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“To promote the Progress of Science and useful Arts”

Report to the Librarian of Congress

by the Register of Copyrights

THE COPYRIGHT OFFICE

The accomplishments of the Copyright Office for the past fiscal year can perhaps best be measured in the context of the copyright revision program, extending back at least to the enactment on October 19, 1976, of Public Law 94-553, the Act for the General Revision of the Copyright Law (title 17 of the United States Code), and the intense preparations through 1977 for its full initial implementation beginning January 1, 1978. This entire period has been one of concentrated attention to the myriad complex issues concerned with the new law, a period marked by almost total dedication within the Copyright Office to a common purpose, the results of which can be fairly assessed as major achievements. While implementation of this new statute, the first general revision of the copyright law since 1909, brought temporary production obstacles that in turn led to arrearages and inevitable frustration, these have been far outweighed by the basic gains realized in the American copyright system.

The new law has preempted virtually all state common law and statutory law equivalent to copyright and has substituted a single federal system of copyright protection, attaching from the creation of a work, with a term in most instances lasting for the life of the author plus fifty years after the author's death. All works thus now receive federal statutory copyright from the moment of their creation, without regard to when or whether they are ever published. And the author is clearly identified in the statute as the first owner of the

copyright.

Along with these gains in the recognition and protection of the rights of the individual author, there have been added provisions that limit these exclusive rights in the public interest, as well as other limitations resulting from the inevitable compromises accompanying most legislation. The latter include the statutory recognition of "fair use," a provision under which certain uses are not infringements of copyright; limitations on the exclusive rights to perform or display certain works arising out of the nonprofit nature of a given activity; and compulsory licenses applying to certain cable television retransmissions of primary broadcast transmissions, to public performances of musical works on coin-operated phonorecord players, to the use of certain copyrighted materials by noncommercial broadcasting entities, and to the making and distribution of phonorecords of musical works.

The trend, both domestic and international, toward increased reliance upon compulsory licensing in particular controversial areas of copyright becomes each day more obvious and poses critical problems for the future of the fundamental concept that the author should have the right to control the use of the copyrighted work. Indeed, as modern society moves toward that phase of economic life called "post-industrial," where livelihoods are earned predominantly through the sale of information, expertise, and related personal services, the extent to which copyrightable creations are pro-

tected as exclusive property interests can become central to national growth.

The unsettled areas that remain in copyright law seem also to reflect the movement to post-industrial models. These areas include educational uses of copyrighted works, the changing roles played by libraries and information networks, the special treatment of the growing not-for-profit sectors of the economy, and a host of issues involving the increasing complexity of mass communications.

All these forces, engendered by the new law and the dynamics of passing time, affect in some degree the Copyright Office. And it should thus be no surprise that fiscal 1979, like its predecessor, has been a momentous period for the office. The workload again was staggering: applications for copyright registration were received at a rate of about 10,000 per week; more than 429,000 registrations were made, a sizable increase over the previous year; a substantial number of cases continued to require correspondence, although there was some reduction here as registrants became more experienced in completing the application forms called for by the new law; the drafting of information circulars continued to have priority attention; and the servicing of the backlog of uncompleted claims carried over from the previous year remained a heavy burden. Indeed, the office has come to believe that there is to be no such thing as a slow season in this specialized but important area of the law.

The staff responded to these challenges with zeal and efficiency. Despite the continuing crush of work before them, they displayed a remarkably strong and positive commitment to making fiscal 1979 a year of solid achievement.

ADMINISTRATION, PERSONNEL, FISCAL ACTIVITY, SPACE

The administrative structure of the Copyright Office stabilized in fiscal 1979. The new divisions added earlier in the reorganization that accompanied implementation of the new law—Records Management and Licensing—became fully operational. Several divisions made internal alterations in the interest of speeding the processing of applications, and staff realignments were made throughout the office as needed to redistribute per-

sonnel in accordance with shifts in the workload.

In order to free time for legal and international matters requiring the personal attention of the Register of Copyrights, responsibilities for administration of the Copyright Office were realigned in June 1979. Full responsibility for matters concerned with workflow, currency, fiscal activities, and personnel was delegated to the assistant register for automation and records. The assistant register for registration and the special legal assistants to the Register participated in a variety of legal and international studies in collaboration with the Register.

Jon A. Baumgarten, general counsel of the Copyright Office since January 1976, resigned on June 8, 1979, to enter the private practice of law. Mr. Baumgarten's contributions to the solution of legal and administrative problems created by the new copyright statute were invaluable. On July 16, 1979, Dorothy M. Schrader was appointed general counsel. Recognized as a leading expert in United States and international copyright law, Ms. Schrader has had fourteen years of varied legal and administrative experience in the Copyright Office, including two years as general counsel, from 1974 to 1976. The Register's staff was further strengthened with the appointment of Michael S. Keplinger as special legal assistant. Susan B. Aramayo, chief of the Licensing Division, was promoted to the position of assistant chief of the Cataloging Division on August 13, 1979. Ann L. Hallstein, formerly planning assistant to the Librarian of Congress, was named chief of the Records Management Division on July 30, 1979.

The Copyright Office lost several career staff members through retirement, among them Edmund C. Bowie, attorney-adviser; Rose V. Lembo, senior administrative officer; and Melvin R. Peterson, assistant chief of the Cataloging Division.

In fiscal 1979 the many Copyright Office staff members honored through the Library of Congress incentive awards program stood as representative of the effort and dedication of the entire office staff of some six hundred people. Thirty staff members received individual cash awards for innovative ideas and suggestions for various improvements, and the special contributions of another twenty-seven staff members were recognized by group cash awards. Certificates in recognition of meritorious service were given to seventeen employees, including one group award.

A total of 232 employees enrolled at some time during the year in work-related courses conducted by the Library of Congress or in workshops or courses held outside the Library. Supervisory staff attended training courses in a number of administrative areas, including instruction in labor-management relations.

Indeed, a sizable fraction of administrative time at various staff levels was allocated for labor-management matters in this first year of operation under the Library's negotiated contracts with labor organizations. Library-wide changes in staff selection procedures, including the use of selection panels, involved administrative planning at the departmental level as well as participation of additional staff. Staff turnover was heavy, particularly in some clerical areas, and recruitment of clerical workers was a critical problem at various junctures during the year.

Readjustments in the allocation of work space, together with planning for future space requirements for staff and copyright deposits, took considerable administrative time. Projected assignments to the Copyright Office of space in the new James Madison Memorial Building were brought up to date in order to accord with the current organization of the office. A complete inventory of office property was completed for use in connection with the move back to Capitol Hill, and group tours of the Madison Building were conducted for the entire Copyright Office staff.

Following a survey by the staff of the Legislative Subcommittee of the Appropriations Committee of the House of Representatives, and in accordance with its recommendations, the Copyright Office Library was discontinued on September 30, 1979. Research materials necessary for the administration of the copyright law were transferred to the custody of the office of the general counsel. A subsequent review by the Library of Congress Audit and Planning Offices was in process as the fiscal year ended.

PRODUCTION AND SERVICES

Almost every phase of copyright activity showed substantial production gains during fiscal 1979. Registrations numbered 429,004 for the fiscal year, and Copyright Office fees during fiscal 1979 totaled \$4,456,453, a part of which was credited, pursuant to law, to the appropriation for the Copyright Office.

Processing Activities

The Acquisitions and Processing Division stabilized most parts of its operations, moving toward currency in the handling of both incoming and outgoing mail. The Mail Unit processed 695,095 pieces of incoming mail, an increase of 6 percent, and 867,571 pieces of outgoing mail, an increase of 12 percent.

The backlog of unfinished business and open correspondence cases carried over from the previous year has continued to be of central concern and to have a dominant influence on work priorities and production schedules. The Materials Control and Fiscal Control Sections felt particularly the impact that came from the large volume of searches for pending applications and the processing of extraordinarily large numbers of refunds.

Acquisitions and Compliance

Throughout the year the Deposits and Acquisitions Section vigorously enforced the requirements of the new copyright law for the mandatory deposit of copies and phonorecords for the enrichment of the collections of the Library of Congress. Indeed, fiscal 1979 saw the Copyright Office become a more active acquisitions source for the Library of Congress at a time when decreasing library acquisitions budgets are a national fact of life. Through its established mechanism for selecting works from deposits sent to the Copyright Office for registration, other departments of the Library acquired 396,118 items for addition to the collections. The Copyright Office's zealous compliance effort enabled the Library to continue to receive many serial publications when subscriptions had to be canceled because of budget cutbacks. The value to the Library of the office's aggressive compliance activity for all forms of material—motion pictures, sound recordings, and maps and atlases, as well as monographs and serials—has been substantial. For motion pictures alone, the count for the first six months of fiscal 1979 showed the acquisition of some two hundred works in response to the demand effort, at a total value of more than \$100,000.

In effect, the new copyright law makes registration voluntary but includes a provision (section 407) which requires owners of copyright to deposit copies of "works published with notice of copyright

in the United States," if they have not registered such published works. This section includes penalties for failure to comply with these deposit requirements. Receipts under section 407 tripled in fiscal 1979, reaching a total of seventy-five thousand items. Some 85 percent of these materials were newspapers and magazines that were processed and forwarded to the Library's acquisitions divisions within a week of their receipt in the Copyright Office.

Procedures have been worked out with acquisitions specialists in other departments of the Library to ensure that the Copyright Office's Deposits and Acquisitions Section is promptly notified of undeposited works desired for the Library's collections, so that the section can proceed with its requests for deposit. Experience has shown that some 80 percent of these cases are resolved within sixty days after the initial request and an additional 15 percent or more within the next thirty days. Most of the remainder are resolved after the final warning, which is issued if there is no resolution within ninety days of the demand. Failure to comply after the final warning has been rare—only fifteen delinquent cases have had to be referred to the Department of Justice for prosecution or other action.

Examining

The avalanche of changes in regulations and procedures that accompanied implementation of the new copyright law in 1978 continued to have its principal impact upon the Examining Division. Some half million items, including books, pamphlets, serial publications, dramas, musical works, works of art, maps, filmstrips, motion pictures, sound recordings, and other materials submitted for copyright registration, were examined in fiscal 1979. As the public became more experienced with the new law and the new application forms, claims requiring correspondence fell to an average of about 30 percent, as contrasted with 80 percent during the first months of the preceding year. The correspondence rate was still double that under the previous law, however, and various measures were therefore undertaken to reduce the load still further. Perhaps the most important of these expedients was the decision to return to the applicant, at the beginning of the in-process cycle, incomplete

submissions for registration (those in which a required element such as application, fee, or copy is missing), with a form letter. This has relieved examiners of the need to review incomplete cases. A special project, staffed with personnel from the Planning and Technical Office and the Examining Division, was able to make substantial reductions in the number of cases held for correspondence by dealing at this initial processing point with those involving use of obsolete forms and insufficient fees, as well as with incomplete submissions.

The intricacy of the examining process, whose principal purpose is to determine the registrability of claims to copyright under the law, was evident in the many conferences and working sessions held throughout the year for the purpose of reevaluating the interim practices adopted in 1978 for use by the Examining Division under the new statute. With the continuing analysis of legal questions arising as a result of the implementation of the new law, examining practices were obviously subject to constant review and refinement. In all instances the Copyright Office followed the basic policy of simplifying examining procedures to the fullest degree possible without violating the integrity of the registration process, the ultimate goal of which must always be the creation of a truly meaningful and reliable public record, particularly in light of the provision of the law making the certificate of registration "prima facie evidence of the validity of the copyright and of the facts stated in the certificate." At year's end the drafting of some sections of the revised collection of practices was under way, as the Examining Division learned from experience what practices were proving most effective in meeting the standards of the Copyright Office and the requirements of the new law.

A special problem created by the new law is the sharp peak in the workload of the staff that examines applications for copyright renewal. The new statute retains the old system for computing the duration of protection for works that secured statutory copyright before 1978 in that it provides for a first term of twenty-eight years, measured from the date protection was originally secured by publication or registration, along with the right to a renewal term, which is forty-seven years under the new law. Thus, such copyrights in their first term must still be renewed in the twenty-eighth year in order to receive the full new maximum term of seventy-five years for such works. But the new law provides that all terms of copyright are to run

to the end of the calendar year in which they would otherwise expire, and this in turn means that all periods for renewal registration run from December 31 of the twenty-seventh year to December 31 of the twenty-eighth year. The result is that, since many renewal claimants desire to file at the earliest date, an unprecedented eighty-five hundred renewal claims were received in January 1979, almost one-third of those received during the entire fiscal year. However, by adjusting personnel allocations, renewal certificates were forthcoming with a minimum of delay.

It is also interesting to note that in fiscal 1979 the Renewals and Documents Section of the Examining Division processed for recordation 1,871 notifications of filing and determination of court actions under the copyright law, which the clerks of the courts of the United States are to send to the Copyright Office to be made a part of its public records pursuant to section 508 of the new statute, a provision not found in the previous copyright law.

Historically, copyright deposits have reflected the interests and concerns of the period in which they are submitted, and 1979 was no exception. Among musical works examined were those entitled "Gas Guzzler's Lament," "Daydreams of a Night Jogger," and "Nuclear Power Plants." Posters continued to be high among submissions of pictorial materials. Receipts tended to indicate a trend away from prints applied to textiles and a current emphasis on woven patterns. The number of fine art prints submitted rose as more artists sought registration for their works under the new law. Also of special interest was the registration of claims to original and renewal copyright in a 1950 work entitled *Ha-Mered* by Israeli Prime Minister Menachem Begin.

Cataloging

The accelerated production of the Examining Division in its effort to reduce the backlog has placed unusually heavy pressure upon the Cataloging Division. Despite computer problems that slowed output in the first part of the year, the division cataloged more than 450,000 items, an increase of 28 percent over the 351,000 items cataloged the preceding year. Refinements in cataloging rules and practices were introduced, improvements were made in the Copyright Office Publication and In-

teractive Cataloging System (COPICS), and adjustments were made in personnel assignments to accommodate changes in workload. Changes in computer programs brought improvements in response time and prevented the data losses that had previously required the recataloging or rekeying of large amounts of cataloging information.

In an effort to give section heads a broader understanding of the Cataloging Division's operations, problems, and relationships within the department and with other parts of the Library, an administrative internship program was conducted by the division. Each of the five section heads and the head of the Technical Support Unit spent two weeks working with the division chief and assistant chief. The program not only gave participants a broader perspective of the work of the division but also increased their understanding of the responsibilities of the department and facilitated their rapport with the division office and with fellow section heads, all of whom share a commonality of problems.

The alignment of personnel during the 1978 reorganization of the Cataloging Division had been based on projections of the amount of work to be received in various classes under the new law. Following an initial period when incoming work was transferred from overburdened sections to those with smaller workloads, statistics were available on which to base reassignments of personnel. The size of the Audiovisual Section was decreased with a concomitant increase in the size of the Serials Section. Workload and personnel assignments are now in reasonable balance, and it seems likely that any future changes will occur gradually over a longer period of time.

The technical support staff completed the editing and preparation for the printer of the last volume in the third series of the *Catalog of Copyright Entries* (volume 31, part 1, no. 2, July-December 1977) and all parts of the catalog for the first half of calendar year 1978. The interval between registration and completion of copy for printing has now been reduced to twelve months maximum and is much shorter for many parts of the catalog.

