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"To promote the Progress of Science and useful Arts. . ."



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

THE COPYRIGHT OFFICE

AN INTERNATIONAL YEAR

For the Copyright Office and for the United States—a nation whose intellectual property represents one of its most important exports—fiscal year 1989 was an historic year in the evolution of both domestic and international intellectual property protection.

First and foremost, the United States became a member of the Berne Union for the Protection of Literary and Artistic Works, the oldest and most extensive multilateral copyright treaty. This step is important both to the development of copyright standards in the General Agreement on Tariffs and Trade (GATT) and to the long-term growth of the Berne Union itself.

The first difficult negotiating steps toward integration of copyright standards of protection into the GATT were taken in fiscal year 1989. The United States seeks to achieve agreement that the Berne Union crystallizes the proper international copyright standards.

Activity in the GATT was complemented by work programs in traditional copyright fora, such as the World Intellectual Property Organization (W.I.P.O.), headquartered in Geneva. There, meetings of governmental copyright experts grappled with the preparation of a model copyright law, and programs were launched to explore a Protocol to the Berne Convention and possible mechanisms for the settlement of private and public intellectual property disputes.

Important bilateral steps were also taken toward sound copyright relationships between the United States and the newly industrialized countries of the Pacific Basin, particularly Malaysia and Indonesia, and with Taiwan.

This fiscal year also saw the conclusion of a new international treaty intended to facilitate the international exploitation of audiovisual works by providing a simple, international registration facility for assignments and licenses of such works.

The Treaty on the International Registration of Audiovisual Works, signed on April 18, 1989, will be run by the W.I.P.O. but will be located in Vienna, Austria.

In short, the United States continued to press for the adoption of meaningful, enforceable, standards of international copyright protection acceptable to the international community. As the only U.S. governmental agency specifically concerned with copyright, these developments involved the Copyright Office in international activities more deeply than at any time since the late 1960's and early 1970's, when the Berne and Universal Copyright Conventions were jointly revised.

The Copyright Office has provided technical support to Executive Branch initiatives in bilateral and multilateral realms. Office staff have worked closely with the Office of the U.S. Trade Representative, the Department of State, and the Department of Commerce.

In addition, the Office has moved to deepen its own distinctive role in promoting the cause of balanced copyright protection on a global basis. In fiscal year 1989, the Office took major strides toward developing a comprehensive development cooperation program, which brings to the Library copyright officials of developing countries who participate in basic and advanced training programs in copyright law.

U. S. Adherence to the Berne Convention

On March 1, 1989, the Berne Convention for the Protection of Literary and Artistic Works came into force for the United States. Slightly 100 years after its inception and following many failures to join, the United States became a member of the Berne Union.

United States entry into the Berne Union is a landmark event in the evolution of U.S. copyright law. It marks the effective end of a period of qualified participation by the United States in

multilateral copyright relations and the beginning of a period of full participation in world copyright affairs.

Compliance by the United States with the requirements of the 1971 Paris Act of the Berne Convention required amendment of the Copyright Act of 1976. The details of these amendments are discussed in the section dealing with legislative developments. It is enough to note here that the principal policy change involved the elimination of the copyright notice as a requirement for the full acquisition of copyright.

Constitutive formalities for copyright, a feature of U.S. law in one form or another since 1790, have been eliminated. For the first time, it can be said with complete accuracy that copyright protection attaches to an author's work automatically, without formalities, upon the creation of the work in some physical medium. The United States now joins virtually every nation in rejecting formalities as preconditions for the existence, exercise, or enjoyment of copyright.

Congress concluded that relatively few changes in the 1976 Copyright Act were required to bring our law into conformity with the minimum requirements of the Berne Convention. That this was so is due to the Berne-compatible changes made by Congress a decade earlier in the comprehensive revision of the copyright laws.

Achievement of the long-sought goal of Berne adherence was the product of many hands, in and out of government, working over decades and coming to a head from 1985 to 1988. In the larger view, Berne adherence built upon the achievements of a triumvir of internationalist and foresighted Registers of Copyright: Arthur Fisher, Abraham Kaminstein, and Barbara Ringer. Much is owed, in particular, to Barbara Ringer. A tireless fighter for international protection of authors' rights, Ms. Ringer lent her expertise, persona, and enormous reputation to the cause of Berne adherence at every crucial point.

Copyright policy has long been an area of Congressional leadership. U.S. adherence to Berne

is stamped with the imprint of many important legislators. Although he would not be serving in the Senate when the vote on Berne accession was taken, Sen. Charles Mac. Mathias, Jr., introduced legislation late in the 99th Congress to bring our law into conformity with Berne, which spurred the effort that culminated in the next Congress.

Rep. Robert W. Kastenmeier, the architect of the 1976 Copyright Act, introduced the bill that served as the vehicle for the implementing legislation and led the legislative process in the House of Representatives, while Senators Dennis DeConcini, Patrick Leahy, and Claiborne Pell led the effort in the Senate.

U.S. adherence to Berne is a step long warranted in its own right. But there is no doubt that it was powerfully motivated by collateral efforts by the Office of the U.S. Trade Representative to negotiate into the GATT enforceable standards governing the protection of intellectual property, including copyright. The practical starting point of this effort for all nations is the Berne Convention.

Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

The success of adherence to the Berne Convention was partially offset by deep disappointment over the failure to achieve a satisfactory multilateral agreement for the protection of layout designs of integrated circuits (semiconductor chips).

From May 8 to 26, 1989, a Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits met in Washington, D.C., seeking to hammer out an international agreement to protect one of the most important and fundamental technologies in the information era. The U.S. delegation was led by Register of Copyrights Ralph Oman, who also served as president of the diplomatic conference. Building upon four preparatory meetings that narrowed issues and developed a

broad consensus among industrialized countries on forms and nature of intellectual property protection for layout designs of chips, the conference was ultimately unable to agree upon a text acceptable to the countries dominating the development, manufacture, and international trade in semiconductor chips: the United States and Japan. Neither signed the treaty finally agreed upon.

The shortcomings of the treaty from the U.S. and Japanese perspective can be briefly summarized. It gives too short a term of protection. It permits overly broad compulsory licensing. The United States did not believe that compulsory licensing was necessary. In the spirit of compromise, the United States would have accepted a compulsory licensing provision if it was drawn narrowly and consistent with international practices—that is, limited to cases of war or the duration of a declared national emergency.

With a short term of protection and reverse engineering permitted, the broad nonvoluntary licensing provision that emerged risked making the obligation to protect the intellectual property in chips design completely empty.

The treaty also failed to address adequately the matter of import restrictions on the sale or other distribution of products containing infringing chips and to require purchasers of infringing chips to pay a royalty after receiving knowledge of the infringement.

Finally, the treaty failed to include a workable dispute settlement mechanism. This is a matter of particular regret. The United States sought to break new ground in an intellectual property treaty by creating a genuine multilateral dispute settlement mechanism.

The results of the Washington conference remain deeply disappointing. The United States exercised leadership in the movement toward a treaty and has important national and trade interests at stake in a stable international system of chip protection. However, it is not possible to evaluate the virtues of a treaty in a vacuum. This treaty is, in important respects, incompatible with U.S. views

on the compulsory licensing of other forms of intellectual property, particularly in the patent field. It would set a lower level of protection than is now available in the laws of many countries including the United States.

The Copyright Office does not see the value or probability of favorable action by the United States on this treaty.

Treaty on International Registration of Audiovisual Works

On April 18, a Treaty on the International Registration of Audiovisual Works was concluded at the W.I.P.O. headquarters in Geneva. The purpose of the treaty is to provide an international facility to record and make available to the public statements of authorship and ownership of rights in motion pictures and other audiovisual works. The internationalized motion picture industry confronts a number of practical problems in licensing and enforcement derived from the territorial nature of copyright and licensing transactions. The registry, it is hoped, can be the basis for simplified international proof of ownership of rights—crucial in national enforcement actions and in commercial copyright transactions.

The treaty creates an international public registry where documents relating to the exercise of copyright in motion pictures will be registrable for a fee. States adhering to the treaty agree to accord to registrations an evidentiary presumption of validity until proved otherwise. The United States, which took the lead in developing the treaty, is expected to ratify the agreement.

International Copyright Institute

The Copyright Office has traditionally been involved in training activities relating to copyright matters concerning developing countries. Largely through the auspices of the W.I.P.O. and UNESCO (prior to U.S. withdrawal from that U.N. agency), many copyright officials of developing nations

came to the Office for periods ranging from a few weeks to several months, in order to pursue study of U.S. copyright law in its international and domestic aspects.

With increased attention being paid to upgrading the level of protection of U.S. works in developing and newly industrialized countries, the Office has attempted to expand training opportunities for foreign copyright specialists and to focus its efforts more sharply upon areas of the world where U.S. copyright industries are fighting an uphill battle against piracy and antiquated or virtually nonexistent copyright systems.

The International Copyright Institute is not so much an organizational unit of the Copyright Office as it is an umbrella for a variety of training programs being developed for officials of developing countries. The purposes of the Institute include not only exposing foreign officials to U.S. copyright laws and policies, but to expose U.S. governmental and private sectors to the views and problems faced by developing countries in the field of copyright. During fiscal year 1989, Institute activities expanded greatly, with support from the Congress and from the United States private sector. The activities ranged from visits of individuals to larger delegations of officials from key developing countries.

In October 1988, the Institute conducted an extensive training program for officials from five nations of Asia and the Pacific Basin: Indonesia, Malaysia, China, Singapore, and Thailand. The program included lectures and discussions of U.S. copyright law, the development of international copyright treaties, contemporary copyright problems at the international level, piracy, and practical aspects of the collective administration of copyright and licensing.

In May 1989, a high-level delegation from the People's Republic of China met with officials of the Copyright Office for a day-long program at which lectures were presented on U.S. copyright law, international trade policy, and protection of computer software.

U.S. adherence to the Berne Convention resolved a threshold problem in U.S. copyright relations with Egypt—the absence of direct protection for Egyptian and U.S. authors in their respective countries. Egypt has long been a member of the Berne Convention, but not of the Universal Convention, to which the U.S. adheres. The existence of copyright relations under Berne resolved the problem of the absence of a treaty basis of protection, but failed to address other problems, including the inadequate level of protection for certain works under the Egyptian copyright law. The Copyright Office established as a priority, building new cooperative links with Egyptian copyright officials, looking toward a closer exchange of views, and ultimate modernization of Egyptian national law.

From June 19-30, 1989, seven copyright officials of the Egyptian government participated in an Institute training program, which involved Office officials and private sector experts in a wide ranging series of lectures and discussions on contemporary copyright law issues and the protection of Egyptian works in the United States. Unlike many other developing countries, Egypt has a well-established motion picture, television program, and sound recording industry with significant markets in the United States.

The largest and most diverse group of trainees brought to the Copyright Office under Institute auspices met from September 11-23. Fourteen officials from Saudi Arabia, Egypt, Qatar, Kuwait, the Philippines, Taiwan, Thailand, and Oman participated in study sessions oriented toward legislative solutions to contemporary copyright issues and enforcement of copyright against piracy. This was the first extended contact in the United States with copyright officials from states of the Persian Gulf, an area where piracy of American sound recordings and motion pictures is endemic. Few of the states in this region participate in international copyright treaty arrangements.

In addition, two attorneys who are also graduate students in intellectual property, one from the

Republic of Korea and the other from Taiwan, spent internships at the Office from June 19 to July 14.

The experience gained in 1989 with the training programs of the International Copyright Institute was immeasurable. It provided not only a forum for the explanation of U.S. objectives in promoting more effective copyright protection, but an opportunity for developing country officials to meet U.S. government and private sector copyright figures and set out their needs and expectations from the United States and other developed countries. As U.S. trade negotiators press change on our trading partners in the Third World, a clear need for a collaborative, independent, forum for experts to meet has become essential. The Institute has begun to perform that function.

COPYRIGHT OFFICE STUDIES

Technological Alterations to Motion Pictures

At the request of the House Subcommittee on Courts, Intellectual Property, and the Administration of Justice, the Office conducted a study into the new technologies affecting filmmaking, including computer color encoding (colorization), panning/scanning and time compression and expansion (lexiconning), and how the technologies affect consumers, artists, producers, distributors, and other individuals and industries. A primary concern motivating the request for the report was the contention of film directors that their "moral rights" in existing films have been violated by these new technologies.

The Register's report, issued March 15, concludes that the subcommittee should seriously consider a unified system of moral rights in the United States for all authors. However, if the subcommittee wishes to focus its consideration on the motion picture industry, the report urges a careful evaluation of the existing web of individual and collective bargaining to determine whether it is adequate to protect directors, screenwriters, and

others in the industry. The report further states that if the subcommittee does consider specifically granting a higher level of moral rights in the motion picture industry, it should bestow the benefit not just on the principal director and screenwriter, but also on all the other creative participants in the motion picture. The report recommends that any additional moral rights would be prospective only and would not affect existing works.

Copyright in Works of Architecture

On June 19 the Office published the Register's report on works of architecture, undertaken at the request of the House Subcommittee on Courts, Intellectual Property, and the Administration of Justice. The report concludes that the Berne Convention requires copyright protection for works of architecture beyond that now accorded under U.S. law. In presenting "Copyright in Works of Architecture" to Subcommittee Chairman Robert W. Kastenmeier, Register of Copyrights Ralph Oman said the Office would support appropriately drafted legislation. The request for the report was prompted by testimony during the Berne convention hearings, which suggested that the United States could join the Berne Convention without altering its law in relation to architecture.

