

THE LIBRARY OF CONGRESS
COPYRIGHT OFFICE

THIRTY-SIXTH ANNUAL REPORT
OF THE
REGISTER OF COPYRIGHTS

FOR THE FISCAL YEAR
ENDING JUNE 30
1933



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

PUBLICATIONS OF THE COPYRIGHT OFFICE

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

BULLETIN No. 14.

The Copyright Law of the United States of America, being the act of March 4, 1909 (in force July 1, 1909), as amended by the acts of August 24, 1912, March 2, 1913, March 28, 1914, December 18, 1919, July 3, 1926, and May 23, 1928, together with Rules for Practice and Procedure under section 25, by the Supreme Court of the United States. 70 pp. 8°. 1932.

BULLETIN No. 17. Cloth, 50c.

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

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

DRAMATIC COMPOSITIONS COPYRIGHTED IN THE UNITED STATES, 1870-1916.

[Over 60,000 titles alphabetically arranged, with complete index to authors, proprietors, translators, etc.] 1 p. l., v. 3547 pp. 4°. 1918. 2 vols. Cloth, \$4.

INFORMATION CIRCULARS. No. 4.—Text of the Convention creating an International Copyright Union, Berne, 1886, 13 pp. 4°. No. 4A.—International Copyright Convention. Revised text, Berlin, 1908. 10 pp. 4°. No. 4 B.—Additional protocol to the International Copyright Convention of Berlin, November 13, 1908, signed at Berne, March 20, 1914. 2 pp. 4°. No. 4 C.—International Copyright Convention. New revision, signed at Rome, June 2, 1928. French text, with English translation. 14 pp. 4°.

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REPORT OF THE REGISTER OF COPYRIGHTS FOR THE FISCAL YEAR 1932-33

WASHINGTON, D.C., *July 9, 1933.*

SIR: The copyright business and the work of the Copyright Office for the fiscal year July 1, 1932, to June 30, 1933, inclusive, are summarized as follows:

RECEIPTS

The gross receipts during the year were \$254,754.99. A balance of \$19,519.91, representing trust funds and unfinished business, was on hand July 1, 1932, making a total sum of \$274,274.90 to be accounted for. Of this amount the sum of \$5,662.89 was refunded as excess fees or as fees for articles not registrable, leaving a net balance of \$268,612.01. The balance carried over to July 1, 1933, was \$17,616.71 (representing trust funds and total unfinished business), leaving fees applied during the fiscal year 1932-33 and paid into the Treasury, \$250,995.30.

Comparison with last year's fees (\$280,964.90) shows a falling off of about 10 percent in the copyright business for the year, as was shown last year by comparison with the previous year. The peak figure (\$327,629.90) was reached in 1929-30, before the depression in general business set in.

The annual applied fees since July 1, 1917, are shown in exhibit C. (See p. 17.)

EXPENDITURES

The total appropriation made by Congress for salaries in the Copyright Office for the fiscal year 1932-33 was \$249,380, less the amount of the furlough required to be deducted by the provisions of the appropriation act (\$15,586.25 to Apr. 1) and less the substituted deduction of 15 percent beginning April 1, as required by the act to maintain the credit of the United States, approved March 20, 1933 (\$9,351.75 for April, May, and June) leaving the net appropriation \$224,442.

The total expenditure for salaries was \$219,216.79. The expenditure for supplies, including stationery and other articles and postage on foreign mail matter, etc., was \$1,018.90. The total expenditures were therefore \$220,235.69. This sum deducted from \$250,995.30, fees received and turned into the Treasury, shows a profit of \$30,759.61 to the credit of the Copyright Office.

During the period of 36 years (1897-1933) the copyright business, as evidenced by the applied fees, increased nearly fivefold. During these 36 years since the organization of the present Copyright Office the copyright fees applied and paid into the Treasury have amounted to a grand total of \$4,893,800.60, and the total copyright registrations have numbered over four millions (4,604,774). The fees earned (\$4,893,800.60) were larger than the total of salaries paid during the same period (\$4,058,283.34) by \$835,517.26.

In addition to this direct profit the large number of over 7,000,000 books, maps, musical works, periodicals, prints, and other articles deposited during the 36 years were of substantial pecuniary value and of such a character that the accession of most of these to the Library of Congress through the Copyright Office effected a large saving to the purchase fund of the Library equal in amount to their price.

COPYRIGHT ENTRIES AND FEES

The registrations for the fiscal year numbered 137,424. Of these, 24,282 were registrations for unpublished works at \$1 each; 105,407 were registrations for published works at \$2 each; 1,324 were registrations of photographs without certificates at \$1 each. There were also 6,411 registrations of renewals at \$1 each. The fees for these registrations amounted to a total of \$242,831.

SUMMARY OF COPYRIGHT BUSINESS

Balance on hand July 1, 1932.....		\$19, 519. 91
Gross receipts July 1, 1932, to June 30, 1933.....		254, 754. 99
		<hr/>
Total to be accounted for.....		274, 274. 90
Refunded.....		5, 662. 89
		<hr/>
Balance to be accounted for.....		268, 612. 01
Applied as earned fees.....	\$250, 995. 30	
Balance carried over to July 1, 1933:		
Trust funds.....	\$15, 536. 47	
Unfinished business.....	2, 080. 24	
		<hr/>
		17, 616. 71
		<hr/>
		268, 612. 01

FEES FOR FISCAL YEAR

Fees for registration of published works, at \$2 each.....		210, 814. 00
Fees for registration of unpublished works, at \$1 each.....		24, 282. 00
Fees for registration of photographs without certificates, at \$1 each.....		1, 324. 00
Fees for registration of renewals, at \$1 each.....		6, 411. 00
		<hr/>
Total fees for registrations recorded.....		242, 831. 00

REPORT OF THE REGISTER OF COPYRIGHTS

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Fees for certified copies of record, at \$1 each.....	\$969. 00	
Fees for recording assignments.....	6, 280. 00	
Searches made and charged for at the rate of \$1 for each hour of time consumed.....	568. 00	
Notice of user recorded (music).....	243. 00	
Indexing transfers of proprietorship.....	104. 30	
		<u>\$8, 164. 30</u>
Total fees for the fiscal year, 1932-33.....		250, 995. 30

ENTRIES

Number of registrations.....	131, 013
Number of renewals recorded.....	6, 411
Total.....	<u>137, 424</u>
Number of certified copies of record.....	969
Number of assignments recorded or copied.....	1, 923

COPYRIGHT DEPOSITS

The total number of separate articles deposited in compliance with the copyright law which have been registered during the fiscal year is 216,339. The number of these articles in each class for the last 5 fiscal years is shown in exhibit E. It is not possible to determine exactly how completely the works which claim copyright are deposited, but in response to inquiries received during the year from the card division, the accessions division, law division, and the reading room in regard to 693 books supposed to have been copyrighted but not discovered in the Library, it was found that 49 of these works had been received and were actually in the Library, 18 books had been deposited and were still in the Copyright Office, 63 works were either not published, did not claim copyright, or for other valid reasons could not be deposited, while in the case of 87 works no answers to our letters of inquiry had been received up to June 30, 1933. Copies were received of 476 works in all in response to requests made by the Copyright Office during the period of 12 months for works published in recent years.

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

During the fiscal year a total of 102,627 current articles deposited have been transferred to the Library of Congress. This number included 33,332 books, 55,902 periodical numbers, 7,914 pieces of music, 2,490 maps, and 2,989 photographs and engravings.

Reference was made in last year's report to the transfer into the Library collections of the oldest copyright deposits, some of them dating back prior to 1870, which added a considerable number of rare and desirable works to the Library shelves.

In the course of completing the elimination from the Copyright Office of this oldest of the stored material there were transferred during the current year 1,657 pieces of music, 183 maps, and 2,376 engravings and prints. Since, however, these doubtless contain many duplicates yet to be sorted out, these figures do not necessarily mean that the permanent Library collections are increased by this amount.

In this accumulation were found also many old title-pages, not accompanied by complete copies of the works, which were transferred to the rare-book and music collections as possessing considerable historical or antiquarian interest.

Under authority of section 59 of the act of March 4, 1909, there were transferred during the fiscal year to other governmental libraries in the District of Columbia for use therein 4,873 books. Under this transfer, up to June 30, 1933, the following libraries have received a total number of books as indicated below since 1909:

Department of Agriculture, 4,093; Department of Commerce, 21,904; Navy Department, 1,871; Treasury Department, 1,496; Bureau of Education, 19,905; Federal Trade Commission, 19,104; Bureau of Standards, 2,094; Army Medical Library, 8,384; Walter Reed Hospital, 2,794; Engineer School, Corps of Engineers, 3,153; Soldiers' Home, 1,600; Public Library of the District of Columbia, 52,915. A number of other libraries have received a smaller number of books, under 1,000 volumes. In all, 161,151 volumes have been thus distributed during the last 24 years.

The Copyright Act of 1909 authorizes the return to copyright claimants of such deposits as are not needed by the Library of Congress or the Copyright Office, after due notice as required by section 60. In response to special requests 2,705 motion-picture films and 69,391 deposits in other classes have been so returned during the fiscal year.

INDEX AND CATALOG OF COPYRIGHT ENTRIES

All copyright entries are promptly indexed. The index cards are ultimately inserted into the great card indexes covering all classes of copyright entries from 1897 to date and now numbering more than 8,000,000 cards. These cards are first used as copy for the printed

Catalog of Copyright Entries, the current numbers of which bind up, with annual indexes, to cover for each class all the entries made for the calendar year. The annual volumes for 1932 are all completed.

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

By the act of Congress approved May 23, 1928, the subscription price for the catalog was increased, the complete catalog for the year to \$10, and the separate parts as follows: Part 1, group 1, books proper, \$3; part 1, group 2, pamphlets and maps, \$3; part 1, group 3, dramatic compositions and motion pictures, \$2; part 2, periodicals, \$2; part 3, musical compositions, \$3; part 4, works of art, photographs, prints, and pictorial illustrations, \$2; single numbers (except book leaflets), 50 cents; annual indexes, each, for complete calendar year, \$2; all parts for complete calendar year, \$10.

