AN OUTLINE OF COPYRIGHT LAW

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INTRODUCTION BY

THORVALD SOLBERG

Register of Copyrights

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PREFACE

This book has grown out of a course of lectures given during several recent years in the School of Diplomacy, Jurisprudence and Citizenship of the American University. Some of the students who took the course were graduates in law, others had no legal education, and the endeavor was made to keep the substance of the lectures sufficiently complete and exact to meet the needs of the former class, while adapting the form of presentation to the latter. The work has been considerably expanded for the purpose of publication, especially in the parts relating to motion pictures, and chapters have been added on authors' contracts and on the errors of procedure most apt to occur in obtaining copyright.

The book is thus a combination of commentary, essay and manual. It is intended to be useful, first of all, to authors, particularly to inexperienced authors, next, to editors, publishers, entertainers and other persons engaged in the exploitation of intellectual property, and finally to the many practicing lawyers who do not specialize in copyright law, but have an occasional question on the subject. Those who desire a more extended treatment of any topic than that permitted

by the limits of this volume may consult the acute and comprehensive treatise of Mr. Arthur Weil, the excellent article in "Corpus Juris" by Mr. William B. Hale, or Mr. R. R. Bowker's "Copyright: Its History and Its Law," which, though written primarily from the book publisher's viewpoint, is well suited to the general reader and admirably equipped with indexes and reference tables. Mention should also be made of the classic treatise by Drone which, in spite of its age, is still worthy of study for its sound philosophical basis. All these works have been of much service in the preparation of this book, a service for which the author's best acknowledgments are tendered.

The series of bulletins and circulars issued by the Copyright Office has also furnished indispensable information. The material in the appendix is reprinted from these publications.

Thanks are due my friend and colleague in the Copyright Office, Mr. Herbert A. Howell, who has read much of the book in proof and has helped me with valuable suggestions.

It is now sixteen years since the present copyright statute, the Act of March 4, 1909, became law. These years, eventful in so many respects, have witnessed developments in the field of literary property which point to the desirability of very considerable changes in the law. The art of producing and exhibiting motion pictures has been greatly improved. Radio broadcasting has suddenly assumed large proportions. Periodi-

cal literature has increased in volume and variety. The World War has affected the international relations of the United States in the sphere of intellectual and artistic production, as it has in every other way. It is necessary that these new conditions should be met, by the amendment or revision of the copyright statutes.

The law should not, and probably will not, be changed without a good deal of preliminary discussion. Such discussion, lasting for several years, paved the way for the enactment of the present statute, as had also happened in the case of its predecessor, the "International Copyright Act" of 1891. The same various conflicting interests will be involved in the next revision and although new factors have been added to complicate the problem, the alignment of forces will remain much the same. On the one hand are the creators of intellectual property — authors, artists, composers, dramatists—and on the other those who exploit such property—publishers, producers and distributors of plays and motion pictures, phonograph manufacturers and radio broadcasters. Standing between the lines, with interests more or less divided between the two parties, are the general public. If a new law is to be enacted, it must be fair to all concerned. Those who advocate change, as well as those who oppose it, will do well to examine and understand the law as it now is and decide what provisions are good and should be retained, what are obsolete and should be discarded. It is the author's hope that this book may serve as a

convenient means to such examination and understanding.

The progress of copyright law does not take place by revolutions, but by successive stages. It resembles the growth of a city in which, as time goes on, some parts are torn down and others are devoted to new uses, while the plan remains the same and the great historic structures are preserved. When changes are made in the law they will continue the lines of development reaching back through two centuries to the Statute of Anne and marked by successive legislative enactments and leading judicial decisions into which the principles of copyright law have permanently crystallized. The author believes that the reader of this volume will get a fair notion of the process by which the law has grown and will find, when amendments take place in the future, that the law still corresponds in all fundamental points, with the "Outline" here presented.

The changes in the law which now appear most desirable and probable are six: (1) the separation of the various rights included in copyright, so that each can be dealt with singly; (2) the abolishment of the arbitrary distinction in the treatment of published and unpublished works; (3) the abrogation of "formalities"—notice, registration and deposit of copies—as conditions of copyright protection; (4) the substitution of a single, continuous term of protection, based on the life of the author, in place of the present system of first term and renewal term; (5) abrogation of com-

pulsory manufacture in the United States for books in the English language, and (6) the entry of the United States into the International Copyright Union. All these changes are in the direction of simplification of the law and tend toward the assimilation of literary property to other kinds of property.

Copyright was originally confined to books and even after it was extended to other kinds of works, the rights of printing and publication were long the most valuable rights which it included. But the time is now rapidly approaching, if it has not already arrived, when rights connected with publication must take a second place and other methods of bringing the creations of the mind before the public will become of paramount value. The motion picture daily presents to millions of people the literary and artistic expression of authors who could formerly reach their audience only through the medium of the printed page. Radio broadcasting plays an increasingly important part in the dissemination of speech and music, while the phonograph and other mechanical instruments compete, in their field, on equal terms with the output of the printing press. The rights of authors and composers which are exploited by the motion picture, by radio and by the phonograph are often of greater pecuniary value than the right to make and distribute "copies," strictly so called. It is therefore illogical and unjust that the right of publication should carry with it, as it does under the present law, the rights of reproduction and representation by other

methods. The author should not be obliged to sell all his rights together. He should be placed in a position to parcel them out and dispose of them separately.

The distinction between common law protection before publication and statutory copyright, which is obtainable for the more important kinds of literary works only after publication, is one which loses its meaning and value when such works can be transmitted to the public without ever being published at all, in the traditional sense of circulation in copies. There is no reason for arbitrarily dividing rights before publication from rights after publication, and this arbitrary division, which exists under the present law, is a constant cause of confusion in the interpretation and application of the law and of contracts for the disposal of literary property. Copyright should be a single body of rights, interpreted by the same rules and enforceable by the same methods from the time when its subject comes into existence until the expiration of the period of protection.

No one can examine the decisions of the courts in copyright cases without being struck by the frequency with which the requirement of a specific form of notice on copies of the work leads to technical interpretations of the law and provides infringers with convenient loopholes of escape. It is not clear that the notice serves any useful purpose of protection. The United States is the only country where it is still obligatory and its retention in our law betrays a still imperfect sense of

literary property. The same objections are in great degree applicable to the requirement of compulsory registration. Something can be said in favor of optional registration, as furnishing a convenient record of the ownership of literary property, especially if the suggestion of divisible copyright should be adopted, and it might be desirable to encourage recording by providing certain summary remedies for infringement, available only when registration has taken place. But to make the very existence of copyright, or of any remedy whatever, depend on recording, results in losses which outweigh all the advantages. And when the double requirement of both notice and registration exists, as at present, the result is confusion worse confounded, because of the inevitable occurrence of inconsistencies between notice and record.

The objections to obligatory registration apply with peculiar force in the case of renewal copyrights, which are absolutely dependent on registration within a certain limited time, by specific classes of persons who are often difficult to locate and identify. The argument for a renewal term has been that it furnishes a means for the author to obtain a share in the increased value of his work after the lapse of years, and provides a sort of insurance for his family. There are, however, other methods by which these objects can be obtained, if it is desirable to make statutory provision for them. The present method too often results in the complete loss of copyright at the end of the first term. Nearly all other

countries have provided for a single, continuous term, and the United States should follow their example.

Compulsory manufacture in the United States, formerly required for all books, was confined by the Act of 1909 to books and periodicals in the English language. It is a measure supposed to benefit American printers and bookbinders. Its effect is to compel the double manufacture on either side of the water of books of English origin, if any considerable demand for such books exists in the United States. Thus an additional cost is added to such books, which is pure waste from the economic point of view, and which comes out of the pocket of the book-buying public. This is doubtless in accordance with the theory of protection to home industries, but if that theory is to be followed, it should be done by placing an additional duty on the English book, instead of by a restriction on the property rights of authors. The manufacturing provisions of our copyright law have already led to reprisals in the new Canadian copyright law and there is much room for doubt as to the reality of the benefits they confer even upon the class of workmen at whose behest they were placed in the law.