The text (Paris, 1971) of the Berne Convention under which the United States joined specifies that "works of architecture," "plans and sketches relative to architecture," and "three-dimensional works relative to architecture" are subject matter protected by copyright. U.S. law specifically protects the latter two categories.

The Register's report sets forth four possible solutions regarding works of architecture:

1. Create a new subject matter category for works of architecture in the Copyright Act and legislate appropriate limitations. Such legislation would need to define the exact nature of the buildings covered, limitations on exclusive rights and the nature of the remedies, as well as the nature of

any specific moral rights protection.

2. Amend the Copyright Act to give the copyright owner of architectural plans the right to prohibit unauthorized construction of substantially similar buildings based on those plans.

3. Amend the definition of "useful article" in the Copyright Act to exclude unique architectural structures. By this amendment, the separability test of the definition of pictorial, graphic, and sculptural works would no longer apply to unique architectural structures. Their overall shape could be protected by copyright if the design is original within the meaning of the copyright law.

4. Do nothing and allow the courts to develop new legal theories of protection under existing statutory and case law, as they come to grips with U.S. adherence to the Berne Convention.

LIBRARY TRANSITION

As part of a Library-wide "transition" to a new form of organization and a new way of operating, with an emphasis on service, Register of Copyrights Ralph Oman organized and chaired the Copyright Services Transition Team. Also serving on the team were Associate Register Michael Pew; Examining Division Chief Harriet Oler; Sr. Cataloger John Greene; Materials Expediter Dennis Pearson; Fiscal Control Section Head Mary Wilson; Cataloging Literary Section Head Jacquelyn Watts; Assistant General Counsel Richard Glasgow; Information and Reference Division Assistant Chief James Cole; Deposits and Acquisitions Division Chief Laila Mulgaokar; Licensing Division Chief Walter Sampson; Sr. Administrative Officer Donette Vandell; Sr. Administrative Officer Eric Reid; Pat Sheehan, M/B/RS Division; Lolita Silva and William Sittig, Collections Development Office; and Nancy Eichacker, Special Projects Office.

In examining the role of the Copyright Office, the team defined the Office's mission as follows: to administer the copyright law; to advise Congress, the Executive Branch, the courts, and the creators and users of copyrighted works on copyright law

and policy; and to promote the creativity of the American people.

Each division developed transition action plans consisting of goals, objectives, and strategies that were reviewed by the division satellite groups before being put into final form. These individual action plans were combined into one document, The Copyright Office Transition Plan, using the focus framework format.

Goals of the Office, as outlined by the team are:

1. To provide support to the creative community in protection of their intellectual property rights through the processing and examining of copyright claims, documents, and licensing applications in the most effective manner feasible.

2. To create and maintain an accurate, useful, and timely public record of copyright registrations, documents, licensing applications, and mandatory deposits.

3. To provide accurate, timely and useful information and reference services to the public and to provide effective legal services to the Congress, the Executive Branch, the courts, and the international and domestic copyright community.

4. To provide effective support to the other Library service units in accomplishing their missions and serve as a resource of copyright advice and information.

5. To provide an environment that encourages staff development, recognition, fairness, participation in the work process, and innovative methods for improving service to all its constituents.

Four work modules (subcommittees) were established to assist the transition team in its work of determining how the Office is accomplishing its goals. The work modules, which completed their assignments by the end of the fiscal year, were: the Transfer Acquisition Function module, chaired by Dorothy Schrader, which developed an action plan for the transfer of the mandatory deposit function from Copyright Services to Collections Services; the Copyright Legal Reference Collection module, chaired by Dorothy Schrader, which identified and recommended ways to improve and expand

the Copyright Legal Reference Collection to provide better service; the Library Access to Copyright Deposits module, chaired by Stephen Soderberg, which developed a plan to encourage access to, and the creative use of, the collections of the Copyright Office for the enrichment of the general collections of the Library; and the Motion Picture Agreement module, chaired by Ralph Oman, which examined the current Motion Picture Agreement that allows for the return to claimants of motion picture deposits subject to recall at a later date by the Copyright Office.

The Operations Group then culled out of the basic document 10 priority actions to be accomplished in fiscal 1989. A status summary was submitted to the Library's Management team reporting completion of these 10 actions. Similarly, a priority set of actions was selected that could be put into effect in fiscal year 1990 without the need for additional funding, and a further group of action items requiring funding has been included in the fiscal year 1991 budget submission.

COPYRIGHT OFFICE OPERATIONS

At his State of the Office address March 28 in the Coolidge auditorium, Register of Copyrights Ralph Oman praised the staff for its dedication and resourcefulness, in the face of constantly climbing workloads, frequent staff shortages, equipment breakdowns, and other adversities. He said it is an enduring aspect of the Copyright Office tradition that the staff gets the job done. "One thing that never changes in the Copyright Office is the amount of work the public asks us to do. It goes up every year. Though a 4 percent increase does not sound like much, it translates into 25,000 more claims for the year," he said.

This fiscal year saw an across-the-board increase in claims of 8 percent over last year, though individual units had up to 21 percent more claims to examine. Other workloads increased, too, with the following just a few of many examples: the

Records Management Unit processed 70 percent more items, the Incomplete Claims Holding Area processed 24,060 claims, an increase of 9.5 percent, and the Public Information Section answered 70 percent more letters from the public than last year. Changes in the law created more work for some divisions, with the Licensing Division particularly hard hit with a new compulsory license to administer; the Publications Section faced extensive revision of printed material due to Berne amendments to the Copyright Act. And in the Deposits and Acquisitions Division, acquisition librarians sent 3,209 demand letters based on requests from the Library, a 145 percent over last year. While coping with such increased workloads, the Office had an across-the-board staff vacancy rate of 10 percent.

Yet if increased workloads are a constant in the Office, so is the praise of the division chiefs for their staff members. The following comments are typical: "It is a tribute to our resourceful staff that they were able to respond to more requests from the public and changes in the law as a result of Berne, while still providing the same high level quality service..." "We end the year with substantial workloads in many areas and with a number of issues unresolved; yet, given the myriad difficulties we face, we look back with pride at the accomplishments of our dedicated and diligent staff." "The staff deserves credit for its Herculean efforts..." and finally, "What is it that motivates our staff to achieve this level of performance despite such vexing difficulties? It can only be strong personal character."

Automation

With the new equipment added in fiscal year 1989, the total number of computer workstations including mainframe, minicomputers and microcomputers has risen to 474, making the Copyright Office one of the most heavily automated departments in the Library of Congress. Increasing automation is one reason why the existing staff has been able to increase productivity in spite of con-

stantly increasing workloads.

This year, for the first time, copyright serial registrations recorded since 1978 are available for searching by title, claimant, and ISSN at all Library mainframe terminals, through the retrieval system SCORPIO. Previously, the information could be accessed only through the Copyright Cataloging's COPICS system, a system never designed for retrieval, which required a designated three-letter code and which was physically available to the public only in the Copyright Card Catalog area.

The use of microcomputers continued to enhance operations in many areas. Two desktop publishing systems were installed in the Publications Section to support the design and layout of office circulars and forms. In the Cataloging Division, the time-consuming manual system for logging in/inventory control/logging out of individual registrations was replaced by a Log-in, Log-out System (LILOS) throughout the Division, and staff members from other units of the Copyright Office were trained in the use of the system. A similar system, also designed by the Cataloging Division staff, was installed for the control of documents submitted for recordation. In addition, document recordation certificate production was also automated during the fiscal year.

During the year, the Copyright Office participated in the analysis of two major information areas identified in the Strategic Information Systems Plan, Description and Organization (of Library holdings) and Collections Management. The Office's cataloging system COPICS and the Library's retriever SCORPIO, upon which the Office depends for retrieval, were two of the three systems placed at the top of the Library's priority list for replacement in the resystemization project. Copyright representatives were assigned to the Library-wide analysis teams and spent considerable time in training, study, interviews, and modeling of information needs. In a similar long-range project, staff members have continued to be a part of the effort to develop a single serials management system (SMS) for the Library.

The Office also participated in a pilot project to evaluate the impact and benefits of remote access to the Library's automated files. Fourteen libraries and universities around the country can now search Copyright and other Library files through dial-up communications to the Library's mainframe computers.

Completion is near on a project with the Catalog Distribution Service to make available Copyright registration records on magnetic tape. A standard record format and a user's guide will enable subscribers to obtain machine readable copies of all registration records since 1978 and to load all or extracted segments of the information into their own computer systems. The subscription service should be available this Fall.

Two changes were made that have helped the staff reduce backlogs and better organize information. A significant change was made in the way storage box numbers are recorded in the on-line catalog records. No longer will the Deposit Copies Storage Unit have to wait until the Cataloging Division clears a record before the deposit copy can be stored. The storage unit staff can now store and record the box numbers for materials as soon as they are received, helping to eliminate the backlog of copies waiting to be stored and the attendant problems of organizing and searching unboxed material.

A change was also made in the organization of postings to deposit accounts. As originally designed, an account could have no more than 9,999 postings. Though this has been adequate for most accounts, many over the last 12 years have exceeded that number, requiring the opening of new accounts. Under the existing COINS system, this administrative workload would have increased as more and more accounts reached this limit. Under the new structure, the postings are organized by a date and time stamp in each transaction, allowing an unlimited number of entries in each account.

Work continued on two major planned systems, the Exception Tracking System (ETS), which will replace the Correspondence Management

System, and the Licensing System, which will provide full automated support for the information processing needs of the Licensing Division. Both of these systems are scheduled for delivery in fiscal year 1990. ETS will streamline the recording of correspondence and exception cases involving claims and other fee service processing. The Licensing System, which will use state of the art relational database management and local area network technology, will provide much improved recording and availability of jukebox license and cable television statement of account information for staff and the public.

The Office has begun to look at new ways to handle the ever increasing number of applications received each year. A preliminary paper, "Project 2000," contains recommendations about concepts in automation technology that could be integrated with basic changes in office work procedures. It describes how the Office might use a whole new approach to application/registration information processing centered around optically stored digital images of the claim forms and other paper records. Optical image storage is also being considered as a replacement for the Copyright Card Catalog which contains over 44 million record cards from 1870 to 1978.

Berne Implementation Committee

On March 1, 1989, the United States implemented its adherence to the Berne Convention. The Register charged an internal Berne Implementation Committee, chaired by General Counsel Dorothy Schrader, with educating both Copyright Office employees and the private sector on the changes made in the law and assessing the Berne Convention Implementation Act's impact upon Office procedures and practices. All divisions were represented on the committee, which had the following subcommittees: Forms and Publications, Regulations, Mandatory Deposit, Registration Practices, and Training and Public Education.

The major change to the law was the abolish-

ment of the mandatory notice of copyright for works first published on or after March 1, 1989. Because nearly all Copyright Office literature discusses mandatory notice, virtually every form, circular, and publication was subject to revision. Two new circulars were prepared specifically on the impact of joining the Berne Convention: Circular 93—Highlights of U.S. Adherence to the Berne Convention and Circular 93a—The United States Joins the Berne Union. Staff throughout the Office received formal training on the changes to the law.

Participation in the Berne Convention also necessitated revision of letters of demand and establishment of new procedures and guidelines for mandatory deposit in the Deposits and Acquisitions Division, under the guidance of the Office of the General Counsel. The division also sponsored a seminar to discuss with the Library's recommending officers and other acquisitions officials the effect of adherence to the Berne Convention on acquisition activities. By the end of the fiscal year the division noted no discernible difference in the conduct of claiming activity nor in deposits received.

The Implementation Act also modified the jukebox compulsory license of the copyright law, providing for direct negotiation between the parties on jukebox licensing. The Berne revision now supercedes the 1985 jukebox agreement, which called for the creation of an administrative committee to further cooperation and understanding within the jukebox and performing rights industries and increase the jukebox licensing compliance levels. Representatives from the performing rights societies, the major jukebox trade association, and the chief of the Licensing Division served on the committee. Since 1985, the compliance level of jukebox licensing, which had decreased each year since 1978 as much as 9.5 per cent, improved noticeably. In calendar year 1988, the compliance level actually increased by more than 2 per cent. This increase continued through fiscal year 1989.

The Register and his policy planning advisors

met frequently with various private, government, and professional associations to discuss Berne adherence, and the General Counsel's Office dealt with various legal issues, but overall, after creation and revision of relevant literature, the effects of joining the Berne Convention were not much felt in the daily operations of the Office. In no way did the abolishment of formalities seem to lessen the flow of registrations or section 407 deposits into the Office.

Motion Picture Product Line

Since 1984, the Examining Division and the Cataloging Division have worked with the Motion Picture, Broadcasting, and Recorded Sound Division (M/B/RS) to prepare a plan for product line processing of certain types of motion picture claims, such as daytime serials, regularly scheduled news programs, and certain other serials. The long-awaited pilot project was effective September 22 and will last for six months, during which time screening, examining, numbering, and cataloging of these numerous claims will be done by technicians on the motion picture teams, thus eliminating duplicative cataloging and improving service to M/B/RS. The projected benefits are: the material is handled fewer times; the processing time is reduced; accuracy is increased; materials are more secure; and the positions of the staff members involved are enhanced, all of which should mean an increase in productivity and procedural efficiency. At the end of the six months, the results of the project will be evaluated, and the Office will proceed as appropriate.