The appropriation for printing the Catalog of Copyright Entries for 1932-33 was drastically cut by Congress in pursuance of the program for greater economy in departmental expenditures. It therefore became necessary to reduce at once the size of the catalog, and a survey was made to discover what details could best be omitted without seriously hampering the usefulness of this publication as a finding list of copyrights. Obviously the facts most essential to be retained were the claimant of copyright, the author, a brief title, and the copyright date and number. Other items, such as addresses, additional dates, amplification of title or description, and explanatory details, could be omitted.

As a result of these omissions the catalog was reduced in size almost 25 percent beginning in July 1932. No change was made, however, in our cataloging of the entries for our card indexes.

A rather serious inconvenience has already resulted from the omission of addresses, however, and the office has been besieged with requests for addresses in great numbers. It seems obvious that the addresses should be restored in the printed catalog if and when the appropriation will permit this moderate increase.

SERVICE

At the end of July 1933 the office lost one of its senior clerks of longest service by the retirement of William A. Miller. Mr. Miller had been for 40 years in the Government service. He entered the Copyright Office in 1900 and served here continuously for 33 years, with a remarkable record for faithful attendance. His numerous contacts made while serving the public in attendance upon copyright business during all those years have resulted in making many friends for the Copyright Office.

CORRESPONDENCE

A large part of the business of the Copyright Office is done by correspondence. The total letters and parcels received during the fiscal year numbered 184,810, while the letters, parcels, etc., dispatched numbered 183,156.

ACCOUNTS

On July 6, 1933, the books of the Copyright Office were balanced for June, the accounts for the fiscal year were closed and the financial statements completed for the Treasury Department, showing that all earned fees to June 30 had been paid into the Treasury.

COPYRIGHT OFFICE PUBLICATIONS

The copyright law of the United States now in force was reprinted during the year as Bulletin No. 14 of the Copyright Office as usual. The office has also printed as Information Circular No. 66 the "Act to protect the copyrights and patents of foreign exhibitors at A Century of Progress (Chicago World's Fair Centennial Celebration), to be held at Chicago, Ill., in 1933." (See footnote 11.)

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

INTERNATIONAL COPYRIGHT

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

The ratification by Peru of the Pan American Copyright Convention signed at Buenos Aires in 1910 was announced by our Department of State on September 2, 1932, as having been reported by the Minister of Foreign Affairs of Argentina. It was on July 4, 1932, that Peru notified the depository government of this ratification, explaining that "Peru has ratified the above-mentioned convention and must be held and considered as having adhered to it from April 30, 1920."

Ratification by Costa Rica, on December 20, 1932, of the convention revising the Convention of Buenos Aires on Literary and Artistic Copyright adopted at the Sixth International Conference of American States held at Habana, February 1928, is reported by the Department of State in its Treaty Information Bulletin No. 40, January 1933. The United States has not ratified this convention.

The following countries have declared adhesion to the Berne convention as revised at Rome in 1928, as announced in *Le Droit d'Auteur*, official organ of the International Copyright Union:

Spain, effective April 23, 1933.

Brazil, effective June 1, 1933.

Monaco, effective June 9, 1933.

With these added it is understood that 20 countries of the union have now subscribed to the Rome convention.

COPYRIGHT BILLS IN CONGRESS

Although the year has passed without enactment of any new legislation by Congress affecting copyright there has been considerable suggestive agitation of the subject in committee.

DESIGN COPYRIGHT

In the winter of 1932-33 the Committee on Patents and Copyrights again made some effort towards securing protection for designs by new legislation. The proposed legislation followed quite closely that which was undertaken in the previous session of Congress (72d Cong., 1st sess.) and which was designated "design registration" to distinguish it from both patents and copyrights. It was intended to apply only to textiles and similar materials. Registration was to be made in the Copyright Office after brief search.

Accordingly on December 7, 1932, Mr. Hastings (for Mr. Hebert) introduced in the Senate a bill (S. 5075)¹ to provide protection by registration of designs for textiles and other materials, which was referred to the Committee on Patents. This bill is very similar to H.R. 12528² introduced in the previous session, nine of the sections being identical.

A hearing on the design registration bill, S. 5075, was held by the Senate committee on January 5, 1933, Senator Hebert presiding. Among the speakers in favor of the bill were Sylvan Gotshal on the part of the Silk Association of America, Harold R. Young representing the National Dry Goods Association, Horace Cheney for the silk manufacturers, and Frank C. Williams for the Roanoke Mills Co. Certain amendments were proposed by these speakers. The National Automobile Chamber of Commerce was heard from, asking to be excluded or excepted from the provisions of the bill.

Hon. Thomas E. Robertson, then Commissioner of Patents, and Karl Fenning, former Assistant Commissioner of Patents, urged the

¹ 1932 (Dec. 7). A bill to provide protection by registration of designs for textiles and other materials. Introduced by Mr. Hastings (for Mr. Hebert). S. 5075, 72d Cong., 2d sess. Referred to the Committee on Patents. For the full text of this bill as amended see p. 23 of this report.

² For the full text of H.R. 12528, see the Annual Report of the Register of Copyrights for the year ending June 30, 1932, p. 45.

passage of the bill so as to relieve the Patent Office of a line of searches which would not include the element of invention and because they believed it would give quick protection against piracy of designs.

William D. Shoemaker, a Washington lawyer and patent attorney, spoke at length against the bill. He opposed the idea of imposing the proposed search upon the Copyright Office and believed that with some readjustment of procedure the Patent Office could meet the demand for quick action and issue of certificate within a specified time.

The Register of Copyrights voiced his opposition to the bill based upon its impracticability from the standpoint of administration. Referring to the search which is required to be made in the Copyright Office (sec. 3) he explained that the Copyright Office has now no file of designs in which to make such search, and that it would take years to assemble one which would be at all adequate. How then, meantime, is he to comply effectively with these requirements? And how could a certificate declaring "the design to be original and novel" (sec. 3) carry any conviction under such circumstances? Worse still, the certificate is required to be issued "within 7 days or less from the date of application" (sec. 3). Here is an attempt to straddle a dilemma and the result must inevitably be disappointing. If a search is required and could be made in the Copyright Office, sufficient time must be allowed for making it satisfactorily. Furthermore, the bill proposes to impose a quasi-judicial function upon the Copyright Office, which is quite unprecedented here. This office has never exercised any judicial function and could not do so effectively in the matter of designs until a force of experts and an adequate equipment could be built up.

A leading industrial organ in New York commenting at the time upon the bill and the hearing observes that "a search in the Copyright Office will mean the same delay as a search in the Patent Office", and adds: "No such search should be required. We should present a bill affording copyright protection for all designs by mere registration as under the present copyright law."

Some weeks later, on February 23, 1933, Mr. Hebert from the Committee on Patents, to which was referred the bill S. 5075 to provide protection by registration of designs for textiles and other materials, reported it with amendments and submitted a report thereon (report no. 1280).³ The bill S. 5075 was called up in the Senate in course of consent proceedings on February 25, 1933, and was passed over on objection of two of the Senators.

While this was going on in the Senate, Mr. Sirovich introduced in the House on February 20, 1933, a bill (H.R. 14727)⁴ to provide

³ For the full text of the bill and the report, see p. 23 and 26 following.

⁴ 1933 (Feb. 20). A bill to provide protection for textiles and other designs. Introduced by Mr. Sirovich. H.R. 14727, 72d Cong., 2d sess. Referred to the Committee on Patents.

protection for textiles and for other purposes. This bill is almost identical with S. 5075, there being a few slight changes in the language only. It was referred to the Committee on Patents, was reported out from committee promptly (report no. 2086) and was referred to the Committee of the Whole House on the state of the Union.

Thus the design registration bill, in substantially identical form, was out of committee and before both Houses when on March 4, 1933, the Seventy-second Congress expired and this, with all other bills not enacted into law, died with it.

Promptly upon assembling of the extra session of the new Congress which followed immediately (73d Cong., 1st sess.) action upon this measure was resumed.

On March 11, 1933, Mr. Hebert introduced in the Senate a bill (S. 241)⁵ to provide protection by registration of designs for textiles and other materials, which was referred to the Committee on Patents. This bill is substantially the same as the bill S. 5075 which was before the last Congress. It provides for registration in the Copyright Office of designs for textiles, laces, and embroidery. The Register of Copyrights is required to establish a file containing such designs. Upon receipt of an application the Register of Copyrights must make search and if he finds the design to be original and novel he shall issue a certificate of registration within 7 days. The fee is \$3 and the term of protection is 5 years. An infringer is liable to an injunction and to pay a sum of not less than \$2,500 in some cases and not less than \$100 in other cases as compensation to the plaintiff. Provision is made for the exemption of the retailer or of an automobile manufacturer in cases of innocent infringement.

About 2 weeks later, on March 23, 1933, Mr. Sirovich, Chairman of the House Committee on Patents, introduced a bill (H.R. 4115)⁶ to provide protection by registration of designs for textiles and other materials, which was referred to the Committee on Patents. This bill is almost identical with S. 241 introduced in the Senate on March 11 by Mr. Hebert.

Thus the design registration bill had been reintroduced in both Houses of the new Congress and was in the hands of their respective committees when the extra session adjourned on June 16, 1933.

GENERAL REVISION OF THE COPYRIGHT LAW

In the first session of the Seventy-third Congress (the extra session) Mr. Dill introduced in the Senate on March 13, 1933, a bill

⁵ 1933 (Mar. 9 (calendar day, Mar. 11)). A bill to provide protection by registration of designs for textiles and other materials. Introduced by Mr. Hebert. S. 241, 73d Cong., 1st sess. Referred to the Committee on Patents.

⁶ 1933 (Mar. 23). A bill to provide protection by registration of designs for textiles and other materials. Introduced by Mr. Sirovich. H.R. 4115, 73d Cong., 1st sess. Referred to the Committee on Patents.