A further reason for doing away with the manufacturing provisions, as well as with compulsory formalities for obtaining copyright, is that such reforms are necessary in order to enable the United States to join the International Copyright Union. As to the desirability of our joining the Union there is no longer

much difference of opinion. There have always been strong reasons of justice for such action and to these have now been added cogent motives of self-interest. It might have been maintained a few years ago that the United States was the gainer by remaining outside of the Union, because our free, if honest, use of the literary property of European authors more than made up for what our own authors lost by failure to get protection in Europe, where there was not much demand for their works. But since the War the situation has been rapidly changing. American motion pictures dominate foreign markets. American popular music is played in theatres, dance halls and salons throughout the world. The political and economic power and prestige with which the United States emerged from the War is furnishing a new application of the adage that "Nothing succeeds like success," and American ideas, American methods, are rapidly gaining favor in Europe, as shown by the growing demand for the publications in which they are expressed and set forth. The literary property of American authors should be adequately protected in Europe through the automatic copyright provided by the International Copyright Convention. And it has always been demonstrable that adequate protection for the literary property of European authors in this country would amply compensate in cultural return for the losses which it might temporarily cause to certain industries which have been built up on the free use of foreign works.

Such is the practical side of the question. There is another side which will seem to many persons equally important. It is unworthy the dignity of a great nation to remain outside the republic of letters which is the International Copyright Union, and whatever promotes intellectual solidarity, mutual understanding and the free exchange of the products of the mind between nations also promotes peace and the sense of human fellowship on which all social welfare ultimately rests.

Washington, D. C.
April 10, 1925.

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INTRODUCTION

It is believed that Mr. De Wolf's book will fill a need. The literature on copyright is very large, but so far as the United States is concerned, there is still lacking a convenient manual of this subject. The author explains in his preface that his book is intended to be useful, first, to authors, particularly inexperienced authors; second, to editors, publishers, and others engaged in the exploitation of literary property, and third, to practicing lawyers who have only an occasional copyright case to deal with.

The book accentuates the one particular advance in relation to copyright which it is generally admitted should now be proposed and urged, namely, the entry of the United States into the International Copyright Union. Our copyright legislation dates back to January, 1783, when the State of Connecticut enacted the first copyright law. The first federal copyright act dates from May, 1790. But it was one hundred and one years later before there was secured from Congress legislation to extend the protection of copyright in the United States to the works of foreign authors, namely the so-called international copyright law of March 3, 1891. Meantime the countries of Europe had evolved the International Copyright Convention of 1887, pro-

viding for the establishment of the International Copyright Union, which now includes twenty-eight countries of the world.

The United States has dragged behind these thirty-seven years, but the time seems now to have arrived when there is a general consensus of opinion that we should join this Union and secure for our authors, artists and composers the benefit of absolute and automatic copyright protection in all the countries now within this practical and up-to-date association of nations.

Our entry into the Copyright Union has been prevented by reason of the provisions in our existing copyright laws which are adverse to the articles of convention, which declare that copyright protection shall not be dependent upon compliance with any conditions or formalities. Our copyright statute requires not only American manufacture, but notice of copyright, deposit of copies, and the registration of a claim of copyright in the work. Chief among the changes in our laws necessary to enable the United States to enter the International Copyright Union is the abrogation of the much discussed typesetting clauses. That these must be abrogated to permit us to enter the Union is now well understood. That they should be eliminated in order also to bring our copyright laws to a parity with those of the other countries of the world the author concedes, and he points out that these manufacturing provisions are an excrescence upon the law, not in accordance with the

principles upon which copyright is based. They were included in our legislation at the instance of the printing trades upon the plea of the latter that they could justly claim the privilege of the manufacture of the work in the United States in exchange for the protection accorded the work in the United States. Whether this much contended for requirement has been of substantial benefit to our printing trades is not by any means clear. In 1901—ten years after the Act of 1891 put this burden on copyright—a report was made (in compliance with a resolution of the United States Senate of January 23, 1900), by Hon. Carroll D. Wright, then Commissioner of Labor, on the effect of the International Copyright Law in the United States. This report failed to reveal any consensus of opinion that ten years of operation under the typesetting clause of the Act of March 3, 1891, had effected any particular beneficial result. It would be interesting to set on foot another investigation at the present time along similar lines. If no more definite results could be demonstrated as the outcome of such an investigation than was the case in 1901, it would seem that the burden of proof should be placed upon the interests urging the retention of this requirement of American manufacture to show that it has resulted in any benefit commensurate with the burden it imposes upon the consumer.

As Mr. De Wolf says: "Its effect is to compel the double manufacture on either side of the water of books of English origin, if any considerable demand for such

books exists in the United States. Thus an additional cost is added to such books, which is pure waste from the economic point of view, and which comes out of the pocket of the book-buying public. This is doubtless in accordance with the theory of protection to home industries, but if that theory is to be followed, it should be done by placing an additional duty on the English book, instead of by a restriction on the property of authors."

Mr. De Wolf points out that the sixteen years which have passed since the Act of March 4, 1909, was put into effect, have witnessed developments in the field of literary property which point to the desirability of very considerable changes in our present copyright laws. Motion picture production and radio broadcasting have assumed large proportions, and in other directions our literary and artistic production has increased in volume and variety. The World War, too, has affected the international relations of the United States in the sphere of intellectual and artistic production. It is necessary that these new conditions should be met by proper amendment and revision of the copyright statutes.

Changes which now appear most desirable as indicated in Mr. De Wolf's book are: (1) the abrogation of such "formalities" as notice of copyright, deposit of copies and registration of claim of copyright; (2) abolishment of the arbitrary distinction in the treatment of published and unpublished works; (3) the separation of the various rights included in copyright, so that each

can be dealt with singly; (4) the substitution of a single, continuous term of copyright protection, based on the life of the author, in place of the present system of first term and a renewal term.

The first of these abrogations, that of the formalities of notice, deposit and registration, is also required by the terms of the International Copyright Convention. It is moreover dictated by a reasonable regard for the rights of the author of the work to be protected. As Mr. De Wolf pertinently says:

"No one can examine the decisions of the courts in copyright cases without being struck by the frequency with which the requirement of a specific form of notice on copies of the work leads to technical interpretations of the law and provides infringers with convenient loop-holes of escape. It is not clear that notice serves any useful purpose of protection. The United States is the only country where it is still obligatory and its retention in our law betrays a still imperfect sense of literary property. The same objections are in great degree applicable to the requirement of compulsory registration. Something can be said in favor of optional registration, as furnishing a convenient record of the ownership of literary property, especially if the suggestion of divisible copyright should be adopted, and it might be desirable to encourage recording by providing certain summary remedies for infringement, available only when registration has taken place. But to make the very existence of copyright, or of any remedy whatever,

depend on recording, results in losses which outweigh all the advantages. And when the double requirement of both notice and registration exists, as at present, the result is confusion worse confounded, because of the inevitable occurrence of inconsistencies between notice and record."

Mr. De Wolf's book is timely. In its pages will be found an intelligent presentation of the present-day copyright questions which have been considered in the drafting of the pending copyright bill (H. R. 11258). It affords an opportunity for comparison and the intelligent consideration of the proposals of that measure, and should prove an aid in determining many disputed questions.

THORVALD SOLBERG.

June, 1925.

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CHAPTER I

The History of Copyright

The invention of printing — Early printers' monopolies — The Stationers' Company of London — The first copyright law, the Statute of 8 Anne — Donaldson v. *Becket — The Constitution of the United States — Wheaton* v. *Peters — Copyright legislation in the United States down to the Act of March 4, 1909.*

Copyright law is the child of the printing press. Authors and artists have existed since the beginning of history, but for any general legal recognition of their right to the fruits of their labor, the creators of intellectual works had to wait until the invention of printing made possible the quantity production of books. In fact they had to wait two and a half centuries longer. Printing from movable types began in 1451 and the first copyright law, the Statute of 8 Anne, was not enacted until 1710. The law follows business, but often lags very far behind it.