The completion of cataloged entries appears to have stabilized. The year-end backlog of forty thousand registrations exceeded the division's goal of ten thousand on hand by the equivalent of roughly a month's work. The volume of documents received, a category not represented in the figures

for total registrations, appears to be increasing at a growing rate. Most of the documents contain information about transfer or termination of literary property rights, and there is a need for users of the Copyright Card Catalog to have access to this information as rapidly as possible. Documents were therefore cataloged on a priority basis, and by the end of the year the division had processed all but the most recent handful of the twenty-six thousand documents received during the year. This currency in cataloging of documents was possible only by the transfer of staff from other sections.

Information and Reference Services

Activity in all sections of the Information and Reference Division was intense throughout the year as the volume of work increased.

The Information and Publications Section again had a record-breaking year. More than sixty-four hundred visitors came to the Public Information Office for information or assistance, an increase of more than one thousand over fiscal 1978. Incoming telephone inquiries totaled over ninety-two thousand, a rise of thirty thousand over last year's figure. Some fifty-four thousand individual letters were written to explain various sections of the new law or to advise the public on Copyright Office policies and procedures. Congressional inquiries handled by the division numbered nearly a thousand.

Interest in the new copyright law remained high, as evidenced by the continuing pressure of requests for speakers from the Copyright Office to address professional conferences and seminars, especially on subjects relating to the activities of the office. As many engagements as possible were scheduled, with speakers from the office of the Register, the office of the general counsel, the Examining Division, and especially the Information and Reference Division. Requests to the Certifications and Documents Section for additional certificates and for copies of copyright deposits were also heavy.

Reorganization of the Reference Search Section into the Copyright Reference and Bibliography Section, resulting from a long and comprehensive study, was finished by the end of the fiscal year, and completion of a new organizational manual was a welcome result of this challenging and arduous task. In addition to responding to written search requests involving more than 125,000 titles,

the section conducted some twenty-two hundred searches requested by telephone, assisted over nine hundred visitors, and responded to a wide variety of telephone inquiries not requiring searches.

Records Management

Fiscal 1979 was a constructive year for the Records Management Division. Toward the end of the year, currency was achieved in the production of certificates and in the filing of the numbered applications and deposits, as well as in the filing of catalog cards.

The establishment of the Certificate Production Unit in the Records Storage Section facilitated the issuance of certificates, and a total of 459,420 were issued during the year. Staff of the Records Maintenance Unit of this section filed 482,620 applications, and the Deposit Copies Storage Unit filed 385,157 new items deposited for registration. Some 530 cubic feet of records were transferred to the Washington National Records Center in Suitland, Maryland, leaving 50,910 cubic feet of deposits in the storage facility at the Library's Pickett Street Annex in Alexandria, Virginia. Installation of a terminal for electronic posting of storage data speeded this process, and introduction of a new system for calling out and returning deposits made the procedure more orderly and provided more accurate records of deposits charged out or transferred.

The Card Catalog Section experienced an especially heavy increase during the latter part of the year in the number of cards received for filing. The Filing and Revising Unit filed 1,755,769 cards, including 1,680,011 filed in the 1978-to-date catalog and 43,395 in the 1971-77 file. The increased flow of cards necessitated an expansion of both of the two segments of the Copyright Card Catalog, and by the end of the year 1,110 hours had been expended in revising and expanding the catalog. The subscriber program, which provides cards to organizations such as the performing rights societies, was able to remain current; a total of 2,136,449 cards were processed for this program.

In the Preservation Section, work continued on the filming of early drama deposits, Patent Office prints and labels transferred to the Copyright Office in 1940, and other records. During the year, 214 reels of dramas deposited from 1901 to 1944 were microfilmed, as were 48 reels of materials transferred from the Patent Office.

A particularly significant event occurring near the end of the fiscal year was the final processing of microfilm records covering the last material under the original microfilm project begun in 1968. The Copyright Office now has a record on microfilm of all copyright registrations from 1790 through 1975. The total microfilm record, on 16- and 35-millimeter film, comprises approximately twenty million frames and is stored at the Federal Records Center in Denver, Colorado. Now that this filming for security purposes is completed, the Preservation Section is developing a long-range preservation plan that will set priorities for the next decade. Emphasis will be on preserving deposits, filming other related records, and determining new possibilities for space conservation.

Licensing

The new Licensing Division, established in 1978, gained practical experience in this first full year of dealing with the two compulsory licenses for which it has substantial responsibility under the new copyright statute: secondary transmissions by cable television and public performances on coin-operated phonorecord players (popularly termed "jukeboxes"). The experience that developed as the year progressed enabled the division to conclude the year with the entire elimination of the backlog of jukebox applications awaiting action at the end of fiscal 1978. With the addition of a few indefinite and part-time staff members, the division was able to process almost all incoming jukebox applications for calendar year 1979 within the twenty-day statutory limitation, to examine for legal acceptability all of the documents necessary for cable systems to maintain their compulsory licenses, and to deposit and authorize investment of approximately one million dollars in jukebox receipts and over twelve million dollars received from cable television operators.

Jukebox licensing has decreased slightly. By the end of fiscal 1978 a total of 138,458 machines had been licensed, compared to 129,677 having current licenses at the end of fiscal 1979. Indeed, licensed machines represent only about one-third of the jukeboxes estimated to be operating in the United States and subject to the compulsory licensing provisions. In view of this situation, the Licensing Division launched a program to inform those jukebox operators who may not be aware of the

new law. Notification was carried out by seeking from the governments of some five hundred American cities copies of public listings of jukebox operators doing business in those cities and sending appropriate forms to operators on these lists who had not previously filed for licenses. It is believed that this campaign will considerably increase the number of licensed boxes.

In conjunction with the Library's Automated Systems Office and Cataloging Distribution Service, the Licensing Division announced the publication and availability, on a fee basis, of the *Jukebox Licensing File* for 1978 and 1979. This computer printout provides a list of over three thousand jukebox operators who have boxes for which compulsory licenses were obtained.

Jukebox applications for 1979 were again processed by the automated batch method. Work on the conversion of the batch system to an on-line system using cathode ray tube terminals has progressed during the year, and the technique is scheduled to be operational in 1980. A financial statement of jukebox royalty fees for calendar year 1979 is included in the tables at the end of this report.

Cable activity also brought new pressures in fiscal 1979. The 7,552 statements of account received for 1978 had to be examined in depth. By the end of the year, this had been completed except for approximately 500 that presented special problems. The examination process revealed issues that required correspondence with over one-third of the 3,787 cable operators.

Under the statute, after the first day of August each year the Copyright Royalty Tribunal, which has responsibility for the distribution of these royalties under the copyright law, determines whether a controversy exists concerning the distribution of the cable royalty fees. On the basis of hearings held on September 6, 1979, the tribunal declared that a controversy existed. The Licensing Division, in anticipation of such a declaration, had already arranged for the reinvestment of \$13,108,621.06 on September 1, 1979, so that royalties could continue to earn interest for the copyright owners without interruption until final distribution by the tribunal. A financial statement of cable television royalty fees for the first and second accounting periods in calendar 1978 appears in the tables at the end of this report.

During the year the chief of the Licensing Division spoke at the annual convention of the Amuse-

ment and Music Operators Association and at the convention of the National Cable Television Association. As necessary, meetings on cable matters were held with officials of the Federal Communications Commission and with representatives of performing rights societies and other interested groups. Staff members of the division attended all hearings called by the Copyright Royalty Tribunal and worked closely with the chairman of the tribunal in reinvesting the cable royalty fees.

Among the documents developed by the division during the year were the new Form JB/R for renewing jukebox compulsory licenses, a circular describing the functions of the Licensing Division, and a circular on the subject of corrected certificates for jukeboxes. All statements of account were photocopied as they were received in the division and filed in the Public Access File for immediate use by copyright owners and other members of the public. A separate file of the first page of the statements was also established to aid in determining whether or not a cable system has filed its statement of account.

Since salaries and operating expenses for the Licensing Division are required by law to be paid from the compulsory license royalty fees received from jukebox and cable television operators, meticulous records were maintained to indicate the precise amount of time involved in performance of these functions.

Automation

Application of automated techniques to copyright processes continued to bring economies and accelerated production in several areas. Mention has already been made in this report of the automated cataloging system (COPICS) and automated procedures for processing jukebox applications in the Licensing Division. Earlier annual reports have described the comprehensive Copyright Office In-Process System (COINS). Phase 1 of COINS involved automation of deposit accounts and was completed in fiscal year 1978. This year phase 2 became operational—a correspondence management system (CMS) that completely tracks all correspondence throughout the time the cases are pending. Using carefully developed procedures, the Planning and Technical Office introduced CMS to the individual sections of the Examining Division, and as fiscal 1979 ended, every new correspondence case in the Examining Division was be-

ing entered in the CMS system. Cases are entered when a letter to the applicant has been drafted in the Examining Division and are then tracked throughout the remainder of the process by the use of bar-code labels and wand readers. The status of any correspondence case can be immediately determined through the use of video terminals. Through use of the system, efficiency in searching and processing claims involving correspondence has greatly improved. During the year the Planning and Technical Office trained more than two hundred staff members in the operation of the new system. In addition to providing immediate information on the status of individual cases pending in the office, the CMS system has proved to be helpful in alerting staff to workflow problems.

Equipment was added as the automated system developed. Fiscal 1979 began with five COINS terminals accessing to dedicated minicomputers; the year closed with fifteen terminals in use throughout the Copyright Office. As CMS expands to include correspondence cases beyond the Examining Division, more terminals will be installed.

At the conclusion of the fiscal year, the Planning and Technical Office was preparing specifications for phase 3 of COINS—the phase that will give full automated control over all in-process and fiscal activities of the Copyright Office. This phase will involve the placing of bar-code labels on every application shortly after it is received in the office, together with input of all accounting data.

Improvements in the COPICS II system were also undertaken during the year, with the objective of speeding cataloging production. During the first half of the fiscal year, problems with existing programs were causing slow response time, excessive computer down time, and a loss of information which affected all cataloging operations. The loss was most troublesome in serial recording, inasmuch as computer system failures obliterated not only the data for the periodical issue in process at the time of the failure but all other issue lines entered for a particular title during the current six-month period. As an initial expedient, copies of registrations for newspaper issues were made and retained as a safeguard for possible computer losses. Later, it was decided to record newspaper issues manually on check-in sheets and input these data into the computer on weekends when the computer system would be under less pressure. Losses of data also occurred in multiple-title documents, some of which contain as many as four thousand

titles. The correction of computer program problems by midyear was reflected in increases in cataloging production during the second half of fiscal 1979. At year's end the Cataloging Division had begun to experiment with an automated log-in system designed to replace the present manual system, thereby freeing clerical time for application to a variety of other pressing tasks.

Working in cooperation with the Automated Systems Office, the Planning and Technical Office also outlined the first operational phase of a computer system to provide automated retrieval from the copyright catalog data base. This system, scheduled to become operational in 1980, will allow computer access by video terminals to all copyright catalog entries made after January 1, 1978. Eventually the system will completely replace the Copyright Card Catalog for new-law registrations. The initial retrieval system will provide access by author, title, claimant, parties to a document, and registration and document number, together with international standard serial and book numbers. In addition, a user will be able to refine a monograph search by limiting records to categories by copyright class, publication status, retrieval code, physical description, and dates of creation, publication, or registration. The system will have a browse function, direct term retrieval, Boolean logic capability, and various other convenience features.

COOPERATION WITH OTHER DEPARTMENTS OF THE LIBRARY

Copyright Deposit Collection

In recognition of the rich source of Americana represented by the Copyright Office's collection of copyright deposit copies, the Library of Congress established, on June 1, 1979, an Advisory Committee on the Expanded Use of the Copyright Deposit Collection. This body, which reports to the Librarian and Deputy Librarian, is studying the feasibility and desirability of making the copyright collection an integral and more accessible part of the Library's holdings. The committee is establishing goals and guidelines for review of the Copyright Deposit Collection, considering such factors as types of materials, selection, cataloging,

storage, access, and preservation and, when appropriate, is expected to recommend an implementation plan. Mary Lyle, program analyst in the Planning and Technical Office, and Ann Hallstein, chief of the Records Management Division, were named to represent the Copyright Office on this committee.

The Copyright Office has welcomed this interest in the Copyright Deposit Collection, since preservation of such deposits for future use is an important means "to promote the Progress of Science and useful Arts," the ultimate constitutional objective of the copyright system. The office has long recognized that preservation of the deposit collection promotes the purposes of the copyright system, since availability of registered works assists the orderly resolution of potential controversies and production of certified copies of these works promotes justice in copyright litigation by providing certainty and precision in the identification of the works in controversy. But beyond these considerations is the important fact that the deposits represent an enormous wealth of untapped resources for serious research and study of American popular culture and, after copyright has expired, a public domain of material free for any and all to use for the enrichment of the intellectual life of the nation.

Other Cooperative Activities

In the interest of achieving new economies throughout the Library, the Copyright Office collaborated with other units of the Library of Congress in the search for new avenues of approach to old problems and new or modified formulas for dealing with the inevitable growth of research materials and the increasing service demands accompanying this growth. For example, the Library has increased its dependence upon the copyright deposits in order to relieve part of the deficiencies caused by rising prices of serial subscriptions and reduced acquisitions allotments.

Sensitive to this situation, the Copyright Office has looked critically at its own programs, examining them from the point of view of how they might increase their contributions to the goals and functions of the Library of Congress and how both the Library and the Copyright Office might benefit from closer cooperation or the merging of some related activities.

At the request of the Office of the Librarian, a cooperative study was undertaken to discover ways in which the processing of serial publications in the Library and the treatment of serial deposits in the Copyright Office might be merged. One segment of this study was concerned with the feasibility of centralizing the processing, registration, and cataloging of serial publications received in the Copyright Office and the possibility of the COPICS data base serving as a record for serial receipts in the Library. The Copyright Office Planning and Technical Office assigned staff to work with the Library's Planning Office on a detailed examination of the myriad problems involved in a prospective coordinated serials activity.

Cooperative endeavors in automated controls over the Library's and the Copyright Office's catalogs have already been mentioned. A Copyright-Processing work group was organized early in 1979 to define requirements for access from COPICS II to certain catalog records in the Library's processing apparatus. Copyright staff have also been active in the Library's planning for future retrieval systems and the eventual closing of the Library's principal card catalog.

COPYRIGHT OFFICE REGULATIONS

The copyright law expressly requires or authorizes the Register of Copyrights to implement general statutory provisions with detailed regulations on specific points. Section 702 of the law affords the Register general authority with respect to "the administration of the functions and duties made the responsibility of the Register under this title." Section 701(d) makes all actions taken by the Register (except those involving reproduction of copyright deposit copies) subject to the Administrative Procedure Act.