(S. 342)⁷ to amend and consolidate the acts respecting copyright, which was referred to the Committee on Patents. This is substantially like the bill S. 3985, which he introduced in the Seventy-second Congress, First Session, as described in the Report of the Register of Copyrights for the year ending June 30, 1932. It follows the present copyright law in many of its sections, but in others presents substantial changes and some novel features. Under its provisions copyright may be had by the author or any other person entitled thereto, for published or unpublished works, and is obtained by affixing the notice upon the work. Conspicuously new is the provision for controlling licensing companies and performing rights societies in their licensing for public performance, particularly by radio broadcasting. Such societies and organizations must place on file in the Copyright Office lists of the music which they control and excessive fees may be protested before a designated arbiter in disputes. This provision follows quite closely the amendment recently added to the Canadian copyright law.

THE UNITED STATES AND THE INTERNATIONAL COPYRIGHT UNION

Towards the close of the first session of the Seventy-third Congress an identical bill was introduced in both Houses of Congress to enable the United States to enter the International Copyright Union under the convention of Rome, 1928. In the House the bill (H.R. 5853)⁸ was introduced by Mr. Luce on May 31, 1933, and was referred to the Committee on Patents. In the Senate the bill (S.1928)⁹ was introduced by Mr. Cutting on June 10, 1933, and was referred to the Committee on Foreign Relations.

This is a new bill dealing only with our entry into the union of 39 countries embracing most of the leading nations. The union countries have agreed upon mutual copyright protection so that a copyright secured in any one of them is automatically protected throughout the others.

The bill provides that from and after the date upon which the adherence of the United States to the convention of Berne for protection of literary and artistic works of September 9, 1886, as revised at Rome on June 2, 1928, becomes effective, copyright throughout the United States and its dependencies shall subsist in the works of foreign authors of any country belonging to the union without compliance

⁷ 1933 (Mar. 13). A bill to amend and consolidate the acts respecting copyright. Introduced by Mr. Dill. S. 342, 73d Cong., 1st sess. Referred to the Committee on Patents. For the full text of this bill see p. 30 of this report.

⁸ 1933 (May 31). A bill to enable the United States to enter the International Copyright Union. Introduced by Mr. Luce. H.R. 5853, 73d Cong., 1st sess. Referred to the Committee on Patents. For the full text of this bill see p. 44 of this report.

⁹ 1933 (June 6 (calendar day, June 10)). A bill to enable the United States to enter the International Copyright Union. Introduced by Mr. Cutting. S. 1928, 73d Cong., 1st sess. Referred to the Committee on Foreign Relations.

with any conditions or formalities whatever provided the work is entitled to copyright within the union.

Conversely, the American author's copyright is automatically extended throughout all the countries of the union.

This is a proposed move on the part of the United States which many proponents of copyright believe has been too long postponed, and which has been supported and urged from time to time by authors and others interested in the extension of copyright protection ever since the argument in favor of it was begun some 40 years ago. It has thus far failed either through a general attitude of indifference or because of active opposition in some quarters.

One continual stumbling block in the way has been the requirement of American manufacture for books in the English language securing American copyright. Another is the requirement of registration in the Copyright Office. The present bill proposes to eliminate these requirements as relating to works of foreign authorship.

Foreign copyright protection for American authors is now possible in a number of countries by action under present legislation. When a copyright is thus secured by an American author in a country which is a member of the International Copyright Union, as, for example, in Great Britain, it is automatically extended throughout the Union under the provisions of the Berne convention. That is what is meant by our "getting into the union through the back door" as the expression is sometimes used in copyright discussions. But there are signs of resentfulness in certain countries against this one-sided arrangement, and it seems possible that some countries may take action to discontinue it.

Under these circumstances it is pertinent to remember that protection abroad for the American author and copyright owner may be effectively secured by entry of the United States into the International Copyright Union.

FOREIGN EXHIBITS AT THE CHICAGO FAIR, 1933

On January 18, 1933, Mr. Chindblom introduced in the House a joint resolution (H.J.Res. 561)¹⁰ amending section 7 of the act entitled "An act to protect the copyrights and patents of foreign exhibitors at A Century of Progress (Chicago World's Fair Centennial Celebration), to be held at Chicago, Ill., in 1933," approved July 19, 1932.¹¹

This resolution passed both Houses and was signed February 24, 1933. The resolution provides for amendment of the act approved

¹⁰ 1933 (Jan. 18). Joint resolution amending (* * *) section 7 of the act entitled "An act to protect the copyrights and patents of foreign exhibitors at A Century of Progress (Chicago World's Fair Centennial Celebration), to be held at Chicago, Ill., in 1933", approved July 19, 1932. Introduced by Mr. Chindblom. H.J.Res. 561. Referred to the Committee on Ways and Means.

¹¹ For the full text of this act see the Annual Report of the Register of Copyrights for the year 1931-32

February 5, 1929, providing for admitting foreign exhibits for the Chicago fair without payment of tariff or customs duties, but that is wholly apart from copyright matters. The resolution has nothing to do with copyright protection as such and affects the Copyright Office only in providing that the reimbursement to be made by A Century of Progress for the expenses incurred in establishing the Branch Copyright Office at the fair "shall be deposited as refunds to the appropriations from which paid, instead of being covered into the Treasury as miscellaneous receipts."

The full text of the amendment affecting the Copyright Office is as follows:

SEC. 2. That section 7 of the act entitled "An act to protect the copyrights and patents of foreign exhibitors at A Century of Progress (Chicago World's Fair Centennial Celebration), to be held at Chicago, Ill., in 1933", approved July 19, 1932, be, and the same hereby is, amended so as to read as follows:

"SEC. 7. All necessary expenses incurred by the United States in carrying out the provisions of this act shall be reimbursed to the Government of the United States by A Century of Progress, also known as the Chicago World's Fair Centennial Celebration, under regulations to be prescribed by the Librarian of Congress and by the Commissioner of Patents, respectively."

SEC. 3. That the receipts from reimbursements to the Government of the United States paid by A Century of Progress, also known as the Chicago World's Fair Centennial Celebration, as provided in the joint resolution entitled "Joint resolution authorizing the President, under certain conditions, to invite the participation of other nations in the Chicago World's Fair, providing for the admission of their exhibits, and for other purposes", approved February 5, 1929, as hereby amended, and in the act entitled "An act to protect the copyrights and patents of foreign exhibitors at A Century of Progress (Chicago World's Fair Centennial Celebration), to be held at Chicago, Ill., in 1933", approved July 19, 1932, as hereby amended, shall be deposited as refunds to the appropriations from which paid, instead of being covered into the Treasury as miscellaneous receipts as provided by the act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1908, and for other purposes", approved March 4, 1907, in the manner provided for receipts from reimbursable charges for labor, services, and other expenses connected with the customs, in section 524 of the Tariff Act of 1930.

Approved, February 24, 1933.

Respectfully submitted.

HERBERT PUTNAM,
Librarian of Congress.

WILLIAM L. BROWN,
Acting Register of Copyrights.

EXHIBITS

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EXHIBIT A

**STATEMENT OF GROSS RECEIPTS, REFUNDS, NET RECEIPTS, AND FEES APPLIED
FOR FISCAL YEAR ENDING JUNE 30, 1933**

Month	Gross receipts	Refunds	Net receipts	Fees applied
1932				
July.....	\$21,705.88	\$521.59	\$21,184.29	\$20,231.50
August.....	19,177.62	641.10	18,536.52	20,181.90
September.....	19,658.37	492.85	19,165.52	19,197.90
October.....	21,165.77	449.32	20,716.45	21,820.30
November.....	18,894.81	620.64	18,274.17	20,357.80
December.....	24,977.58	360.17	24,617.41	20,787.40
1933				
January.....	28,487.30	287.23	28,200.07	24,240.60
February.....	17,328.32	324.65	17,003.72	19,172.60
March.....	21,265.94	468.00	20,797.94	21,247.70
April.....	20,360.22	662.19	19,708.03	21,526.60
May.....	21,513.48	406.25	21,107.23	21,671.70
June.....	20,219.70	428.90	19,790.80	20,559.30
Total.....	254,754.99	5,662.89	249,092.10	250,995.30

Balance brought forward from June 30, 1932.....	\$19,519.91
Net receipt July 1, 1931 to June 30, 1933:	
Gross receipts.....	\$254,754.99
Less amount refunded.....	5,662.89
	<u>249,092.10</u>
 Total to be accounted for.....	 268,612.01
Copyright fees applied July 1, 1932 to June 30, 1933.....	250,995.30
Balance carried forward to July 1, 1933:	
Trust funds.....	15,536.47
Unfinished business.....	2,080.24
	<u>268,612.01</u>

REPORT OF THE REGISTER OF COPYRIGHTS

EXHIBIT B

RECORD OF APPLIED FEES

Month	Registrations of published works, including certificates		Registrations of unpublished works, including certificates		Registrations of published photos, no certificate		Registrations of renewals		Total number of registrations	Total fees for registrations
	Number	Fees at \$3	Number	Fees at \$1	Number	Fees at \$1	Number	Fees at \$1		
1932										
July.....	8,519	\$17,038.00	1,775	\$1,775.00	191	\$191.00	573	\$573.00	11,058	\$19,577.00
August.....	8,498	16,996.00	2,109	2,109.00	142	142.00	413	413.00	11,162	19,660.00
September.....	8,008	16,016.00	2,128	2,128.00	80	80.00	413	413.00	10,629	18,637.00
October.....	9,306	18,612.00	1,964	1,964.00	89	89.00	463	463.00	11,822	21,128.00
November.....	8,432	16,864.00	1,959	1,959.00	94	94.00	529	529.00	11,014	19,446.00
December.....	8,931	17,862.00	1,843	1,843.00	131	131.00	284	284.00	11,189	20,120.00
1933										
January.....	10,159	20,318.00	2,244	2,244.00	200	200.00	655	655.00	13,258	23,417.00
February.....	7,974	15,948.00	1,888	1,888.00	43	43.00	810	810.00	10,715	18,699.00
March.....	8,860	17,720.00	2,134	2,134.00	66	66.00	519	519.00	11,579	20,439.00
April.....	8,900	17,800.00	2,095	2,095.00	177	177.00	760	760.00	11,932	20,832.00
May.....	9,118	18,236.00	2,108	2,108.00	52	52.00	575	575.00	11,853	20,971.00
June.....	8,702	17,404.00	2,035	2,035.00	59	59.00	417	417.00	11,213	19,915.00
Total.....	105,407	210,814.00	24,282	24,282.00	1,324	1,324.00	6,411	6,411.00	137,424	242,831.00
Month	Copies of record		Assignments and copies		Indexing transfers of proprietorship		Notices of user		Search fees	Total fees applied
	Number	Fees at \$1	Number	Fees	Number	Fees at \$0.10	Number	Fees		
1932										
July.....	70	\$70.00	130	\$508.00	55	\$5.50	21	\$21.00	\$52.00	\$20,231.50
August.....	96	96.00	138	366.00	39	3.90	14	14.00	42.00	20,181.90
September.....	66	66.00	158	442.00	69	6.90	23	23.00	23.00	19,197.90
October.....	108	108.00	152	520.00	63	6.30	11	11.00	47.00	21,820.30
November.....	91	91.00	235	730.00	178	17.80	6	6.00	67.00	20,357.80
December.....	55	55.00	142	530.00	124	12.40	32	32.00	38.00	20,787.40
1933										
January.....	150	150.00	201	630.00	46	4.60	17	17.00	22.00	24,240.60
February.....	43	43.00	123	330.00	166	16.60	20	20.00	74.00	19,172.60
March.....	89	89.00	175	620.00	117	11.70	25	25.00	63.00	21,247.70
April.....	74	74.00	153	536.00	96	9.60	24	24.00	51.00	21,526.60
May.....	75	75.00	149	556.00	67	6.70	25	25.00	38.00	21,671.70
June.....	52	52.00	167	514.00	23	2.30	25	25.00	51.00	20,559.30
Total.....	969	969.00	1,923	6,280.00	1,043	104.30	243	243.00	568.00	250,995.30