The earliest copyrights were obtained by way of special grant, or privilege, to the publisher-printers of the fifteenth and sixteenth centuries. The Republic of

Venice, where the art of printing rose almost instantly to a flourishing condition, sharing in the beauty and distinction which the gifted Venetians imparted to everything they made, granted to John of Speyer, in 1469, the sole right of printing the letters of Cicero and of Pliny, for a period of five years. This is the earliest "copyright" of which we know. Other Italian States granted like privileges, as did the free cities of Germany. In England, where Caxton had set up the first printing press in 1474, we find no account of any special privilege of printing until 1518, when Richard Pynson brought out a book, the title-page of which stated that it was protected under a grant of privilege from the King, against reprinting within the kingdom or importation from without, for a period of two years.

Royal grants of monopoly to print certain works continued to be made in England for a century or more. Queen Elizabeth was particularly fond of thus enriching her favorites at no expense to herself. The books printed under these monopolies were, at first, not original works, but reprints of the classics, translations and the like. With the growing power of Parliament and the dislike of monopolies generally, such royal grants became less frequent until they finally came to be restricted to books of which the King claimed control, by virtue of his offices as head of the State and of the Church.

In all these grants of monopolies of printing we find no recognition of authorship as creating a property

right. Sometimes they were given as a reward of meritorious enterprise to the printer, but oftener as a cheap way of benefiting some courtier or dependent, who was neither printer nor author and who farmed out the grant to somebody else.

The first effect of printing, then, which led gradually up to copyright, was the possibility which the invention offered to princes and governments, of enriching favored individuals. A second effect, which operated even more strongly to the same end, was the necessity for regulation and control of the press in governmental interest. The rising tide of printed matter, accompanying the growth of free speculation and criticism, alarmed the absolutist princes and prelates of the sixteenth century and they sought to check it, in so far as it propagated doctrines contrary to what they conceived as essential to the existence of the State or the Church, of which they regarded themselves as the embodiments or exponents. Hence a series of laws to regulate the press, the first of which, in England, was included in the charter granted to the guild of printers called the Stationers' Company in 1556, by Queen Mary. This act recites the printing of seditious and heretical books and grants to the newly chartered Company the right to seize and burn all prohibited books, while at the same time it forbids any person not a member of the Company from printing any book at all. Thus the Stationers' Company was given a monopoly of all printing in England. The Court of Star Chamber, in 1566, forbade

any person to print anything against the force and meaning of any ordinance in any of the statutes or laws of the realm, and again, in 1637, the same body issued a decree, more stringent than any which had preceded it, for the suppression of libellous, seditious and mutinous books, and ordered that thereafter every book should be licensed and entered in the register of the Stationers' Company. After the abolition of the Court of Star Chamber in 1640, Parliament enacted laws substantially repeating the provisions of the Star Chamber decrees. The latest of these acts was that of 1662, entitled "An act for preventing the frequent abuses in printing seditious, treasonable and unlicensed books and pamphlets, and for regulation of printing and printing presses." The act, like most of its predecessors, provided that all books should be entered in the register of the Stationers' Company and that nobody should print any book so entered without the consent of the owner. This act, after several renewals, finally expired in 1694.

All these decrees, ordinances and acts were aimed primarily at the suppression of such works as the party in power, whether Catholic or Protestant, royalist or parliamentary, thought injurious to its interests. But incidentally they all recognized the custom of entry in the register of the Stationers' Company as an indication of the ownership of books and they all entrusted the Company with large powers of enforcement. There can be no doubt that members of the Stationers' Com-

pany had a considerable hand in the making of these laws and that they regarded them as made as much for the protection of their property as for the punishment of those who spread destructive opinions. Here again, however, there is no question of the author. He is never once mentioned as having an interest to be protected. Ownership of a "copy," as copyright was then called, was evidenced only by entry in the register at Stationers' Hall. Such entries could only be made by members of the Stationers' Company. The laws protected the Company and its members in their monopoly of printing and publishing in England. They did not protect the author himself.

At the time when the last of the royal printers' licensing acts went out of existence in 1694 the calling of authorship had begun to be respectable. The writing of books had ceased to be merely the accomplishment of aristocrats or the function of sycophants. Dryden, Swift, Prior, Gay. Pope, Addison and Steele did not depend entirely upon their writings for their livelihood, but they enjoyed a great reputation as authors and some of them received considerable pecuniary rewards. Authors became class conscious. They met in each other's homes, or at the famous coffee houses and discussed matters of common interest. Some of them were members of the government, where they had gained places by their literary talents. So it came about that when the Stationers' Company petitioned Parliament for a renewal of the licensing act, or for some other

measure which would protect them against the independent printers, who were "stealing" their "copies," the authors themselves took an interest in the matter. What the Stationers' Company wanted was, first, a definite statutory penalty against piracy, such as had been provided through the licensing acts by way of punishment, not so much for taking another's property as for not submitting to scrutiny by legal authority the books to be printed, and, second, the recognition of the ancient custom of registration in the Company's books and by its members. They had no particular idea of setting up a property right in authors. But the ultimate results of the law which they obtained were quite different from what they had expected.

This law, the celebrated Statute of Anne (cited as 8 Anne, chapter 19) and entitled "An act for the encouragement of learning" was passed in 1710. It is said to have been originally drafted by Dean Swift. It recited that, whereas lately booksellers and others had made a practice of reprinting books without the consent of their authors or proprietors, therefore such authors, or their assigns, should have the sole liberty of printing such books for a limited time—twenty-one years in the case of books already in existence, and fourteen years with a possible renewal for a second fourteen years in the case of new books. The penalties for violation of the act were forfeiture of the unauthorized copies and a fine of a penny a sheet. Finally, no book was to be entitled to protection unless its title had been duly entered in the

register book of the Stationers' Company. It was not required, however, that the entry should be made in the name of a member of the Company, consequently entry in the name of the author became possible and was prima facie proof of ownership. Nine copies of the book had to be delivered to the Stationers' Company for various university and other libraries.

In the Statute of Anne we have the first law ever enacted for the protection of literary property. It is the parent of all copyright legislation and contains two out of three of the requirements for copyright protection which the law of the United States still includes—registration and the deposit of copies. The third requirement—that of a notice printed in the book itself—came later.

The next chapter in the history of copyright law deals with the efforts of the booksellers and printers to avoid the effect of the statute which they had themselves been so urgently anxious to obtain. Whether or not it occurred to them, soon after the enactment of the Statute of Anne, that the limitation of the term of protection had changed a permanent property right into a temporary one, the fact is that it was not for fifty years that any case came into court in which the statutory remedies were invoked. In the meantime, however, a number of applications were made to the High Court of Chancery for injunctions to restrain the unauthorized printing of "copies" alleged to belong to the applicants, and in all these cases the books had been published so

long before that the statutory term of protection had expired. The Court seems to have had little hesitation in granting the injunctions and this fact was largely responsible for the theory, which soon made its appearance, that there had always been, at common law, a right of perpetual copyright, and that the Statute of Anne had not taken that right away.