A considerable portion of the regulatory activity during fiscal 1979 was devoted to the regulation implementing section 115, which provides for a compulsory license for making and distributing phonorecords of nondramatic musical works. This license permits the use of such works without the permission of the copyright owner thereof if certain conditions are met and the statutory royalties paid. Section 115 directs the Register to issue regulations governing the content and filing of certain notices and statements of account required under the section. Interim regulations were issued in fiscal 1978. After considering public comments

received in response to the interim regulations, the Register adopted amendments to those regulations at the beginning of fiscal 1979 and announced a public hearing to be held on November 28 and 29, 1978, to take testimony on the interim regulations as amended. After extensive consideration of the testimony and public comments, tentative conclusions were reached on the principal points in issue. These conclusions are described and discussed in some detail in a background paper that will form the basis for informal discussions to be held early in fiscal 1980. Although the proposed regulations deal with a number of matters under section 115, the main point of contention between the copyright owners of the musical works recorded and the recording interests is the interpretation of the word *distributed* as used in the clause specifying that the statutory royalty shall be payable "for every phonorecord made and distributed in accordance with the license," particularly in connection with the practice in the record industry of providing phonorecords to wholesalers and retailers with the privilege of returning unsold stock for credit or exchange.

Section 302 of the new law provides, as the general rule, that the term of copyright protection shall be "the life of the author and 50 years after the author's death" but specifies in the case of anonymous or pseudonymous works that the term shall be 75 years from the year of first publication or 100 years from the year of creation of the work, whichever expires first. This section also establishes a procedure for revealing in the records of the Copyright Office the identity of the author of an anonymous or pseudonymous work, so that the period of protection for such a work will be the life-plus-50 term. At the end of the fiscal year the Copyright Office had requested public comments on a proposed regulation implementing this statutory provision.

The new law provides, in section 410, that the Register shall determine whether or not the material deposited for registration constitutes "copyrightable subject matter" and, if it does not, shall refuse registration. Near the end of the fiscal year the Register announced that a public hearing would be held on October 10, 1979, for the purpose of eliciting comments, views, and information to assist in drafting regulations governing policies and practices relating to the registration of the graphic elements involved in the design of books and other printed publications.

SPECIAL PROJECTS

Committee to Negotiate Guidelines for Off-the-Air Videotaping for Educational Uses

The prickly problem of defining guidelines for the use of copyrighted materials in the classroom through off-the-air taping by educational institutions continued to be the subject of special attention. On March 2, 1979, a conference on off-the-air taping for educational purposes was held under the auspices of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. To help resolve the differences among the various interests, Robert W. Kastenmeier, the subcommittee chairman, invited eighteen representatives of concerned groups to serve as an ad hoc committee to propose guidelines on fair use for broadcast audiovisual works. Bruce A. Lehman, the subcommittee counsel, and Ivan Bender, consultant to the Copyright Office, were designated as monitors for the work of the ad hoc group.

The committee met on April 27, May 23, July 18, and September 12; and monthly sessions are scheduled for the remainder of calendar 1979. While the complexity of the issues prevents any easy solution to some of the differences in view, a spirit of cooperation and desire to find reasonable compromises have been evident in the deliberations. The committee will report to the subcommittee early in 1980.

Section 108(l) Advisory Committee

Section 108(i) of the new law provides that "Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users." The Register began this consultation in 1978, first in separate meetings with representatives of the library and user communities and representatives of copyright proprietors and authors. Subsequently an advisory committee was formed to assist the Copyright Office in fulfilling

the responsibility assigned to the Register in section 108(i). The committee, whose membership is representative of all the interests involved, met on December 19, 1978, and April 5, 1979, and is to meet again on October 25 and 26, 1979. An internal Copyright Office planning group has met frequently throughout the year, under the guidance of Mr. Bender.

Attention has been directed toward defining the most pervasive and controversial problems experienced in the application of the new law to the reproduction of copyrighted materials. A survey of existing literature on earlier photocopying studies was undertaken in order to avoid duplication of effort.

As the year ended, plans were being made to hold a series of regional hearings, the first scheduled for January 1980 in conjunction with the American Library Association's midwinter meeting in Chicago.

LEGISLATIVE DEVELOPMENTS

Despite enactment of omnibus copyright revision legislation in 1976, substantial congressional activity in the copyright field continued during fiscal 1979. While several proposals involved matters that might be considered part of the unfinished business of copyright revision, others reflect new concerns.

Performance Royalty for Sound Recordings

The scope of rights in sound recordings was a major topic of consideration in both houses of Congress during the last phase of the general revision effort. Attention focused on proposals establishing a limited performance right in the form of a compulsory license, with payments to performers and producers of copyrighted sound recordings. Congress decided, however, that the problem required further study, and section 114(d) of the revised statute directed the Register of Copyrights to submit a report to Congress. The Copyright Office submitted its basic "Report on Performance Rights in Sound Recordings" to Congress on January 3, 1978, followed by several addenda to the report, including a draft bill to create a public performance right for copyrighted sound recordings. The House Judiciary Subcommittee on Courts, Civil Liberties,

and the Administration of Justice then held public hearings in March and May of 1978.

Congressional momentum toward performance rights legislation for sound recordings continued in the first session of the 96th Congress. Rep. George E. Danielson introduced two bills, H.R. 237 (1979) and H.R. 997 (1979), to amend the copyright law to create a public performance right with respect to sound recordings. H.R. 237, which is identical to H.R. 6063 (1977), introduced by Representative Danielson in the first session of the 95th Congress, would amend section 114 of the law to provide for a compulsory license for the performance of sound recordings and a schedule of royalty payments to be made by radio stations, background music services, operators of jukeboxes, and other commercial users of sound recordings. These nonassignable royalties would be distributed annually by the Register of Copyrights. Controversies over distribution would be resolved by the Copyright Royalty Tribunal. Following—with some changes—the draft bill submitted by the Register to the House Judiciary Subcommittee in March 1978, H.R. 997 would amend section 101 of the copyright law by deleting the definition of *perform* and inserting, in part, “. . . in the case of a sound recording, to ‘perform’ the work means to make audible the sounds of which it consists.” This bill also provides a compulsory license for the public performance of sound recordings. Unlike H.R. 237, however, the nonassignable royalties collected under this bill would be distributed annually by the Copyright Royalty Tribunal rather than by the Register of Copyrights. An identical bill, S. 1552, 96th Congress, 1st Session (1979), introduced by Sens. Harrison A. Williams, Jr., Howard H. Baker, Jr., Bill Bradley, Alan Cranston, Jacob K. Javits, Howard M. Metzenbaum, and Paul S. Sarbanes, has been referred to the Senate Committee on the Judiciary.

Protection of Ornamental Designs of Useful Articles

Another aspect of unfinished copyright revision business concerns proposed legislation for the protection of ornamental designs of useful articles, based largely on copyright principles. The current effort to enact such a bill began with the introduction of a design protection measure in 1957. Design bills have been introduced regularly since that time.

A design bill was reported as title II of the general copyright revision bill, S. 22, 94th Congress, 1st Session, and passed by the Senate in 1975. Ultimately, however, the design provisions were deleted before passage of the final conference version of the revision bill, since the unresolved issues they raised might have caused further delay in acceptance of basic copyright reform.

Congressional interest in design legislation has been rekindled with the introduction of two bills, H.R. 2706, 96th Congress, 1st Session (1979), and H.R. 4530, 96th Congress, 1st Session (1979), by Rep. Tom Railsback.

Rights of Artists

A bill to create an American version of the European concept of the “droit moral,” H.R. 288, 96th Congress, 1st Session (1979), was introduced by Rep. Robert F. Drinan. This bill, which is identical to Representative Drinan’s earlier proposal, H.R. 8261, 95th Congress, 1st Session (1977), reflects the growing concern among artists and their representatives over the protection of the moral rights in their works. The purpose of the bill is to secure the rights of artists to claim authorship of a work of fine art and to prevent its distortion, mutilation, alteration, or destruction. The legislation also seeks to protect the honor and reputation of the artist in relation to his works.

Concern for the rights of artists has also been evidenced in state legislatures. The Senate of the State of Washington is considering Senate Bill No. 3012 (1979), which is similar to H.R. 288, mentioned above. Also, the Iowa legislature is considering a proposal, H.F. 340 (1979), to afford greater rights to artists, based on the concept of the “droit de suite.” Under the proposal, whenever a work of visual art is sold in Iowa, or is sold by an Iowa resident, for more than five hundred dollars and the selling price exceeds the seller’s earlier purchase price, a royalty of 5 percent of the selling price would be paid to the artist.

Protection for Imprinted Design Patterns on Semiconductor Chips

Efforts to combat copying in the burgeoning semiconductor chip industry led to the introduction of H.R. 14293, 95th Congress, 2d Session

(1978), by Reps. Don Edwards, Norman Y. Mineta, and Paul N. McCloskey, Jr. The bill would amend section 101 of the copyright law by expanding the definition of "pictorial, graphic, and sculptural works" to include:

... the photographic masks used to imprint patterns on integrated circuit chips and include the imprinted patterns themselves even though they are used in connection with the manufacture of, or incorporated in a useful article.

The bill was reintroduced in the first session of the 96th Congress as H.R. 1007 (1979). The House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice conducted a public hearing on the subject on April 16, 1979, in San Jose, California. Jon A. Baumgarten, general counsel of the Copyright Office at the time, testified on behalf of the Register of Copyrights that "Congress may well conclude that the 'photographic masks' and 'imprinted patterns' covered by H.R. 1007 are 'writings of an author' in the constitutional sense, and 'original works of authorship' that it may choose to protect under the copyright act." However, Mr. Baumgarten asked the subcommittee to consider a number of questions concerning the degree of authorship represented by the designer's labors, the relationship among the schematic drawings, imprinted chip patterns, and computer programs either stored in or generated by the chip, and possible limitations that may be placed on the scope and duration of protection. The fiscal year closed without further activity on the bill.

Exemptions of Certain Performances and Displays

Several bills were introduced in the House seeking to broaden two exemptions found in section 110 of the copyright law. Introduced by Rep. William H. Harsha, H.R. 2487, 96th Congress, 1st Session (1979), would amend section 110 by adding a new subsection which would exempt nonprofit veterans organizations from performance royalties for the performance of musical works in the course of their activities. Expansion of the educational exemption found in section 110(1) of the law was the subject of H.R. 4264, 96th Congress, 1st Session (1979), introduced by Rep. Brian J. Donnelly. This proposal would exempt profit-making educational institutions, in addition to currently exempted nonprofit

educational institutions, from copyright liability for certain performances or displays of copyrighted works by instructors or pupils in the course of face-to-face teaching activities. Another bill, H.R. 5183, 96th Congress, 1st Session (1979), introduced by Rep. David R. Bowen, also would provide that certain performances and displays by profit-making educational institutions are not infringements of the exclusive rights of copyright owners.

Other Legislative Activities

The question of copyright liability of cable systems for the retransmission of copyrighted programming proved to be the single most difficult issue in the general revision of the copyright law. The solutions reached in section 111 of the new statute were based on a number of underlying assumptions deriving from existing regulations of the Federal Communications Commission.

Section 111 of the copyright law created a compulsory license under which cable systems may make certain secondary transmissions authorized by the commission without the copyright owners' consent, so long as notices of identity and statements of account are filed with and statutory royalties are paid to the Copyright Office. During the year the effective operation of section 111 was thrown into doubt by the introduction of a bill for the omnibus revision of the Communications Act of 1934, H.R. 3333, 96th Congress, 1st Session (1979), by Reps. Lionel Van Deerlin, James M. Collins, and James T. Broyhill. In addition to abolishing the Federal Communications Commission, the bill would also prohibit, in title IV thereof, all federal regulation of cable television, including signal carriage and pay services. Furthermore, section 453(a) of the bill would prohibit the retransmission or rebroadcast of a program without the express authority of the originating station or the person who owns or controls the exclusive rights to the program involved. Barbara Ringer, the Register of Copyrights, focused on this controversial provision in her testimony before the House Interstate and Foreign Commerce Subcommittee on Communications on June 28, 1979. She opposed the "retransmission or program consent" proposal for four fundamental and interrelated reasons:

- The provision would not work as it is intended to work.

- The need for the provision has not been shown.
- Even if some change is needed, the provision goes too far.
- If enacted, the provisions would undermine the existing copyright law.

During the mark-up sessions, Rep. Van Deerlin decided to abandon his efforts to secure passage of H.R. 3333. Two bills have also been introduced in the Senate to amend the Communications Act of 1934: S. 611, 96th Congress, 1st Session (1979), introduced by Sen. Ernest F. Hollings, and S. 622, 96th Congress, 1st Session (1979), introduced by Sen. Barry Goldwater. Neither bill includes a provision requiring cable systems to obtain retransmission or program consent for their secondary transmission activity.

In related regulatory developments, the obtaining of retransmission or program consent by cable systems was also suggested by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce in a petition before the Federal Communications Commission. Despite their denial of the NTIA proposal, the commission is inviting comments on "all aspects of retransmission consent including details of how it might work," as well as comments "on pretransmission notification and any other way to allow the market process to work with the least amount of intervention." Furthermore, the commission is proposing the deletion from its regulations of all restrictions placed on cable systems which either limit the number of distant signals which may be secondarily transmitted or require the blacking out of certain syndicated programs carried on distant signals.

The House Communications Subcommittee also considered H.R. 3179, 96th Congress, 1st Session (1979), introduced by Rep. Tom Corcoran. This proposal would add a new section 331(a) to part 1 of title III of the Communications Act of 1934, so as to establish certain requirements for the televising of professional sports clubs' games. Under this "antiblackout" proposal, if any game of a professional sports club is to be broadcast by means of television pursuant to a league television contract, no agreement which would prevent the broadcasting by means of television of that game, at the same time, in the area in which the game is being played would be valid or have any force or effect.

Several bills were introduced in Congress proposing tax incentives for the arts and humanities. Among these, H.R. 1847, 96th Congress, 1st Session (1979), introduced by Rep. Jack Edwards, modifies the restrictions contained in 170(e) of the Internal Revenue Code by adding a new paragraph to make "any literary, musical, or artistic compositions, or similar property created by the personal efforts of the taxpayer (free from reduction) by the amount of appreciation of such property, and the whole amount of such charitable contributions shall be taken into account and be treated as if the property had been sold at its fair market value." The Arts and Humanities Tax Reform Act of 1979, H.R. 2113, 96th Congress, 1st Session (1979), introduced by Rep. S. William Green, would amend the Internal Revenue Code to disregard, in the valuation for estate tax purposes of certain items created by the decedent during his or her life, any amount which would have been ordinary income if the item had been sold by the decedent at its fair market value. The proposal would also allow a charitable deduction based on the fair market value of the item. Similarly, H.R. 2498, 96th Congress, 1st Session (1979), introduced by Reps. Abner J. Mikva and William M. Brodhead, would add a special rule to the Internal Revenue Code for certain charitable contributions of literary, musical, or artistic compositions, or similar property created by the personal efforts of the taxpayer. These contributions would be subject to the fair market value at the time of contribution, and no reduction in this amount would be made. However, certain contributions by public officials that were written, prepared, or produced by or for them during the performance of their duties while officers or employees of the United States would not be included. A bill introduced by Sens. Jacob K. Javits and Harrison A. Williams, Jr., S. 1078, 96th Congress, 1st Session (1979), has components dealing with estate taxes, charitable contributions, the "hobby loss" rule, and the elimination of a problem created by the carry-over basis provisions of the Tax Reform Act of 1976. This proposal would, among other things, restore the earlier capital gains treatment for copyrights. Finally, a bill introduced by Sen. Daniel P. Moynihan, S. 397, 96th Congress, 1st Session (1979), would amend the Internal Revenue Code to recognize and define theatrical production organizations, to allow cost recovery accounting for such organizations, to permit the investment tax credit for theatrical pro-

duction costs, to provide for capital gains treatment upon sale of certain theatrical production rights, to allow for a limited nonrecognition of gain realized or income derived by a theatrical production organization, and to provide for capital gains treatment for sales by authors of first theatrical production rights and the initial subsequent sale of ancillary rights.