EXHIBIT C

STATEMENT OF GROSS CASH RECEIPTS, YEARLY FEES, NUMBER OF REGISTRATIONS, ETC., FOR 36 FISCAL YEARS

Year	Gross receipts	Yearly fees applied	Number of registrations	Increase in registrations	Decrease in registrations
1897-98.....	\$61,099.56	\$55,928.50	75,545		
1898-99.....	64,185.65	58,267.00	80,968	5,423	
1899-1900.....	71,072.33	65,208.00	94,798	13,830	
1900-1901.....	69,525.25	63,687.50	92,351		2,447
1901-02.....	68,405.08	64,687.00	92,978	627	
1902-03.....	71,533.91	68,874.50	97,979	5,001	
1903-04.....	75,302.83	72,629.00	103,130	5,151	
1904-05.....	80,440.56	78,058.00	113,374	10,244	
1905-06.....	82,610.92	80,198.00	117,704	4,330	
1906-07.....	87,384.31	84,685.00	123,829	6,125	
1907-08.....	85,042.03	82,387.50	119,742		4,087
1908-09.....	87,085.53	83,816.75	120,131	389	
1909-10.....	113,682.83	104,644.95	109,074		11,057
1910-11.....	113,661.52	109,913.95	115,198	6,124	
1911-12.....	120,149.51	116,685.05	120,931	5,733	
1912-13.....	118,998.26	114,980.60	119,495		1,436
1913-14.....	122,636.92	120,219.25	123,154	3,659	
1914-15.....	115,594.55	111,922.75	115,193		7,961
1915-16.....	115,663.42	112,988.85	115,967	774	
1916-17.....	113,808.51	110,077.40	111,438		4,529
1917-18.....	109,106.87	106,352.40	108,728		4,710
1918-19.....	117,518.96	113,118.00	113,003	6,275	
1919-20.....	132,371.37	126,492.25	126,562	13,559	
1920-21.....	141,199.33	134,516.15	135,280	8,718	
1921-22.....	145,898.26	138,516.15	138,633	3,353	
1922-23.....	153,923.62	149,297.00	148,946	10,313	
1923-24.....	167,705.98	162,544.90	162,694	13,748	
1924-25.....	173,971.95	166,909.55	165,848	3,154	
1925-26.....	185,038.29	178,307.20	177,635	11,787	
1926-27.....	191,375.16	184,727.60	184,000	6,365	
1927-28.....	201,054.49	195,167.65	193,914	9,914	
1928-29.....	322,135.82	308,993.80	161,959		31,955
1929-30.....	336,890.75	327,629.90	172,792	10,833	
1930-31.....	312,865.41	309,414.30	164,642		8,150
1931-32.....	284,719.20	280,964.90	151,735		12,907
1932-33.....	254,754.69	250,995.30	137,424		14,311
Total.....	5,087,952.63	4,893,800.60	4,604,774		

EXHIBIT D

NUMBER OF REGISTRATIONS MADE DURING THE LAST 5 FISCAL YEARS

Class	Subject matter of copyright	1928-29	1929-30	1930-31	1931-32	1932-33
A	Books:					
	(a) Printed in the United States:					
	Books proper.....	13,501	15,221	14,175	13,460	10,820
	Pamphlets, leaflets, etc.....	25,205	26,135	27,143	28,995	24,290
	Contributions to newspapers and periodicals.....	13,574	14,587	12,698	10,489	9,290
	Total.....	52,280	55,943	54,016	50,944	44,400
	(b) Printed abroad in a foreign language....	3,868	4,664	4,339	4,784	4,232
	(c) English books registered for ad-interim copyright.....	1,466	1,228	1,198	1,337	1,352
	Total.....	57,614	61,835	59,553	57,065	49,984
	B	Periodicals (numbers).....	44,161	43,939	42,415	39,177
C	Lectures, sermons, addresses.....	348	567	563	521	388
D	Dramatic or dramatico-musical compositions.....	4,594	5,734	5,784	6,296	6,359
E	Musical compositions.....	27,023	32,129	31,488	29,264	26,846
F	Maps.....	2,232	2,554	2,940	1,774	1,178
G	Works of art, models or designs.....	2,486	2,734	2,551	2,590	2,667
H	Reproductions of works of art.....	0	0	0	0	0
I	Drawings or plastic works of a scientific or technical character.....	1,511	1,687	1,993	1,697	1,495
J	Photographs.....	4,850	4,311	3,618	2,570	1,882
K	Prints and pictorial illustrations.....	9,873	9,170	5,813	3,354	3,143
L	Motion-picture photoplays.....	1,087	890	940	800	864
M	Motion pictures not photoplays.....	1,232	1,305	986	739	743
R	Renewals.....	4,948	5,937	5,998	5,888	6,411
	Total.....	161,959	172,792	164,642	151,735	137,424

EXHIBIT E

NUMBER OF ARTICLES DEPOSITED DURING THE LAST 5 FISCAL YEARS

Class	Subject matter of copyright	1928-29	1929-30	1930-31	1931-32	1932-33
A	Books:					
	(a) Printed in the United States:					
	Books proper.....	27,002	30,442	28,350	26,920	21,640
	Pamphlets, leaflets, etc.....	50,582	51,996	54,348	53,922	48,538
	Contributions to newspapers and periodicals.....	13,574	14,587	12,698	10,489	9,290
	Total.....	91,158	97,025	95,396	91,331	79,468
	(b) Printed abroad in a foreign language....	3,689	4,664	4,339	4,784	4,232
(c) English works registered for ad-interim copyright.....	1,466	1,228	1,198	1,337	1,352	
Total.....	96,313	102,917	100,933	97,452	85,052	
B	Periodicals.....	87,926	87,992	84,830	78,354	70,928
C	Lectures, sermons, etc.....	336	555	563	521	388
D	Dramatic or dramatico-musical compositions...	5,205	6,504	6,502	7,077	7,048
E	Musical compositions.....	37,051	41,183	39,040	36,331	32,886
F	Maps.....	4,452	4,947	5,869	3,535	2,353
G	Works of art, models or designs.....	2,569	2,993	2,636	2,645	2,694
H	Reproductions of works of art.....	0	0	0	0	0
I	Drawings or plastic works of a scientific or technical character.....	2,428	2,837	3,121	2,737	2,366
J	Photographs.....	9,337	8,032	6,666	4,638	3,427
K	Prints and pictorial illustrations.....	14,012	12,887	8,761	6,357	6,027
L	Motion-picture photoplays.....	2,196	1,779	1,846	1,602	1,728
M	Motion pictures not photoplays.....	2,379	2,588	1,923	1,440	1,442
	Total.....	264,204	275,214	262,690	242,689	216,339

ADDENDA

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I. A bill to provide protection by registration of designs for textiles and other materials. (S. 5075). In the Senate of the United States December 7, 1932. Reported by Mr. Hebert with amendments (Calendar No. 1386).....	23
II. S. Report No. 1280 to accompany S. 5075.....	26
III. A bill to amend and consolidate the Acts respecting copyright. (S. 342). In the Senate of the United States March 13, 1933. By Mr. Dill.....	30
IV. A bill to enable the United States to enter the International Copyright Union (H.R. 5853). In the House of Representatives May 31, 1933. By Mr. Luce.....	44

ADDENDUM I

[S. 5075, 72d Cong. 2d Sess. Dec. 7, 1932]

Mr. Hastings (for Mr. Hebert) introduced the following bill; which was read twice and referred to the Committee on Patents, February 21 (calendar day, Feb. 23), 1933. Reported by Mr. Hebert, with amendments. Omit the part in black brackets and insert the part printed in italic.

A BILL To provide protection by registration of designs for textiles and other materials

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the original author of a design to be applied to textiles, laces, and/or embroidery of any kind, whether such design is to be woven into or applied to the surface of or incorporated into the surface or fiber of the fabric, or any person who is the assignee of any such original author, may procure registration of such design by filing with the Register of Copyrights two specimens, drawings, photographs, or other identifying representations of the design accompanied by a statement under oath of the name and address of the applicant and of the original author, together with such other information as the Register of Copyrights shall require, and a fee of \$3. The application must be filed before the design has been published or commercially distributed. The rights of priority provided for industrial designs in the Convention for the Protection of Industrial Property signed at The Hague in 1925 are hereby made applicable to designs registered under the provisions of this act. This act shall not apply to the illustration or pictorial representation of wearing apparel, patterns or designs, or to the manufacture, sale, or distribution of patterns for woman's wearing apparel.