This question came up for decision in 1760, in the case of Tonson *v.* Collins, relating to the right of publication of the famous *Spectator*, but after learned argument on both sides the case was found to be a collusive one and was dismissed. It seems, however, that Lord Mansfield, before whom the arguments were heard, was in favor of the contention that a property in authorship had existed at common law. Blackstone, the author of the Commentaries, was counsel for the plaintiff, and argued in favor of this view, as he did in the later and more famous case of Millar *v.* Taylor, brought in 1766 and decided in 1769 by the Court of King's Bench. Millar was a member of the Stationers' Company and the publisher of Dr. Johnson's Dictionary. In 1729 he had become the owner of the "copy" of James Thomson's poem, "The Seasons," a long and laborious work in Spenserian metre, which was a best seller in the eighteenth century. Taylor, an outsider, reprinted the work and began to sell it in 1763. Millar of course could not base his claim on the Statute of Anne, because he statutory term of protection had expired, and he frankly claimed a perpetual and absolute ownership of

this literary property under the common law. The questions presented for the decision of the four judges were two: (1) Whether the copyright of a book belonged to an author by common law, and (2) whether such common law right, if any, was taken away by the Statute of Anne. Three out of the four judges, headed by Lord Mansfield, decided that there was an original common law right and that it had not been abrogated by the statute. Lord Mansfield's opinion, which will be found in full in volume 4 of Burrows' Reports, at page 2303, and is quoted from briefly in Augustine Birrell's agreeable little work, "Copyright in Books," while referring for support to the cases in Chancery in which injunctions had been granted, was based primarily upon that sense of the justness and fitness of things which was the stronghold of the believers in "natural law." The author's undoubted right to control his unpublished manuscript, Lord Mansfield thought, should be continued after publication. It was agreeable to natural principles and moral justness that authors should be allowed to reap the pecuniary profits of their own ingenuity and labor, which they could not do unless permitted to retain ownership of their works after they had been put in print. They could reap no pecuniary profit if at the next moment after their works came out, they might be pirated upon worse paper, in worse print, and in a cheaper volume. As to the Statute of Anne, under which protection had actually existed for a term of twenty-eight years, his lordship brushed it aside with

the remark that "We are considering the common law on principles before and independent of that Act."

Mansfield's arguments are as cogent today as they were when he made them and there are still many persons who agree with him as to the inherent right and justice of allowing authors the same perpetual property rights as belong to the producers of other kinds of property. But the growth of law is shaped by influences more powerful than those of abstract logic, and perpetual copyright, which may be said to have existed in England for a few years, as a result of the decision in Millar *v.* Taylor, was done away with, once for all, by the decision of the highest tribunal in England, the House of Lords, in the case of Donaldson *v.* Becket, in 1774.

The successful plaintiff in Millar *v.* Taylor sold his copyright in Thomson's "Seasons" to Becket, and it was again pirated by Donaldson, a Scotch bookseller. Becket immediately secured an injunction against Donaldson and the latter appealed to the House of Lords. It will be remembered that when the House of Lords sat as a court, it first listened to arguments by counsel on either side, then summoned the Judges of the Courts of Kings Bench and Exchequer and propounded questions to them as to the law governing the case. Upon the basis of their answers, the House of Lords rendered its decision in the case.

The total number of the judges who answered the questions in the case of Donaldson *v.* Becket was eleven

and the number of questions put to them was five, as follows:

First, Whether at common law the author of any book or literary composition had the sole right of first printing and publishing the same for sale and might bring an action against any person who printed, published and sold the same without his consent? Ayes, 10. Noes, 1.

Second, If the author had such right originally, did the law take it away on his printing and publishing such book or literary composition; and might any person afterwards reprint and sell for his own benefit such book or literary composition against the will of the author? Ayes, 4. Noes, 7.

Third, If such action would have lain at common law, is it taken away by the Statute of 8 Anne; and is an author by the said statute precluded from every remedy, except on the foundation of said statute, and on the terms and conditions prescribed thereby? Ayes, 6. Noes, 5.

Fourth, Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity by the common law? Ayes, 7. Noes, 4.

Fifth, Whether this right is in any way impeached, restrained, or taken away by the Statute of 8 Anne? Ayes, 6. Noes, 5.

Stated more briefly, what the judges held was that an author had in perpetuity the right to control his

unpublished work, but that, as to published works, this right had been taken away by the Statute of Anne, after the enactment of which the protection of the statute, for a maximum of twenty-eight years, was all that could be had for a published work. The House of Lords accordingly decided in favor of Donaldson. The decision struck consternation into the Stationers' Company and the booksellers tried to get a new law passed, giving them perpetual copyright, but failed.

The decision in Donaldson *v.* Becket has ever since been followed in the courts of England and America. It established finally both the doctrine of full property in an unpublished work, and the destruction of that property by publication, except when copyright is secured by compliance with statutory requirements at or before the time when the work is published. Henceforth we find the law of copyright centering and growing around the question: What is publication? Has it, or has it not, taken place in the case under consideration? At the particular point of time when a work is published, it passes out of the protection of the common law into that of statutory copyright, enduring only for a limited time, or else it at once becomes public property.

When Donaldson *v.* Becket was decided, the American Colonies were about to begin their struggle for independent existence. Among their earliest legislative acts, after their independence was secured, were the copyright laws which were passed by all of the thirteen original colonies except Delaware. One who desires to

revel in the noblest sentiments, expressed in the loftiest language, should read the preambles of these acts, which are printed in Bulletin No. 3 of the Copyright Office at Washington. They all announce the double purpose, to promote the public welfare by encouraging the spread of knowledge, and to protect authors in their property, but the first named purpose seems to have been uppermost in the minds of the legislators. So it was also, one may believe, when the makers of the Constitution provided that the Congress should have power "To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." [*Article I, Section 8.*] It is by virtue of, and with the restrictions expressed in, this provision of the Constitution that the patent and copyright legislation of the United States exists, hence its phraseology ought always to be carefully borne in mind when any copyright statute is being studied or applied.

In the first place, one may observe the purpose of the constitutional provision—"To promote the progress of science and useful arts." If it can be demonstrated that any particular copyright statute does not, in fact, promote the progress of science or useful arts, such statute is invalid. Second, the rights in question are to be "secured" to authors and inventors. In the leading case of Wheaton *v.* Peters, it was argued that the force of this word "secure" was to imply a previously existing right, not the creation of a new

right. But the court overruled this contention. Next, the rights to be secured are "for limited times," which does away with the possibility of perpetual copyright in the United States unless the Constitution is amended. Finally, one notes that it is the "writings" of authors which are to be protected. When the Constitution was adopted books were almost the only objects deemed worthy of protection. Early legislation added maps and charts, but musical compositions and works of the fine arts were not for some time regarded as sufficiently important to be included as subject matter of copyright and of course photography was not yet dreamed of. Legal battles have been, and will continue to be, waged about the meaning of the word "writings" in the Constitution. In accordance with accepted principles of construction, the word has been interpreted very broadly. The Supreme Court of the United States has decided that it includes photographs, but has indicated a doubt as to whether its meaning can be extended so far as to make it include phonograph records and piano-player rolls, holding that these devices are, at least, not "copies" of the musical composition which they reproduce. [*White-Smith Music Publishing Co.* v. *Apollo Co., 209 U. S. Reports, 1.*] Such sound records, however, have been brought within the scope of copyright control under the present law by an indirect method.

For the consideration of the curious another observation is presented which appears not to have had the attention of any court. If it should seem a bit metaphysical,

academic, pedantic, it may be remembered that important decisions sometimes turn on the meaning of a word, or the position of a comma, in the Constitution or a statute thereunder. Let us quote the passage again:

"The Congress shall have power. . . .

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

This is an example of the balanced style of composition so much used in the days of the colonial worthies. We have as the objects of promotion, science and useful arts, as the classes of persons whose rights are to be secured, authors and inventors, and as the subjects of protection, their respective writings and discoveries. If we take this phraseology disjunctively, it resolves itself into two separate statements: (1) The progress of science is to be promoted by securing to authors the right to their writings; and, (2) the progress of useful arts is to be promoted by securing to inventors the right to their discoveries. Lawyers, textbook writers and even judges sometimes seem to have the impression that the proposition is the other way about—that science is to be promoted through patent protection and useful arts through copyright. But when the Constitution was adopted, the word science did not have the specific meaning which it has today—that of natural science. It meant learning in general. And on the other hand, the word art was not so closely associated as it now is

with the fine arts. One occasionally finds references to the useful arts as being within the scope of copyright protection on account of their having been mentioned in the Constitutional provision referred to. It is doubtful, however, whether the framers of the Constitution had any such idea.