The administration of public printing services and the distribution of public documents were the subjects of H.R. 4572, 96th Congress, 1st Session (1979). This bill, introduced by Rep. Frank Thompson, Jr., and seventeen others, would revise title 44 of the United States Code. The stated purpose of the bill is to enact amendments necessitated by the technological advances which are changing the way government information is generated, produced, and disseminated and by a growing demand for improved and increased access to this information. In the Senate a similar bill, S. 1436, 96th Congress, 1st Session (1979), was introduced by Sen. Claiborne Pell. In a letter from the Librarian of Congress to Representative Thompson, attention was directed to certain copyright concerns that were implicit in the bill. It was suggested that the definition of "public documents" in the bill needed clarification to avoid inconsistencies with copyright principles embodied in the Copyright Act of 1976 and that there is also a need to clarify the status, under the bill, of the reorganized Government Printing Office with respect to its authority (or lack of authority) to claim copyright in works prepared by its employees within the scope of their official duties.

INTERNATIONAL ACTIVITIES

Fiscal year 1979 was a very lively one in international copyright, both in domestic actions concerning international matters and with respect to the activities of international organizations that deal with copyright.

The 1979 Joint Meeting of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union

The first part of the biennial joint meeting of the governing bodies of the Universal Copyright Convention (the Intergovernmental Copyright Commit-

tee) and the Berne Convention for the Protection of Literary and Artistic Works (the Berne Executive Committee) was held February 5-9, 1979. The two committees coordinated their agenda and held joint sessions as appropriate. The United States was represented at this meeting by Barbara Ringer, the Register of Copyrights, and Jon A. Baumgarten, the Copyright Office general counsel. Numerous topics were discussed, one of the most important being the issue of United States adherence to the Berne Convention.

The Berne Question

The Berne Convention for the Protection of Literary and Artistic Works was the world's first major multilateral treaty on copyright, its earliest version being the convention signed at Berne, Switzerland, in 1886. The convention, which provides, in effect, that the countries to which it applies shall constitute the Berne Union, has been the subject of a number of revisions, the latest being that signed at Paris in 1971. While this convention has, since its inception, fostered the establishment and maintenance of a high level of international copyright protection among the developed countries of the world, the United States has never adhered to it.

Although the reasons for the failure of the United States to adhere to the Berne Convention are numerous and complex, the most important factors have been the failure of the United States, despite a number of efforts over the years, to amend its law in such a way as to eliminate or sufficiently alter certain formal conditions of protection, particularly the copyright notice and registration.

However, the fundamental changes reflected in the new U.S. copyright law, coupled with the ever-growing importance of international trade and the increased transborder flow of copyrighted works, have led to a renewed and revitalized interest in U.S. membership in the Berne Union. The major practical questions appear to be: (1) how close does the new U.S. law come to meeting the minimal standards for eligibility to accede to the convention; and (2) how can any gap be bridged?

At the February 1979 meeting of the Berne Executive Committee, these questions were addressed in detail. The first proposed solution was put forward by the Secretariat of the World Intellectual

Property Organization (WIPO), the organization responsible for administration of the convention. The proposal would involve adding to the convention a protocol which would permit the United States, or any other country that has never been a Berne member, to accede to the convention for a limited period of time while work went forward to amend its domestic law in such a way as to permit full membership. This proposal, intended to be limited to the issue of formalities only, did not meet with the approval of several members of the Executive Committee. The Register of Copyrights, as the U.S. observer at the meeting, expressed the interest and concern of the American copyright community, summarized the nation's international copyright history, and suggested that the question of how to enable the United States to accede to the Berne Convention be given further serious consideration by the Secretariat and by the members of the Berne Union. Following this statement, the proposal for a protocol was put aside, and the Secretariat agreed to seek authorization to establish a working group to study the U.S. copyright law and identify its points of incompatibility with the Berne Convention. This approach was approved by the members of the Executive Committee and will be presented at the forthcoming Triennial Meeting of the Assembly of the Berne Union.

In May 1979 Dr. Arpad Bogsch, director general of WIPO, visited the United States to ascertain the attitude of the various interest groups toward U.S. adherence to the Berne Convention. On the East Coast Dr. Bogsch met with the International Copyright Advisory Panel of the U.S. Department of State, and on the West Coast he discussed the issue with prominent copyright attorneys and industry representatives. Both discussions indicated a strong measure of support for Berne membership.

Developing Nations and Copyright

As in other areas of legal, economic, and social policy, developing countries have particular needs and interests with regard to domestic and international copyright law. They need to establish copyright laws, as well as the infrastructure for their enforcement and administration, and they need access to the works of developed countries. Moreover, they have legitimate concerns about the foreign copying of their folklore and the works of

their own authors. The Copyright Office is involved in these matters in several important ways, including participation in the activities of the WIPO Permanent Committee on Cooperation and Development and in various WIPO-UNESCO joint programs concerned with copyright problems of developing nations.

The Copyright Office was represented by Michael S. Keplinger, special legal assistant to the Register, at the Seminar on Copyright and Neighboring Rights for Asian and Pacific States, held December 19-23, 1978, in New Delhi. The purpose of the meeting was twofold: to enable the representatives of the developing nations of the region to identify common problems, and to make it possible for those nations, together with international organizations and other observer states, to suggest possible solutions. The fundamental theme of the conference was to determine ways that the copyright laws of the region could be strengthened to curb piracy of books and sound recordings while still ensuring that developing countries have access to educational and scientific material.

The fourth meeting of the WIPO Permanent Committee on Cooperation and Development, held in Dakar from March 12 to 16, 1979, was also attended by Mr. Keplinger. Half the program was devoted to patent law questions arising under the Paris Convention for the Protection of Industrial Property and the other half to copyright. Major themes of the meeting included the need for better programs to train copyright personnel from the developing countries and the desire that such programs be particularly directed toward familiarizing the trainees with the ways in which licenses for reproduction or translation can be negotiated with the publishers of developed countries.

Another joint WIPO/UNESCO project of significance for developing nations stemmed from earlier joint meetings of the Berne Executive Committee and the Intergovernmental Copyright Committee at which several developing nations had questioned the efficacy of the compulsory licensing systems established in the 1971 Paris revisions to the Berne and Universal Copyright Conventions. The extent of this concern, among both developed and developing nations, prompted the joint secretariats to undertake a study aimed at answering questions as to how the 1971 compulsory licensing provisions of the two conventions had worked in practice. To gather background information on the ways in which developed and developing nations

dealt with one another in obtaining translation and reproduction rights, an extensive questionnaire was submitted to the member states. Responses from the United States and twenty-three other members were analyzed and summarized in a report circulated by the secretariats. The culmination of this project was the Meeting of Experts on Developing Country Access to Protected Works, held in Paris, July 2-6, 1979. The Copyright Office was represented at the meeting by Lewis I. Flacks and Michael S. Keplinger, special legal assistants to the Register. After a discussion of the responses to the questionnaire and the issues raised from the floor, the meeting adopted recommendations for presentation to the joint meeting of the Berne Executive Committee and the Intergovernmental Copyright Committee in October 1979. Reflecting the fact that most of the problems faced by developing nations in gaining effective access to the educational, scientific, and technical literature of developed nations are not strictly copyright problems but rather arise from the lack in many developing nations of the publishing infrastructure and economic base needed to support a broad program, the recommendations emphasized practical solutions that would enable the international organizations and the developed nations to aid the third world in building its own internal copyright and publishing systems.

International Training Programs

During the fiscal year the United States continued to cooperate with both WIPO and UNESCO in providing training for copyright officials of developing nations. The WIPO deputy director general, Madame K. Liguier-Laubhouet, visited the Copyright Office to seek increased United States support for WIPO's training efforts and to explain her views on the need for a more structured program that would provide better training for those coming to developed countries on fellowships. As a result of the meeting, and in realization of the importance of training in furthering international copyright cooperation, the Copyright Office agreed to seek support for a more extensive educational program in both copyright law and in the ways in which copyrighted works are licensed in a market economy.

Officials from several foreign copyright departments or offices received training in the U.S.

Copyright Office during the year, including Majid Bhuiyan of the Copyright Office of Bangladesh, G.K. Abankwah of the Ministry of Education of Ghana, S.L. Takkar of the Ministry of Social Education and Welfare in India, and three attorneys from Iran — Manigheh Joorabchian, Laleh Mahjoby, and Abdollah Aghaie.

Cable Television

The copyright questions associated with the retransmission of television broadcast programming by cable systems was one of the most intractable problems in the recent U.S. copyright revision effort. This same problem, complicated by questions of national sovereignty and international economics, continued to elude solution in international copyright circles this past year.

During 1979, problems arising from the transmission by cable of television programs remained on the agenda of the joint sessions of the Intergovernmental Copyright Committee and the Berne Executive Committee while the report of the Working Group on Television by Cable was circulated for comment. The United States supplied information on the U.S. experience in dealing with cable television under the new copyright law and suggested that the problems concerned with the regulation of cable be left to domestic legislation, consistent with the provisions of the international conventions.

Satellite Convention

The Brussels Convention Relating to the Distribution of Programme Carrying Signals Transmitted by Satellite (the Brussels Satellite Convention), signed in 1975, represents an attempt to control at the international level the phenomenon of "signal piracy," which is the misappropriation of program-carrying signals by terrestrial distributors. Because the Satellite Convention does little more than obligate its signatories to adopt measures, at the national level, necessary to suppress signal piracy, great interest in exploring the means of implementing the convention has been expressed both in the United States and abroad.

The Committee of Governmental Experts on the Implementation of the Satellite Convention, which met in Paris on June 11-14, 1979, with Mr. Flacks

representing the Copyright Office, adopted model provisions for the guidance of national legislatures in implementing the convention. Two sets of provisions were agreed upon, the first creating a private right in the organization originating the satellite transmission and the second establishing a public system of protection with criminal sanctions. The convention itself leaves member states virtually complete discretion in choosing a system of protection for satellite transmissions.

Computer Uses of Copyrighted Works

In May 1979 WIPO and UNESCO convened a working group of nongovernmental experts to study problems relating to computer use of copyrighted works. Arthur J. Levine, former executive director of the National Commission on New Technological Uses of Copyrighted Works (CONTU), was invited by the WIPO Secretariat to attend in his private capacity. The working group focused its attention on determining whether copyright liability attaches to the computer use of a work at input or output, how copyright would apply to computer data bases, and what the copyright status of works created by computer application should be.

The working group, chaired by Dr. Eugen Ulmer, director emeritus of the Max Planck Institute for Foreign Patent, Trademark, and Unfair Competition Law in Munich, took the view that input of a copyrighted work into a computer should be considered a reproduction of the work for which the authorization of the copyright owner would be required. With respect to output, the working group suggested that a printout would be a reproduction and that the projection of the work on a cathode ray tube unit would constitute a display or performance of the work. On the basis of extensive discussions of the use of computers in the creation of works, the working group expressed the opinion that both the creator of the program and the person who used the program may have rights, in varying degrees, in the work created.

Translators

The Copyright Office circulated UNESCO's "Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators" both to the general public (through publication in the Federal Register) and to translators (by mailings to the

members of the American Translators Association and the American Literary Translators Association) for comment. While the UNESCO material shows that generally translations are afforded the same protection as other derivative works, for practical purposes this protection may be illusory owing to certain complex factors. The UNESCO recommendation is aimed at alleviating those conditions that tend to place translators at a disadvantage in business dealings with those using their services, by recognizing the professional status and cultural importance of translators in facilitating the international flow of information.

The responses thus far received by the Copyright Office from American publishers and other users of translations, as well as from individual translators, seem to indicate that this is an area of significant concern to both parties. The Copyright Office will use this information in formulating the U.S. response to the UNESCO recommendation.

Other International Activities

Barbara Ringer, the Register of Copyrights, was invited to give the Fiftieth Jubilee Lecture to the Royal Swedish Copyright Society on April 27, 1979, in Stockholm. As Ms. Ringer was unable to attend, the lecture was delivered by Mr. Keplinger. The topic was "The United States and International Copyright."

The Copyright Office was also invited to participate in a Workshop on Transpacific Information Flow, sponsored by the International Communications Agency and the Center for the Book in the Library of Congress. The workshop was part of an integrated program designed to expose librarians from the Asian states to the opportunities for establishing two-way exchanges of information through the printed word. Mr. Keplinger represented the office, delivering a paper entitled "The Role of Copyright in the International Flow of Information."

Michael R. Pew, assistant register of copyrights for automation and records, represented the office at the 1979 Annual Conference of the International Institute of Communications in London. At the conference a wide range of subjects of significant influence on the future development of international copyright were discussed, including the issues of national sovereignty and individual privacy involved in cable television and satellite broadcasting services.

Distinguished Foreign Visitors to the Copyright Office

The Copyright Office received a number of important foreign visitors during the year, two of whom delivered lectures to members of the staff. Dr. Robert Dittrich, honorary professor at the Ministry of Justice of Austria and a noted expert on the rights of performers, gave an address on October 11, 1978, entitled "The Practical Application of the Rome Convention of 1961 for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations." A. A. Keyes, special adviser to the Government of Canada and a leading authority on the copyright law of that country, spoke on the principal issues in the Canadian copyright revision program on October 24, 1978.

JUDICIAL DEVELOPMENTS

In fiscal 1979 courts had their first real opportunities to construe the Copyright Act of 1976 (title 17, U.S.C.), most of the provisions of which did not take effect until January 1, 1978. To be sure, many of the cases reported concerned the earlier copyright law, but even there the courts often referred to the present law and its legislative history in reaching their decisions. In economic terms, the most important cases were probably *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 47 U.S.L.W. 4359 (1979), in which the United States Supreme Court held that blanket licenses for the public performance of musical works were not per se violations of the antitrust laws, and *Universal City Studios, Inc. v. Sony Corp. of America*, 448 P.T.C.J. D-1 (1979), in which the U.S. District Court for the Central District of California held that off-the-air videotaping of television in the home was not a copyright infringement. But many other cases raised and decided issues of importance not only to their litigants but to scholars, the bar, and the Copyright Office as well.

Subject Matter and Scope of Copyright

However great the changes made by the general revision of the copyright law, the subject matter/scope cases for fiscal 1979 appear comfortably familiar to followers of past judicial developments—typeface, blank forms, an allegation that a work

is in the public domain because of the relationship of the U.S. government to its creation, an industrial design, and the expiration of statutory copyright in a motion picture film based on a protected underlying work—have all been the subject of decisions before fiscal 1979. Do this year's cases yield the same results as their predecessors? The answer is the lawyer's stock in trade: it depends.