SEC. 2. The Register of Copyrights shall establish a file containing such registered designs and such other designs which he may see fit to include, all of which shall be open to public inspection.

SEC. 3. Upon receipt of such application the Register of Copyrights shall cause a search to be made, and if he finds the design to be original and novel and the application to be in proper form, he shall, within seven days or less from the date of application, issue a certificate of registration under seal to the applicant.

SEC. 4. When a certificate of registration has been issued after search and examination by the Register of Copyrights there shall be in any action or suit involving the same a presumption of originality and novelty in the registered design and of validity in the registration thereof; and a presumption of copying may, in the discretion of the court, be held to arise from substantial resemblance to the registered design in defendant's design. On any motion for a preliminary injunction on production of the certificate of registration or a certified copy thereof the court, in the absence of other proof, shall hold the design covered by the certificate of registration to be original, novel, and properly registered, and if the court finds a substantial resemblance between the registered design and the defendant's design a preliminary injunction shall be forthwith issued.

SEC. 5. During five years from the date of the certificate it shall not be lawful for any person (a) for the purpose of sale, to apply or cause to be applied to any fabric, lace, or embroidery of any kind, the registered design or any fraudulent or obvious imitation thereof except with the license or written consent of the

registrant, or to do anything with a view to enable the design to be so applied; or (b) knowing that the registered design or any fraudulent or obvious imitation thereof has been applied to any such article without the consent of the registrant, to publish, sell, or expose for sale or cause to be published, sold, or exposed for sale that article; and the owner of the certificate of registration shall have against any person acting in contravention of this section the same rights to sue and recover as for infringement of copyright; but a distributor at retail to the general public or an automobile manufacturer shall be deemed to act in contravention of this section only as to goods embodying the design with respect to which the court has granted an injunction, either preliminary or final, as constituting an infringement of a registered design, and purchased by such distributor or automobile manufacturer from the defendant or defendants in such suit after written notice that such injunction has been granted, and provided such written notice is accompanied by a copy of the injunction order and by a sample, reproduction, or copy of the infringing goods showing the complete design embodied in such goods; but this exception for the distributor at retail or automobile manufacturer shall apply only if such distributor or automobile manufacturer shall have made, upon request of the owner of the certificate of registration, a prompt and full disclosure as to source and particulars of the purchase of any goods claimed to be an infringement of a registered design, and if such distributor at retail or automobile manufacturer had not induced or acted in collusion with a manufacturer to make, or an importer to import, an article containing a substantial resemblance to the registered design, but purchasing or giving an order for purchase in the ordinary course of business shall not in itself be construed as constituting such inducement or collusion. In addition to other remedies provided, a person doing anything in contravention of this section shall be liable to pay a sum of not less than \$2,500 where the defendant is a manufacturer or importer, and in any other case not less than \$100, as compensation to the plaintiff and not as a penalty, in each case, upon plaintiff's request, where the court in its discretion concludes that an accounting should be dispensed with or that upon an accounting, damages or profits, where the defendant is a manufacturer or importer, would not exceed \$2,500 or would not exceed \$100 in any other case.

SEC. 6. Failure of the registrant or his agent to apply the design to fabrics, lace, or embroidery of any kind within one year of the date of the certificate of registration shall terminate any exclusive rights in the design unless copied thereafter by one with whom negotiations for manufacture or purchase had begun during said year. Before delivery on sale by the registrant or his agent of any article to which a registered design has been applied, the registrant or his agent shall cause every such article, or the wrapper or package in which it is contained, to be marked "Registered" or R in a circle thus: ®—as he may choose, but where the design is repeated on an article it shall not be necessary to so mark each occurrence of the design, but a single marking on each ordinary unit of sale shall be sufficient. Failure to so mark shall preclude recovery of damages or profits for an infringement unless actual notice is proven.

SEC. 7. Any person who shall (a) register a design knowing that any of the statements contained in the application for registration are false or (b) with fraudulent intent place the notice of registration provided by this act upon an article not bearing the registered design or (c) sell an article bearing the notice of registration knowing that it has not been registered, shall be guilty of a misdemeanor and liable to a fine of not less than \$100 and not more than \$1,000.

SEC. 8. Any person who shall bring an action or suit for infringement of a design alleged to be protected under this act, and known by the plaintiff to be not an original work of authorship of the person alleged in the application to be the original author of said design, shall on due showing of such knowledge be

liable in the sum of \$1,000, or such part thereof as the court may determine, as compensation to the defendant to be charged against the plaintiff and paid to the defendant in addition to the taxable costs and counsel fees of the defendant to be assessed by the court.

SEC. 9. The provisions of law with respect to assignments of copyrights and recording thereof shall apply to assignments of certificates of registration under this act, and the Register of Copyrights shall have the same authority to make rules for proceedings under this act as with respect to copyrights.

SEC. 10. No patent for any design for textiles, laces, or embroideries of any kind shall issue under sections 4929 and 4931 of the Revised Statutes on an application filed after this act goes into effect.

SEC. 11. This act shall take effect July 1, 1933.

ADDENDUM II
REGISTRATIONS OF DESIGNS

[S. Report No. 1280, 72d Congress 2d sess., Feb. 21 (calendar day, Feb. 23), 1933]

Mr. Hebert, from the Committee on Patents, submitted the following report (to accompany S. 5075):

The Committee on Patents, to which was referred the bill (S. 5075) to provide protection by registration of designs for textiles and other materials, having had the same under consideration, reports the bill to the Senate with the following amendments and recommends that the same do pass.

On page 2, line 9, add the following:

"This act shall not apply to the illustration or pictorial representation of wearing apparel, patterns or designs, or to the manufacture, sale, or distribution of patterns for woman's wearing apparel."

On page 2, line 16, strike out the word "/or", and insert between "novel" and the first comma, "and the application to be in proper form".

On page 2, line 19, strike out the word "such".

On page 2, line 20, between "issued" and "there", insert "after search and examination by the Register of Copyrights".

On page 2, line 25, strike out the word "of" and insert in lieu thereof "in".

Page 3, line 1, strike out the words "or in any other proceeding or action".

Page 3, line 13, strike out the word "identical".

Page 3, line 17, strike out the word "identical".

Page 3, line 24, between "public" and "shall", insert "or an automobile manufacturer".

Page 4, line 1, strike out all of lines 1 through 7, and through the word "retail;" in line 8, and insert in lieu thereof:

"goods embodying the design with respect to which the court has granted an injunction, either preliminary or final, as constituting an infringement of a registered design, and purchased by such distributor or automobile manufacturer from the defendant or defendants in such suit after written notice that such injunction has been granted, and provided such written notice is accompanied by a copy of the injunction order and by a sample, reproduction, or copy of the infringing goods showing the complete design embodied in such goods;"

Page 4, line 9, between "retail" and "shall", insert the words "or automobile manufacturer".

Page 4, line 10, between "distributor" and "shall", insert the words "or automobile manufacturer".

Page 4, line 14, between "retail" and "had", insert the words "or automobile manufacturer".

Page 4, line 16, strike out the words "an identical or obvious" and insert in lieu thereof "a substantial".

Page 4, line 18, strike out the words "the purchases" and insert in lieu thereof "purchase".

Page 4, line 24, strike out "\$400" and insert in lieu thereof "\$100".

A bill (H.R. 11852) similar in character to the pending measure was reported favorably to the Senate at the third session of the Seventy-first Congress. (See Report no. 1627, Calendar no. 1689.)

For the information of the Senate the pertinent parts of said report are subjoined. This report has reference to provisions somewhat different from those contained in the accompanying bill, but the underlying principle is the same, and the reasons why legislation of this character should be enacted are fully set forth therein and apply with equal force to the measure now before the Senate.

It should be noted that the amendments proposed have been agreed upon as desirable and satisfactory by all interested parties. Heretofore a question has arisen in the course of the consideration of the general subject of design copyright as to the effect it would have upon innocent purchasers of copyrighted material. This phase of the subject has been fully considered and proper safeguards have been provided in the present bill.

CONSTITUTIONAL PROVISION APPLIED

Paragraph 8 of section 8 of the Constitution provides:

"To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

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

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

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

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

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

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

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

Act of February 4, 1887:

"*Be it enacted, etc.*, That hereafter, during the term of letters patent for a design, it shall be unlawful for any person other than the owner of said letters patent, without the license of such owner, to apply the design secured by such letters patent, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or to sell or expose for sale any article of manufacture to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied. Any person violating the provisions, or either of them, of this section, shall be liable in the

amount of two hundred and fifty dollars; and in case the total profit made by him from the manufacture, or sale, as aforesaid, of the article or articles to which the design, or colorable imitation thereof, has been applied, exceeds the sum of two hundred and fifty dollars, he shall be further liable for the excess of such profit over and above the sum of two hundred and fifty dollars; and the full amount of such liability may be recovered by the owner of the letters patent, to his own use, in any circuit court of the United States having jurisdiction of the parties, either by action at law or upon a bill in equity for an injunction to restrain such infringement.

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

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

The reasons for this change become apparent upon an analysis of the functions of patents and of copyrights, respectively. A copyright is precisely what its name indicates, that is, a right to prohibit the making of a copy of an original design by any other person than the author of it, and in order to prohibit the production of a design which is copyrighted it must appear that the alleged infringement is a copy.

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

DELAYS IN SECURING PATENTS

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

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

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

The officials of the Patent Office and of the Copyright Office are agreed that the present patent law is a dead letter so far as a very large number of manu-

factured products are concerned, even though such products are entitled to protection, and that very likely such products would be protected if the law were made more practical in its application.

The necessity for such a change as is embodied in the present bill is amply borne out by the testimony presented at the hearings before committees of both the House and the Senate.

SPREAD OF DESIGN PIRACY

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

ADDENDUM III

[S. 342, 73d Cong., 1st sess., Mar. 13, 1933]

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

A BILL To amend and consolidate the acts respecting copyright

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

I. WHAT COPYRIGHT INCLUDES

SECTION 1. Any author or other person entitled thereto, upon compliance with the provisions of this act shall secure and be granted copyright throughout the United States and its dependencies on all his writings, published or unpublished, in any medium or form, or recorded by any method whatsoever by which the thought of the author is expressed, for the term hereinafter provided.

