exemption, for instance, for music. That is because music is available. Music is available to anybody. One can turn on his radio, turn a dial, and he will get music.

To a great extent, Mr. Chairman, dramatic works are also available. There is a market for dramatic works, and people listen to them. Dramatic works are available to the blind. They can get them on the CBS Mystery Theater, the soap operas, and so forth. They can get all of those other things.

Mr. Chairman, it is not necessary to make this possible for the blind. The problem of the radio station is that when a program is put out on the air, we do not know to whom it is going or who is going to hear it. I realize that it can go out on a subcarrier station specifically designed for blind people, but those things will be available to all people all over the country in future years.

Mr. Chairman, this amendment will impact on the traditional authors rights. The only thing he has is literary rights, the right to prohibit other people from using his work without payment.

Therefore, Mr. Chairman, this amendment, although I know it is for the blind and that it seems to be doing something that is good, the fact is it would fundamentally affect the Copyright Law, and it would be a mistake for this committee to adopt it, thinking they were doing the blind a great favor in doing it.

Mr. Chairman, I would like to add one other point, and then I will yield to the gentleman from Minnesota (Mr. FRASER). That point is this: Most of the dramatic works that are performed on any radio station are in the public domain. One does not need permission in that respect. Other dramatic works are available from authors. Authors are very generous. One needs preparation before a dramatic work is put on or performed. In the case of an author, it is true that he might want to be paid for the use of his work. However, in reading a book or a newspaper, one has relatively long lead time. All one has to do is write to the author. He will write back and say, "Go ahead and use it." Again, if he wants to make a profit, he will charge for its use.

Mr. Chairman, in other cases, such as with respect to the Library of Congress, marvelous things have been done for free. We can be sure that authors will be generous in this respect, too; but we must not impose this on the authors or with respect to dramatic works by, in effect, giving the compulsory license which we are granting here.

Mr. FRASER. Mr. Chairman, will the gentleman yield?

Mr. PATTISON of New York. I yield to the gentleman from Minnesota.

Mr. FRASER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to make sure that the gentleman from New York agrees that if our amendment is accepted, it would not touch the basic question of dramatic works being read for nonprofit use. This is limited just to the blind and the physically handicapped under a subcarrier system. The gentleman from New York agrees with that; is that correct?

Mr. PATTISON of New York. That is correct, I do.

Mr. FRASER. Does the gentleman know Dr. Marvin Rockwell who directs the Washington Ear on Station WETA?

Mr. PATTISON of New York. I know him very well.

Mr. FRASER. I would say to the gentleman from New York that Dr. Rockwell has indicated that it takes 6 or 8 months to get permission to have one of these plays on one of these subcarrier channels and by that time the opportunities are passed. They ought to be able to get volunteer actors to read them over the radio but without this amendment it is enormously difficult to do that.

Mr. PATTISON of New York. Of course, we have given the right in subsection 112 to record so the leadtime is of very little consequence as far as 6 or 8 months. It might happen occasionally. But we do not need that in order to read Shakespeare and most of the other plays that people who are blind are familiar with. So this would not be used, anyway and I do not think it is possible, anyway. So that this is such a fundamental attack on the copyright holders rights that it really is not worth doing and it should be rejected.

Mr. FRASER. Would the gentleman not agree that under the amendment there are no royalty losses?

Mr. PATTISON of New York. Not today, perhaps, but there will be in the future.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. SEIBERLING

Mr. SEIBERLING. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SEIBERLING: Page 127, line 16, strike ", including" and all that follows down through line 20, and insert in lieu thereof a period.

(Mr. SEIBERLING asked and was given permission to revise and extend his remarks.)

Mr. SEIBERLING. Mr. Chairman, my amendment is intended to save the "Federal preemption" of State law section, which is section 301 of the bill, from being inadvertently nullified because of the inclusion of certain examples in the exemptions from preemption.

This amendment would simply strike the examples listed in section 301(b)(3).