After failing to obtain copyright protection through the legislative and judicial processes, a typeface proprietor nonetheless found a court receptive to his unfair competition and misappropriation claims in *Leonard Storch Enterprises, Inc. v. Mergenthaler Linotype Co.*, Copyright L. Rep. (CCH) ¶25,092 (E.D.N.Y. April 5, 1979). Storch manufactured and sold film fonts for use in Mergenthaler's phototypesetting machine and was charged with misappropriating Mergenthaler's fonts, notwithstanding the fact that the characters comprising the fonts were in the public domain. The court accepted Mergenthaler's argument that state law protection against machine reproduction of public domain type fonts was not preempted by the Copyright Act of 1909. (The parties stipulated that the 1976 act did not apply to the copying at issue). Citing *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), *Goldstein v. California*, 412 U.S. 546 (1973), and *International News Service v. Associated Press*, 248 U.S. 215 (1918), the court concluded that such federal objectives as encouraging originality and promoting the disclosure of information did not conflict with Mergenthaler's claim, which therefore survived Storch's motion to dismiss. The court expressed no opinion about whether Mergenthaler might prevail on the merits or, of equal importance, what result would obtain under the preemption provisions of the 1976 act, 17 U.S.C. §301. A case in the same Circuit which does discuss those provisions, *Ortho-O-Vision, Inc. v. Home Box Office, Inc.*, Copyright L. Rep. (CCH) ¶25,093 (S.D.N.Y. June 27, 1979), suggests that this type of misappropriation action might no longer be available.

In many cases involving form contracts and the like, courts have stated that copyrightable works of minimal originality can be infringed only by virtually exact copying, but all such cases have involved either uncopyrightable works or less than inculpatory copying and, thus, no infringement. The first finding of infringement under this standard was in *Professional Systems & Supplies, Inc. v. Databank Supplies & Equipment Co., Inc.*, Copy-

right L. Rep. (CCH) ¶25,081 (W.D. Okla. April 24, 1979), in which the defendant, without plaintiff's permission, took plaintiff's form, styled "promissory note, disclosure statement, and security agreement," to a printer for reprinting. The copies made were identical to plaintiff's, except for the absence of a copyright notice in plaintiff's name. The court found that plaintiff's president has expended sufficient skill, labor, and judgment in creating the forms to justify the copyright claim and that defendant had infringed by reprinting and vending the forms.

In *Schnapper v. Foley*, Copyright L. Rep. (CCH) ¶25,082 (D.D.C. June 8, 1979), the plaintiff sought to establish that a motion picture film commissioned by the Administrative Office of the U.S. Courts was not protected by copyright because it was produced with taxpayers' money and, for good measure, that all such past, present, and future copyrights be declared null and void. The Register of Copyrights was joined as a defendant inasmuch as part of the relief prayed for was the expunging from the Copyright Office records of claims to copyright in any works created with U.S. government funds. The court examined 17 U.S.C. §105 and its legislative history and held that copyright could be claimed in a work commissioned by the U.S. government unless the commission was a "mere alternative" to having a federal officer or employee prepare the work as part of his or her official duties. Since the agency here was not in the business of making films, that proscription did not apply. Plaintiff's arguments that such copyrights foster censorship or violate the provisions of the First Amendment to the U.S. Constitution were also unavailing. The court noted that Congress had found that the *absence* of copyright led to a result similar to censorship since it made entrepreneurs unwilling to publish works commissioned by the government. The alleged tension between copyright and the First Amendment was, according to the court, largely resolved by the familiar idea-expression analysis: the protection of the expression in no way impinges on anyone's freedom to speak or print the underlying idea.

The outdoor lighting fixture created by Esquire, Inc., remained beyond the scope of copyright as the Supreme Court twice declined to consider the argument that the Copyright Office's interpretation of *Mazer v. Stein*, 347 U.S. 201 (1954), discriminated against works of applied modern art as opposed to more traditional works. *Esquire*,

Inc. v. Ringer, 591 F.2d 796 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 908 (February 21, 1979), *pet. for rehearing denied*, 99 S.Ct. 2019 (April 16, 1979).

The expiration of the term of copyright in a derivative work is an event which at least twice has led to litigation between persons seeking the free use of that work and persons claiming rights in the work from which it is derived. Whatever the conflict between the holdings in *Rohauer v. Killiam Shows, Inc.*, 551 F.2d 484 (2d Cir. 1977), and *Filmvideo Releasing Corp. v. Hastings*, 426 F. Supp. 690 (S.D.N.Y. 1976), it may be true that derivative works which passed into the public domain before January 1, 1978, and were derived from unpublished works protected by the common law can be used, copied, or otherwise exploited without regard to others' rights in the underlying work. At least it is clear that *Classic Film Museum, Inc. v. Warner Bros., Inc.*, 597 F.2d 13 (1st Cir. 1979), held that the museum could lawfully copy the film *A Star Is Born*, in which the first term of copyright had expired, without permission from Warner, which claimed common law copyright in the unpublished screenplay. The court felt that to hold otherwise would grant Warner control over the film itself as long as the common law right in the screenplay existed. At the time of the alleged infringement, common law rights had not been preempted and were perpetual in theory. The court did not consider the possible effect of the 1976 act, which now provides finite statutory copyright for all works, whether published or not, including the screenplay at issue in this case. Thus it is unclear what it is that courts will do in the future when confronted with similar facts, since the underlying work in such cases will have a limited term.

Public Performance Rights and Related Topics

The Copyright Act of 1976 appears to have led to an increase in litigation related to the public performance of copyrighted works. That this has happened is hardly surprising, since the law now provides that jukeboxes and cable television systems are vehicles for such performances. In addition, several cases which turn on issues other than copyright may have great significance for owners and transmitters of copyrighted works. The Supreme Court decided two of these cases: *Broadcast Music, Inc. v. Columbia Broadcasting System*,

Inc., 47 U.S.L.W. 4359 (1979), and *Federal Communications Commission v. Midwest Video Corp.*, 47 U.S.L.W. 4335 (1979).

In *BMI v. CBS* the Court added a new chapter to a story which remains unfinished when it reversed the decision of the U.S. Court of Appeals for the Second Circuit, which had held that the blanket licenses offered by BMI and the American Society of Composers, Authors and Publishers (ASCAP) were forms of price fixing and thus per se violations of federal antitrust laws. The practice of both performing rights societies has been to sell television networks (and, indeed, all customers) the unlimited right to perform all of the musical compositions within the societies' repertoires. A customer's only alternative has been to seek a license directly from individual copyright owners. The Court did not, however, finally decide whether blanket licenses were lawful; it remanded the case to the Second Circuit so that it could determine whether such licenses violate the "rule of reason."

The Supreme Court acknowledged that BMI and ASCAP do set the prices of their blanket licenses but, unlike the Second Circuit, was unwilling to call such behavior price fixing, particularly in view of the fact that all three commercial television networks had obtained and used such licenses continuously since 1946, that Congress had conceded the utility of copyright owners collectively claiming their rights, and that, given the universe of thousands of owners, millions of works, and thousands of users, something more than one-to-one negotiations was necessary if performance rights were to have any meaning. The Court accepted the argument, contained in the amicus brief of the Justice Department, that the market for the product in question, the blanket license, was different from the market for individually negotiated permissions: "Here, the whole is truly greater than the sum of its parts; it is, to some extent, a different product."

The decision was not an unqualified victory for BMI and ASCAP. Mr. Justice White, writing for the majority, took pains not to state the Court's belief, if any, concerning the ability of the blanket license to withstand scrutiny on remand and on possible further review by the Supreme Court. Mr. Justice Stevens, dissenting, argued that the blanket license was not a per se antitrust violation but felt that the remand was not necessary. He stated that he would hold blanket licensing violative of the rule of reason because the price was based upon the gross rev-

enues of the customer, without regard to the quantity or quality of the use made, which he styled "a classic example of economic discrimination."

In *Midwest Video* the Supreme Court announced a decision which, while not directly related to copyright, was extremely significant for entrepreneurs in the cable television industry. In 1976 the Federal Communications Commission had ruled that cable systems having at least thirty-five hundred subscribers had to reserve certain channels for community access and also had to furnish equipment and facilities so that the public could take advantage of that access. A cable system sued the FCC, arguing that such a rule exceeded the FCC's statutory authority to regulate radio and television broadcasting. The FCC argued that such rules created a "definite societal good" and that they promoted the long-standing objective of increasing the outlets for local self-expression.

The Eighth Circuit set aside the rules on the ground that they exceeded the FCC's jurisdiction, and the Supreme Court affirmed, noting that the Communications Act of 1934 was unequivocal in its requirement that broadcasters not be treated as common carriers and that the FCC could regulate cable operators only when such regulation was reasonably ancillary to broadcast regulation. The Court was satisfied that access rules were unrelated to broadcast regulation and that the proscription of common carriage applied to cable systems, whose existence was, of course, not foreseen when the law in question was enacted.

The vigorous dissent of Justices Stevens, Brennan, and Marshall argued that stricter rules regarding program origination had been upheld in *United States v. Midwest Video Corp.*, 406 U.S. 649 (1972), and that their "less onerous" replacements, at issue here, should also have survived. The dissenters charged the majority with misreading the common carriage provisions. According to them, all that the law provided was that a station should not be declared a common carrier simply because it was a broadcast station. Given the FCC's apparent intent to deregulate cable television to a great extent on its own, it may well be that *Midwest Video's* significance is not so much that it buries the public access rule but rather than it demonstrates that the Supreme Court is not immune to the deregulatory fervor which the other two branches of government have embraced.

A new agency's new regulation did withstand attack in *Amusement & Music Operators Ass'n. v.*

Copyright Royalty Tribunal, Copyright L. Rep. (CCH) ¶25,062 (D.D.C. February 22, 1979). There the trade association of jukebox operators sought to enjoin the enforcement of a regulation of the Copyright Royalty Tribunal (CRT) which required that operators file lists of box locations with the tribunal. The association argued that certain privacy and liberty rights under the Fifth Amendment to the U.S. Constitution were violated and that such lists were entitled to protection as trade secrets. The court, in discussing the complaint without an opinion, apparently believed that the regulation fell within the CRT's congressionally delegated authority.

Two former licensees of Home Box Office (HBO), a pay television subscription service, provided grist for federal judicial mills when they delivered signals to their subscribers in the New York Borough of Queens without paying HBO for the signals. Each licensee had had unclear contractual relationships with HBO which soured over terms of payment and permission to expand their licenses to serve more households. Each defendant was enjoined from further retransmitting HBO's programs, but the theories leading to that remedy were markedly different. In *Home Box Office, Inc. v. Pay TV of Greater New York, Inc.*, 467 F. Supp. 525 (E.D.N.Y. 1979), HBO sought relief under 47 U.S.C. 605 (the Communications Act), the Copyright Act, and New York statutory and common law. The court accepted HBO's uncontested assertion that its signal was not "broadcast . . . for the use of the general public" (§605) and that the Communications Act thereby provided a basis for a preliminary injunction. Summary judgment and a permanent injunction followed shortly thereafter, *Id.*, Copyright L. Rep. (CCH) ¶25,089 (E.D.N.Y. June 8, 1979). The copyright and state law questions did not receive attention since the injunction issued on HBO's first theory.

The same theories were propounded on very similar facts in *Orth-O-Vision, Inc. v. Home Box Office, Inc.*, Copyright L. Rep. (CCH) ¶25,093 (S.D.N.Y. June 27, 1979). There, however, HBO's assertion of rights under §605 was contested and proved unavailing. Judge Gagliardi was unwilling to conclude that HBO's intent to deliver signals to many licensees for ultimate distribution to as many persons as possible made its transmissions something other than a broadcast, at least under the rules governing the disposition of motions for summary judgment. He also suggested that after *Cort*

v. Ash, 422 U.S. 66 (1975), courts should reexamine whether any private right of action can be judicially implied from the Communications Act. It thus seems possible that even if he had found that HBO's transmissions were not broadcasts and were within the scope of §605, HBO would not have had standing to obtain an injunction under the Communications Act.

Home Box Office also sought relief under both the common law of unfair competition and another private action implied from a statute — this time from New York's theft of services law. As to unfair competition, the court made what may be the first application of 17 U.S.C. §301 when it decided that state law misappropriation theory was preempted when the right to be vindicated was the right to exhibit an audiovisual work to the public — clearly a right "equivalent to copyright." The private use of the theft of services statute was also unavailing, because no state court had ever found it to exist and because Orth-O-Vision claimed it was merely deferring payments rather than perpetually refusing to make them.

Finally, under the provision of 17 U.S.C. §111, the court granted HBO a permanent injunction against Orth-O-Vision's infringements, by unauthorized retransmission, of the copyrighted works transmitted by HBO. Most of these works are motion pictures, sporting events, and the like, as to which HBO acquired the performance rights. Since HBO sued for copyright infringement only with respect to its own copyrights, it is not clear whether HBO held exclusive licenses in the other programming it transmitted. The court rejected Orth-O-Vision's argument that the injunction should not issue because only a small percentage of HBO's transmissions consisted of material copyrighted by HBO and issued the injunction with respect to present and future copyrighted material.

The remaining performance rights cases are the predictable music suits with, for the most part, totally predictable results. In *Broadcast Music, Inc. v. Grant's Cabin, Inc.*, Copyright L. Rep. (CCH) ¶25,074 (E.D. Mo. March 14, 1979), and *Chess Music, Inc. v. Tadych*, 467 F. Supp. 819 (E.D. Wisc. 1979), plaintiffs received statutory damages and costs for the unauthorized public performances of their works. In the former case, a potentially ominous note was sounded for copyright proprietors when the court declined to award BMI attorney's fees "because of the insignificant amount involved [\$1,500 statutory damages] and

the insignificance of the occurrence." Should this become the usual result in small-scale statutory damage cases, questions will undoubtedly arise concerning the cost effectiveness of this type of suit.

In *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302 (N.D. Ind. 1979), the court, after looking at the legislative history of 17 U.S.C. §504, granted BMI's motion to strike defendant's jury demand on the ground that statutory damages are equitable in nature, thus paving the way for an easy win for BMI. The opposite conclusion was reached with respect to a like motion in *Broadcast Music, Inc. v. Moor-Law, Inc.*, Copyright L. Rep. (CCH) ¶25,056 (D. Del. December 13, 1978), in which the District Court declined to follow those "equitable in nature" cases which antedate *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962), where the Supreme Court had ruled that legal issues are for the jury even if they are "incidental" to equitable issues. In the present case the court was satisfied that an award of statutory damages should be within the province of a jury. Finally, in *Broadcast Music, Inc. v. Leisure Properties, Inc.*, 201 U.S.P.Q. 685 (N.D. Ohio 1978), the court ruled that infringement claims are considered to be in the nature of an intentional tort and are thus neither provable nor dischargeable in bankruptcy. This meant that the court could retain jurisdiction and try the infringement action without deferring to the jurisdiction of the bankruptcy court.

Infringement and Defenses

Infringement cases decided during fiscal 1979 considered both the 1909 and 1976 acts. In two instances a "new law right" — that of public display — was vindicated. But for the most part, business continued as usual. Tape pirates remained ineligible to be compulsory licensees, convictions under the criminal provisions continued to be affirmed, historical facts remained uncopyrightable, birds remained popular (as did fair use as a defense), and yet another opinion was filed in the *Wall Street Transcript* case. Which is not to say that nothing happened; much did, but little of it was dramatically affected by the "new law."