For the purpose of this act "copyright" means the sole and exclusive right—

(a) To produce or reproduce the work or any substantial part thereof, in any material form whatsoever in which the thought of an author may be recorded and from which it may be read, broadcast, produced, reproduced, performed, exhibited, represented, or communicated mechanically or otherwise.

(b) To complete, change, to finish the work, to translate the work into any other language or dialect, to rearrange the work in any way whatsoever, whether by dramatizing it or converting it from one form of literary production to any other form whatsoever, and if the work be a musical composition to arrange or adapt the words and/or the music for any purpose whatsoever, into any form from which it may be read, broadcast, produced, reproduced, performed, exhibited, represented, or otherwise communicated.

The provisions of this subsection, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically a musical work, shall include no work published or copyrighted previous to July 1, 1909.

(c) To deliver, perform, render, exhibit, produce, or reproduce in any way whatsoever the original work or any of the forms into which it may have been translated, converted, or arranged, if it be a dramatic or dramatico-musical work, or lecture, sermon, or address, and to communicate such work to the public by any method or means for transmitting or delivering sounds, words, images, or pictures, whether now or hereafter existing; and in the case of a musical composition, to perform the said work publicly for profit: *Provided*, That nothing in this act shall be construed to prohibit the performance of any copyright work for public entertainment and not for profit, nor the performance of any work for charitable or educational or religious purposes by churches, schools, and/or fraternal organizations, whether for profit or not: *Provided further*, That the use of a machine, instrument, or instruments serving to reproduce mechanically and/or electrically such work or works, except where such reproduction is by radio or wireless broadcast, shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs: *Provided further*, That the provisions of this act shall not apply to the reception of any work by the use of a radio-receiving set or other receiving

apparatus unless a specific admission or operating fee is charged therefor by the owner or operator of such radio-receiving set or other receiving apparatus.

(d) To vend or otherwise dispose of the work or any and all of the forms and rights enumerated in subsections (a), (b), and (c), either separately or as a whole, as the copyright owner may decide.

SEC. 2. Any compilation, abridgment, adaptation, arrangement, translation, dramatization, or other version of a work, if the same be a work in the public domain, or of a copyright work when produced with the consent of the proprietor of the copyright in such work, shall be regarded as a new work subject to copyright under the provisions of this act; but such copyright of any such new work shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, nor be construed to imply an exclusive right to such use of the original work, or to secure or extend copyright in such original work.

Nothing in this act shall prevent the fair use of quotations from copyright matter, unless the copyright owner by notice affixed, has expressly prohibited such quotations from the copyright work in whole or in part, but whenever such quotations are printed or reproduced by radio for profit, credit shall be given to the source.

SEC. 3. The copyright is distinct from the property in the copyrighted work or in any material reproduction of the work, and the sale or conveyance, by gift or otherwise, of the original work or a material reproduction thereof shall not of itself constitute a transfer of the copyright, nor shall the assignment or license of the copyright constitute a transfer of the title to the original work or the material reproduction unless expressly stipulated; except in the case of photographic portraits made for hire or on commission, in which case, in the absence of written agreement to the contrary, the copyright shall vest in the person whose portrait is reproduced or his legal representatives: *Provided*, That in the absence of agreement to the contrary, no copyright in any photograph shall prohibit its use in any way whatsoever by the person whose portrait is reproduced.

Nothing in this act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyright work the title to which has been lawfully obtained.

SEC. 4. No copyright shall subsist in the original text of any work which is in the public domain, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however*, That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any other use or appropriation of such copyright material without the consent of the copyright proprietor.

SEC. 5. The copyright of a work of architecture shall cover only its artistic character and its design and shall not extend to processes or methods of construction, nor shall it prevent the making, exhibiting, or publishing of photographs, motion pictures, paintings, or other illustrations thereof, which are not in the nature of architectural drawings or plans, and the owner of the copyright shall not be entitled to obtain an injunction restraining the construction, substantially begun, or use, of an infringing building, or an order for its demolition or seizure.

II. HOW TO SECURE COPYRIGHT

NOTICE

SEC. 6. Any author or other person entitled to copyright under this act and desiring to protect the same by law shall make claim of copyright by affixing a legible notice to the work or works in which copyright is claimed. Notice shall consist of the word "copyright" or "copr" or the letter C inclosed in a circle

thus © or words expressly forbidding the exercise of any rights included under the term "copyright" as defined in this act, year when copyright begins and the name of the copyright owner. The notice shall be affixed to all copies of the work published or otherwise distributed in the United States or its dependencies.

In case of a book or other printed publication, the notice shall be placed on the title page or one of the ten pages immediately following. In the case of a newspaper or periodical, if notice of copyright is placed in the column containing the editorial and publishing statement it shall be deemed sufficient to protect all matter printed in the issue of that date, and in case of individual contributions to a newspaper or periodical, said notice will protect such special contributions, but additional notice may be affixed under the title of the contribution, at the foot of any page, or at the beginning or end of the contribution.

In the case of a work or works or copies of works on which it is not practicable to affix the name of the copyright owner, the notice may consist of the letter C or the letter C inclosed in a circle thus © accompanied by the initials, monogram, mark, or symbol of the copyright owner: *Provided*, That on some accessible portion of such work or copies or on the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear.

In the case of works in which copyright is subsisting when this act shall go into effect, the notice of copyright may hereafter be either in one of the forms prescribed herein or in one of the forms prescribed by the law when the copyright in the work was secured: *Provided*, That in case an author or other person entitled thereto, shall affix notice of claim of copyright in accordance with the provisions of this act, the Register of Copyrights may at any time thereafter upon actual notice, require the proprietor of the copyright to deposit two complete copies of the best edition of the work in the Library of Congress, or one copy if the work be by a foreign author which has been first published in a foreign country, and after the said demand shall have been made, in default of the deposit of copies of the work within three months after receipt of the notice, the proprietor of the copyright shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work.

SEC. 7. Any person who, with fraudulent intent, shall insert or impress any notice of copyright or words of the same purport in or upon any article in which copyright for the United States does not subsist or impress a false notice upon any work that may be copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$1,000, and any person who shall knowingly issue or sell any article bearing such notice or words of the same purport when copyright in such article does not subsist in the United States shall be liable to a fine of \$100.

SEC. 8. Where the copyright proprietor has sought to comply with the provisions of this act with respect to notice the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct.

SEC. 9. In the case of a book published abroad in the English language before publication in this country, the deposit in the copyright office, not later than sixty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of

publication of the said book, shall secure to the author or proprietor and ad interim copyright, which shall have all the force and effect given to copyright by this act, and shall endure until the expiration of four months after such deposit in the copyright office.

Whenever within the period of such ad interim protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions of this act relating to manufacturing and printing, and whenever within the said period of ad interim protection, the provisions of this act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this act.

REGISTRATION

SEC. 10. Any author or other owner of a copyright in a work or of any right, title, or interest therein, who has made claim to copyright of the same and desires to register said claim, shall file application for registration of copyright in the work or the right, title, or interest therein with the Register of Copyrights, Washington, District of Columbia, and said application shall specify to which of the following classes the work belongs:

- (a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations, abridgements, adaptations, and translations;
- (b) Periodicals, and contributions to periodicals, including newspapers, and contributions thereto;
- (c) Lectures, sermons, addresses, or other matter prepared for oral delivery;
- (d) Dramatic compositions, dramatizations; dramatico-musical compositions; scenarios or continuities for motion pictures; choreographic works and pantomimes, the scenic arrangement or acting form of which is fixed in writing or otherwise;
- (e) Musical compositions;
- (f) Maps;
- (g) Works of art;
- (h) Reproductions of a work of art, including engravings, lithographs, photo- engravings, photogravures, casts, plastic works, or copies by any other methods of reproduction;
- (i) Drawings and plastic works of a scientific or technical character;
- (j) Photographs;
- (k) Prints and pictorial illustrations, including prints or labels for articles of manufacture formerly registerable under the Act of June 18, 1874, and trade-union labels;
- (l) Motion-picture photoplays, with or without sound and/or dialogue;
- (m) Motion pictures other than photoplays, with or without sound and/or dialogue;
- (n) Works of architecture, models, or designs for architectural works; or
- (o) Not otherwise classified.

Provided, nevertheless, That the above specifications shall not be held to limit the subject matter of copyright as defined in this act, nor shall any error in classification invalidate or impair the copyright protection secured under this act.

SEC. 11. At the time of filing the application, the applicant shall deposit one copy of the work with notice affixed as hereinbefore provided, accompanied by fee of \$1 if it be an unpublished work, and two complete copies with notice affixed as hereinbefore provided with affidavit giving date when the work was completed and the date when the notice was first affixed, accompanied by a fee

of \$2 if it be a published work, with the Register of Copyrights, whereupon he shall be entitled to a certificate of registration.

If the published work be by a foreign author and if it has been first published in a foreign country, only one copy need be deposited. The postmaster to whom articles are delivered for deposit as provided by this act, shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

If any author or other person desires to register a printed book or periodical under this act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art: *Provided, however,* That said requirements shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this act, or to works printed or produced in the United States by any other process than those above specified in this section.

In the case of the registration of a printed book in the English language, the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process, and printing and binding were performed and the date of the completion of the printing of the book or the date of publication.

SEC. 12. The copy or copies deposited for registration may either be printed, typewritten, or be in legible handwriting if the work be a book, or a dramatic, musical, or dramatico-musical composition; a scenario of a motion picture; a lecture, sermon, or address, or the acting form of a choreographic work or a pantomime. In the case of unpublished works, for a photograph, there shall be deposited one print from the negative; for any work of art, or for a model or design for a work of art, or a drawing or plastic work of a scientific or technical character, or any work not particularly specified in this section, a photograph or other identifying reproduction; for a motion picture, the title, and a description or synopsis and prints sufficient for identification; for an architectural work, a photographic or other identifying representation of such work and such drawings as are necessary to identify it: *Provided,* That if any work for which application

for registration of claim of copyright is filed, by reason of its character, bulk, fragility, or because of its dangerous ingredients cannot expediently be placed or kept on file, the Register of Copyrights may determine that there shall be deposited for registration, in lieu of a copy of such work, such identifying photographs or prints, together with such written, typewritten, or printed description of the work as shall be sufficient to identify it: *Provided further*, That in cases of application for the registration of newspapers, if several editions are published in one day, a deposit of any one of said editions shall be considered to be in full compliance with the requirements of this act.