Cataloging Division

Copyright Cataloging Division receipts for fiscal year 1989 continued to reflect the increase in applications experienced by the Copyright Office as a whole. Total registrations received for the year, including renewal applications and documents submitted for recordation, were 624,915 as

compared to receipts in the previous fiscal year of 588,441.

In the face of steadily increasing receipts during the year, in May the Cataloging Division instituted a series of "work only weeks." Scheduled at the rate of one per month for the remainder of the fiscal year, these "work only weeks" were designed to curtail meetings and outside activities and allow all staff members, including the supervisory staff, to focus their maximum efforts on productivity improvements. As in years past, the staff responded to the challenge, and records were broken repeatedly for individual team, individual section, and division productivity. Various teams and sections experimented with productivity improvement efforts during these "work only weeks," and due to their success, many of these efforts are now a permanent part of the division's procedures.

At the end of the fiscal year the division reported an all-time high number of clearances at 631,857 as compared with 592,344 for the previous year. At year's end the division's on-hand figure was 102,176, representing the second year in a row that the division had successfully reduced its on-hand figure in spite of steadily increasing receipts. The year end on-hand figure represents just over eight weeks worth of work for the division.

Two key departures in the division office should be noted. In October 1988, Chief Peter R. Young left the Library of Congress to assume a position in the private sector. In April, 1989, Jeannie Coe took another position within the division, vacating the Secretary to Chief's position in which she had served for nearly 20 years. In August she left the division to assume a position with the Department of Education.

Throughout the year the process of self-revision, employed experimentally in the past, gained increasing acceptance among the senior level cataloging staff. Review of records created by this process shows that the high level of accuracy maintained by the senior staff prior to the use of self-revision continues to be met.

The historically contentious issue of work performance standards within the division in the past appears to be nearing resolution. The development of a new performance appraisal system (PAS) has been the focus of the division's Labor Management Satellite Group for several years. The group gathered statistics using several different methodologies, and experimental methods of work distribution have now become the accepted standard. As a result of this process, a level of mutual understanding between supervisors and staff has been created. At this time, it seems unlikely that the division will return to strict numerical quotas related to quality and quantity of work for senior level catalogers, but will rely upon an informal system tailored to the individual situations encountered in the performance appraisal process.

Deposits and Acquisitions Division

The decision last year that the Copyright Acquisitions Section should participate in the Library's ACQUIRE system was realized by its participation in the ACQUIRE Management Policy Committee and its various subcommittees.

Early in the year, the Library began action on last year's Management and Planning (MAP) Committee recommendations and entered its transition stage to a new macro-organization. The recommendation for a new administrative location for the division's acquisitions function was closely studied by the Copyright Office's Transition Team and was incorporated in the Collections Services work module dealing with acquisitions and collections development.

By the end of the fiscal year the firm proposal was made for the Compliance Records Section to become a part of the Copyright Cataloging Division—remaining in the Copyright Office—and for the Copyright Acquisitions Section to be funded through the Copyright Office but to be operationally responsible to the Director of Acquisitions in Collections Services—remaining physically where it is now located because of its close budget and

workflow ties to the Copyright Office.

Procedures put in place last fiscal year to address staff shortages were retained; additional procedures were reviewed and modified as needed for greater efficiency and prompt resolution of cases. The vacancy created by the resignation of the Compliance Records Section head in June, which existed through the end of the fiscal year, required an already small staff to absorb additional duties and accounts for an ever-increasing arrearage.

Nearly all compliance actions against publishers were successfully resolved, resulting in acquisition of materials in a variety of formats. A high volume of works were acquired through telephone discussions of deposit responsibilities. There was an increase of 29 percent in the number of demand letters initiated by the copyright acquisitions librarians in the division, as well as a significant increase of 145 percent in the number of demand letters sent based on Library requests. The value of material received during the year was \$1,488,253; registration fees accompanying some of these titles amounted to \$34,300; the value of titles received from publishers in addition to works demanded totaled \$311,133, giving a grand total of \$1,833,686, a 52 percent increase over the previous fiscal year.

The division was approached by distributors of foreign works for ongoing special relief to deposit one copy—an indication that these foreign publishers intend to comply with section 407.

A total of 271,527 works in all formats deposited under section 407 were transferred during fiscal year 1989 to the Library, an increase of 8.22 percent over fiscal year 1988. The number of materials transferred to the Library's collections (232,463) showed an increase over fiscal year 1988, and materials to the Exchange and Gift Division (39,064) a decrease.

Examining Division

The Examining Division has two major, perennial challenges: to process in a timely manner a

growing workload with existing staff and to study, resolve, and draft practices and procedures for substantive issues that affect the copyright community at large. This fiscal year, there was no dearth of opportunity for challenges in both arenas.

The Copyright Office received an unprecedented 644,000 claims to be examined this year, an overall 8 percent increase over last year. Within specific classes of material, however, the amount was even greater, with classes VA, PA and SR experiencing increases of from 11 to 21 percent. Special handling claims continued to rise, increasing the burden of deciding difficult copyrightability questions within a short time frame. The Visual Arts Section bears the brunt of this workload. This year the section attorney-advisors and section head handled a record of 895 such claims. Appeal cases, averaging more than 30 each month, likewise continue to plague the Visual Arts Section.

The Performing Arts Section achieved dramatic results in reducing its motion picture claims on hand. In January 1989, representatives from the motion picture team, the PA Section, the division, and the Administrative Office began a series of meetings to discuss short-term and long-term plans for streamlining the processing of motion picture claims, which at that time numbered over 5,000. Expedited examining procedures were adopted in consultation with the Cataloging Division and M/B/RS; at the end of the fiscal year, motion picture claims numbered 785.

The division chief and the Mask Works Unit supervisor worked with the Literary Section to create Short Form SE, designed to expedite registration of serial claims. Presently, the section technicians are able to handle 75 percent of serial claims without review; with the adoption of Short Form SE, which will be limited to serials that meet six specific criteria, technicians are expected to be able to handle 90 to 95 percent of serial claims. The form has been finalized and should be printed shortly.

The division faced a panoply of substantive

issues this year. Following issuance of a new Office regulation last year, the division gained expertise in processing claims in computer screen displays. A computer program and its related copyrightable screen displays, when owned by the same claimant, must be registered together in a single registration. An intersectional group of staff at the supervisory level and above met to discuss and resolve pending cases. The group completed its work in late September and began training staff in each section to handle these complex claims.

A second intradivisional issue that was resolved was the registrability of synthesizer patches. A new practice decided that a single patch (a program in visual or machine readable form that fixes a varying number of parameters to produce a particular sound quality) must represent the selection of more than a minimal number of parameters from a significant range of options to produce a particular sound quality. The deposit required for registration of such a work must include a voice data record or a similar chart, from which the authorship can be visually perceived. It must also show the settings and the range of parameters from which the selections were made.

The PA Section also drafted a practice for claims in subliminal works that contain some portion of authorship that is intentionally imperceptible to conscious listeners or viewers. The section has seen a proliferation of these works during the past year. Typically, such a work contains audible sounds in the form of music or ocean waves along with an inaudible recitation of suggestions or affirmations intended to be perceived only subconsciously. A subliminal motion picture may contain subliminal textual suggestions flashed on the screen in such a way that they are not seen during normal viewing, but presumably are discerned subconsciously. The examiner is aware of the subliminal material usually through statements the applicant makes in a letter or on the application or from liner notes on albums or tapes. The draft practice proposes that to the extent that the subliminal authorship is revealed and identified as text or sounds, it

is a proper subject of copyright, and the usual standards of copyrightability apply. No protection exists for the technique, method, or purpose of subliminal works.

Visual perceptibility is also a problem for the PA Section in claims in "closed captioning" television programs that enable the hearing impaired to read what is being said. Closed captions can be perceived only if the viewer's television has a special decoder attached; the text appears as white letters against a black rectangular background. Creative authorship in closed captioning is in adapting, editing, and abridging the text that is spoken to make it fit the television screen. Again, it is registrable only on the basis of copies identifying its content.

A closely related issue is the copyrightability of "signing" for the hearing impaired. The term itself as a statement of authorship is not acceptable because it is not clear whether it refers to the method, the performance, or the underlying text. Although the act of signing is not copyrightable, signing may represent copyrightable motion picture authorship as a visible performance; also, the literary authorship fixed through signing may represent copyrightable authorship as original text or as a translation from one language to another.

The division also studied the legal issues raised by claims in aerobic exercises as choreography.

Among the difficult issues engendered by claims representing computer-related technologies were those involving the copyrightability of templates and add/on programs, artificial intelligence programs and programmable array logic (PAL). After review of these cases by a special task group and the division office, and consultation with industry experts, it seems that templates, which are marketed for user customization, are typically copyrightable but frequently raise questions about the appropriate extent of the claim. PAL claims, on the other hand, are questionable because their authorship may be determined by the device functions. The division continues to study and correspond on these claims to determine whether sufficient

authorship, apart from the predetermined expression, exists to warrant registration.

Technological developments also spawned many inquiries for the unit that examines claims in mask works embodied in semiconductor chips. In response to questions from Rep. Robert W. Kastenmeier, Chairman of the House subcommittee that deals with copyright issues, and the Semiconductor Industry Association, the Mask Work Unit prepared a report on the Office's position on protection for discreet mask works fixed in semiconductor chip products. The report will be used in international treaty discussions.

Training for the entire staff continued on January 24 in the Coolidge Auditorium when the renowned American composer Elie Siegmeister presented the 20th lecture in the Examining Division's "View From the Other Side" series. Mr. Siegmeister, who celebrated his 80th birthday the week he spoke to the staff, delighted the audience with copyright-related vignettes of his experiences as a composer and author. Under Mr. Siegmeister's direction, the Library of Congress Chorale performed "Three Workers' Rounds," which Siegmeister composed in the 1930's.

Information and Reference Division

During fiscal 1989 there were two additions to the division office. Jim Cole, formerly the assistant chief in the Licensing Division, was appointed assistant chief in December, and Joan Georges came from the Preservation Office to become the secretary to the assistant chief in February. The division contributed the services of Chief Joan Doherty to the Library's management team for AFSCME 2477 master contract negotiations.

The Information Section capped the fiscal decade of the eighties with a dramatic rise in overall productivity, an ambitious schedule of outside engagements and 50 in-house tours, a busy training calendar, a new telephone system, and plans for a new era of information dissemination.

In fiscal year 1989 section staff responded to

171,620 telephone inquiries, again surpassing previous years, and up over 13,000 from last year. The information specialists answered 64,878 letters of inquiry, an increase of over 70 percent from the previous period. The number of visitors to the section remained almost constant at 16,030.

Telephone technology dominated the administrative arena. In November, the long-awaited AT&T System 85 was made operable in the Library, and the section received and was trained in the use of new telephone instruments. The equipment performed well, and the transition from the ROLM switch went without a hitch. In December, discussions began toward procurement of a recorded information system, and a contract was awarded to AT&T for the Conversant System. This system should serve the needs of both the Information and Publication Sections well into the next decade.

The Reference and Bibliography Section experienced another very busy and eventful year, starting fiscal year 1989 with 405 searches on hand. Through the continued hard work and concentrated efforts of the staff and supervisors, this number was decreased to a two-year low of 147 by December 1988. They conducted 3 percent more searches this year than last for a total of 9,378 and searched a total of 166,779 titles. The staff assisted a record number of 6,847 visitors, an increase of 1.6 percent over the previous year.

The section was called on by the Library to undertake a special search this year for the Library's American Memory Project. The time frame was very short and all staff volunteered to do what they could. The search involved numerous political cartoons and was completed in record time, 13 days ahead of schedule.

Fiscal year 1989 saw increases in the workload for the Certifications and Documents Section. The amount of correspondence received increased to 3,786, a dramatic 400 percent increase from last year. Search and estimate requests received increased 42 percent over last year to a total of 1,783 for this year, and the number of inspections by the

public increased 13 percent over last year to 259. This increase in demands from the public resulted in higher backlogs of work-on-hand.

The demand from the public for expedited requests increased to such an extent that the section increased the estimate of turn-around time for this service from 7-10 working days to 10-15 working days. The willingness of the staff to work additional hours to process these requests helped reduce the backlog of these requests to an acceptable level. A joint effort was implemented by the Photoduplication Service and the Certifications and Documents staff to help inform the members of the public what was required in order to obtain expedited service from Photoduplication.

In the Records Management Section, the Preservation Unit exceeded the previous year's productivity in the number of items processed, filmed, and edited. The unit processed 168,333 items for the year, an increase of 74 percent over the prior year. In March, the unit began to microfilm all post-1977 applications now stored in the Records Maintenance Unit (RMU). By the end of the year 82,000 applications had been filmed. This project will help relieve some of the space problems being experienced in RMU.

The disposal of post-1977 published deposits continued with a representative from the Collections Development Office periodically reviewing "red file" deposits before disposal. The Section continued to process and microfilm post-1977 PAU paper deposits. After microfilming, the original deposits are sent to either the Manuscript Division or the Exchange and Gift Division. The processing and microfilming of the Licensing Division's Statements of Account and the Cataloging Division's Assignments and Documents continued at a steady rate. Filming continued on the 508 documents received by the Certifications and Documents Section.

In June, the Cataloging Division initiated a number of measures to reduce its backlog. Due in large part to these measures, both RMU and the Deposit Copies Storage Unit (DCSU) began to

experience an influx of material significantly higher than normal levels. Despite a complete turnover of personnel, the staff in RMU absorbed the increased level of receipts, as they filed 656,669 applications, 10 percent more than the prior year. However, an arrearage began to build up at the DCSU warehouse in Landover. In September, an update to the DCSU Box Numbering System was put into effect, a long-awaited improvement that will help the staff reduce the backlog of deposit copies waiting to be boxed.