The scope of copyright protection in the United States has gradually and steadily expanded, through successive statutes and decisions of the courts, from the date of the Constitution down to that of the present law, enacted in 1909 and amended in several important particulars since that time. The rights originally given to authors of books have come to be extended to composers of music, artists, engravers, dramatists, photographers, printers, and in fact to every one who, in however slight a measure, exercises creative intellectual or esthetic labor in the production of a concrete tangible form. Not only have the subjects of protection increased in number and variety, but the amount of protection extended to any particular subject has also increased, keeping step with new methods of reproducing and disseminating the results of the creative effort, the tendency being to give to the author (in the broad sense of the word—the creator of any kind of copyrightable matter) more and more complete control over his works. And finally we may note the increase in the time of protection, from a maximum of twenty-eight to a maximum of fifty-six years.

The first copyright law of the United States was

enacted in 1790 and included in the subject matter of protection books, maps and charts. The rights were granted only to citizens of the United States, a policy which continued until 1891. The period of protection was fourteen years. (It is interesting to note how the seven-year term of the old royal patents continues, in the form of multiples of seven, in the American law, as it did until lately in England.) Renewal for a second term of fourteen years could be made by the author if he was living at the end of the first term. Certain formalities were required in order to secure copyright: (1) the deposit of a printed title; (2) the deposit of a copy of the work with the Secretary of State; (3) the giving of a notice of the copyright by four successive advertisements in some newspaper.

In 1802 a new act extended the protection of the law to "historical prints," designed, engraved or etched, and required a notice of copyright to be printed on the copies of the work to be protected.

In 1819 the Circuit Courts of the United States were given original jurisdiction in copyright cases.

In 1831 the subject matter of copyright was further expanded to include musical compositions and the term "historical print" was enlarged to "any print or engraving." The newspaper notice of copyright was done away with, except as regarded renewals, and the term of protection was extended to twenty-eight years, with provision for a renewal of fourteen years, which privilege was granted not only to the author, but to his widow

or children, if he himself was no longer living at the expiry of the original term.

In 1834 the Supreme Court of the United States decided the case of Wheaton *v.* Peters [*8 Peters' Supreme Court Reports, 591*] and that decision holds a place in American law similar to that of Donaldson *v.* Becket in English law. The subject of the dispute was Wheaton's Supreme Court Reports. The copyright proprietor had failed to comply with the provision of the law then in force which required deposit of copies of the work with the Secretary of State. He contended that regardless of such non-compliance, he was entitled to copyright at common law. The Supreme Court declared that there was no common law of the United States, and if Mr. Wheaton's Reports were protected by any common law, it must be that of the State of Pennsylvania, where they were published. But if indeed there ever was such a thing as perpetual copyright at common law in England, which the court thought doubtful, it was not shown to have become part of the common law of Pennsylvania, and the decision in Donaldson *v.* Becket, in the absence of American precedents, was deemed authority of sufficient weight to justify a decision against any common law right of copyright after publication. This was a decision of four members of the Supreme Court against two dissenting, with one judge absent, and some of the most thorough students of copyright law have thought it wrong. From time to time some one has proposed that the question should be

tried again. In fact it was tried again in New York State, the theory being that the common law of New York differed from that of Pennsylvania. The New York court, however, followed the decision in Wheaton *v.* Peters. It does not seem probable that the question will ever be raised again. Any one who is interested in learning what can be said on principle in favor of perpetual copyright—and a great deal can be said in its favor—should consult the excellent work of Drone.

In 1856 the right of public performance was for the first time granted to authors or proprietors of dramatic compositions.

In 1865 photographs were added to the subject matter of copyright protection.

In 1870 a general revision of the law took place and the classes of works which could be protected were enumerated as "any book, map, chart, dramatic or musical composition, engraving, cut, print or photograph or negative thereof . . . painting, drawing, chromo, statue, statuary, and . . . models or designs intended to be perfected as works of the fine arts."

In 1873-4 the copyright law was included in the Revised Statutes of the United States, as Sections 4948-4971.

In 1891 the so-called "international copyright law" for the first time, and after prolonged agitation, extended the benefits of American copyright to aliens. At the same time there was inserted by way of restriction a provision that books to be protected by American

copyright must be manufactured in the United States.

In 1905 an entering wedge in the direction of dispensing with the American manufacture of books was inserted in the law, providing that books in foreign languages printed in a foreign country might obtain a preliminary, "ad interim" copyright of one year, during which the foreign proprieter might decide whether or not it would pay him to reprint the work, or a translation of it, in the United States and so go on to secure copyright in the usual way for the full term of protection.

In 1909 was enacted the copyright statute which, with some amendments, is now in force and which will form the basis of discussion in the further chapters of this book.

CHAPTER II

DEFINITIONS

Copyright distinguished from patent, from rights in trade-marks and from the right of privacy — What is an "author"? — What is a "writing"? — Rights in unpublished works, without copyright — What is publication?

Before proceeding with the discussion of the copyright law as it now is, it will be desirable to attempt to arrive at a rough general conception of what copyright is and this can be gotten at by considering in the first place what it is not. Certain other forms of protection given by the law against unauthorized reproduction or copying of words, pictures or other concrete expressions of thought, are apt to be confused with copyright, with which they sometimes overlap. A patent may be distinguished from a copyright by the fact that it is normally the protection of the *idea* of the inventor, as exhibited in a new and useful "art, machine, manufacture or composition of matter" or a "new and ornamental design for an article of manufacture." Two men may have the same idea and invent the same machine; only the first can obtain a patent. But if it is possible for two men to write the same book or paint the same picture, independently, both can obtain

a copyright. Copyright protects against the copying of the thing protected. Patent not only does this, but prevents the duplication of the invention, even if it is not done by copying, but by a second act of original invention. Of course the subjects of patent are ordinarily quite different from those of copyright, but there is in the field of design patents a close approach and even at times a coincidence of the two domains of protection.

A trade-mark may consist of an artistic work which may also be the subject of a copyright. But the origin of the two rights is entirely different. Copyright originates in authorship — trade-mark rights originate in adoption and use. It is not necessary that the owner of a trade-mark shall have been the maker of it. Again, the copyright law gives the exclusive right to make copies of the article, or to reproduce it otherwise. The trade-mark law confirms the right to use the mark on goods of the owner, not the right to copy it generally.

The so-called "right of privacy" is, in our law, of rather a shadowy and indefinite nature, although clearly recognized in Roman law. It exists by statute in many states, but according to the best opinion, it does not exist apart from statutory enactment. It is the right to prevent the unauthorized publication of one's photograph, for example, or of details of one's private life. It is more closely related to the right to obtain redress for libel or slander, than to copyright, since it does not involve any question of property in the matter pub-

lished, or copied, but only injury to the feelings or reputation of the person whose privacy is invaded.

By way of a closer approach to the conception of copyright, one or two standard definitions may be quoted, always with the caution of the well worn maxim: *Omnis definitio in lege periculosa.*

Drone says: "Copyright is the exclusive right of the owner to multiply and dispose of copies of an intellectual product." This definition is hardly broad enough, as it does not include the rights of performance, so important in the case of dramatic and musical works, nor rights of modification of form, such as translation, dramatization, and arrangement of musical compositions.

Bouvier's Law Dictionary defines copyright as "The exclusive privilege, secured according to certain legal forms, of printing or otherwise multiplying, publishing and vending copies of certain literary or artistic productions," which definition restricts the meaning of the word to copyright secured under statutory provisions. This is a limitation which makes for clearness, but the definition is otherwise open to the same objection as that of Drone.

Mr. William B. Hale, author of the article on copyright in "13 Corpus Juris," calls it "the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment to the extent specified in the statute." This definition gets rid of the difficulty by referring to the statute and in spite of the

unsatisfactory vagueness which results, that is, as Mr. Weil, author of the latest comprehensive work on copyright, points out, the only safe guide.

One might simplify still more by going back to the Constitution and saying that copyright is a body of exclusive rights granted by statute thereunder to authors for the protection of their writings. This raises the questions: What is an author? and What is a writing?