SEC. 13. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000, and all of his rights and privileges under said copyright shall thereafter be forfeited.

SEC. 14. Subject to this act, the Supreme Court of the District of Columbia or a judge thereof, may on the application of any person aggrieved, by writ of mandamus upon due cause shown, order that any registration or record made under this act may be canceled, annulled, and expunged or similarly order the correction of any omission, error, or any defect in any registration or record or attempted registration or record. An appeal shall lie to the Court of Appeals of the District of Columbia from any final order made under this section.

III. ASSIGNMENTS

SEC. 15. The author or other owner of any copyright secured under this act or previous acts of the United States may by written instrument, signed by him, or his duly authorized agent, assign, mortgage, license, or otherwise dispose of, the entire copyright, or any right included therein, either wholly or separately, either generally or subject to limitations, for the term of the copyright or for a limited time, or for a specified territory, and may bequeath the same by will: *Provided*, That a license or assignment to make a motion picture shall be deemed to include all motion-picture rights of reproduction and exhibition of same from the film so licensed, no matter by whom it is exhibited.

Any person deriving an interest in a copyright as aforesaid may prevent infringement of, or interference with any or all of his rights in the copyright by legal means and may obtain damages as provided by this act for any violation of said rights.

Every assignment of copyright and every copyright license executed in a foreign country may be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be *prima facie* evidence of the execution of the instrument.

SEC. 16. Every assignment, grant, mortgage, or license of copyright or of rights therein shall be recorded in the Copyright Office, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

When an assignment of the copyright in a specified book or other work has been recorded, the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this act.

SEC. 17. No action shall be maintained for damages for the infringement of the copyright in any work, or of any right thereunder, by an assignee of the copyright or a right thereunder previous to the recording of the assignment under which he claims, or filing of notice in the Copyright Office that assignment has been made, said notice to give date and name of assignee.

IV. TERM OF COPYRIGHT

SEC. 18. The term of copyright under this act shall be fifty-six years from the date of completion of the work, which date together with date of affixing notice shall be declared under oath by the applicant for registration of claim of copyright at the time of filing said application: *Provided*, That no right of action for infringement shall exist for any period previous to the date of affixing notice of claim of copyright as hereinbefore provided.

SEC. 19. The copyright subsisting in any work when this Act goes into effect shall be continued until the expiration of fifty-six years from the date of copyright. The definition of the term "date of copyright" as used herein shall, as to a work registered under the provisions of the Act in force prior to July 1, 1909, be deemed to be the date when the title of such work was registered in the Copyright Office; as to a published work registered under the provisions of the act of March 4, 1909, the date when such work was published, with notice, and as to unpublished works registered pursuant to the provisions of said act, the date of the registration of such works in the Copyright Office.

The continuation of the subsisting copyright shall vest in the person or persons owning such copyright when this act goes into effect, subject to any agreement previously made by the author, or other person entitled in law or equity to make same, for the disposal of the renewal term under the law existing when this act goes into effect, any said agreement to be effective to the same extent it would have been effective under the law existing when this act goes into effect: *Provided*, That in the absence of any such agreement the continuation of the subsisting copyright shall vest, at the end of twenty-eight years from the date of such copyright, in the author, his executor, testamentary trustees, or administrator; or, if renewal registration has been made, in the person or persons who would have been the owners of the renewal copyright under preexisting law.

III. INFRINGEMENT

SEC. 20. If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable—

(a) To an injunction restraining such infringement, except as otherwise provided.

(b) To pay such damages to the owner of the right infringed as he may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement; and in proving profits the plaintiff shall be required to prove only sales and/or other revenues received and the defendant shall be required to prove every element of cost which he claims.

(c) To pay to the owner of the right infringed, in lieu of actual damages and profits, such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts hereinafter stated as payment in full for all infringement up to date of suit; but except as otherwise expressly stated in this act, such total damages for all infringement up to date of suit shall in no case exceed the sum of \$5,000 nor be less than \$150 and shall not be regarded as a penalty.

First. In case of any copyrighted work, except a painting, statue, sculpture, or motion-picture film, of which a material copy may be made, \$1 for every infringing copy made, sold, or found in the possession of the infringer or his agents, and for every copy of a painting, statue, or sculpture \$10.

Second. In case of an unauthorized newspaper or periodical reproduction of a copyrighted photograph, said statutory damages shall not exceed \$200 nor be less than \$10 for all infringement up to date of suit.

Third. In case of unauthorized dramatic or dramatico-musical performance or performances, or of unauthorized motion-picture exhibition or exhibitions, with or without sound and/or dialogue or unauthorized performance or performances for profit of a musical work, said statutory damages shall not exceed a total of \$10,000 nor be less than \$50 for all infringement up to date of suit.

(d) To deliver up, on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright or any right comprised therein: *Provided*, That in case the judgment is adverse to the complainant, the respondent shall be entitled to such damages as he may have suffered on account of such impounding and have judgment therefor rendered by the court.

(e) To deliver up, on oath, for destruction, as the court may order, all the infringing copies, records, rolls, and other contrivances or devices, as well as all plates, molds, matrices, or other means for making such infringing copies: *Provided*, That in any action for infringement of copyright in any work or any right thereunder, covered by the provisions of this act, if the plaintiff fail to prove that at the time of the alleged infringement, either (a) the copyright work had been registered with the Register of Copyrights, or (b) notice of copyright had been affixed thereto, or to the newspaper or periodical containing the same, he shall not be entitled to any remedy other than an injunction; but in such case no injunction shall issue if the defendant show to the satisfaction of the court hearing the same that, prior to the beginning of such action, he had incurred any substantial expenditure or liability in connection with the exploitation, production, reproduction, or performance of any such work, and thereupon the plaintiff shall be entitled to recover only the fair and reasonable value of a license, but not less than \$25 nor more than \$2,500.

SEC. 21. If two or more persons owning or controlling copyrights or any rights therein combine either directly or by means of an association, society, or corporation to acquire or pool copyrights or rights therein, and to issue or grant licenses or other authorizations for public performance for profit, or for broadcasting performances of copyright works or for the manufacture, lease, or sale of recordings or mechanical reproductions, and to fix and collect fees, charges, or royalties for such licenses or other authorizations, then—

(a) Every such combination of copyright owners shall file with the Register of Copyright:

(1) Names and addresses of copyright owners, and if a corporation or association its name, officers, and principal place of business, together with a true copy of its agreement or articles of incorporation and by-laws.

(2) Lists of all copyrighted works, and rights therein, over which such combination exercises or claims control, including those of foreign origin, together with dates of beginning and end of each copyright work.

(3) Names of the owners of said copyrighted works and the dates on which the term of their copyright begins and ends.

(4) Statements of all fees, charges, or royalties which such combination of copyright owners collects as compensation for the grants or other authorization together with such revisions thereof as from time to time shall be made.

(b) The lists and statements required to be filed under the preceding subsection (a) shall be kept open for public inspection at the Copyright Office.

(c) Any such combination of copyright owners upon compliance with the foregoing provisions shall be entitled to make a fair and reasonable charge for the rights conferred. Such charge shall be a fixed amount for a definite period of time.

Proof of failure to comply with the provisions of this section shall be a complete defense to any suit for infringement of a copyrighted work, and no combination

of copyright owners or individual owner shall be entitled to sue for or to collect any license fees or royalties with respect to any copyrighted works not specified in the lists filed by it with the Register of Copyrights as herein provided, nor to sue for or collect any fees or royalties which are unreasonable or discriminatory, nor withdraw the performance of more than 10 per centum of the works covered by a license during the period covered by the license.

Whenever such combination of copyright owners has granted licenses for the use of copyrighted works which it controls, or changes its fees or its lists of copyrighted works covered by an outstanding license not yet expired, any person within each class of users operating under practically the same economic conditions and desiring to make similar use of such works shall, upon application therefor, be entitled to a license under the same terms and conditions as such licensees and it shall be the duty of said combination of copyright owners to grant such license upon payment of the stipulated fee.

In any action or proceeding brought by such combination of copyright owners, or by any individual owner, for infringement of the copyright in any work which the said combination controls, the infringing party shall be liable—

(a) To an injunction only with respect to works proved to have been infringed.

(b) To pay to the owner of the right infringed in lieu of actual damages and profits, damages in accordance with the provisions of this act, and, in assessing such damages, the court may, in its discretion, allow the amounts stated as payment in full for all infringements by the infringing party of all works controlled by such combination up to the date of suit.

Provided, That whenever any such combination of copyright owners shall discriminate or propose to discriminate against any person within a class of users operating under practically the same economic condition, or shall demand an unreasonable charge for license of the rights to any work which it permits to be used for public performance, then the Federal Trade Commission on request of the person desiring a license, or demanding equal treatment, shall designate a representative, who, together with the representative of the licensor and the representative of the person asking for a license or for equal treatment, shall constitute a committee of arbitration. Such committee is hereby authorized to revise or otherwise prescribe the fees or royalties which the said combination of copyright owners may collect from the aggrieved person in return for the grant or license, said fees and conditions to be such as to prevent discrimination.

If such combination of copyright owners shall refuse to appoint a representative for arbitration on the request of any party aggrieved as aforesaid, the aggrieved party may petition the Supreme Court of the District of Columbia for an order directing that such arbitration proceed as hereinbefore provided. Ten days' notice in writing of such application shall be made upon the defaulting party and a certified copy of such notice shall be served upon the Federal Trade Commission, which, for purposes of accepting service thereof, shall be deemed its agent. Any petition to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided. Each arbitrator shall be paid \$10 per day and expenses, to be paid by the person asking for the arbitration.