Licensing Division

The Licensing Division reports that during fiscal year 1989 its total receipts of royalty payments on behalf of copyright owners from 1978 onward surpassed \$1 billion dollars. Royalty payments from cable television retransmissions and jukebox licenses accounted for this total amount. During fiscal year 1989 additional royalties were submitted for the new satellite carrier compulsory license. Investment of royalties prior to distribution by the Copyright Royalty Tribunal (CRT) added another \$44.6 million dollars in interest earnings to this amount. Total distributions of royalties by the Tribunal through 1987 include \$751,724,981.87 and \$34,669,810.42 for cable and jukebox, respectively.

On January 1, 1989, Congress enacted the Satellite Home Viewer Act, Pub. L. 100-667, which established a compulsory license for certain secondary transmissions made by satellite carriers to home "dish" owners for private home viewing. (See section on Copyright Office Regulations for a discussion of the legislation.)

To implement this act, the Licensing Division established a separate account for investment of the royalty fees received, and set up a public file to record the names and addresses of national television networks. Satellite carriers are required to provide networks with lists of subscribers receiving their programming and to update any additions or deletions to the subscriber base on the 15th

of each month. The division also designed a statement of account form for satellite carriers to report their retransmission of television broadcast programming and calculate the royalty fee.

The Division implemented an internal restructuring this fiscal year that split the Accounting and Records Section into the Fiscal Section and the Licensing Information Section, which more effectively identifies the accounting and public information functions. Except for the division chief, every managerial position in the Licensing Division became vacant at some time during fiscal year 1989. John Martin, former head of the Examining Section, became assistant chief.

Effective July 1, 1989, a Copyright Office interest regulation was implemented, which requires cable television system owners to pay interest on late payments of royalties and underpayments. Effective implementation of this regulation has proved to be administratively tedious. A late royalty payment and an underpayment accrue interest differently. In order to implement this regulation, the statement of account form was revised to include instructions and a worksheet to assist cable television system owners with interest computation.

Throughout fiscal year 1989, the division continued to collect cable television royalties pursuant to the United States Court of Appeal's decision in *Cablevision Systems Development Company v. Motion Picture Association of America, Inc.* No. 85-5552 (D.C. Cir, Jan. 5, 1988). This decision affirmed Copyright Office regulations defining "gross receipts" for cable television systems and affected statement of account filings during both accounting periods of 1986 and the first accounting period of 1987. As a result of this project, the examination of current statement of account filings was delayed considerably while declarations and supplemental forms were filed, examined and processed. By the end of the year, over \$106 million dollars in additional royalty fees had been collected.

Because of additional royalty fees submitted as

a result of the *Cablevision* case, the division was prevented from providing the Copyright Royalty Tribunal (CRT) with a timely breakdown of 1986 cable royalty fees (i.e., Base, 3.75, and Syndex) during fiscal year 1988 to form the basis of determining the percentage distribution of royalties to copyright owners. During fiscal year 1989, however, when the bulk of additional fees was received, reports for both 1986 and 1987 were executed. This required the division to review over 33,000 statements of account, including supplemental filings, refunds, and additional payments resulting from amendments and examiners actions.

Quite unanticipated by the Licensing Division was a CRT request for a breakdown of additional cable royalty fees received for the 1987 period subsequent to its earlier report. The Licensing Division's original report accounted for a breakdown of over \$156 million dollars in 1987 cable royalty fees, or 99.17 percent of the total received during that period. Since the division's automated system is not yet operational, the breakdown of the \$3.9 million dollars in additional royalty payments received after the earlier study was concluded must be painstakingly prepared entirely by hand. Additional staff resources must be assigned to develop an effective methodology to enable the identification and breakdown of the additional royalty fees covering a specific period of time.

This year presented an opportunity for in-depth involvement by the staff of the Division with the design and development of a stand-alone computer system. The proposed system will improve and integrate the existing jukebox processing system and cable address system with a sophisticated statement of account information system and much needed jukebox and cable accounting and form tracking system. The system will provide a cutting-edge-of-technology approach to data retrieval and enable prompt reporting to the CRT of royalty payment distributions. Development of the new system requires a base understanding of Oracle software products and relational database

design. Although welcomed by staff and management alike to eliminate lengthy manual processes and increase overall efficiency and reporting capability, the new system calls upon tight divisional resources and full-time involvement by the Copyright Automation group to ensure that it meets the division's full expectations.

Receiving and Processing Division

The Incoming Mail Unit began the fiscal year with about three days work on hand and ended the year completely current with incoming receipts. But this does not tell the whole story. The unit was plagued by vacancies, and during the December and January holidays, developed a build-up of work that eventually reached about 15 days at its peak. The build-up fluctuated for several months as limited overtime and staff from outside the unit were utilized at various times, but because of continuing vacancies and record receipts, the backlog persisted until late spring, at which time it was eradicated with the help of the Mail and Correspondence Control Section head.

The Registered and Outgoing Unit fared somewhat better in coping with the mounting workloads, and the work build-up never reached the levels of the Incoming Unit. The outgoing supply mail operation was let out on contract on a trial basis in September to a firm that provides work for handicapped persons. First indications are that this arrangement is working well and will likely be made permanent, freeing up one or two employees to perform other duties. The small staff of the Correspondence Control Unit maintained work currency despite the increased workload.

The Fiscal Control Section suffered a great loss when the section head and the supervisor of the Data Preparation and Recording Unit accepted other positions and left the division on the same day. This sudden exodus of these two key employees certainly left a vacuum in the section, and the positions are still vacant at the end of the fiscal year.

Nonetheless, the Data Preparation and Recording Unit, led by its assistant supervisor produced 680,993 Receipt/In Process (RIP) Records, compared with 657,534 the previous year. During the summer months after the mail room cleared out its two-week backlog on to the shelves of this unit, there was no panic and no clamoring for outside assistance. The staff in the unit put together a series of weeks of truly outstanding output and steadily whittled down the build-up to nearly normal levels by the end of the fiscal year.

The Accounting Unit transferred copyright fees to the U.S. Treasury totalling \$7,434,715.66, compared with \$7,007,602 the previous fiscal year. The unit serviced 2,141 deposit accounts with a collective total balance at the beginning of the year of \$1,323,359.06. Staff in the unit were beset by system problems affecting the deposit accounts. A large number of transactions affecting several accounts were omitted during a periodic purge of the file. Identifying the source of the problem and correcting it became about a three-month process, during which time statements of account could not be mailed to depositors. It became necessary for the staff of the unit to send out notices to depositors and to provide a phone number for balances. The staff handled this extra workload admirably, and major problems were averted.

The Materials Expediting Units completed 53,661 searches, an increase of 3.4 percent over the previous year. The Incomplete Claims Holding Area (ICHA) received and processed 24,060 claims, an increase of 9.5 percent. The Materials Control Section handled 2,352 formal requests for special handling, an increase of 7.5 percent over the previous year. The staff also expedited 722 internal specials, resulting from Office errors or unusual delays. The section clerks of the Materials Control Section processed 51,968 reply connections. They assumed the responsibility for typing all necessary information for a mailing advice when a special handling request is to be mailed by special mode. These versatile employees provide regular assistance in ICHA and have provided valuable

relief to the Data Prep Unit.

The Registration Processing and Certificate Production Unit provided one of the more remarkable accomplishments of the year, processing 615,711 registrations compared with 565,801 the previous year. To its credit, the unit never developed a backlog serious enough to cause concern or to require the assistance of staff outside the unit.

The only production problem that developed could not be blamed on the staff and was solved effectively with the delivery of a new Pitney-Bowes folder/insert machine for certificates. The new machine allowed the staff to eliminate what was on hand and assured that certificates would be inserted and ready for mailing within 24 hours of availability. Later in the year, in a move that saved staff time in the Outgoing Mail Unit, a postage meter was hooked to the folder/insert, and envelopes were also metered. Although this new system is clearly more efficient than the old process, the Office did receive some complaints from the public because certificates are now mailed in separate envelopes instead of being grouped manually as was done in the past. The elimination of this manual sorting process saves the unit valuable staff time for more productive activities.

Representatives of the division and the Motion Picture Unit of Examining Division held a series of meetings to develop a procedures manual for the handling of motion picture claims, resolving inconsistencies in the way motion pictures are handled. A new interoffice search report form was developed by representatives of the expediting units and the Publications Section, which includes pertinent information not requested in the past. In other interoffice activities, new special mode mailing procedures for materials expeditors were developed; in an effort to assure that an even flow of materials is forwarded to Cataloging Division, a form was developed that graphically indicates the types and numbers of materials being sent to Cataloging; and in cooperation with the Examining Division, systems were implemented to moni-

tor referrals more efficiently and to improve the security of adult motion pictures.

COPYRIGHT OFFICE REGULATIONS

Mask Work Protection

The present Copyright Office regulations provide that only one registration can be made for the same version of a mask work and that the registration must consist of the most complete form as fixed in a semiconductor chip product at the time of registration. This requirement is intended to discourage applicants from fractionalizing their mask work contributions into smaller portions and making multiple registrations.

Despite the general appropriateness of the most complete form regulation, it has come to the attention of the Office that there may be one instance where it results in different treatment between different categories of applicants depending upon whether they are a merchant manufacturer or a captive manufacturer.

So-called merchant manufacturers are companies that license unpersonalized gate arrays to others who customize the chips into finished products by adding the customized metallization layers. In the typical circumstances, the merchant manufacturer will own the mask work contribution in the unpersonalized gate array, and the company manufacturing the final product will own the rights in the customized metallization layers. As a result, two separate registrations may be made covering each owner's mask work contribution. The captive manufacturer owns both the gate array and the metallization layers. Once a captive manufacturer has produced any final product by adding the metallization layers, under the existing regulations it loses the right to register separately the unpersonalized gate array and the customized metallization layers.

On February 7, 1989, the Office published a

proposed amendment to section 211.4(c) and (e) of its regulation that would provide the same treatment for both merchant manufacturers and captive manufacturers by permitting separate registrations for the unpersonalized gate arrays and the customized metallization layers despite the existence of a completed final form.

Satellite Carrier Statutory License Statements of Account and Filing Requirements

The "Satellite Home Viewer Act of 1988", Pub. L. 100-667, went into effect on January 1, 1989, for a six-year period. The Act, which adds a new section 119 to the Copyright Act of 1976, establishes a statutory license for certain secondary transmissions made by satellite carriers to satellite "dish" owners for private home viewing. Satellite carriers will be permitted to make secondary transmissions of superstation and network signals to satellite "dish" owners for private home viewing upon payment of a statutory royalty fee and satisfaction of certain other conditions. The statutory royalty fee will sunset in four years, and will be replaced by privately negotiated licenses or an arbitrated fee established on or before December 31, 1992. The entire Act itself terminates on December 31, 1994.

On February 28, 1989, the Office published proposed regulations to implement the Act. On March 1, 1989, the Office informed the public that pursuant to the Act it was preparing a new statement of account form to be filed semiannually by satellite carriers who make secondary transmissions of superstation and network signals to satellite "dish" owners for private home viewing. The notice invited participation in a public meeting to assist the Office in preparing the statement of account form.

Final regulations were published on July 3, 1989, which require the satellite carriers availing themselves of the compulsory license to submit royalty fees and statements of account forms within

one month after the closing date of each semiannual accounting period.

Computer Programs Containing Trade Secrets and Computer Screen Displays

On March 3, 1989, the Office published final regulations amending the current regulations concerning the deposit of computer programs. The amendments establish special deposit procedures for computer screen displays and for computer programs containing trade secrets.

The changes in the regulations pertaining to computer programs containing trade secrets include a requirement that the deposit copy represent the source code of a computer program; grant permission to block out trade secret material embodied in the deposit; and, reaffirm the continued availability of "special relief" for computer programs containing trade secrets.

Where the application for registration of a computer program includes a reference to a claim in computer screen material, the regulations were amended to require deposit of visual reproductions, such as printouts, photographs, or drawings of the screen display.

Registration and Deposit of Databases

The final regulation providing for group registration of automated databases and their updates or other revisions was published on March 31, 1989. The regulation amends 37 CFR 202.3 and 202.20 and for the first time authorizes group registration for such works even though the database and its revisions have been published at different times. The regulation specifies conditions under which registration may be made on a single application with a single deposit and fee. Under certain conditions the regulation permits a group registration of updates or revisions created or published within a three-month period. The nature of the required deposit is also specified in the regulation.

Assessment of Interest Regarding the Cable Compulsory License

On April 10, 1989, the Office published notice of a final regulation amending section 201.17 of its regulations, to assess interest on underpaid royalty sums due under the cable television compulsory license of the Copyright Act. The amendment is prospective in application and took effect at the end of the 1989-1 accounting period. The regulation applies to underpayments (including zero payments) occurring on or after July 1, 1989. Interest will accrue from the first day after the last filing date of the applicable accounting period in which the underpayment is made.

PUBLIC ANNOUNCEMENTS

Jukebox Copyright Licensing

On October 20, 1988, the United States Senate ratified the Berne Convention for the Protection of Literary and Artistic Works. The Act of October 31, 1988, (Pub.L. 100-568, 102 Stat. 2853) amended the Copyright Act to conform to the requirements of the Berne Convention. One of the amendments allows jukebox operators to replace the compulsory license administered by the Copyright Office with voluntary licenses. Under a voluntary license the terms and royalty rates are agreed to directly between copyright owners or their representatives and jukebox operators or their representatives. Royalty payments under any voluntary agreement would not be made to the Copyright Office. Since, however, no voluntary agreements were made during 1988, the compulsory license remained in effect for the 1989 licensing year.