The United States Supreme Court has quoted with approval the definition of author in Worcester's Dictionary: "He to whom anything owes its origin; originator, maker, one who completes a work of science or literature." [*Burrow-Giles Lithographic Co.* v. *Sarony, 111 U. S. Reports.* 53.] In cases where one person originates and another completes the work, there is an apparent difficulty in deciding which one is the author and the decision will depend on the facts of the particular case. Where the originator supervises the execution of the work, giving detailed instructions for carrying it out, which instructions are followed, quasi-mechanically, by him who completes the work, the first person will be the author. But where only the suggestion of a subject is given and its treatment is left entirely to the one who does the actual writing, painting, or composing, then this latter person is the author. Between these two extremes lie all degrees of collaboration, resulting in joint authorship, as in the case of a musical comedy in which one person writes dialogue, another lyrics and a third composes the music. All three are entitled to a share in

the copyright of the resulting work, considered as a single copyrightable whole. The case of moving pictures presents an even more elaborate combination of intellectual and artistic effort, scenario writer, title maker, photographer, director and general producer all coöperating to a single end. It might often be difficult to decide whose was the guiding mind—who was "the effective cause," to use the definition of author given by an English court—in the finally resulting work. Practically, the case is usually one for the application of the convenient rule given in Section 62 of the Copyright Act, which includes in the definition of author, for purposes of interpretation and construction, "an employer in the case of works made for hire." This provision finds application also in the case of composite works, such as encyclopedias. Each contributor would at first be the author of his particular contribution, and the one who planned and outlined the whole work would be the author of the whole, as distinguished from the parts. But the employer for hire would in any event stand in the shoes of the employee authors, so far as rights under the Copyright Act are concerned. And where a photograph is ordered and paid for by the sitter, he is entitled to the copyright as though he were the actual author. On the other hand, if the photographer solicits the sitting and makes the picture gratis, then the photographer is the author of the photograph, just as though he were photographing the scenery of nature, without the intermediation of any other person. [*Altman* v.

New Haven Union Co., 254 Federal Reporter, 113.]

The term "writings" has received a very broad construction by courts and by Congress, which, in making such things as sculpture and "drawings or plastic works of a scientific or technical character" subjects of copyright, has thus tacitly included them under the head of the writings mentioned by the Constitution. Some time after the inclusion of photographs in the statutory subject matter of copyright, an attempt was made to prove that they were not writings, but the United States Supreme Court held that they were, suggesting that anything in which the ideas of an author are given visible expression, is entitled to the name "writing." [*Burrow-Giles Lithographic Co. v. Sarony, 111 U. S. Reports, 53.*] It is still a matter of doubt whether phonograph records and piano player rolls are writings within the meaning of the Constitution. The Supreme Court held that they are not copies of the music which they reproduce, pointing out that they could not be read, and it was strenuously contended by representatives of the mechanical music machine manufacturers, at the hearings before Congressional Committees when the present law was under discussion, that not being copies, they could not be writings. As will be seen, Congress has not made them direct subject matter of copyright, but only a manner of infringement of copyrighted music, if unauthorized. The provision of the Copyright Act which refers to them uses this language: "Any system of notation or any form of record in

which the thought of an author may be recorded and from which it may be read or reproduced." That is a very good definition of a "writing," and one which ought to be adopted as a basis for future copyright legislation. At present, it is a definition of one kind of right secured by copyright, but not a definition of that which is itself a subject of copyright—a writing.

At this point consideration may be given to the rights which an author has with reference to his unpublished work, without securing statutory copyright. These rights, existing at common law, are (1) the right to publish, (2) the right to dispose of the unpublished manuscript, drawing, musical composition or the like, and in the case of an unpublished play, the very important right to perform it publicly, or license others to do so, and (3) the right to secure statutory copyright for it. It may be observed that the possession of such rights implies the power of assigning them to others, in whole or in part. Mr. Weil very well says that an author's common law right in his unpublished works amounts substantially to the right to do as he chooses with them, so long as he does not publish them. He may pass copies about among his friends, he may read in public from them, he may do anything that he could do with any other kind of property, always provided he does nothing to indicate a relinquishment of his own private control and a dedication to the general public. These are exclusive rights. The author can prevent any other person from doing any of the things

with his unpublished work which he himself alone has the right to do, and can obtain suitable redress in the courts for such wrongs. The Copyright Act (Section 2) expressly affirms the common law rights of the author in the following language:

"Nothing in this Act shall be construed to annul or limit the right of an author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication or use of such unpublished work without his consent, and to obtain damages therefor."

Publication being the one thing forbidden to the author who would keep his common law rights, is nevertheless the one thing which he wants and needs in order to reap the full value of his labor in reputation and money. And this is where the copyright statute steps in, continuing, and even enlarging, the author's control, on condition of the performance of certain formalities. Unless these formalities are fully performed, the author loses his property forever with the act of publication. To be sure, there are certain kinds of intellectual creations, such as plays, music and motion pictures, which may be to some extent exploited without being published. But it may be said broadly that every author contemplates publication of his work at some time. As this is the time when he either secures the protection of the statute for a limited time, or loses all rights in his work, it becomes important to determine, so far as possible, what acts constitute publication.

It may be said in general that publication of a work which is of a character to be distributed in copies means simply the placing of copies at the disposal of the public, whether by sale or gift. The number of copies so disposed of is immaterial. Publication may take place by the sale of a single copy, or even by the exhibition of copies meant for sale, or distribution, though none of them leaves the hands of the dealer. Expensive works are often issued in limited editions, but though an edition consists of but one hundred copies, it is published if it is possible for any member of the public to obtain a copy while they last. In copyright law, there is no such thing as a limited publication. There may be a limited distribution, confined to members of a certain organization and this is not such a publication as to destroy common law rights if the limitation is strictly maintained, as for example, in the case of the ritual of a secret society. Whether the leasing, or loaning, of copies, a method of distribution much in practice by makers of motion pictures and some books (commercial rating reports, market reports and courses of instruction) is publication is a matter of some doubt. It is probable that it is, where any one who chooses may obtain a copy by complying with the terms of the lease. But, as already stated, one may make copies of his work, even by a mechanical process, and give them to friends, without thereby publishing it. He gives or withholds each copy at his own discretion. He has not abandoned his exclusive control of the work. Send-

ing out sample copies of a work for the purpose of securing orders is not a publication, but in a case in which the proprietor at first refused to sell such a sample, but later accepted the amount fixed as the price, he was held to have published it. [*Gottesberger* v. *Aldine Book Publishing Co.*, *33 Federal Reporter*, *381*.]

Wherever a question of publication arises, one must consider the particular form of the work which is in controversy. Publication of a book in the French language is not publication of a translation of it. The translator has all common law rights, including the right of securing copyright, in his translation, just as though it were an original work. (This, of course, is assuming that the original work is not protected by copyright, or if it is so protected, that the translator is authorized by the copyright owner to translate it.) The like is true of other modifications of the form of a work which involve authorship—of dramatizations, for example, or new arrangements of music. They are regarded as original works, so far as the author's common law rights are concerned.

Publication has a usual, but not an essential, connection with printing. A work may be published even in copies written with pen or pencil. Or it may be printed for private distribution without being published. In the rules of the Copyright Office, the applicant for copyright registration is instructed to print *and* publish the work, with copyright notice, before filing his application. But

the privilege of copyright could not be denied to an author, merely because he did not make use of the printing press.

As to works reproduced in copies for sale or distribution, the Copyright Act contains a provision that the date of publication is to be understood as "the earliest date when copies of the first authorized edition were placed on sale, sold or publicly distributed." This, by implication, defines publication as the selling, placing on sale, or public distribution of copies. That definition is no doubt sufficient as regards publication of such works for the purpose of securing copyright. When we come to works which are not distributed in copies, but which may be placed before the public in other ways, the question of what is publication presents greater difficulty and there is less judicial opinion to guide us.