The amendment is strongly supported by the Justice Department, which believes that it would be a serious mistake to cite as an exemption from preemption the doctrine of "misappropriation." The doctrine was created by the Supreme Court in 1922, and it has generally been ignored by the Supreme Court itself and by the lower courts ever since.

Inclusion of a reference to the misappropriation doctrine in this bill, however, could easily be construed by the courts as authorizing the States to pass misappropriation laws. We should not approve such enabling legislation, because a misappropriation law could be so broad as to render the preemption section meaningless.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, may I ask the gentleman from Ohio, for the purpose of clarifying the amendment that by striking the word "misappropriation," the gentleman in no way is attempting to change the existing state of the law, that is as it may exist in certain States that have recognized the right of recovery relating to "misappropriation"; is that correct?

Mr. SEIBERLING. That is correct. All I am trying to do is prevent the citing of them as examples in a statute. We are, in effect, adopting a rather amorphous body of State law and codifying it, in effect. Rather I am trying to have this bill leave the State law alone and make it clear we are merely dealing with copyright laws, laws applicable to copyrights.

Mr. RAILSBACK. Mr. Chairman, I personally have no objection to the gentleman's amendment in view of that clarification and I know of no objections from this side.

Mr. SEIBERLING. I thank the gentleman.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. SEIBERLING. I will be glad to yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Chairman, I too have examined the gentleman's amendment and was familiar with the position of the Department of Justice. Unfortunately, the Justice Department did not make its position known to the committee until the last day of markup.

Mr. SEIBERLING. I understand.

Mr. KASTENMEIER. However, Mr. Chairman, I think that the amendment the gentleman is offering is consistent with the position of the Justice Department and accept it on this side as well.

Mr. SEIBERLING. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. SEIBERLING).

The amendment was agreed to.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MCFALL) having resumed the chair, Mr. SMITH of Iowa, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the Senate bill (S. 22) an act for the general revision of the copyright law, title 17 of the United States Code, and for other purposes, pursuant to House Resolution 1550, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the Senate bill.

The Senate bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The

question is on the passage of the Senate bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 316, nays 7, answered "present" 3, not voting 104, as follows:

[Roll No. 800]