Cable Compulsory License Specialty Station and Significantly Viewed Signal Determinations

In response to petitions from members of the public to make certain determinations concerning

the administration of the cable compulsory license, the Office held an inquiry into possible changes in the list of specialty broadcast stations originally developed by the Federal Communications Commission (FCC) and the determination of a station's "significantly viewed" status under the FCC's former "must-carry" rules.

On September 18, 1989, the Office announced the following policy decisions. With respect to specialty stations, the Office adopted procedures whereby an updated, annotated list of specialty stations will be established and amended periodically as stations allege that they qualify or cease to qualify as specialty stations under former FCC rules. Furthermore, the Office announced that it will not attempt to institute a new procedure for the determination of the significantly viewed status of stations since, after a lapse of time, the FCC has apparently resumed making such determinations.

Cable Compulsory License: Merger of Cable Systems

The Office published a notice of inquiry on September 18, 1989, to inform the public that it is examining the issues of merger and acquisition of cable systems and their impact on the computation of royalties under the cable compulsory license and specifically the interpretation of the "contiguous communities" provision of the definition of cable systems in 17 U.S.C. 111(f). Under existing regulations, two or more cable facilities are classified as one individual cable system if the facilities are either in contiguous communities under common ownership or control or are operating from one common headend. A single statement of account must be filed in these cases and the "combined" distant signal equivalents must be applied against the gross receipts for secondary transmissions for the combined system. The Office is reopening the matter of the interpretation of "contiguous communities" found in 17 U.S.C. 111(f) and seeks public comments and proposals as to the proper reporting and royalty calculation pro-

cedures for cable systems under common ownership in contiguous communities, whether as a result of a merger of systems or expansion of a single system.

LEGISLATIVE DEVELOPMENTS

Berne Convention

As discussed earlier, on October 31, 1988, at the close of the 100th Congress, President Reagan signed the ratification and implementation legislation of the Berne Convention for the Protection of Literary and Artistic Works. The momentous signing marked the end of a 102-year period in which the United States remained outside the Convention and solidified America's position in the international copyright arena. The Convention became effective on March 1, 1989.

Ratification and implementation of the Berne Convention has brought about several significant changes in U.S. copyright law. The mandatory notice of copyright provisions of the Copyright Act were abolished for works published for the first time on or after March 1, 1989. The Act's provisions requiring registration of a work prior to bringing an infringement suit were retained for all but Berne Convention works that are not of U.S. origin. Also, the Berne Convention Implementation Act doubled statutory damages and contained provisions for moving toward replacing the jukebox compulsory license with negotiated licenses between jukebox operators and copyright owners for musical works performed on jukeboxes.

Fees and Compensation

On March 23, 1989, Rep. Robert W. Kastenmeier introduced H.R. 1622, the "Copyright Fees and Technical Amendments Act of 1989," which would increase the fees charged by the Copyright Office for various services, as well as make technical corrections to the numeration and delineation of

various sections of the Copyright Act. The bill allows the Register of Copyrights to adjust Copyright Office fees every five years in accordance with the current Consumer Price Index. In testimony before the Senate Subcommittee on Patents, Copyrights and Trademarks on July 12, 1989, regarding S. 1271, the companion bill to H.R. 1622 in the Senate, Register of Copyrights Ralph Oman noted that while the bill would raise the current copyright filing fee from \$10 to \$20, the cost of registering a claim to copyright is still "one of the best bargains in town." The Senate bill was sent to the full Judiciary Committee on July 26, 1989.

Rep. Kastenmeier introduced H.R. 3046 on July 28, 1989, which would reduce the number of Copyright Royalty Tribunal Commissioners to three and set their compensation at Level V of the Executive Pay Schedule. Rep. Carlos Moorhead also introduced an amendment to H.R. 3046, which would compensate the Register of Copyrights at Level IV of the Executive Pay Schedule and provide for three Associate Registers to be compensated at Level V of that same schedule. As the fiscal year ended, the Library and the Copyright Office sought modification of the Moorhead Amendment.

Work Made for Hire

The Register of Copyrights testified on September 20, 1989, before the Senate Subcommittee on Patents, Copyrights and Trademarks on S. 1253, which proposes changes to the work-made-for-hire and joint work provisions of the Copyright Act. Introduced by Sen. Thad Cochran, the bill would obviate the Supreme Court's recent interpretation in *Community for Creative Non-Violence v. Reid*, ___ U.S. ___, 57 U.S.L.W. 4607 (June 5, 1989) of who a work for hire "employee" is by requiring that the work be produced by a "formal, salaried employee." The Register supported the bill but recommended several changes to its provisions regarding joint authorship.

Eleventh Amendment: Copyright Liability of the States

Rep. Kastenmeier introduced H.R. 1131 and substitute bill H.R. 3045, which would abrogate states' immunity from copyright infringement suits. A like bill, S. 497, the "Copyright Remedy Clarification Act," was introduced in the Senate by Sen. Dennis DeConcini. The Register of Copyrights testified before the House Subcommittee on Courts, Intellectual Property and the Administration of Justice on April 12, 1989, supporting state copyright liability, and did likewise before the Senate Subcommittee on Patents, Copyrights and Trademarks on May 17, 1989. The Senate subcommittee sent the bill to the full Judiciary Committee on July 26, 1989. Both bills would amend section 501(a) of the Copyright Act to make clear that states are part of the class of persons or entities who are subject to copyright liability for acts of infringement.

Computer Software Rental

The Register of Copyrights testified on April 19, 1989, before the Senate Subcommittee on Patents, Copyrights and Trademarks on S. 198, the "Computer Software Rental Amendment Act." Introduced by Sen. Orrin Hatch, the bill is modeled after the record rental provisions of the Copyright Act and would grant copyright owners of computer programs the right to control commercial lending. The bill was marked up on July 26 and sent to the full Judiciary Committee. A companion bill, H.R. 2740, has been introduced in the House by Rep. Mike Synar.

Hospital Exemption

Rep. Benjamin Cardin and Sen. William Roth introduced bills in their respective bodies on August 4, 1989, which would exclude from copyright liability as public performances the showing of works on videocassettes to persons in hospitals,

hospices, nursing homes, retirement homes, and other such group homes or institutions, provided that certain conditions are met. H.R. 3158 and S. 1557 require that the institution making the public performance provide health or health-related care to individuals on a regular basis and serve as their temporary or permanent home. The bills also mandate that no direct charge be made for the performances and that they are not further transmitted by closed circuit television or by any other means. No hearings have been held on either of the bills.

Moral Rights

Sen. Edward Kennedy introduced S. 1198 on June 16, 1989, the "Visual Artists Rights Act of 1989," to protect the moral rights of visual artists. A similar bill, H.R. 2690, was introduced by Rep. Kastenmeier on June 20, 1989. The bills provide for protection of authors' moral rights in fine art works of painters and sculptors. Also in the bills are protections for fine art photography. The bills require the Register of Copyrights and the Chairman of the National Endowment for the Arts to jointly conduct a study to evaluate the feasibility of new initiatives that would permit visual artists to share in the financial appreciation of their works after their first sale. A hearing was held on S. 1198 on June 21, 1989.

Design Protection

Design protection has received a significant amount of interest in the 101st Congress. On February 7, 1989, Rep. Carlos Moorhead introduced H.R. 902, which would add a new chapter 10 to title 17 of the United States Code entitled "Protection of Industrial Designs of Useful Articles." The bill grants protection to designs of useful articles that are intended to make the articles attractive or distinctive in appearance. H.R. 902 places responsibility for administering the new design protection legislation on the Register of Copyrights.

Rep. Richard Gephardt introduced another design bill, H.R. 3017, which builds on the provisions of H.R. 902. It includes typefont among the list of protected designs and addresses concerns over automobile parts by excluding that portion of the useful article whose shape is dictated by its mechanical function. No hearings were held on the bills during the fiscal year.

Trade and Intellectual Property

The Register of Copyrights submitted a statement to the House Subcommittee on Courts, Intellectual Property and the Administration of Justice on July 25, 1989, summarizing recent intellectual property developments calculated to have a bearing on the improvement of the U.S. trade picture, such as U.S. adherence to the Berne Convention and the Omnibus Trade and Competitiveness Act of 1988.

Attorney's Fees

Rep. Howard Berman introduced H.R. 671 on January 27, 1989, which would add a new section 505(b) to the Copyright Act to require the court to award attorney's fees when the prevailing party owns the rights to the infringed work and is either a small business concern or an individual. The section would not apply if the infringement is by a nonprofit educational institution, library, or public broadcasting entity. No hearings have been held on the bill.

Cable Compulsory License

On January 4, 1989, Rep. John Bryant introduced H.R. 109, the "Cable Subscribers Protection Act of 1989." The bill conditions the availability of the cable compulsory license on a cable system's compliance with reasonable "must carry" rules of the FCC. Those cable systems that do not comply with must carry rules are free to negotiate their own licenses for the programming that they re-

transmit. The bill also prohibits channel shifting of broadcast stations. A similar bill, S. 177, was introduced in the Senate by Sen. Dennis DeConcini. No hearings have been held on the bills.

Other Legislative Activities

The Register of Copyrights testified at an oversight hearing on March 16, 1989, conducted by the House Subcommittee on Courts, Intellectual Property and the Administration of Justice. The Register cited 11 areas where there would likely be legislative activity in the 101st Congress, including design protection, sovereign immunity, colorization of motion pictures, and the moral rights of visual artists. The Register also asked for support in increasing the Copyright Office's fee structure and recommended amendments to the scope of the statutory charge to the Copyright Office to prepare reports at five-year intervals regarding library photocopying of works.

Sen. Albert Gore introduced S. 1067, the "National High Performance Computer Technology Act of 1989," which promotes government involvement in developing computer technology and networks in the field of high performance computing. The bill implicates rights in works made for hire, computer software, databases, screen displays, and other intellectual property concerns. Hearings were held on the bill before the Senate Subcommittee on Science, Technology and Space on June 21, 1989, and further hearings are scheduled.

Sen. J. Bennett Johnston introduced S. 712 on April 5, 1989, which provides for a referendum on the political status of Puerto Rico. The bill contains intellectual property provisions relating to designs of useful articles originating in Puerto Rico and modifies the exclusive rights of owners of mask works for those works of Puerto Rican origin.

Sen. Patrick Leahy introduced S. 270 on January 25, 1989, which removes the antitrust presumption of monopoly market power for owners or

licensees of intellectual property wherein the alleged wrongdoing is in connection with the marketing or distribution of a product or service protected by the intellectual property right. No hearings have been held on the bill.

JUDICIAL DEVELOPMENTS

Copyright Office Litigation

In *Beverly Hills Design Studio, Inc. v. Morris*, 88 Civ. 5886 (LLS) (S.D.N.Y. 1989), the district court upheld the Copyright Office's refusal to register paper patterns designed to aid in the cutting of fabric for exercise apparel designs. The paper patterns did not merely portray the appearance of the apparel or otherwise convey information, but instead were two-dimensional designs of useful articles—an integral part of the cut and shape of the clothing being made. The Register of Copyrights had become a defendant in the case under section 411(a) with respect to the issue of registrability of the copyright claims. The court granted the Register's motion for summary judgment.

At the invitation of the court, the Office filed an amicus brief in *Gordon & Breach, Science Publishers, Inc. v. Information on Demand, Inc.*, No. C-88-1695 EFL (N.D. Cal. 1989). At issue was the Office's registration practice interpreting section 409 of the Copyright Act, which considers the registration of a collective work to extend to constituent works that the registrant also owns even if, under certain circumstances, the works are not individually identified on the registration form. In upholding the registration practice, the court noted that experience has taught the Office that virtually all periodicals are wholly owned by the publisher.

The extent of the Office's authority to require the payment of interest on cable television compulsory license royalty underpayments remains to be decided in *Motion Picture Association of America v. Oman*, No. 89-1246-SSH (D.D.C. 1989). Section 111(d)(1)(B) of the copyright law requires

payment of a royalty by cable systems based on "gross receipts from subscribers ... for the basic service of providing secondary transmissions of primary broadcast transmitters." In turn an Office regulation, 37 C.F.R. §201.17(b)(1), mandates that gross receipts "include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals...."

The National Cable Television Association [NCTA] sought to overturn the regulation in the courts and won at the district court level, but the Office's interpretation of the statute, as embodied in its regulation, was upheld by the District of Columbia Circuit Court of Appeals, requiring an additional payment by those cable systems that had not followed the regulation in calculating their royalty payments. *Cablevision Systems Development Corp. v. Motion Picture Association of America, Inc.*, 641 F.Supp. 1154 (D.D.C. 1986), *rev'd*, 836 F.2d 599 (D.C. Cir.), *cert. denied*, 108 S.Ct. 2901 (1988).

Following the support of its regulation by the appellate court, the Office declared that it has the authority to and should require payment of interest on future royalty underpayments. Accordingly, the Office adopted a final regulation, adding a new subsection (i)(2) to 37 C.F.R. section 201.17, requiring that interest be paid on the royalty underpayments occurring on or after July 1, 1989. *Assessment of Interest Regarding the Cable Compulsory License*, 54 Fed. Reg. 14217 (1989).