Three cases continued the overwhelming trend against tape pirates. In *Heilman v. Bell*, 583 F.2d 373 (7th Cir. 1978), and *Pearl Music Co., Inc. v.*

Recording Industry Association of America, Inc., 460 F. Supp. 1060 (C.D. Cal. 1978), courts held that no amount of sham compliance with the compulsory license provisions of the Copyright Act of 1909 would exempt pirates from liability for infringement. *United States v. Whetzel*, 589 F.2d 707 (D.C. Cir. 1978), showed again that criminal convictions for tape piracy under the copyright law will stand. However, it is interesting to note in *Whetzel* that two counts of interstate transportation of stolen goods were dismissed because of an absence of proof that the tapes in question were worth more than the jurisdictional minimum, \$5,000. The court placed value only on the physical tape and not on the copyrighted works contained therein.

In *United States v. Hamilton*, 583 F.2d 448 (9th Cir. 1978), a conviction for criminal infringement of a map was affirmed. The only issue on appeal was whether the map was sufficiently original to be protected by copyright. The court held that it was and in so doing expressly declined to follow the so-called "direct observation rule" of *Amsterdam v. Triangle Publications, Inc.*, 189 F.2d 104 (3d Cir. 1951), on the ground that it seemed to set a higher standard of copyrightability for maps than for other works. The Ninth Circuit found the owner's action in selecting, designing, and synthesizing his map worthy of copyright.

The uncopyrightability of facts led to dismissals of complaints against an author of an historical novel (*Roots*) and the publisher of a book of artistic criticism (*Monet: Le Déjeuner sur l'herbe*) in *Alexander v. Haley*, 460 F. Supp. 40 (S.D.N.Y. 1978), and *Mount v. Viking Press, Inc.*, Copyright L. Rep. (CCH) ¶25,073 (2d Cir. April 6, 1979), respectively. The same doctrine did not prevent a jury from awarding an author \$216,750 when a motion picture studio based its "made for television" movie on his work. The plaintiff in *Miller v. Universal City Studios, Inc.*, 460 F. Supp. 984 (S.D. Fla. 1978), was a reporter who wrote an account of a kidnapping and rescue. Over the protestations of its scriptwriter, Universal based its work almost entirely on plaintiff's. The resulting film included several incidents found only in plaintiff's work, some of which were his embellishments or errors. The court denied Universal's motion for a new trial, at least in part because the scriptwriter's "squirring and fidgeting on the witness stand indicat[ed] that he had plagiarized the book."

Three cases were decided in which promotional materials were infringed by the competitors of copyright proprietors. In each case, the competitor's primary product did not infringe a copyright, but the promotional materials did, and their use was enjoined, not only on copyright grounds, but also on the basis of §43(a) of the Lanham Act, which prevents such deceptive practices as misrepresenting the source of a product and false advertising: *Dawn Associates v. Links*, 4 Media L. Rep. 1642 (N.D. Ill. 1978), which related to horror movie advertising; *Instant Fortunes, Inc. v. Strathmore Sales Enterprises*, 201 U.S.P.Q. 754 (S.D.N.Y. 1978), which concerned placards and certificates to accompany novelty pens; and *Traditional Living, Inc. v. Energy Log Homes, Inc.*, Copyright L. Rep. (CCH) ¶25,068 (N.D. Ala. November 22, 1978), which involved advertising for log houses.

The infringement of musical compositions was alleged in two cases and proved in one. In *Plymouth Music Co. v. Magnus Organ Corp.*, 456 F. Supp. 676 (S.D.N.Y. 1978), the defendant clearly copied the works in question but argued that plaintiff's arrangements of public domain songs were themselves in the public domain. The court held to the contrary, finding sufficient originality in the arrangements to justify the copyright. *Ferguson v. National Broadcasting Co., Inc.*, 584 F. 2d 111 (5th Cir. 1978), served to remind the copyright bar how times have changed since 1946. Then, in *Arnstein v. Porter*, 154 F.2d 464 (2d Cir.), a well-known composer, Cole Porter, was sued by a copyright owner who believed that he detected a certain similarity between the defendant's successful works and his own relatively unknown compositions. In the *Ferguson* case, John Williams was accused of copying twenty-four bars of an unpublished song written twenty years earlier. Defendant, as had Cole Porter, moved for summary judgment, stating that Williams had heard of neither the composer nor the song and that there was only one three-note sequence which was similar. Plaintiff argued that she had sent the song to BMI in 1953 and that Williams had some contacts there. The court, in granting defendant's motion, noted that in opposition to a motion for summary judgment the nonmoving party must offer significant probative evidence (as opposed to the *Arnstein* rule of, essentially, any evidence) and that plaintiff had failed to do so.

Judges, lawyers, and commentators never appear too comfortable with "directory" cases, and two recent decisions offer little balm. In one case, *American Chemical Society v. Dun-Donnelley Publishing Corp.*, 202 U.S.P.Q. 459 (N.D. Ill. 1979), the defendant's cutting and pasting of plaintiff's and others' directories, which led to the quick completion of defendant's work, was not deemed behavior eligible for injunctive relief, notwithstanding the substantial identity of 1,650 (out of 2,450) listings in defendant's and plaintiff's works. On the other hand, the similarity of 400 of 900 listings led to a contempt citation and an injunction in *National Research Bureau, Inc. v. Kucker*, Copyright L. Rep. (CCH) ¶25,080 (S.D.N.Y. June 29, 1979), a decision which seems more consistent with the preponderance of such cases.

In two cases the right to control the public display of copyrighted works was upheld. In *Burwood Products Co. v. Marsel Mirror & Glass Products, Inc.*, 468 F. Supp. 1215 (E.D. Ill. 1979), the defendant was charged with infringement of a wicker mirror design. Marsel argued that it could not be sued in Illinois, where it had no place of business, no telephone, and no bank account, but where it had displayed its works at an exhibition. The court held that it had jurisdiction under the Illinois "long-arm statute" since the display constituted a tort within Illinois if the work displayed should prove, as charged, to be infringing. It may be that this result would not have been reached under the 1909 act, which provided no specific right of public display. A "confusing" display of a fabric sample so small as not to be readily distinguishable from another's copyrighted fabric was enjoined in *Kirk-Brummel Associates, Inc. v. dePootere Corp.*, Copyright L. Rep. (CCH) ¶25,051 (S.D.N.Y. Jan. 4, 1979); there the injunction ran against not an infringing work but rather a similar work whose differences were revealed only when the samples displayed were of sufficient size.

Television network broadcasts of independently made documentary films led to liability in two instances. In *Burke v. National Broadcasting Co.*, 598 F.2d 688 (1st Cir. 1979), the court reversed a ruling below when it held that a film was protected by common law copyright. Burke's movie showed an encounter between lions and zebras which revealed previously undocumented animal behavior. A German professor acquired a copy of the

film from him to use in conjunction with some lectures. The film was later exhibited on German public television. A British production company, SAL, used some of Burke's footage, which it acquired from the German source, in its film, which NBC broadcast before the effective date of the 1976 act. Thereafter SAL wrote to Burke asking him how much it owed him. He denied that the professor had had the power to authorize the copying or performance of the film and asked for compensation at the usual rate. After receiving nothing, he sued. The trial court ruled that the film had been published without notice of copyright and was thus in the public domain, but the court of appeals held that neither the transfer of a copy to the professor nor the broadcast on German television in any way affected the common law copyright in the work, since the former was a limited publication and the latter no publication at all. Of particular interest was the court's determination that the transfer of the film to the professor carried an implied limitation on further copying, notwithstanding the absence of any explicit copying restrictions.

In *Iowa State University Research Foundation, Inc. v. American Broadcasting Co.*, 463 F. Supp. 902 (S.D.N.Y. 1978), the court found ABC's use of three minutes of a twenty-eight-minute copyrighted film about an Olympic champion wrestler from Iowa State University "inexcusable" where the network employed one of the students who had produced the film and where the network copied the film in its entirety without payment or permission. Copyright in the lifelike rendering of birds was involved in *John L. Perry Studio, Inc. v. Wernick*, Copyright L. Rep. (CCH) ¶25,086 (9th Cir. June 4, 1979), where both plaintiff and defendant made white plastic gull sculptures of similar size, shape, posture, and mountings. At trial the court found that defendant's bird was independently created and that both resembled real flying gulls. The Court of Appeals for the Ninth Circuit affirmed, noting that although plaintiff had made a prima facie showing of infringement (access and substantial similarity), defendant had properly carried its burden of persuading the court that its creation was independent rather than the result of copying.

In *Durham Industries, Inc. v. Tomy Corp.*, 201 U.S.P.Q. 576 (S.D.N.Y. 1979), an alleged infringer sought a declaratory judgment and preliminary injunction to protect itself from the effects of a published charge of infringement. The court found the charge, made just before a toy fair attend-

ed by both parties, defective in that it did not identify the 5 toys (of 144) about which the complaint was made and in that its effect was to dissuade customers from buying any of the toys. The court required that Tomy publish a new notice specifying which toys it believed to be infringements, that it refrain from similar broad charges in the future, and that it write to those of Durham's customers who withdrew their orders so as to specify the offending works.

An unfortunate series of events recounted in *Walker v. University Books, Inc.*, Copyright L. Rep. (CCH) ¶25,087 (9th Cir. June 18, 1979), serves as a reminder of the more strict copyright notice provisions of the 1909 act and of some courts' willingness to seek out ways of avoiding them. There the plaintiff showed her copyrighted *I Ching* cards to defendant, a publisher; later she assigned her copyright to another publisher, who distributed her works without a notice. Thereafter plaintiff learned that defendant was producing what she believed were infringing cards, but her infringement action was dismissed at trial because of the publication without notice by her assignee, and because the court found no evidence that defendant had produced its arguably infringing works before the assignment and forfeiture. The court of appeals reversed, on the ground that defendant's blueprints, from which it made its wares, could be infringing copies, and remanded the case for a determination whether they were made before plaintiff's assignment, in which case plaintiff could maintain her action.

One of the most significant fair use cases ever decided was announced just after the end of fiscal 1979 and merits inclusion here. Although many issues were raised in *Universal City Studios, Inc. v. Sony Corp. of America*, 448 P.T.C.J. D-1 (C.D. Cal. 1979), the successful interposition of the defense of fair use to a charge that off-the-air home videotaping of copyrighted television programming constituted copyright infringement effectively disposed of the entire case in the trial court.

Although one individual who made copies at home was named as a defendant, the plaintiffs, major motion picture studios, sought relief primarily against the manufacturer, distributor, wholesaler, advertiser, and retailer of videotape recorders (VTRs). Most of these defendants could not have been liable unless home copying had been held infringing. Thus, the finding of fair use prevented any recovery against them, whether on a

theory of contributory infringement or vicarious liability.

In analyzing home copying, the court found alternative routes to a holding of noninfringement. First, it examined the legislative history of the Copyright Act of 1976 and determined that Congress had not intended to proscribe the home copying of "free" television broadcasts. It placed particular emphasis on the Sound Recording Act of 1971 and statements in the hearings and floor debates which preceded its enactment.

In addition, and apart from the legislative history with respect to copying, the court determined that home copying was fair use. After reviewing the few prior noncommercial fair use cases and determining them to be of little assistance, the court turned to the four fair use factors contained in 17 U.S.C. § 107 and treated them in the following order: harm to plaintiffs, nature of the material, purpose of the use, and substantiality of the copying.

The court placed great emphasis on the fact that the plaintiffs adduced no concrete evidence of harm attributable to the marketing of VTRs. Plaintiffs' evidence was characterized as "personal belief and speculation." The court observed that the profits of the plaintiffs "have increased yearly, including the years in which VTR technology was introduced and growing."

As to the nature of the material copied, the court, after conceding the difficulty of distinguishing information from entertainment, noted that the viewers of free television (as opposed to book buyers or theatergoers) enter into no economic relationship with copyright owners and implied that advertisers, who have always paid rates according to the size and configuration of the viewing public, could bear the cost of any change in audience characteristics caused by VTR use. The purpose of the use was characterized as both noncommercial and "in the home." The court noted that this use was consistent with First Amendment policy regarding public access to information and that enforcement of a prohibition against it would be both intrusive and impossible. Finally, although the entire works were generally copied, no bar to fair use was thus created. After considering all four factors, the court concluded that the use was fair.

Moreover, it observed that even if home copying were infringement, no relief could be had against manufacturers and vendors of VTR equip-

ment, since they neither directly, contributorily, nor vicariously infringed. The court placed emphasis on the absence of precedent for imposing copyright liability upon the manufacturers of equipment used by others.

Other fair use cases, although apparently not of a similar order of importance, yielded interesting results. The only unsuccessful fair use case reported in fiscal 1979 involved an attempt to exploit the combined markets for female nudity and professional football. The defendants in *Dallas Cowboy Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184 (5th Cir. 1979), prepared a poster substantially similar to plaintiff's, but for the partial nudity of the models depicted. The court refused to accept the contention that this amounted to a justifiable parody and thus fair use.

Uses involving news reporting, a political campaign, and public safety were found to be fair. In *Italian Book Corp. v. American Broadcasting Co.*, 458 F. Supp. 65 (S.D.N.Y. 1978), the copyright owner was held not entitled to compensation for the broadcast of part of its song during news coverage of an Italian festival since no clear harm could be shown. The First Amendment interests in a political campaign outweighed an officeholder's copyright in a jingle in *Keep Thomson Governor Committee v. Citizens for Gallen Committee*, 457 F. Supp. 957 (D.N.H. 1978); defendant used a portion of plaintiff's copyrighted work in his own campaign advertisements, which the court held to be noninfringing, since to hold otherwise could have had the effect of suppressing political speech. Finally, in *Key Maps, Inc. v. Pruitt*, 470 F. Supp. 33 (S.D. Tex. 1978), the owner of copyright in a map failed, for whatever reasons, to deliver 200 copyrighted fire zone maps to a fire marshal within the contractual ten-day period; after waiting six weeks, the marshal had the maps reproduced elsewhere. In finding such use "fair," the court emphasized the public purpose of the use and concluded, interestingly, that plaintiff had failed to show that defendant's use was "unfair," a statement reflecting a novel view of the various burdens to be borne by copyright litigants. Of additional interest may be courts' reliance, in *Sony, Keep Thomson Governor*, and *Key Maps*, on the decision in *Williams & Wilkins Co. v. United States*, 487 F.2d 1345 (Ct Cl. 1973), *aff'd by an equally divided court*, 420 U.S. 376 (1975), which many

observers believed had died on the effective date of the Copyright Act of 1976.

The final group of infringement cases offers guidance on the procedural aspects of copyright infringement actions. Three cases concern those who may sue or be sued: *Mills Music, Inc. v. Arizona*, 591 F.2d 1278 (9th Cir. 1979); *Lottie Joplin Thomas Trust v. Crown Publishers, Inc.*, 592 F.2d 651 (2d Cir. 1978); and *F.E.L. Publications, Ltd. v. National Conference of Catholic Bishops*, 466 F. Supp. 1034 (N.D. Ill. 1978). In *Mills* the Ninth Circuit ruled, in a case involving a complaint of copyright infringement brought against the State of Arizona, that states are subject to such suits in the federal courts despite the Eleventh Amendment to the U.S. Constitution, which provides that the judicial power of the United States shall not extend to suits against the states by citizens of another state, a decision which is contrary to the position taken by the Eighth Circuit in *Wihtol v. Crow*, 309 F.2d 777 (1962). In *Thomas*, the trust established for Scott Joplin's widow was held to retain the renewal rights in *Treemonisha* and was thus a proper plaintiff with respect to an unauthorized recording of that work. Plaintiff in *F.E.L.* sought to stop widespread copying of its religious music at the diocesan and parish level by suing a national organization of bishops whose guidelines spoke of the need to obtain authorization before reproducing copyrighted works. The court refused either to issue an injunction or to dismiss the case, pending proof of defendant's ability to supervise or control the alleged acts of infringement.