SEC. 22. All actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the district courts of the United States, the district court of any Territory, the Supreme Court of the District of Columbia, the district courts of Alaska, Hawaii, Panama Canal Zone, and Porto Rico, and the courts of first instance of the Philippine Islands, and any court given jurisdiction under this section may proceed in any action, suit, or proceeding instituted for violation of any provision of said laws to enter a judgment or decree enforcing the remedies provided by this act.

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

SEC. 23. Any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this act may be served on the parties against whom such injunction may be granted anywhere in the United States and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

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

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

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

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

IV. REGISTER OF COPYRIGHTS

SEC. 26. There shall be appointed by the Librarian of Congress a Register of Copyrights, at a salary of \$6,000 per annum, and one Assistant Register of Copyrights, at a salary of \$4,000 per annum, who shall have authority during the absence of the Register of Copyrights to attach the Copyright Office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the Register as may from time to time be authorized by law.

SEC. 27. The Register of Copyrights shall keep and preserve in the Copyright Office of the Library of Congress all records and other things relating to copyrights which the law requires shall be kept and preserved, and the Register of Copyrights, under the supervision and with the approval of the Librarian of Congress, shall perform all duties relating to registration of copyrights, claims of or interests in copyrights, and of assignments and other evidences of transfer, license, or disposal of the same that are registered. He is hereby authorized, subject to the approval of the Librarian of Congress, to make rules and regulations for the registrations provided for by this act and to prescribe the form or forms of application to be used for such registrations.

SEC. 28. The seal used in the Copyright Office on July 1, 1909, shall be the seal of the Copyright Office, and by it all papers issued from the Copyright Office requiring authentication shall be authenticated.

SEC. 29. The Register of Copyrights upon receipt of the application for registration and copy or identifying matter and fee provided in this act shall make a

full and complete record of the copyright claim and send a certificate of registration under the seal of the Copyright Office to the person indicated in the application.

Such certificates shall contain the name and address of said owner, the name of the country of which the author of the work is a citizen or subject, the title of the work which is registered for which copyright or right therein is claimed, the date when notice was first affixed, the date of the deposit of the copy or copies of such work, the date of publication if the work has been reproduced in copies for sale or publicly distributed, and such marks as to class designation and entry number as shall fully identify the entry.

In the case of registration of a printed book in the English language, the certificate shall show also the receipt of the affidavit required for printed books as hereinbefore provided and the date of the completion of printing or date of publication as set forth in said affidavit.

If the author be an alien domiciled in the United States at the time of making the work, or its first publication, the registration certificate shall contain a statement of that fact, including his place of domicile.

The Register of Copyrights shall prepare printed forms for said certificates to be filled out as above provided, in the case of all registrations made after this act goes into effect, which certificate, sealed with the seal of the Copyright Office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and a similar certificate shall be supplied on request in the case of all previous registrations so far as the Copyright Office record books shall show such facts. In addition to such certificate the Register of Copyrights shall furnish upon request, without additional fee, a receipt for the copy or copies of any work deposited under this or previous acts of the United States. Said certificate and receipt shall be admitted in any court as prima facie evidence of the facts stated herein.

Sec. 30. The Register of Copyrights shall, upon payment of the prescribed fee, record any instrument pertaining to copyright or right therein as hereinbefore provided, and shall return it to the sender with a certificate of record attached under seal of the Copyright Office, and upon the payment of the prescribed fee he shall furnish to any person requesting the same a certified copy thereof under the said seal.

Sec. 31. The Register of Copyrights shall fully index all registrations of claims to copyright or rights therein and all assignments, grants, licenses, mortgages, or other instruments recorded and shall print at periodic intervals a catalogue of the names of the authors, where known, and of the titles of works deposited and registered, together with suitable indices, and at intervals may print complete and indexed catalogues for each class of copyright entries, and after such catalogues are printed may destroy the original manuscript catalogue cards. Both the current catalogues and the complete and indexed catalogues for each class of copyright entries shall be furnished to all persons desiring them at reasonable prices, to be determined by the Register of Copyrights and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications. The said printed current catalogues as they are issued shall be promptly distributed by the Copyright Office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster General.

Sec. 32. The record books of the Copyright Office, together with the indices to such record books, and all works deposited and retained in the Copyright Office, shall be open to public inspection, and copies may be taken of the entries actually

made in such record books, and of the applications on which such entries have been made, subject to such safeguards and regulations as shall be prescribed by the Register of Copyrights and approved by the Librarian of Congress. The Register of Copyrights may allow copies to be made of the work deposited and retained in the Copyright Office upon authority of the copyright owner of record or upon application of either party to a suit for infringement of the copyright.

SEC. 33. The Register of Copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of a claim to copyright or rights therein under the provisions of this act, \$2 for a published work, and \$1 for an unpublished work, which sum is to include a certificate of registration under seal: *Provided*, That in the case of a photograph the fee shall be \$1; for every additional certificate of registration made, \$1; for recording and certifying any written instrument provided for in section 10 or 11 of this act, or for any copy of such assignment, grant, mortgage, or license, duly certified, \$2 for each Copyright Office record-book page or fraction thereof, up to five pages, and \$1 for each such page or fraction thereof beyond five pages; for a certified copy of an application, \$1; for comparing any copy of an assignment with the record of such document in the Copyright Office and certifying the same under seal, \$2; for any other certificate under seal of the Copyright Office, \$1; for any requested search of Copyright Office records, indices, or deposits, \$1 for each full hour of time consumed in making such search.

SEC. 34. The Register of Copyrights shall make daily deposits with the Treasurer of the United States of all money received to be applied as copyright fees, and shall make weekly transfers to the Treasurer of the United States, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters; and he shall make monthly reports to the Comptroller General of the United States and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

The Register of Copyrights shall give bond to the United States in the sum of \$20,000, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

SEC. 35. The Register of Copyrights shall make an annual report to the Librarian of Congress of all copyright business for the previous fiscal year, which report shall be printed promptly after the close of the fiscal year.

SEC. 36. Of the articles deposited in the Copyright Office under the provisions of the previous copyright laws of the United States or of this act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 37. That of any article undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the Register of Copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the Copyright Office, and after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from January to November, inclusive, a statement of the year of receipt of such articles and a notice to permit any author, copyright owner, or

other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years not reserved or disposed of as provided for in this act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright owner of record, permitting him to claim and remove it.

VII. IMPORTATION OF BOOKS

SEC. 38. The importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

During the existence of the American copyright in any book the importation into the United States of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in this act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of this act, shall be, and is hereby, prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply—

- (a) To works in raised characters for the use of the blind;
- (b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;
- (c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;
- (d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

Second. When imported by the authority or for the use of the United States;

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 39. Any and all articles prohibited importation by this act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in viola-

tion of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however,* That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

SEC. 40. The Secretary of the Treasury and the Postmaster General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this act, and may require notice to be given to the Treasury Department or Post Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this act, and which infringe the rights of such copyright proprietors or injured parties.

VIII. RIGHTS OF FOREIGN AUTHORS

SEC. 41. No rights granted by this act shall be granted to the writings of author or proprietor, who is a citizen or subject of a foreign state or nation, except—

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

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

Proclamations heretofore made by the President, establishing the rights of citizens of foreign countries under copyright laws hitherto in effect, shall be regarded as of continuing force and validity under this act.

IX. MISCELLANEOUS

SEC. 42. The provisions of this act apply to existing copyrights save as expressly indicated in this act. All other acts or parts of acts relating to copyrights are hereby repealed, as well as all other laws or parts of laws in conflict with the provisions of this act, except that subsection (e) of sections 1 and 25 of the act of March 4, 1909, as amended (U.S.C., title 17, secs. 1 (e) and 25 (e)), shall continue in full force and effect in respect of musical compositions copyrighted subsequent to July 1, 1909, up to six months after the date this act goes into effect.

Nothing in this act shall affect suits, actions, or proceedings for infringement of copyright heretofore committed now pending in the courts of the United States, but such suits, actions, or proceedings shall be prosecuted to a conclusion in the manner heretofore provided by law.

This act shall become effective July 1 of the fiscal year following its passage by Congress.

ADDENDUM IV

[H.R. 5853, 73d Cong., 1st Sess. May 31, 1933]

Mr. Luce introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

A BILL To enable the United States to enter the International Copyright Union

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That copyright throughout the United States and its dependencies shall subsist in the work of alien authors, not domiciled in the United States, by virtue of the adherence of the United States to the Convention of Berne for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Rome on June 2, 1928.

SEC. 2. From and after the date upon which the adherence of the United States to the said convention of 1928 becomes effective, copyright protection shall be accorded without compliance with any conditions or formalities whatever for all works by such alien authors who are nationals of any country which is a member of the International Copyright Union, as well as for any work which may be or has been first published in a country which is a member of the said Union: *Provided,* That as to copyright in works not previously copyrighted in the United States, no right or remedy given pursuant to this act shall prejudice lawful acts done or rights in or in connection with copies lawfully made or the continuance of business undertakings or enterprises lawfully undertaken within the United States or any of its dependencies prior to the date on which the adherence of the United States to the said convention of 1928 goes into force; and the author or other owner of such copyright or person claiming under him shall not be entitled to bring action against any person who has prior to such date taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability.

SEC. 3. Copyright is hereby granted and secured by this act to all authors entitled thereto from and after the creation of their work, whether published or unpublished, including works of architecture and choreographic works and pantomimes, and the duration and termination of such copyright shall be governed by the provisions of sections 23 and 24 of the act of March 4, 1909 (U.S.C., title 17): *Provided,* That the duration of copyright in the United States shall not in the case of the work of any alien author extend beyond the date upon which such work has fallen into the public domain in the country of its origin as defined in said convention of 1928.

SEC. 4. The rights granted in section 1 of the said act of 1909 (U.S.C., title 17) shall include the exclusive right of the author to communicate his work for profit to the public by any system of broadcasting; and the author of any copyrighted work, even after the assignment of the copyright in such work, shall at all times have the right to claim the authorship of his work, and the right to oppose every distortion, mutilation, or other modification of the said work which might be prejudicial to his honor or to his reputation, as well as the right to restrain the publication and/or the performance of the mutilated work.

SEC. 5. The Supreme Court of the United States shall prescribe such additional or modified rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement under the provisions of this act.

SEC. 6. This act shall take effect from the date of its passage.