The Motion Picture Association of America sued the Office because the payment was limited to only prospective underpayments. The NCTA moved to intervene, but the court had not ruled on NCTA's motion at the close of the fiscal year.

The district court, in *OddzOn Products, Inc. v. Oman*, No. 89-0106 (HHG) (D.D.C. 1989), upheld the Office's refusal to register a KOOSH ball as a sculptural work. The plaintiff had challenged the rejection of the claim and filed this action under the Administrative Procedure Act. The court de-

ferred to the Register's decision that the ball, a familiar shape and symbol albeit with tactile qualities (2,000 radiating rubber filaments), did not embody creative authorship in its delineation or form. The court found the Register's refusal to register the work was not arbitrary, capricious, or an abuse of discretion.

Oman v. Springer-Verlag GmbH, No. 89-1741 (D.D.C. 1989) marked the first section 407 foreign noncompliance case ever referred to the Department of Justice. The demand of the Register for the deposit of three periodicals published with notice of copyright in the United States was refused by the largest scientific, technical, and medical publisher in the Federal Republic of Germany. A complaint has been filed and negotiations on a consent decree between the parties were taking place at the end of the fiscal year.

The district court deferred to the Register's decision that the videogame "Breakout" did not contain sufficient authorship to be registered as an audiovisual work, in *Atari Games Corporation v. Oman*, No. 88-0021 (D.D.C. 1989).

"Breakout" simulates a ball and paddle knocking out rectangles (bricks) in a four color rectangular grid, while an audio tone signals contact of the "ball" with another object or the sides of the screen.

Atari appealed the adverse decision to the District of Columbia Circuit Court of Appeals. The case was argued September 18, 1989, and a decision is pending. On appeal, the Office reiterated that the visual authorship in the game is comprised merely of familiar unprotectible symbols and that the sounds—four different audio signals—do not rise to the level of sufficient copyrightable authorship to support registration.

Following the refusal to register "Breakout" and a similar work entitled "Super Breakout," the copyright owner filed an action under section 411(a) of the copyright statute against an alleged infringer. The Office entered that action, *Atari Games Corporation v. Romstar, Inc.*, No. 87 C 9504 (N.D. Ill. 1989), to explain to the court its reasons for refusing to register. As the fiscal year ended the

court had not ruled on a motion to stay that proceeding pending a decision on the copyrightability of "Breakout" by the Court of Appeals for the District of Columbia.

Finally, in *Business Systems, Inc. v. Reynolds and Reynolds Co.*, No. 88-1426 (E.D. Pa. 1988) the Office awaits a decision on its motion for summary judgment filed in this action in support of the refusal to register, as uncopyrightable blank forms, several accounting sheets designed and owned by the plaintiff. The Office had concluded that the arrangement, format, and design of the sheets were not protectible, and that the sheets conveyed insufficient information to support copyright registration. Following the refusal to register, the copyright owner sued an alleged infringer and the Register became a party to the action under section 411(a) with respect to the issue of registrability of the copyright claims in the works.

Publication

The popular novel by Tom Clancy, *The Hunt for Red October*, was the subject of a lawsuit for copyright infringement and breach of contract in *United States Naval Institute v. Charter Communications, Inc.*, 10 U.S.P.Q.2d 2021 (2d Cir. 1989).

The licensing agreement for the paperback version of the novel reflected that it is standard industry practice to delay publication of the paperback version of a book until one year after the month of hardcover publication, but did not mention a publication date nor define the term.

The paperback publisher argued that in shipping and selling the edition prior to the one-year period, its actions were in accordance with trade usage of the term "publish."

The district court held that the paperback publisher's action was neither copyright infringement nor a breach of the licensing agreement.

On appeal, the Second Circuit reversed, holding that the shipping and substantial sales prior to October 1985—the one year anniversary of hardcover publication—constituted unpermitted

publication. Using general contract principles, the Second Circuit reasoned that the one-year delay was necessary so that the paperback version did not compete with its hardcover counterpart and diminish sales.

Works Made For Hire

In *Community for Creative Non-Violence v. Reid*, ___ U.S. ___ 57 U.S.L.W. 4607 (June 5, 1989), Reid was commissioned by CCNV to produce a statue dramatizing the plight of the homeless. In holding that Reid was not an employee within the meaning of section 101 of the copyright law, the Supreme Court settled a four-way split among the circuits as to when a work is prepared by an employee within the meaning of the Copyright Act. The four main theories the courts had employed in deciding whether a work was made for hire were: (1) that the hiring party retains the right to control the product; (2) that the hiring party has wielded actual control of creation of the work; (3) that the term "employee" carries its common law agency meaning; or (4) that the term "employee" is limited to formal, salaried workers.

The Court decided that the determination of whether a work is made for hire under the first part of the definition of a "work made for hire" in section 101 of title 17 U.S.C. depends upon the application of general common law principles of agency.

Moral Rights

In *Turner Entertainment Co. v. Huston, et al.*, Court of Appeal of Paris, 4th Chamber, Section B (1989), a French court permitted the broadcast of a colorized version of the John Huston classic "Asphalt Jungle" over the objections of Huston's heirs and the co-author of the screenplay, Ben Maddow.

The colorized version of the work was registered in the U.S. Copyright Office on June 20, 1988. As sole author of the work, Turner argued that

only it could exercise the moral right and that colorization constituted an adaptation, which is a patrimonial right belonging to Turner. In the absence of a defective adaptation, Turner maintained, its right could not be paralyzed by invoking a moral right to which colorization caused no harm. Turner also argued that U. S. law should apply, under which it would be considered to be the author of the work.

The court did apply U.S. law, and recognized that although the U.S. law does not contain a moral rights provision, such rights are not prohibited as part of a contract. However, Huston and Maddow had worked under a contract that gave all their rights to their producer/employer.

Although the court held that colorization is not a defect in adaptation, the television channel agreed to set out before the broadcast a special declaration that the colorized version was an adaptation of the original black-and-white work, and to broadcast a notice reminding viewers that they could watch the new version in black and white by using the color control knob on their television.

Copyright Notice

Omission of the copyright notice from 710 issues of a racetrack guide, out of a total of 28,000 issues, was not a sufficiently small number of copies to satisfy section 21 of the 1909 Copyright Act or the less restrictive provision of the 1976 Act, section 405(a)(1) to justify the granting of plaintiff's motion for a preliminary injunction. *Wabash Publishing Co. v. Flanagan*, No. 89 C 1923 (N.D. Ill. 1989). However, the publication of seven screen displays without notice, out of 300, was de minimis and would not invalidate the remainder of the copyrights. *Manufacturers Technologies, Inc. v. Cams, Inc.*, 706 F.Supp. 984 (D. Conn. 1989).

The Democratic National Committee distributed 100 to 150 written copies of Jesse Jackson's speech prepared for the convention to the press without the copies bearing a copyright notice, but

containing the statement "NOT FOR PUBLIC USE UNTIL DELIVERED." Jackson filed for registration of the claim to copyright in the speech about 10 days after the distribution, and in the suit to enjoin the sale of videocassettes of the speech, the defendant argued that Jackson had abandoned rights to the speech by not filing earlier.

In *Jackson v. MPI Home Video*, 694 F.Supp. 483 (N.D. Ill. 1989), the court held that inaction for 10 days was insufficient to establish an intent to abandon. The court also held that Jackson had made a sufficient effort to add notice to the already distributed copies to be considered reasonable under section 405 of the Copyright Act.

Subject Matter of Copyright

In *Manufacturers Technologies, Inc. v. Cams, Inc.*, 706 F.Supp. 984 (D.Conn. 1989), the court upheld the copyrightability of computer screen displays in a program enabling the user to estimate the cost of machining a manufactured part through computer rather than manual calculation.

The court reasoned that the displays were not dictated solely by functional considerations, and protected the external sequencing and flow of the displays. The internal aspects of the displays were not protected, however, because the conventions were limited to a very narrow range of possibilities: centering the heading at the top, locating program commands and setting out the functions to be performed. The internal method of navigation of the displays was also not protected.

Shirley MacLaine's book, *Out on a Limb*, was held not to infringe plaintiff's work, *Date with the Gods*, in *Silva v. MacLaine*, 697 F.Supp. 1423 (E.D. Mich. 1988). Before writing her book, MacLaine had travelled with the plaintiff in Peru and her book describes the trip and their conversations.

Both books dealt with spirituality, astral projections and extraterrestrials, but the court concluded that MacLaine's work did not take the total concept and feel of the plaintiff's book: there were

similarities in the physical descriptions of an extraterrestrial woman, but MacLaine was allowed to describe her talks with plaintiff; atomic structure and connection to a spiritual world are unprotectible scientific facts having a very limited range of expression, and various terms describing what the spirit is made of are unprotectible ideas, as is the concept of a silver cord connecting body and spirit in astral projection.

In *United Telephone Co. of Missouri v. Johnson Publishing Co.*, 855 F.2d 604 (8th Cir. 1988), the court protected, as a compilation, the arrangement of names, addresses, and telephone numbers in the white pages section of a telephone directory against direct copying of the information into a database, even though the defendant had independently verified the data.

Where a studio retains the exclusive rights to reproduce and distribute copies of portraits, the interaction between a photographer and his subject does not support a presumption of co-ownership or co-authorship. *Olan Mills, Inc. and Professional Photographers of America, Inc. v. Eckerd Drug of Texas, Inc. and Jack Eckerd Corp.*, No. 3-88-0333-D (N.D. Tex. 1988).

In another film case, the Second Circuit held that the copyrighted videotape of a cosmetician applying makeup to a customer, including camera position, angle and closeness, was not infringed by defendant's work, which took only these unprotectible ideas. *Jane Ring v. Estee Lauder, Inc.*, 702 F.Supp. 76 (S.D.N.Y. 1988), *aff'd per curiam*, No. 89-7043 (1989).

In an interesting computer case limiting the scope of copyright protection, the Fifth Circuit held that it was not an infringement for defendant to sell diskettes containing a program unlocking the protective device on plaintiff's program and permitting users to copy the program placed on the latter's diskette. *Vault Corp. v. Quaid Software Ltd.*, 847 F.2d 255 (5th Cir. 1988).

The court reasoned that defendant's use came within the exception in section 117(1), permitting copying as an essential step in utilization of the

program. The court would not limit the exception to uses intended by the copyright owner.

Copyright protection for computer software was expanded, on the other hand, in *Pearl Systems, Inc. v. Competition Electronics, Inc.*, 8 U.S.P.Q.2d 1520 (S.D. Fla. 1988), which held that software protection for a pistol shooting timer device extended beyond the source and object code to the separate subroutines designed to aid the user in setting par time, reviewing shots fired, and learning the elapsed time between each shot.

Copyright Registration

In *Manufacturers Technologies, Inc. v. Cams, Inc.*, 10 U.S.P.Q.2d (D. Conn. 1989), the court affirmed the Office practice that registration of a computer program covers the program itself, as well as screen displays or user interfaces of the program, to the extent each contains copyrightable subject matter.

Sovereign Immunity

In *Pennsylvania v. Union Gas Co.*, ___ U.S. ___, 57 U.S.L.W. 4662 (June 15, 1989), the Supreme Court held that with a clear statement of legislative intent, Congress has the authority under the Commerce Clause (like the Copyright Clause, another Article I power) to abrogate state Eleventh Amendment immunity.

Other cases, specifically involving the interplay between the Copyright Act and the Eleventh Amendment, have held that the Amendment is a bar to actions for money damages against unwilling states. *BV Engineering v. University of California, Los Angeles*, 858 F.2d 1394 (9th Cir. 1988), *cert. denied*, 109 S.Ct. 1557 (1989); *Richard Anderson Photography v. Brown*, 852 F.2d 114 (4th Cir. 1988), *cert. denied*, 109 S.Ct. 1171 (1989); *Lane v. First National Bank of Boston*, 10 U.S.P.Q.2d 1268 (1st Cir. 1989).

Renewal

Frederick Music Co. v. Sickler d/b/a Second Floor Music, Copyright L. Rep. (CCH) ¶ 26,402 (S.D.N.Y. 1989) involved a dispute over the renewal interest in the song "Night Train." The song had been registered as an unpublished work on March 11, 1952, and as a published work on June 5 of the same year. The plaintiff in this litigation claimed its interest through an assignment from the co-author of the song, Jimmy Forest. The defendant claimed through a later assignment from Forest's widow. Forest died on August 27, 1980, before expiration of the first term of copyright, but after the plaintiff had renewed both copyrights.

In a case of first impression, the court held for the plaintiff, concluding that renewal rights vest on registration during the statutory renewal period while the author is still living. There was no requirement that the author survive into the renewal term.

The Supreme Court recently granted certiorari in another renewal case, this time involving rights to Alfred Hitchcock's "Rear Window." *Abend v. MCA, Inc.*, 863 F.2d 1465 (9th Cir. 1988), cert. granted, 58 U.S.L.W. 3079 (1989).

The Ninth Circuit reversed a holding for the defendants who were sued for re-releasing the film during the renewal term of the underlying story on which the film is based, "It Had To Be Murder." The story author had assigned rights to make the movie and agreed to assign the renewal rights. Prior to expiration of the initial copyright term, however, the author died and his executor assigned the rights to plaintiff.