In *Manning v. Turf & Sport International, Ltd.*, 5 Media L. Rptr. 1299 (N.D.N.Y. 1979), the court held that a Delaware corporation with its principal place of business in Maryland could not be sued in New York, where the plaintiff lived, since the corporation had no offices, agents, employees, business license, or tax liability in that state and merely mailed some of its allegedly infringing works to New York subscribers.

What appears to be the last word in *Wainwright Securities, Inc. v. Wall Street Transcript Corp.* is to be found at 80 F.R.D. 103 (S.D.N.Y. 1978). Plaintiff, having won its infringement action at trial and on appeal, went out of business and was permitted to dismiss the case over defendant's objection that it could not thereafter vindicate itself. The reason given by the court for dismissing further action in the case was that the defendant, on appeal, had not protested its innocence.

Related Rights

The commercial exploitation of the late Elvis Presley's likeness remained the exclusive right of his estate when the Supreme Court refused to review the decision which had reached that result, *Factors, Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215 (2d Cir. 1978), *cert. denied*, _____ U.S. _____ (March 1, 1979). The Supreme Court did decide another case, *Herbert v. Lando*, 47 U.S.L.W. 4401 (1979), which provided ground rules for how a public figure could seek to prove (as he must to recover) that an allegedly defamatory story about him was made with "actual malice." The case has been widely described as requiring courts to "read reporter's minds," but that does not appear to be correct. "Actual malice" here had nothing to do with ill will, but rather had to do with whether an author knew or should have known that his story was false. The Court observed that the records in earlier public figure defamation cases were replete with evidence of the editorial process and held that the First Amendment provided no shield against liability when published reports were known to be false or were published with reckless disregard of their possible falsity.

It proved difficult to prevail in a privacy action in fiscal 1979, at least when the defendant could demonstrate a First Amendment interest in the allegedly invading work. The National Broadcasting Company survived an attack by Roy Cohn, who claimed that *Tail Gunner Joe*, a motion picture about Sen. Joseph McCarthy which the network broadcast, had invaded his privacy by using his name. The court held that the facts recounted were the subject of legitimate public interest and dismissed the claim in *Cohn v. National Broadcasting Co.*, 4 Media L. Rptr. 2533 (N.Y. App. 1979). In *Lutz v. Hoffman*, 4 Media L. Rptr. 2294 (E.D.N.Y. 1979), the court ruled that the reporting of information concerning an allegedly haunted house did not invade the privacy of the homeowners (who desired a proprietary interest in their story), since their names and pictures of the house were newsworthy. An interesting footnote to the larger issue involved in many privacy cases was provided by *Castagna v. Western Graphics Corp.*, 4 Media L. Rptr. 2497 (Ore. App. 1979), in which plaintiff consented to the use of his photograph on a poster in return for payment. When the poster was distributed but he was not paid, he sought relief on privacy grounds, arguing that the absence

of payment vitiated his consent. The court ruled otherwise, holding that he might recover in contract but that he had waived his right of privacy, unless the misrepresentation concerned the scope of the waiver (what the publisher published) rather than the inducement to enter into the contract (the fact of nonpayment).

Two other privacy cases led to results which were not final but admitted of the possibility of recovery. In *Forsher v. Bugliosi*, 5 Media L. Rptr. 1145 (Cal. App. 1979), a person associated with a lawyer who disappeared during a murder trial sued the author of a book about the trial, charging that the book's reference to him was both libelous and an invasion of his privacy. The court held that statements insinuating that plaintiff might have been involved in the lawyer's death were actionable and ordered that the case be tried, over a vigorous dissent which questioned whether one action could ever sound in both libel and privacy, since an element of the former is falsity, and of the latter, truth.

In *Cohen v. Hallmark Cards, Inc.*, 4 Media L. Rptr. 1778 (N.Y. 1978), defendant was charged with the unauthorized publication of photographs of a mother and her child. At trial there was a jury award of punitive damages, for which the appellate court found some supporting evidence, since it appeared that defendant may have made several printings of its work after receiving notice that plaintiff had never executed a written release. The case was remanded for a determination whether the award of punitive damages was against the weight of the evidence.

The timing of a letter of complaint was also important in *Bindrim v. Mitchell*, 5 Media L. Rptr. 1113 (Cal. App. 1979), a libel action brought by a therapist, who specialized in "nude marathon" group therapy, against the author and publisher of a novel. The court held that a novel could be libelous if a reasonable reader could identify the plaintiff and if the statements about him were defamatory. Here all of the author's defamations were held actionable. Also, the publisher was held liable, but only for its acts which occurred after it received plaintiff's complaint, since plaintiff was a public figure and since the publisher did not know certain statements were false until then. The result of this distinction was that the publication of the paperback edition, but not of the hardback edition, constituted libel by the publisher.

In *Frosch v. Grosset & Dunlap, Inc.*, 4 Media L. Rptr. 2307 (N.Y. Sup. Ct. 1979), the executor of

Marilyn Monroe's estate brought an action against the publisher of Norman Mailer's book about the late actress. Here the court held that the right of publicity could not be used to prevent even a somewhat fictitious biographical work, since it enjoyed First Amendment protection to a far greater extent than such clearly commercial works as T-shirts and the like. The court noted that fictional embellishments might give rise to a privacy action, but that such right never survives its owner.

Two cases concerning written works involved contentions by the United States that "national security" issues entitled the government to judgment. In *United States v. Snepp*, 4 Media L. Rptr. 2313 (4th Cir. 1979), a former Central Intelligence Agency employee published a book about CIA activities, in apparent violation of an agreement that he would seek permission before so doing. No claim was made that he had divulged classified information. At trial the court enjoined further publication of the work and imposed a constructive trust on all the monies earned by defendant from the book. On appeal the injunction was approved, but the trust was dissolved and the case remanded in part so that defendant could seek a jury determination of damages. The court did not accept defendant's argument that the nondisclosure agreement violated the First Amendment. It held that the CIA had a right to review all material before publication but that it could not withhold permission to publish unclassified material.

From 1955 to 1973 the Central Intelligence Agency intercepted certain pieces of first class mail to and from the Soviet Union. In *Birnbaum v. United States*, 588 F.2d 319 (2d Cir. 1978), several plaintiffs sought damages for the opening and copying of their mail. At trial they were awarded \$1,000 each and the government was ordered to send them letters of apology. The trial court found that liability could be predicated on any of several alternative theories — privacy, common law copyright, or constitutional tort. The Second Circuit affirmed as to damages for the invasion of privacy and reversed as to the other grounds and as to the letter of apology. With respect to privacy, it held that the CIA had so far exceeded its statutory authority that its conduct was not within any of the exemptions from liability in the Federal Tort Claims Act. The common law copyright, however, was not infringed since there was no publication of the letters, and the Federal Tort Claims Act was held not to encompass constitutional torts. Finally,

no letter of apology could be required since only money damages could be had against the United States.

The titles of copyrightable works, although themselves outside the scope of copyright, continued to be protectible under the Lanham Act. A previous decision that a magazine could not be titled *Nova* against the wishes of the proprietors of an educational television series of the same name was affirmed summarily in *WGBH v. Penthouse International, Ltd.*, 4 Media L. Rptr. 2536 (2d Cir. 1979). In *Blake Publishing Corp. v. O'Quinn Studios, Inc.*, 202 U.S.P.Q. 848 (S.D.N.Y. 1979), the publisher of *Fantastic Films*, a magazine, succeeded in having another publisher enjoined from using the name *Fantastica* as the title of its new magazine because of the likelihood that the public would be confused about the source of the latter. The court held that, although plaintiff's title was "descriptive," it had sufficient recognition among purchasers in the relevant market to afford it protection.

An interesting title case arose out of the now common practice of releasing a paperback book contemporaneously with a movie based, more or less, on that book. In *Orion Pictures Co. v. Dell Publishing Co.*, 5 Media L. Rptr. 1390 (S.D.N.Y. 1979), a production company obtained the motion picture rights to a French novel, *E=MC², mon amour*, from which it prepared a screenplay and movie entitled *A Little Romance*. Defendant Dell thereafter acquired English translation paperback rights in the novel and planned to call its work *A Little Romance*. Orion and Dell could not agree upon terms of a proposed tie-in of the movie and the book. Dell then published its book as *A Little Romance* and promoted it with many implications of its relationship with the movie. Orion sought an injunction both against the use of the title and for the reacquisition and destruction of all copies of the book. The court granted the injunction as to further editions and promotional material because of the difference between the book and movie versions and the strong likelihood of public confusion about any relationship between the two.

Another Lanham Act case involved the content and promotion of a sexually explicit motion picture. In *Dallas Cowboy Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 4 Media L. Rptr. 2325 (S.D.N.Y. 1979), the similarity of a cheerleader's costume worn by the female lead in *Debbie Does Dallas* to that of plaintiff's cheerleaders and the

false statement in advertisements that she was a former employee of plaintiff's led to an injunction not only against the false advertising but also against the performance of the motion picture. Defendant argued that its star's uniform amounted to parody, and thus fair use. The court accepted the proposition that such defenses were available in Lanham Act lawsuits but held them not proved in this instance.

Gee v. CBS, Inc., Copyright L. Rep. (CCH) ¶25,066 (E.D. Pa. March 7, 1979), was a case in which the court was asked, on multiple grounds, to afford the estate of Bessie Smith various economic rights of which she had allegedly been deprived. The court dismissed all counts of the action but nonetheless published an exhaustive opinion recounting her career and the claims of her alleged adopted son and her widower's executor. Among the various charges were that the Civil Rights Act made all of her contracts void on the ground that they were unconscionable, since she had received only \$200 per song with no royalties; that various copyrights had been infringed; that property rights in her 78 rpm recordings were violated when CBS reissued them as long-playing records in the 1950s and 1970s; and that her rights of publicity were violated. The court expressed its admiration for Smith as an artist; however, in view of the extraordinary time between the alleged wrongs and the lawsuit, the absence of copyright registrations, the apparent absence of a real party in interest, and the presence of some evidence that her manager had not been devoid of business acumen, the court dismissed the claim.

Contracts for the publication of literary works gave rise to several cases decided in fiscal 1979. Perhaps the most interesting of these was *Edison v. Viva International*, 4 Media L. Rptr. 1821 (N.Y. Sup. Ct. 1978), in which an author's "moral rights" were enforced. Plaintiff had contracted to write a four-thousand-word article for defendant and did so. It was published in a form which plaintiff charged was materially altered to such an extent that it constituted breach of contract and libel. Defendant moved to dismiss, largely on the ground that the contract contemplated editorial revision. The court denied the motion, stating that permission to edit did not mean that a publisher had the unrestricted right to alter materially (and allegedly mutilate) an author's work and then also attribute it to him. The court was satisfied that plaintiff's right to preserve the integrity of his work and his

reputation survived that portion of the contract which permitted editing.

Two cases were decided in which authors prevailed in actions against their publishers. In *Frankel v. Stein and Day, Inc.*, 470 F. Supp. 209 (S.D.N.Y. 1979), a contract provided that the publisher would pay the author within thirty days of the sale of paperback rights, on pain of termination of the copyright transfer to the publisher. The publisher sold the paperback rights but paid the author nothing, based upon the author's alleged failure to deliver a publishable manuscript on a timely basis. The court ruled that the copyright had reverted to the author and that he was therefore entitled to damages not only for breach of the contract to pay for the paperback rights but also for the copyright infringement which occurred by the continued publication of the cloth edition after reversion. In *Random House, Inc. v. Gold*, 464 F. Supp. 1306 (S.D.N.Y. 1979), a publisher shared in the lesson recently learned by other entertainment entrepreneurs: long-term contracts for "stars" are binding even after the glow has faded. Defendant had written two successful children's books and had earned more than \$100,000 in royalties therefrom. His publisher then offered him

a contract to write four more books for an advance of \$150,000 against royalties, payable in ten annual installments. After four years and two books, plaintiff had advanced defendant \$60,000, even though these works had produced only \$9,300 in royalties. In accordance with the terms of the contract, plaintiff terminated. It also sought to recover the \$50,700 excess payment. The court held not only that it could not recover the excess, since the contract permitted the defendant to keep all advances for delivered manuscripts, but also that it owed defendant \$15,000 more, based on its acceptance of two of defendant's works.

The legal maxim that "an agreement to agree is not a contract" was honored in *Harcourt, Brace, Jovanovich, Inc. v. Farrar, Straus & Giroux, Inc.*, 4 Media L. Rptr. 2625 (N.Y. Sup. Ct. 1979). There plaintiff had arranged with a British publisher for the rights to a British author's next book "on terms to be mutually agreed upon." When defendant, a different publisher, was offered the American rights to that book, plaintiff sued defendant and the British publisher, but lost since there was neither a price nor a method for determining a price established in the agreement.

Respectfully submitted,

BARBARA RINGER
Register of Copyrights and
Assistant Librarian of Congress
for Copyright Services

International Copyright Relations of the United States as of September 30, 1979

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

Bilateral	Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.
BAC	Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.
UCC Geneva	Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955.
UCC Paris	Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974.
Phonogram	Party to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974.
Unclear	Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.
None	No copyright relations with the United States.