YEAS—316

Abdnor	Dellums	Kastenmeier
Abzug	Dent	Kazen
Addabbo	Derwinski	Kelly
Alexander	Devine	Kemp
Allen	Dickinson	Ketchum
Ambro	Dodd	Keys
Anderson, Calif.	Downey, N.Y.	Kindness
	Downing, Va.	Koch
Anderson, Ill.	Drinan	Krebs
Andrews, N.C.	Duncan, Oreg.	Lagomarsino
Andrews, N. Dak.	Duncan, Tenn.	Latta
	du Pont	Leggett
Archer	Early	Lehman
Ashbrook	Eckhardt	Lent
Aspin	Edgar	Levitas
AuCoin	Edwards, Ala.	Lloyd, Calif.
Badillo	Edwards, Calif.	Lloyd, Tenn.
Baldus	Ellberg	Long, La.
Baucus	Emery	Long, Md.
Bauman	English	Lott
Beard, Tenn.	Erlenborn	Lujan
Bedell	Evans, Ind.	Lundine
Bennett	Evins, Tenn.	McClory
Bergland	Fary	McCloskey
Bevill	Fascell	McCormack
Biester	Fenwick	McDade
Bingham	Findley	McDonald
Blanchard	Fish	McEwen
Blouin	Fisher	McFall
Boland	Fithian	McHugh
Boiling	Flood	McKay
Bonker	Florio	McKinney
Bowen	Flowers	Madigan
Brademas	Flynt	Maguire
Breaux	Foley	Mahon
Breckinridge	Ford, Mich.	Mann
Brinkley	Ford, Tenn.	Mathis
Brodhead	Fountain	Mazzoli
Brooks	Fraser	Meeds
Brown, Ohio	Frenzel	Melcher
Broyhill	Frey	Metcalfe
Buchanan	Fuqua	Mesvinsky
Burgener	Gaydos	Mikva
Burke, Calif.	Gilman	Milford
Burke, Fla.	Ginn	Miller, Calif.
Burke, Mass.	Grassley	Miller, Ohio
Burleson, Tex.	Hagedorn	Mineta
Burlison, Mo.	Hall, Ill.	Minish
Burton, John	Hall, Tex.	Mitchell, N.Y.
Butler	Hamilton	Moakley
Byron	Hannaford	Montgomery
Carney	Hansen	Moore
Carr	Harkin	Moorhead, Calif.
Carter	Harrington	
Cederberg	Harris	Moorhead, Pa.
Chappell	Harsha	Morgan
Clausen, Don H.	Hayes, Ind.	Mosher
	Hechler, W. Va.	Moss
Clawson, Del	Heckler, Mass.	Mottl
Cleveland	Hefner	Murphy, Ill.
Cochran	Hightower	Murtha
Cohen	Holt	Myers, Ind.
Collins, Ill.	Holtzman	Myers, Pa.
Collins, Tex.	Horton	Natcher
Conable	Hubbard	Nedzi
Conte	Hungate	Nichols
Corman	Hutchinson	Nolan
Cornell	Hyde	Nowak
Cotter	Ichord	Oberstar
Crane	Jacobs	Obey
D'Amours	Jeffords	O'Brien
Daniel, Dan	Jenrette	O'Hara
Daniel, R. W.	Johnson, Calif.	O'Neill
Danielson	Jones, Okla.	Ottinger
Davis	Jones, Tenn.	Patten, N.J.
de la Garza	Jordan	Patterson, Calif.
Delaney	Kasten	
Pattison, N.Y.	Roush	Taylor, N.C.
Perkins	Rousselot	Thone
Pettis	Roybal	Thornton
Pickle	Runnels	Traxler
Pike	Russo	Treen
Poage	Santini	Tsongas
Pressler	Sarasin	Ullman
Preyer	Satterfield	Van Deerlin
Price	Scheuer	Vander Jagt
Pritchard	Schroeder	Vander Veen
Quie	Sebelius	Vanik
Quillen	Seiberling	Vigorito
Railsback	Sharp	Walsh
Randall	Shipley	Wampler
Rangel	Shriver	Waxman
Regula	Simon	Whalen
Reuss	Sisk	White
Rhodes	Skubitz	Whitehurst
Richmond	Smith, Iowa	Wilson, Bob
Rinaldo	Snyder	Winn
Risenhoover	Solarz	Wirth
Roberts	Spence	Wolff
Robinson	Steed	Wydler
Rodino	Steiger, Wis.	Wylie
Roe	Stokes	Yates
Rogers	Studds	Yatron
Roncalio	Symington	Young, Fla.
Rooney	Symms	Young, Ga.
Rose	Talcott	Zablocki
Rostenkowski	Taylor, Mo.	Zeferetti