The district court had held for the defendants, based on *Rohauer v. Killiam Shows, Inc.*, 551 F.2d 484 (2d Cir.), cert. denied, 431 U.S. 949 (1977). The Ninth Circuit rejected *Rohauer*, instead following *Miller Music Corp. v. Charlie N. Daniels, Inc.*, 362 U.S. 373 (1960), which held that statutory successors to renewals take clear of assignments of rights when the author dies before renewing the work. The appellate court noted that the *Rohauer* view cheats

authors and their families out of their second chance to benefit from the work.

Fair Use

In *New Era Publications International v. Henry Holt & Co.*, 10 U.S.P.Q.2d 1561 (2d Cir. 1989), the Second Circuit permitted the publication of an unauthorized biography of L. Ron Hubbard, the founder of the Church of Scientology. Contrary to the lower court, the Second Circuit reaffirmed its earlier holding in *Salinger v. Random House, Inc.*, 811 F.2d 90 (2d Cir.), cert. denied, 108 S.Ct. 213 (1987), that unpublished works are completely protected against the copying of protected expression. The district court had found that quotations taken from Hubbard's published and unpublished writings were necessary to demonstrate the biographer's basic premise about Hubbard's character, and constituted fair use. Because of a two-year delay in bringing the action, however, the court denied plaintiff's motion for permanent injunctive relief on the ground of laches. Relief was limited to damages.

In another case involving unpublished writings, the court in *Love v. Kwitny*, 706 F.Supp. 1123 (S.D.N.Y. 1989) held that it was not fair use for defendant to take more than half of plaintiff's unpublished manuscript, even though the latter's work was largely factual. The defendant argued that he had to quote extensively to avoid the potential for libel, but the court, following *Salinger*, held that the risk of distortion does not justify copying protected material. The amount of the taking, the unpublished nature of the manuscript, and the potential impairment of the market for plaintiff's work did not support a finding of fair use.

Finally, in a case involving mentor-protege co-authors of scholarly medical articles, the court, in *Weissman v. Freeman*, 868 F.2d 1313 (2d Cir. 1989), held that it was not fair use for the mentor to delete his protege's name from an article she had authored solely and substitute his own, then modify the title for classroom teaching.

The article had been based on their previously co-authored works, so the defendant believed he could use it, and that it was even a joint work. The court did not allow the use, even though it was not for monetary profit, because publication under the defendant's name usurped plaintiff's recognition, a currency far more valuable than money in the academic community.

Public Performance

The performance of copyrighted musical compositions before 21 members and guests of a private golf club was a public performance, *Fermata International Melodies, Inc. v. Champions Golf Club, Inc.*, 11 U.S.P.Q.2d 1460 (S.D. Tex. 1989), as was the showing of rented videocassettes to 200 to 300 institutionalized inmates of a prison. *Op. Att'y Gen., La.*, No. 88-576 (1988).

However, because hotel guest rooms are not open to the public once they are rented, the viewing of rented videodiscs by guests in their hotel rooms was held not to be a public performance, in *Columbia Pictures Industries, Inc. v. Professional Real Estate Investors, Inc.*, 866 F.2d 278 (9th Cir. 1989).

Mask Works

In the first case to be decided under the Semiconductor Chip Protection Act, the court denied the plaintiff a preliminary injunction in *Brooktree Corp. v. Advanced Micro Devices, Inc.*, 705 F.Supp. 491 (S.D. Cal. 1988). Because the defendant had established reverse engineering by showing a "paper trail," the plaintiff had to show, in a comparison of the chips, that they were substantially identical rather than just substantially similar. The plaintiff did not meet this burden.

Eligibility

The constitutionality of the provision in the Taiwan Relations Act [TRA] giving copyright protection to Taiwanese nationals under the Treaty

of Friendship, Commerce and Navigation [FCN], was upheld in *New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc.*, Copyright L. Rep. (CCH) ¶26,398 (S.D.N.Y. 1989). The TRA was signed by President Carter following the de-recognition of the Republic of China and extended to Taiwan the provisions of the FCN treaty concerning copyright despite the termination of formal diplomatic relations.

INTERNATIONAL MEETINGS

Policy Planning Advisor Marilyn Kretsinger was in Kuala Lumpur, Malaysia, and Taipei, Taiwan, October 10-14, 1988. She discussed bilateral copyright relations between the United States and Malaysia and the United States and Taiwan. In Taiwan, she participated in talks between the Coordination Council for North American Affairs and the American Institute in Taiwan. In January 1989, Ms. Kretsinger discussed copyright matters with representatives from Taiwan at a meeting in Washington, D.C. She returned to Taiwan in May for more discussions and participated in talks with officials from Taiwan in Washington, D.C., in September.

Register of Copyrights Ralph Oman was in Geneva in November for two meetings relating to protection for semiconductor chips sponsored by the World Intellectual Property Organization (W.I.P.O.): the Committee of Experts on Intellectual Property in Respect of Integrated Circuits, November 7-11, and the Preparatory Meeting for the Diplomatic Conference on the Adoption of a Treaty for Integrated Circuits, November 14-18. As head of the U.S. delegation, Mr. Oman delivered a paper outlining the U.S. position on the draft treaty.

Policy Planning Advisor Marybeth Peters attended a conference sponsored by the W.I.P.O. on the Establishment of an International Register of Audiovisual Works in Geneva from November 28-December 2. She was the alternate head of the U.S. delegation, when, on April 18, she and Har-

vey Winter of the U.S. State Department, the head of the U.S. delegation, affixed their signatures in Geneva to a treaty for the International Registration of Audiovisual Works.

Mr. Oman headed the U.S. delegation to a meeting to discuss proposed model copyright law provisions, February 20-March 4 in Geneva. Also attending the W.I.P.O.-sponsored meeting were General Counsel Dorothy Schrader and Policy Planning Advisor Lewis Flacks. The meeting was the first of a series aimed at forging a model law that could guide nations that do not have a copyright law or that wish to further develop their laws.

Assistant Register of Copyrights Anthony Harrison was the U.S. delegate to the April 3-7 meeting in Geneva of the Permanent Committee for Development Cooperation Relating to Copyright and Neighboring Rights, sponsored by the W.I.P.O.

Mr. Flacks attended the Second Session of the Intellectual Property Working Group of the United States-Japan Trade Committee. The conference was held in Tokyo March 27-April 3.

Ms. Kretsinger was in Turkey and Saudi Arabia March 27-April 3 as part of a U.S. delegation to improve the level of intellectual protection accorded U.S. works in these countries. Also participating were officials from the U.S. Trade Representative's office and the Patent and Trademark Office.

Mr. Oman met with Nikolai N. Tchetverikov, Chairman of the Soviet Copyright Agency (VAAP), during April in Washington, D.C. On April 20, Mr. Tchetverikov announced the intention of his country to join the Berne Convention. Among the major industrialized nations, only the Soviet Union and the People's Republic of China are not Berne members.

Mr. Oman, Ms. Schrader, and several others from the Office served on the U.S. delegation to the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, May 8-26, and discussed earlier in this report.

Ms. Kretsinger, Mr. Flacks, and Ms. Peters met with a parliamentary delegation from Finland in Washington, D.C., in May to discuss current copyright issues.

Policy Planning Advisor Eric Schwartz was a member of the U.S. delegation conducting trade talks in South Korea and Taiwan June 13-22. Both countries are on a U.S. priority watch list for their failure to provide adequate and effective protection for intellectual property. The U.S. delegation met for two days in each country to raise specific issues and questions about copyright, patent, and trademark protection of U.S. works.

Mr. Oman met with representatives from private and government copyright-related industries in Finland while in Helsinki August 20-24. The Register served as alternate head of the U.S. delegation in the Meeting of the Governing Bodies of the W.I.P.O. in Geneva, September 22-October 4, 1989.

Charlotte Givens, a Senior Attorney Advisor in the General Counsel's Office, gave four presentations at a copyright conference in Lagos, Nigeria, September 7-24. Sponsored by the United States Information Agency, the conference concerned the passage of a new copyright law in Nigeria.

Respectfully submitted,
RALPH OMAN

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

International Copyright Relations of the United States as of September 30, 1989

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

Berne	Party to the Berne Convention for the Protection of Literary and Artistic Works as of the date given. Appearing within parentheses is the latest Act ¹ of the Convention to which the country is party. The effective date for the United States was March 1, 1989. The latest Act of the Convention to which the United States is party is the revision done at Paris on July 24, 1971.	
Bilateral	Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.	
BAC	Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.	
None	No copyright relations with the United States.	
Phonogram	Party to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974.	
SAT	Party to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, Brussels, 1974, as of the date given. The effective date for the United States was March 7, 1985.	
UCC Geneva	Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955.	
UCC Paris	Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974.	
Unclear	Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.	
Afghanistan	UCC Geneva Feb. 13, 1958	UCC Geneva Dec. 27, 1976
None	Berne June 10, 1967 (Brussels) ²	UCC Paris Dec. 27, 1976
Albania	Phonogram June 30, 1973 ³	Bahrain
None	Australia	None
Algeria	Bilateral Mar. 15, 1918	Bangladesh
UCC Geneva Aug. 28, 1973	Berne April 14, 1928 (Paris) ²	UCC Geneva Aug. 5, 1975
UCC Paris July 10, 1974	UCC Geneva May 1, 1969	UCC Paris Aug. 5, 1975
Andorra	Phonogram June 22, 1974	Barbados
UCC Geneva Sept. 16, 1955	UCC Paris Feb. 28, 1978	UCC Geneva June 18, 1983
Angola	Austria	UCC Paris June 18, 1983
Unclear	Bilateral Sept. 20, 1907	Berne July 30, 1983 (Paris) ²
Antigua and Barbuda	Berne Oct. 1, 1920 (Paris) ²	Phonogram July 29, 1983
Unclear	UCC Geneva July 2, 1957	Belau
Argentina	SAT Aug. 6, 1982 ⁴	Unclear
Bilateral Aug. 23, 1934	UCC Paris Aug. 14, 1982	Belgium
BAC April 19, 1950	Phonogram Aug. 21, 1982	Berne Dec. 5, 1887 (Brussels) ²
	Bahamas, The	
	Berne July 10, 1973 (Brussels) ²	

- Bilateral July 1, 1891
UCC Geneva Aug. 31, 1960
- Belize**
UCC Geneva Dec. 1, 1982
- Benin**
(formerly Dahomey)
Berne Jan. 3, 1961 (Paris) ²
- Bhutan**
None
- Bolivia**
BAC May 15, 1914
- Botswana**
Unclear
- Brazil**
BAC Aug. 31, 1915
Berne Feb. 9, 1922 (Paris) ²
Bilateral April 2, 1957
UCC Geneva Jan. 13, 1960
Phonogram Nov. 28, 1975
UCC Paris Dec. 11, 1975
- Brunei**
Unclear
- Bulgaria**
Berne Dec. 5, 1921 (Paris) ²
UCC Geneva June 7, 1975
UCC Paris June 7, 1975
- Burkina Faso**
(formerly Upper Volta)
Berne Aug. 19, 1963 (Paris) ²
Phonogram Jan. 30, 1988
- Burma**
Unclear
- Burundi**
Unclear
- Cambodia**
UCC Geneva Sept. 16, 1955
- Cameroon**
Berne Sept. 21, 1964 (Paris) ²
UCC Geneva May 1, 1973
UCC Paris July 10, 1974
- Canada**
Bilateral Jan. 1, 1924
Berne April 10, 1928 (Rome) ²
UCC Geneva Aug. 10, 1962
- Cape Verde**
Unclear
- Central African Republic**
Berne Sept. 3, 1977 (Paris) ²
- Chad**
Berne Nov. 25, 1971 (Brussels) ²
- Chile**
Bilateral May 25, 1896
BAC June 14, 1955
UCC Geneva Sept. 16, 1955
Berne June 5, 1970 (Paris) ²
Phonogram Mar. 24, 1977
- China** ⁵
Bilateral Jan. 13, 1904
- Colombia**
BAC Dec. 23, 1936
UCC Geneva June 18, 1976
UCC Paris June 18, 1976
Berne Mar. 7, 1988 (Paris) ²
- Comoros**
Unclear
- Congo**
Berne May 8, 1962 (Paris) ²
- Costa Rica** ⁶
Bilateral Oct. 19, 1899
BAC Nov. 30, 1916
UCC Geneva Sept. 16, 1955
Berne June 10, 1978 (Paris) ²
UCC Paris Mar. 7, 1980
Phonogram June 17, 1982
- Côte d'Ivoire (Ivory Coast)**
Berne Jan. 1, 1962 (Paris) ²
- Cuba**
Bilateral Nov. 17, 1903
UCC Geneva June 18, 1957
- Cyprus**
Berne Feb. 24, 1964 (Paris) ²
- Czechoslovakia**
Berne Feb. 22, 1921 (Paris) ²
Bilateral Mar. 1, 1927
UCC Geneva Jan. 6, 1960
UCC Paris April 17, 1980
Phonogram Jan. 15, 1985
- Denmark**
Bilateral May 8, 1893
Berne July 1, 1903 (Paris) ²
- UCC Geneva Feb. 9, 1962
Phonogram Mar. 24, 1977
UCC Paris July 11, 1979
- Djibouti**
Unclear
- Dominica**
Unclear
- Dominican Republic** ⁶
BAC Oct. 31, 1912
UCC Geneva May 8, 1983
UCC Paris May 8, 1983
- Ecuador**
BAC Aug. 31, 1914
UCC Geneva June 5, 1957
Phonogram Sept. 14, 1974
- Egypt**
Berne June 7, 1977 (Paris) ²
Phonogram April 23, 1978
- El Salvador**
Bilateral June 30, 1908, by virtue of
Mexico City Convention, 1902
Phonogram Feb. 9, 1979
UCC Geneva Mar. 29, 1979
UCC Paris Mar. 29, 1979
- Equatorial Guinea**
Unclear
- Ethiopia**
None
- Fiji**
UCC Geneva Oct. 10, 1970
Berne Dec. 1, 1971 (Brussels) ²
Phonogram April 18, 1973 ³
- Finland**
Berne April 1, 1928 (Paris) ²
Bilateral Jan. 1, 1929
UCC Geneva April 16, 1963
Phonogram April 18, 1973 ³
UCC Paris Nov. 1, 1986
- France**
Berne Dec. 5, 1887 (Paris) ²
Bilateral July 1, 1891
UCC Geneva Jan. 14, 1956
Phonogram April 18, 1973 ³
UCC Paris July 10, 1974
- Gabon**
Berne Mar. 26, 1962 (Paris) ²