Afghanistan	Bangladesh	Burundi
None	UCC Geneva Aug. 5, 1975	Unclear
Albania	UCC Paris Aug 5, 1975	Cambodia
None	Barbados	(Kampuchea)
Algeria	Unclear	UCC Geneva Sept. 16, 1955
UCC Geneva Aug. 28, 1973	Belgium	Cameroon
UCC Paris July 10, 1974	Bilateral July 1, 1891	UCC Geneva May 1, 1973
Andorra	UCC Geneva Aug. 31, 1960	UCC Paris July 10, 1974
UCC Geneva Sept. 16, 1955	Benin	Canada
Angola	(formerly Dahomey)	Bilateral Jan. 1, 1924
Unclear	Unclear	UCC Geneva Aug. 10, 1962
Argentina	Bhutan	Cape Verde
Bilateral Aug. 23, 1934	None	Unclear
BAC April 19, 1950	Bolivia	Central African Empire
UCC Geneva Feb. 13, 1958	BAC May 15, 1914	Unclear
Phonogram June 30, 1973	Botswana	Chad
Australia	Unclear	Unclear
Bilateral Mar. 15, 1918	Brazil	Chile
UCC Geneva May 1, 1969	Bilateral Apr. 2, 1957	Bilateral May 25, 1896
UCC Paris Feb. 28, 1978	BAC Aug. 31, 1915	BAC June 14, 1955
Phonogram June 22, 1974	UCC Geneva Jan. 13, 1960	UCC Geneva Sept. 16, 1955
Austria	UCC Paris Dec. 11, 1975	Phonogram March 24, 1977
Bilateral Sept. 20, 1907	Phonogram Nov. 28, 1975	China
UCC Geneva July 2, 1957	Bulgaria	Bilateral Jan. 13, 1904
Bahamas, The	UCC Geneva June 7, 1975	Colombia
UCC Geneva July 10, 1973	UCC Paris June 7, 1975	BAC Dec. 23, 1936
UCC Paris Dec. 27, 1976	Burma	UCC Geneva June 18, 1976
Bahrain	Unclear	UCC Paris June 18, 1976
None		

- Comoros**
Unclear
- Congo**
Unclear
- Costa Rica¹**
Bilateral Oct. 19, 1899
BAC Nov. 30, 1916
UCC Geneva Sept. 16, 1955
- Cuba**
Bilateral Nov. 17, 1903
UCC Geneva June 18, 1957
- Cyprus**
Unclear
- Czechoslovakia**
Bilateral Mar. 1, 1927
UCC Geneva Jan. 6, 1960
- Denmark**
Bilateral May 8, 1893
UCC Geneva Feb. 9, 1962
Phonogram Mar. 24, 1977
UCC Paris July 11, 1979
- Djibouti**
Unclear
- Dominica**
Unclear
- Dominican Republic¹**
BAC Oct. 31, 1912
- Ecuador**
BAC Aug. 31, 1914
UCC Geneva June 5, 1957
Phonogram Sept. 14, 1974
- Egypt**
Phonogram April 23, 1978
For works other than sound recordings, none
- El Salvador**
Bilateral June 30, 1908, by virtue of Mexico City Convention, 1902
UCC Geneva March 29, 1979
UCC Paris March 29, 1979
Phonogram Feb. 9, 1979
- Equatorial Guinea**
Unclear
- Ethiopia**
None
- Fiji**
UCC Geneva Oct. 10, 1970
Phonogram Apr. 18, 1973
- Finland**
Bilateral Jan. 1, 1929
UCC Geneva Apr. 16, 1963
Phonogram Apr. 18, 1973
- France**
Bilateral July 1, 1891
UCC Geneva Jan. 14, 1956
UCC Paris July 10, 1974
Phonogram Apr. 18, 1973
- Gabon**
Unclear
- Gambia, The**
Unclear
- Germany**
Bilateral Apr. 15, 1892
UCC Geneva with Federal Republic of Germany Sept. 16, 1955
UCC Paris with Federal Republic of Germany July 10, 1974
Phonogram with Federal Republic of Germany May 18, 1974
UCC Geneva with German Democratic Republic Oct. 5, 1973
- Ghana**
UCC Geneva Aug. 22, 1962
- Greece**
Bilateral Mar. 1, 1932
UCC Geneva Aug. 24, 1963
- Grenada**
Unclear
- Guatemala¹**
BAC Mar. 28, 1913
UCC Geneva Oct. 28, 1974
Phonogram Feb. 1, 1977
- Guinea**
Unclear
- Guinea-Bissau**
Unclear
- Guyana**
Unclear
- Haiti**
BAC Nov. 27, 1919
UCC Geneva Sept. 16, 1955
- Honduras¹**
BAC Apr. 27, 1914
- Hungary**
Bilateral Oct. 16, 1912
UCC Geneva Jan. 23, 1971
UCC Paris July 10, 1974
Phonogram May 28, 1975
- Iceland**
UCC Geneva Dec. 18, 1956
- India**
Bilateral Aug. 15, 1947
UCC Geneva Jan. 21, 1958
Phonogram Feb. 12, 1975
- Indonesia**
Unclear
- Iran**
None
- Iraq**
None
- Ireland**
Bilateral Oct. 1, 1929
UCC Geneva Jan. 20, 1959
- Israel**
Bilateral May 15, 1948
UCC Geneva Sept. 16, 1955
Phonogram May 1, 1978
- Italy**
Bilateral Oct. 31, 1892
UCC Geneva Jan. 24, 1957
Phonogram Mar. 24, 1977
- Ivory Coast**
Unclear
- Jamaica**
None
- Japan²**
UCC Geneva Apr. 28, 1956
UCC Paris Oct. 21, 1977
Phonogram Oct. 14, 1978
- Jordan**
Unclear
- Kenya**
UCC Geneva Sept. 7, 1966
UCC Paris July 10, 1974
Phonogram April 21, 1976
- Kiribati**
(formerly Gilbert Islands)
Unclear
- Korea**
Unclear

Kuwait Unclear	Mongolia None	Philippines Bilateral Oct. 21, 1948 UCC status undetermined by Unesco. (Copyright Office considers that UCC relations do not exist.)
Laos UCC Geneva Sept. 16, 1955	Morocco UCC Geneva May 8, 1972 UCC Paris Jan. 28, 1976	Poland Bilateral Feb. 16, 1927 UCC Geneva Mar. 9, 1977 UCC Paris Mar. 9, 1977
Lebanon UCC Geneva Oct. 17, 1959	Mozambique Unclear	Portugal Bilateral July 20, 1893 UCC Geneva Dec. 25, 1956
Lesotho Unclear	Nauru Unclear	Qatar None
Liberia UCC Geneva July 27, 1956	Nepal None	Romania Bilateral May 14, 1928
Libya Unclear	Netherlands Bilateral Nov. 20, 1899 UCC Geneva June 22, 1967	Rwanda Unclear
Liechtenstein UCC Geneva Jan. 22, 1959	New Zealand Bilateral Dec. 1, 1916 UCC Geneva Sept. 11, 1964 Phonogram Aug. 13, 1976	Saint Lucia Unclear
Luxembourg Bilateral June 29, 1910 UCC Geneva Oct. 15, 1955 Phonogram Mar. 8, 1976	Nicaragua¹ BAC Dec. 15, 1913 UCC Geneva Aug. 16, 1961	San Marino None
Madagascar (Malagasy Republic) Unclear	Niger Unclear	Sao Tome and Principe Unclear
Malawi UCC Geneva Oct. 26, 1965	Nigeria UCC Geneva Feb. 14, 1962	Saudi Arabia None
Malaysia Unclear	Norway Bilateral July 1, 1905 UCC Geneva Jan. 23, 1963 UCC Paris Aug. 7, 1974 Phonogram Aug. 1, 1978	Senegal UCC Geneva July 9, 1974 UCC Paris July 10, 1974
Maldives Unclear	Oman None	Seychelles Unclear
Mali Unclear	Pakistan UCC Geneva Sept. 16, 1955	Sierra Leone None
Malta UCC Geneva Nov. 19, 1968	Panama BAC Nov. 25, 1913 UCC Geneva Oct. 17, 1962 Phonogram June 29, 1974	Singapore Unclear
Mauritania Unclear	Papua New Guinea Unclear	Solomon Islands Unclear
Mauritius UCC Geneva Mar. 12, 1968	Paraguay BAC Sept. 20, 1917 UCC Geneva Mar. 11, 1962 Phonogram Feb. 13, 1979	Somalia Unclear
Mexico Bilateral Feb. 27, 1896 BAC Apr. 24, 1964 UCC Geneva May 12, 1957 UCC Paris Oct. 31, 1975 Phonogram Dec. 21, 1973	Peru BAC April 30, 1920 UCC Geneva Oct. 16, 1963	South Africa Bilateral July 1, 1924
Monaco Bilateral Oct 15, 1962 UCC Geneva Sept. 16, 1955 UCC Paris Dec. 13, 1974 Phonogram Dec. 2, 1974		Soviet Union UCC Geneva May 27, 1973

Spain Bilateral July 10, 1895 UCC Geneva Sept. 16, 1955 UCC Paris July 10, 1974 Phonogram Aug. 24, 1974	Thailand Bilateral Sept. 1, 1921	Uruguay BAC Dec. 17, 1919
Sri Lanka Unclear	Togo Unclear	Vatican City (Holy See) UCC Geneva Oct. 5, 1955 Phonogram July 18, 1977
Sudan Unclear	Tonga None	Venezuela UCC Geneva Sept. 30, 1966
Surinam Unclear	Trinidad and Tobago Unclear	Vietnam Unclear
Swaziland Unclear	Tunisia UCC Geneva June 19, 1969 UCC Paris June 10, 1975	Western Samoa Unclear
Sweden Bilateral June 1, 1911 UCC Geneva July 1, 1961 UCC Paris July 10, 1974 Phonogram Apr. 18, 1973	Turkey None	Yemen (Aden) Unclear
Switzerland Bilateral July 1, 1891 UCC Geneva Mar. 30, 1956	Tuvalu Unclear	Yemen (San'a) None
Syria Unclear	Uganda Unclear	Yugoslavia UCC Geneva May 11, 1966 UCC Paris July 10, 1974
Tanzania Unclear	United Arab Emirates None	Zaire Phonogram Nov. 29, 1977 For works other than sound recordings, unclear
	United Kingdom Bilateral July 1, 1891 UCC Geneva Sept. 27, 1957 UCC Paris July 10, 1974 Phonogram Apr. 18, 1973	Zambia UCC Geneva June 1, 1965
	Upper Volta Unclear	

¹ Effective June 30, 1908, this country became a party to the 1902 Mexico City Convention, to which the United States also became a party effective the same date. As regards copyright relations with the United States, this convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

² Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the Universal Copyright Convention, Geneva, 1952, effective April 28, 1956.

Section 104 of the copyright law (title 17 of the United States Code) is reprinted below:

§ 104. Subject matter of copyright: National origin

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

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

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, dom-

iciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person, wherever that person may be domiciled; or

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

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

(4) the work comes within the scope of a Presidential proclamation. Whenever the Pres-

ident finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may

by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

Number of Registrations by Subject Matter of Copyright, Fiscal Year 1979

Category of material	Published	Unpublished	Total
Nondramatic literary works			
Monographs	103,938	18,878	122,816
Serials	109,648		109,648
Machine-readable works	759	420	1,179
Total	214,345	19,298	233,643
Works of the performing arts			
Musical works	24,245	84,013	108,258
Dramatic works, including any accompanying music	813	6,262	7,075
Choreography and pantomimes	14	19	33
Motion pictures and filmstrips	4,828	910	5,728
Total	29,900	91,204	121,104
Works of the visual arts			
Two-dimensional works of fine and graphic art, including prints and art reproductions	7,941	4,716	12,657
Sculptural works	1,736	665	2,401
Technical drawings and models	1,057	491	1,548
Photographs	553	652	1,205
Cartographic works	1,633	35	1,668
Commercial prints and labels	2,481	86	2,567
Works of applied art	11,492	1,720	13,212
Total	26,893	8,365	35,258
Sound Recordings	7,873	2,800	10,673
Multimedia works	1,259	66	1,325
Grand total	280,270	121,733	402,003
Renewals			27,001
Total, all registrations			429,004

Disposition of Copyright Deposits, Fiscal Year 1979

Category of material	Received for copyright registration and added to copyright collection	Received for copyright registration and forwarded to other departments of the Library	Acquired or deposited without copyright registration	Total
Nondramatic literary works				
Monographs, including machine-readable works . . .	104,210	¹ 126,132	6,319	236,661
Serials		223,236	71,882	295,118
Total	104,210	349,368	78,201	531,779
Works of the performing arts				
Musical works; dramatic works, including any accompanying music; choreography and pantomimes	116,563	24,955	515	142,033
Motion pictures and filmstrips	910	² 4,828	93	5,831
Total	117,473	29,783	608	147,864
Works of the visual arts				
Two-dimensional works of fine and graphic art, including prints and art reproductions; sculptural works; technical drawings and models; photographs; commercial prints and labels; works of applied art	51,443	7,461	27	58,931
Cartographic works	35	1,633	111	1,779
Total	51,478	9,094	138	60,710
Sound recordings	10,673	7,873	369	18,915
Total, all deposits ³	283,834	396,118	⁴ 79,316	759,268

¹ Of this total, 41,770 copies were transferred to the Exchange and Gift Division for use in its programs.

² Includes 2,248 motion pictures returned to remitter under the Motion Picture Agreement.

³ Extra copies received with deposit and gift copies are included in these figures. Totals include transfer of multimedia materials in any category.

⁴ Of this total, 3,063 copies were transferred to the Exchange and Gift Division for use in its programs.

Summary of Copyright Business

Balance on hand October 1, 1978		\$901,558.23
Gross receipts October 1, 1978 to September 30, 1979		4,934,173.29
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Total to be accounted for		\$5,835,731.52
		<hr/>
Refunded	\$192,402.33	
Checks returned unpaid	15,271.80	
Transferred as earned fees	4,901,189.78	
Deposited as undeliverable checks	4,995.50	
Balances carried over October 1, 1979:		
Deposit accounts balance	\$789,359.12	
Unfinished business balance	891,373.97	
Card service	1,451.85	
Total		\$6,796,044.35
Less liability on advanced transfers		-960,312.83
		<hr/>
Balance		\$5,835,731.52
		<hr/>

	Registration	Fees earned
Published works at \$6.00	612	\$3,672.00
Unpublished works at \$6.00	198	1,188.00
Renewals at \$4.00	109	436.00
Published works at \$10.00	279,658	2,796,580.00
Unpublished works at \$10.00	121,535	1,215,350.00
Renewals at \$6.00	26,892	161,352.00
		<hr/>
Total registrations for fee	429,004	\$4,178,578.00
Fees for recording documents		\$142,558.00
Fees for certified documents		23,302.00
Fees for searches made		107,880.00
Fees for import statements		1,157.00
Fees for deposit receipts		822.00
Fees for CATV documents		2,156.00
Total fees exclusive of registrations		\$277,875.00
		<hr/>
Total fees earned		\$4,456,453.00

*Financial Statement of Royalty Fees for Compulsory Licenses for Secondary
Transmissions by Cable Systems for Calendar Year 1978*

Royalty fees deposited	\$12,668,709.89	
Interest income on investments paid	426,153.13	
		\$13,094,863.02
Less: Operating costs	215,403.72	
Refunds issued	67,969.40	
Investments purchased at cost	12,378,173.24	
		\$12,661,546.36
Balance as of September 30, 1979		\$433,316.66
Balance as of September 30, 1979	\$433,316.66	
Face Amount of securities purchased	12,690,000.00	
Cable royalty fees for calendar year 1978 available for distribution by the Copyright Royalty Tribunal		\$13,123,316.66*

*The Copyright Royalty Tribunal declared that an official controversy existed on September 6, 1979, and the royalty fees were not distributed. These royalty fees were reinvested August 31, 1979, for later distribution by the Copyright Royalty Tribunal.

*Financial Statement of Royalty Fees for Compulsory Licenses for
Coin-Operated Players for Calendar Year 1979*

Royalty fees deposited	\$1,037,281.06	
Interest income on investments	28,149.73	
		\$1,065,430.79
Less: Operating costs	\$167,722.98	
Refunds issued	2,454.00	
Investments purchased at cost	885,226.78	
		\$1,055,403.76
Balance as of September 30, 1979		\$10,027.03
Balance as of September 30, 1979	\$10,027.03	
Face amount of securities purchased	875,000.00	
Estimated interest income due September 30, 1980	113,203.14	
Jukebox royalty fees for calendar year 1979 available for distribution by the Copyright Royalty Tribunal on October 1, 1980		\$998,230.17