NAYS—7

Dingell	Mollohan	Stratton
Goldwater	Paul	
Goodling	Staggers	

ANSWERED "PRESENT"—3

Armstrong	Gonzalez	Krueger

NOT VOTING—104

Adams	Hébert	Riegle
Annunzio	Heinz	Rosenthal
Ashley	Helstoski	Ruppe
Bafalis	Henderson	Ryan
Beard, R.I.	Hicks	St Germain
Bell	Hillis	Sarbanes
Biaggi	Hinshaw	Schneebeli
Boggs	Holland	Schulze
Broomfield	Howard	Shuster
Brown, Calif.	Howe	Sikes
Brown, Mich.	Hughes	Slack
Burton, Phillip	Jarman	Smith, Nebr.
Chisholm	Johnson, Colo.	Spellman
Clancy	Johnson, Pa.	Stanton, J. William
Clay	Jones, Ala.	
Conlan	Jones, N.C.	Stanton, James V.
Conyers	Karth	
Coughlin	LaFalce	Stark
Daniels, N.J.	Landrum	Steelman
Derrick	McCollister	Steiger, Ariz.
Diggs	Madden	Stephens
Esch	Martin	Stuckey
Eshleman	Matsunaga	Sullivan
Evans, Colo.	Meyner	Teague
Forsythe	Michel	Thompson
Giaimo	Mills	Udall
Gibbons	Mink	Waggonner
Gradison	Mitchell, Md.	Weaver
Green	Moffett	Whitten
Gude	Murphy, N.Y.	Wiggins
Guyer	Neal	Wilson, C. H.
Haley	Nix	Wilson, Tex.
Hammer-schmidt	Passman	Wright
	Pepper	Young, Alaska
Hanley	Peyser	Young, Tex.
Hawkins	Rees	

The Clerk announced the following pairs:

Mr. Annunzio with Mr. Jarman.
Mr. Murphy of New York with Mr. Gradison.
Mrs. Boggs with Mr. Peyser.
Mr. Nix with Mr. Esch.
Mr. Pepper with Mrs. Smith of Nebraska.
Mr. Matsunaga with Mr. Steelman.
Mr. Giaimo with Mr. Ruppe.
Mr. Hébert with Mr. Steiger of Arizona.
Mr. Helstoski with Mr. Henderson.
Mrs. Mink with Mr. Clancy.
Mr. Neal with Mr. Heinz.
Mr. Charles H. Wilson of California with Mr. McCollister.
Mr. Green with Mr. Bafalis.
Mr. Hawkins with Mr. Eshleman.
Mr. Teague with Mr. Beard of Rhode Island.
Mr. Biaggi with Mr. Derrick.
Mr. Adams with Mr. Brown of Michigan.
Mr. Phillip Burton with Mr. Gude.
Mr. Dominick V. Daniels with Mr.
Mr. Evans of Colorado with Mr. Hil
Mrs. Chisholm with Mr. LaFalce.
Mr. Haley with Mr. Broomfield.
Mr. Gibbons with Mr. Guyer.
Mr. Clay with Mr. Brown of California.
Mr. Hanley with Mr. Hammerschmidt.
Mr. Hicks with Mr. Conlan.
Mrs. Spellman with Mr. Howe.
Mr. Conyers with Mr. Holland.
Mr. Howard with Mr. Johnson of Pennsylvania.
Mr. St Germain with Mr. Karth.
Mr. Diggs with Mr. Hughes.
Mr. Waggonner with Mr. Jones of Alabama.
Mr. Udall with Mr. Landrum.
Mrs. Meyner with Mr. Madden.
Mr. Moffett with Mr. Jones of North Carolina.
Mr. Passman with Mr. Martin.
Mr. Wright with Mr. Mills.
Mr. Sikes with Mr. Riegle.
Mr. Shuster with Mr. Rosenthal.
Mr. Whitten with Mr. Michel.
Mr. Slack with Mr. Mitchell of Maryland.
Mr. Stephens with Mr. Ryan.
Mr. Schulze with Mr. Sarbanes.
Mr. Rees with Mr. Ashley.
Mr. Stark with Mr. James V. Stanton.
Mr. Thompson with Mr. Stuckey.
Mr. J. William Stanton with Mrs. Sullivan.
Mr. Weaver with Mr. Wiggins.
Mr. Young of Alaska with Mr. Charles Wilson of Texas.

Mr. STAGGERS changed his vote from "yea" to "nay."

Messrs. SEBELIUS and BEDELL changed their vote from "nay" to "yea."

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore (Mr. McFALL). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 22, COPYRIGHT LAW REVISION

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 22) for the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes, with House amendments thereto, insist on the House amendments and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none, and appoints the following conferees: Messrs. KASTENMEIER, DANIELSON, DRINAN, BADILLO, PATTISON of New York, RAILSBACK, and WIGGINS.

ML- 132
Sept. 1976 - 5,000