Gambia, The
Unclear**German Democratic Republic**
Berne Dec. 5, 1887 (Paris)^{2, 7}
UCC Geneva Oct. 5, 1973
UCC Paris Dec. 10, 1980**Germany**
Bilateral April 15, 1892**Germany, Federal Republic of**
Berne Dec. 5, 1887 (Paris)^{2, 7}
UCC Geneva Sept. 16, 1955
Phonogram May 18, 1974
UCC Paris July 10, 1974
SAT Aug. 25, 1979⁴**Ghana**
UCC Geneva Aug. 22, 1962**Greece**
Berne Nov. 9, 1920 (Paris)²
Bilateral Mar. 1, 1932
UCC Geneva Aug. 24, 1963**Grenada**
Unclear**Guatemala**⁶
BAC Mar. 28, 1913
UCC Geneva Oct. 28, 1964
Phonogram Feb. 1, 1977**Guinea**
Berne Nov. 20, 1980 (Paris)²
UCC Geneva Nov. 13, 1981
UCC Paris Nov. 13, 1981**Guinea-Bissau**
Unclear**Guyana**
Unclear**Haiti**
BAC Nov. 27, 1919
UCC Geneva Sept. 16, 1955**Holy See**
(See entry under Vatican City)**Honduras**⁶
BAC April 27, 1914**Hungary**
Bilateral Oct. 16, 1912
Berne Feb. 14, 1922 (Paris)²UCC Geneva Jan. 23, 1971
UCC Paris July 10, 1974
Phonogram May 28, 1975**Iceland**
Berne Sept. 7, 1947 (Rome)²
UCC Geneva Dec. 18, 1956**India**
Berne April 1, 1928 (Paris)²
Bilateral Aug. 15, 1947
UCC Geneva Jan. 21, 1958
Phonogram Feb. 12, 1975**Indonesia**
Bilateral Aug. 1, 1989**Iran**
None**Iraq**
None**Ireland**
Berne Oct. 5, 1927 (Brussels)²
Bilateral Oct. 1, 1929
UCC Geneva Jan. 20, 1959**Israel**
Bilateral May 15, 1948
Berne Mar. 24, 1950 (Brussels)²
UCC Geneva Sept. 16, 1955
Phonogram May 1, 1978**Italy**
Berne Dec. 5, 1887 (Paris)²
Bilateral Oct. 31, 1892
UCC Geneva Jan. 24, 1957
Phonogram Mar. 24, 1977
UCC Paris Jan. 25, 1980
SAT July 7, 1981⁴**Ivory Coast**
(See entry under Côte d'Ivoire)**Jamaica**
None**Japan**⁸
Berne July 15, 1899 (Paris)²
UCC Geneva April 28, 1956
UCC Paris Oct. 21, 1977
Phonogram Oct. 14, 1978**Jordan**
Unclear**Kenya**
UCC Geneva Sept. 7, 1966
UCC Paris July 10, 1974
Phonogram April 21, 1976
SAT Aug. 25, 1979⁴**Kiribati**
Unclear**Korea**
Democratic People's Republic
of Korea
Unclear**Republic of Korea**
UCC Geneva Oct. 1, 1987
UCC Paris Oct. 1, 1987
Phonogram Oct. 10, 1987**Kuwait**
Unclear**Laos**
UCC Geneva Sept. 16, 1955**Lebanon**
Berne Sept. 30, 1947 (Rome)²
UCC Geneva Oct. 17, 1959**Lesotho**
Unclear**Liberia**
UCC Geneva July 27, 1956
Berne Mar. 8, 1989 (Paris)**Libya**
Berne Sept. 28, 1976 (Paris)²**Liechtenstein**
Berne July 30, 1931 (Brussels)²
UCC Geneva Jan. 22, 1959**Luxembourg**
Berne June 20, 1888 (Paris)²
Bilateral June 29, 1910
UCC Geneva Oct. 15, 1955
Phonogram Mar. 8, 1976**Madagascar**
(Malagasy Republic)
Berne Jan. 1, 1966 (Brussels)²**Malawi**
UCC Geneva Oct. 26, 1965**Malaysia**
Unclear

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

South Africa

Bilateral July 1, 1924
Berne Oct. 3, 1928 (Brussels) ²

Soviet Union

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

Spain

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

Sri Lanka

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

Sudan

Unclear

Suriname

Berne Feb. 23, 1977 (Paris) ²

Swaziland

Unclear

Sweden

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

Switzerland

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

Syria

Unclear

Tanzania

Unclear

Thailand

Bilateral Sept. 1, 1921
Berne July 17, 1931 (Berlin) ²

Togo

Berne April 30, 1975 (Paris) ²

Tonga

None

Trinidad and Tobago

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

Tunisia

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

Turkey

Berne Jan. 1, 1952 (Brussels) ²

Tuvalu

Unclear

Uganda

Unclear

United Arab Emirates

None

United Kingdom

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

Upper Volta

(See entry under Burkina Faso)

Uruguay

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

Vanuatu

Unclear

Vatican City

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

Venezuela

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

Vietnam

Unclear

Western Samoa

Unclear

Yemen (Aden)

Unclear

Yemen (San'a)

None

Yugoslavia

Berne June 17, 1930 (Paris) ²
UCC Geneva May 11, 1966
UCC Paris July 10, 1974
SAT Aug. 25, 1979 ⁴

Zaire

Berne Oct. 8, 1963 (Paris) ²
Phonogram Nov. 29, 1977

Zambia

UCC Geneva June 1, 1965

Zimbabwe

Berne April 18, 1980 (Rome) ²

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

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

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

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

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

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

⁷ Date on which the accession by the German Empire became effective.

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

Number of Registrations by Subject Matter, Fiscal 1989

Category of material	Published	Unpublished	Total
Nondramatic literary works			
Monographs and machine-readable works	110,338	43,468	153,806
Serials	133,932		133,932
Total	244,270	43,468	287,738
Works of the performing arts, including			
musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	47,427	149,860	197,287
Works of the visual arts, including			
two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied art	43,911	22,374	66,285
Sound recordings	12,880	15,498	28,378
Grand total	348,488	231,200	579,688
Renewals			38,626
Total, all copyright registrations			618,314
Mask work registrations			1,229

Number of Registrations Cataloged by Subject Matter, Fiscal 1989

Category of material	Total
Nondramatic literary works	
Monographs and machine-readable works	155,035
Serials	133,932
Total	288,967
Works of the performing arts, including	
musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	197,287
Works of the visual arts, including	
two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied art	66,285
Sound Recordings	28,378
Renewals	38,626
Total, all claims cataloged	619,543
Documents recorded	13,596

Information and Reference Services, Fiscal 1989

Direct reference services	
In person	26,028
By correspondence	176,636
By telephone	274,432
Total	¹ 477,096
Search requests received	10,118
Titles searched	171,376
Search reports prepared	9,411
Additional certificates	6,244
Other certifications	799
Deposits copied	2,393

¹ Includes 807 in-person services, 97 correspondence services and 1,830 telephone reference services provided by the Licensing Division.

Summary of Copyright Business, Fiscal 1989

Receipts	Claims	Fees
Copyright registrations at \$10	595,260	\$5,952,600
Renewals at \$6	48,818	292,908
Total claims and fees therefrom	644,078	6,245,508
Fees for recording documents		310,558
Fees for certified documents		68,155
Fees for searches made		172,177
Fees for special handling		470,600
Fees for expedited services		26,748
Fees for registering mask works at \$20		25,280
Fees for 407 deposits at \$2		690
Fees for other services (photocopying, etc.)		12,987
Total fees exclusive of copyright registration claims		1,087,195
Total fees		\$7,332,703
Transfers		
Fees transferred to appropriation		7,000,000
Fees transferred to miscellaneous receipts		434,715
Total fees transferred		\$7,434,715

Disposition of Copyright Deposits, Fiscal 1989

Category of material	Received for copyright registration and added to copyright collection	Received for copyright registration and forwarded to other departments of the Library	Acquired or deposited without copyright registration	Total
Nondramatic literary works				
Monographs and machine-readable works	102,151	160,221	16,660	279,032
Serials	0	267,864	249,868	517,732
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips				
	170,570	49,669	919	221,158
Sound recordings	23,094	14,402	762	38,258
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, commercial prints and labels, and works of applied art				
	63,062	1,227	0	64,289
Cartographic works	105	2,952	369	3,426
Total, all deposits	358,982	496,335	268,578	1,123,895

Estimated Value of Materials Transferred to the Library of Congress

	Items accompanying copyright registration	Items submitted for deposit only under 407	Total items transferred	Average unit price	Total value of items transferred
Books	101,188	16,660	117,848	\$35.34	\$4,164,748
Books, periodicals (for Exchange and Gift)	99,127	39,064	138,191	3.00	414,573
Periodicals	227,684	210,804	438,488	6.94	3,043,107
Motion Pictures	6,098	879	6,977	1	1,842,480
Music	29,940	40	29,980	22.00	659,560
Sound Recordings	7,792	762	8,554	10.00	85,540
Maps	2,888	369	3,257	26.00	84,682
Prints, pictures, and works of art	1,223	0	1,223	18.00	22,014
Total	475,940	268,578	744,518		\$10,316,704
¹ 5,581 Video @ \$ 80.00 = \$ 446,480					
1,396 Films @ \$1,000.00 = \$1,396,000					
6,977					\$1,842,480

**Financial Statement of Royalty Fees for Compulsory Licenses for Secondary
Transmissions by Cable Systems for Calendar Year 1988**

Royalty fees deposited	\$190,802,167.47	
Interest income paid on investments	12,116,442.35	
		\$202,918,609.82
Less: Operating costs	\$687,832.00	
Refunds issued	549,634.33	
Investments purchased at cost	198,854,461.96	
Copyright Royalty Tribunal cost for services	300,000.00	
		\$200,391,928.29
Balance as of September 30, 1989		2,526,681.53
Face amount of securities purchased		203,185,000.00
Cable royalty fees for calendar year 1988 available for distribution by the Copyright Royalty Tribunal		\$205,711,681.53

**Financial Statement of Royalty Fees for Compulsory Licenses for
Coin-Operated Players (Jukeboxes) for Calendar Year 1989**

Royalty fees deposited	\$6,001,833.25	
Interest income paid on investments	425,412.79	
		\$6,427,246.04
Less: Operating costs	\$242,566.00	
Refunds issued	3,449.00	
Investments purchased at cost	6,160,564.54	
		\$6,406,579.54
Balance as of September 30, 1989		20,666.50
Face amount of securities purchased		6,162,000.00
Estimated interest income due September 30, 1990		436,042.50
Jukebox royalty fees for calendar year 1989 available for distribution by the Copyright Royalty Tribunal		\$6,618,709.00

**Financial Statement of Royalty Fees for Statutory Licenses for Secondary
Transmissions by Satellite Carriers for Calendar Year 1989**

Royalty fees deposited for 89/1 accounting period	\$1,088,677.39	
		\$1,088,677.39
Less: Operating costs	\$51,700.00	
		\$1,082,855.93
Balance as of September 30, 1989		5,821.46
Face amount of securities purchased		1,025,000.00
Estimated interest income due July 31, 1990		57,787.50
Satellite carrier royalty fees for calendar year 1989 available for distribution by the Copyright Royalty Tribunal		\$1,088,608.96

Copyright Registrations, 1790-1989

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

Copyright Registrations, 1790-1989

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

Copyright Registrations, 1790-1989

	District Courts ¹	Library of Congress ²	Patent Office ³			Total
			Labels	Prints	Total	
1961		247,014				247,014
1962		254,776				254,776
1963		264,845				264,845
1964		278,987				278,987
1965		293,617				293,617
1966		286,866				286,866
1967		294,406				294,406
1968		303,451				303,451
1969		301,258				301,258
1970		316,466				316,466
1971		329,696				329,696
1972		344,574				344,574
1973		353,648				353,648
1974		372,832				372,832
1975		401,274				401,274
1976		410,969				410,969
1976 Transitional qtr. ⁴		108,762				108,762
1977		452,702				452,702
1978		⁵ 331,942				⁵ 331,942
1979		429,004				429,004
1980		464,743				464,743
1981		471,178				471,178
1982		468,149				468,149
1983		488,256				488,256
1984		502,628				502,628
1985		539,165				539,165
1986		560,212				560,212
1987		581,276				581,276
1988		565,801				565,801
1989		611,328				611,328
Total	150,000	22,461,300	55,348	18,098	73,446	22,684,746

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

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

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

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

⁵ Reflects changes in reporting procedure.