The public performance of a play has never been a publication which would divest the author's common law rights under United States law, but it was so under British law down to 1911, when the law was changed. It was contended before the Supreme Court that as the owner of a play which had been performed, although not circulated in copies, in Great Britain, had lost his common law rights under British law, he had also lost them here. But the Court decided that a statutory modification of common law in Great Britain could have no effect here and that the play was protected against unauthorized performance in this country, without copyright. [*Ferris* v. *Frohman, 223 U. S. Reports, 424.*]

What has been said regarding plays applies also to music. Public performance is not publication.

Works of art, if set up in a public place (not merely exhibited in a building to which the public is admitted only under certain conditions) must be regarded as dedicated to the public, at least to the extent of permitting photographs to be made of them. [*Carns* v. *Keefe Bros.*, *242 Federal Reporter*, *745*.] Of course the makers of such photographs, or other permissible reproductions, may each secure copyright for their pictures, just as a translator may do for his work.

Since the author of a work has the exclusive right of publication, it follows that publication without his authority does not deprive him of any rights. Unauthorized publication is no publication in law.

There are two different purposes, or viewpoints, for the consideration of the question whether publication has taken place in any particular case. The first is, whether a sufficient publication has taken place to divest the author of his common law rights, the second, whether publication has been sufficient to give the author copyright, for the copyright law requires publication with the notice of copyright, in order to vest the right. Courts are much more careful in the consideration of the question, where the loss of rights is involved, than where their establishment has been attempted. It will be harder to prove a divestitive than an investitive publication.

Whether or not the publication with notice required

to obtain copyright under the present statute must take place in the United States—a question not yet authoritatively decided—it is believed that first publication without the copyright notice anywhere in the world will destroy the author's common law rights in America, including his right to obtain copyright, except in the case of books in the English language "seeking ad interim copyright" under section 21 of the statute. Something more will be said on this point when the provisions of the law for securing copyright come to be treated, in the next chapter.

The Copyright Act provides (Section 11) for the copyrighting of certain classes of works "of which copies are not reproduced for sale"—*i.e.*, lectures, sermons or addresses, prepared for oral delivery; dramatic, musical and dramatico-musical compositions, motion pictures, photographs, works of art, drawings or plastic works of a scientific or technical character. In view of the generally accepted theory, under decisions of the courts prior to the present Copyright Act, that copyright can only be had upon publication, the question has been raised when, if at all, the works mentioned in Section 11 of the Copyright Act are published. It is argued that there must be a publication at some time, especially as the period of protection is fixed by the date of publication, on which it begins to run (Section 23 of the Copyright Act). Hence, says Mr. Weil, the chief proponent of this argument, we must find a date of publication for the works mentioned in Section 11, if copyright

in them is to be upheld, and this date can be no other than the date of their deposit in the Copyright Office. He cites cases which hold that such deposit in a public office is tantamount to publication. This construction of the law seems a little technical, and such quasi-fictions are to be avoided. It is true that, when a copy of a work has been deposited in the Copyright Office, the public may have access to it, the Copyright Act expressly providing for this. But that hardly amounts to publication, in the general sense of giving the work to the public. A different view is taken by the Copyright Office itself, which regards works not reproduced in copies for sale as simply unpublished works. This is also the view of Mr. Hale, the writer on copyright in "Corpus Juris." As to the date when the copyright of such works begins to run, that is no doubt the date of the deposit of the copy, since the law provides that copyright is secured by the act of depositing the copy. If there is any inconsistency between this view and the provision of Section 23, that copyright begins on the date of publication, it is not a serious one. For it will be observed that, whichever view one takes, the result is the same so far as the beginning of the copyright protection is concerned.

Do common law rights still subsist in the works mentioned in Section 11, notwithstanding the fact that copyright has been obtained for them? That question has not yet come up for decision. It is often said that copyright terminates common law protection. That

statement seems to come from a course of reasoning something like this: Publication terminates common law protection, as was held in the cases of Donaldson *v.* Becket and Wheaton *v.* Peters. But copyright can only be obtained by publication, and prior to the present Act has always been so obtained. Therefore copyright terminates common law protection. In answer to this it may be said that the present law has changed the method of copyrighting works so far as to enable some classes of unpublished works to be copyrighted. There is no reason in the nature of things why the owner of a work should not have the option of claiming protection at common law for his unpublished work, even after he has registered a claim to copyright. And Section 2 of the Copyright Act, above quoted, seems to show that he can.

In case an author decides to sue for the protection of his rights in an unpublished work, the Court will probably require him to elect his remedy, whether under the copyright statute or under the common law. But the election should bind him only for the one case. He should still be held to retain both copyright and common law rights for future use.

CHAPTER III

How Copyright is Obtained

Publication with the copyright notice — Deposit of copies — Requirement of American manufacture — Works not reproduced for sale — Registration.

An "author" has produced a "writing." It may be a literary work, a musical composition, a play, a picture, a map, a photograph, a piece of sculpture, a motion picture. or a set of architectural or engineering plans. It is his property. He can, at common law, prevent its appropriation and exploitation by any other person. But this is not enough. He wishes to give it to the public and to receive a return for it. He wishes to publish it and, in order to retain property in it after publication, he must secure copyright.

For this purpose the law lays down certain formalities to be complied with, the general purposes of which are to serve notice on the public that the control of the work has been retained by the author or proprietor, after publication, to make a permanent record of the copyright claim, and to enrich the collection of works in the national library—the Library of Congress at Washington.

The formalities may be considered under three heads: (1) the notice of copyright inscribed on copies

of the work; (2) the deposit of one or more copies of the work in the Copyright Office, in the Library of Congress; (3) the registration or recording of the copyright in the Copyright Office.

Section 9 of the Copyright Act provides:

"That any person entitled thereto by this Act may secure copyright for his work by publication with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad interim protection under section twenty-one of this Act."

"Any person entitled thereto" means the author of the work, or some one who has obtained his rights from the author—the "proprietor"—with the restriction that the author must be either an American citizen, or a resident of the United States, or a citizen of a country with which the United States has established copyright relations. "Publication with the notice required by this Act" means in the normal case the sale or public distribution of copies bearing the notice. For some classes of works, particularly books and periodicals, publication is obligatory, but for the other classes the alternative method of securing copyright provided in Section 11 may be used. This method, which it will be convenient to treat as the exception, and publication with notice as the rule, has already been referred to, and will be taken up in detail a little later.

It has until recently been supposed that the publication required to secure copyright in the United States must be first or simultaneous publication in this country. The arguments in favor of this view are vigorously put by Mr. Weil. [*Weil, Copyright Law, pp. 273 et seq.*] Nevertheless the point is doubtful. The statute does not expressly require first publication in the United States and there is no decision of an American court which does so. On the other hand a recent decision upheld the validity of copyright in a work which had been published in a foreign country without the statutory American notice several years before its republication in the United States with the notice, where no intervening rights were involved and the foreign copyright proprietor had printed a notice on the work at the time of its publication abroad which, though not in the form provided by American law, was yet an assertion of reservation of rights for all countries. [*Italian Book Co.* v. *Cardilli, 273 Federal Reporter, 619.*] This decision may go too far, but it seems probable, at least, that publication in a foreign country with the statutory notice is sufficient to initiate copyright protection, even if it takes place in advance of publication in the United States.

To those unfamiliar with copyright, the idea of proceeding with publication and placing a notice of copyright upon the published copies of the work before registration seems peculiarly repugnant. They cannot readily believe that there is not some preliminary action

to be taken in the Copyright Office, to obtain a guarantee of protection in advance of publication. This idea is natural enough to the beginning author, who feels that he is sending his precious manuscript out naked and unprotected, unless previously clothed with a government certificate, and the notion that some preliminary protection is necessary has also been confirmed in the mind of the public by the long period during which the copyright law provided for the filing of the title of the work in the government office, in advance of publication. The law, however, now rests upon the theory that the author, who is the first owner of the work, has himself the right to give it to the public with a notice of his ownership, and then proceed with reasonable promptness to make the necessary deposit and registration of his rights. In practice, it is nearly always the publisher who takes care of these formalities, whether the copyright is held by the author, or sold to the publisher. But the author should see that the matter is properly attended to when he retains the copyright. Particular attention should be given to the proper printing of the copyright notice, as any omission or defect in the notice may prove fatal to the copyright and cause the author to lose his protection. Irregularities in the other formalities may be corrected, but it is too late for correction of the notice after the work has been published.

Section 18 of the Copyright Act prescribes the forms of the copyright notice. It provides:

"That the notice of copyright required by section nine of this act shall consist either of the word 'Copyright' or the abbreviation 'Copr.,' accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four."

It will be observed that two forms of notice are provided for works copyrighted under the present Act. The first, and longer, form may be used for any of the classes of subject matter of copyright. The second, briefer form can only be used for works of classes (f) to (k), that is, for maps and pictorial or other artistic works. Whichever form is used, the requirements of the statute regarding it must be substantially complied with.

In the longer form of the copyright notice we have three elements: the word "copyright," in full or ab-

breviated to "copr.," the name of the copyright proprietor (the author, or one to whom he has sold or transferred the copyright), and the year date of publication, which, however, may be omitted on other than printed literary, musical, or dramatic works.

The full name of the copyright proprietor need not be given; provided his surname is given in full, initials for the other names are sufficient. A trade name is also valid. (But if the trade name is unlawful by statute in the State where the work originated, it is unlawful in the copyright notice. [*Haas* v. *Feist, 234 Federal Reporter. 105*].) The omission of the name, however, or the giving of a name other than that of the actual legal owner of the copyright, is fatal. An example of the last named fault is found in the history of Holmes' "Professor at the Breakfast Table," first published in instalments in the *Atlantic Monthly*, with only the general notice of copyright of that periodical in the name of the publishers, Ticknor and Fields, but later published in book form with a copyright notice in the author's name. The United States Supreme Court held that "a previous copyright having been obtained in the name of the publishers, Ticknor and Fields, the subsequent notice of copyright by Dr. Holmes in his book must be held insufficient." [*Mifflin* v. *White, 190 U. S. Reports, 260.*]

This situation, which is likely to arise where a work is first published serially in a periodical, the publisher having been given only a license to publish and the

author having retained the copyright, should be carefully guarded against. The author should see to it that the notice of copyright contains his name. In cases where he has given the publisher authority, either express or implied, to print the notice with the publisher's name, it seems likely that a court will avoid forfeiture of the copyright by holding that the publisher is a trustee and may be required to assign the copyright back to the author, who will be protected in the meantime against infringers generally. But the difficulty in such cases is that the author may not be protected against bona fide purchasers from the publisher, without notice of the trust. [*Brady* v. *Reliance Motion Picture Corporation*, *229 Federal Reporter, 137*; *232 Federal Reporter, 259.*] The only entirely safe course is to have the notice contain the name of the actual, legal owner of the copyright.

The third essential item in the notice, at least where the work is a printed literary, musical or dramatic composition, is the year in which publication takes place. Its omission from the notice on a periodical was held to defeat the copyright, although the date of issue of the periodical appeared just above a line below which the notice was printed. [*Record and Guide Co.* v. *Bromley*, *175 Federal Reporter, 156.*] Even post-dating the notice by one year invalidated the copyright in a book, according to another decision, the theory given for so holding being that the copyright owner had claimed, as against the public, a year more

of protection than he was entitled to. [*Baker* v. *Taylor*, *2 Blatchford's Reports, 82. See also Callaghan* v. *Myers, 128 U. S. Reports, 617.*] It is worth noting that publishers who bring out books very late in the year, say about Christmas, sometimes think it reasonable to put the subsequent year in the notice, apparently believing that a few days, more or less, may be disregarded. But the practice is a dangerous one.

The briefer form of notice provided for in Section 18 is an innovation in the law, intended to avoid the disfigurement said to result from printing the longer form of notice on works of art. The optional omission of the year date from this form of notice perhaps is based on the fact that most printed pictures are ephemeral, having been forgotten long before the expiration of the copyright period. Or it may be simply an example of the increasing liberalization of our law in the direction of abolishing the notice altogether, as has been done by British and other foreign copyright laws. If this form of notice is used, the full name of the copyright owner must appear somewhere on the article where it may be found, not covered up or otherwise concealed.

Section 19 of the Copyright Act, specifying the place where the notice must be printed, is as follows:

"That the notice of copyright shall be applied, in the case of a book or other printed publication, upon the title-page or the page immediately following, or if a periodical either upon the title-page or upon the first

page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided*, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice."

There are three possible places for the notice in a periodical, two in a book, play or musical composition. Putting it on the editorial page of a periodical, instead of one of the places specified, was held to invalidate the copyright in a case decided under a former Copyright Act, which would no doubt be followed, in principle, under the present Act. [*Freeman* v. *The Trade Register, 173 Federal Reporter, 419.*] The copyright owner must take pains to guard his property by strict compliance with the requirements. Persons interested are not obliged to hunt all the way through the work to find a notice of copyright in some obscure place.

One notice must appear in each volume, or issue of a periodical, but one is enough. The meaning of this requirement will be clear if one considers the case of such works as law books, of which many revisions are issued, each new edition being copyrighted for the protection of the newly added matter. Formerly it was the practice to print a new notice for each new edition and a great part of the back of the title-page was sometimes so occupied. Now it is sufficient to print a single notice, but the various year dates of publication should probably all be given.

The notice must appear on each and every copy of

the work, as it reaches the public. In a case where a small picture was copyrighted and a large number of reproductions of it printed on a sheet, intended to be cut up into smaller portions and used to wrap candy boxes, only one notice was printed on the sheet, so that all the small portions did not show it. This was held to invalidate the copyright. The notice should have appeared on each and every copy. [*Louis De Jonge & Co.* v. *Breuker & Kessler Co., 235 U. S. Reports, 33.*]

In the case of a work of art, the notice need not appear on the original as this is not a "copy." [*American Tobacco Co.* v. *Werckmeister, 207 U. S. Reports, 284.*]

Whether the notice is necessary on copies of the work deposited in the Copyright Office for registration is a matter of some doubt. Mr. Weil thinks it is, but this opinion results from his holding that the deposit of copies is publication, *per se*, as to which we have seen there is fair room for question. The Copyright Office makes a practice of calling attention to the omission of the notice from copies of a published work sent in for registration, but does not refuse to accept them.

The notice is not required on copies of a work which are not published or offered for sale in the United States by authority of the copyright proprietor, nor on copies of a work for which ad interim copyright is sought.

Should the notice be omitted from some copies of the work through mere inadvertence, the copyright is not invalidated, this contingency being covered by Section 20 of the Copyright Act, which declares

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

Section 29 of the Act imposes penalties for false or fraudulent notice or for removal of a notice, that is, for the printing of a copyright work without it. A penalty is also provided for the issue, sale or importation of a work bearing a copyright notice, which has not been copyrighted. Fraudulent intent and guilty knowledge have to be proved in such cases and that is usually a difficult matter.

Section 30 prohibits the importation of works bearing a false notice.

The provisions of the copyright law requiring the

deposit of copies in the Copyright Office, at the Library of Congress in Washington, are to be found in Sections 12, 13 and 14 of the Act. Such deposit has always been a requirement of American copyright law. Formerly it was a condition precedent to the securing of copyright, along with the filing of a title of the work. No copyright was secured unless copies were deposited within a definite period after publication or, under the law in force immediately before the enactment of the present statute, not later than the day of publication. But under the present law deposit, in the case of published works, is one of the acts to be performed after copyright has been secured by publication with the copyright notice. A mere delay in the deposit of copies will not invalidate the copyright, although a contumacious delay, after copies have been demanded by the Register of Copyrights, will do so. And in no case can suit for infringement of copyright be brought until the deposit has taken place.

Section 12 provides

"That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, or if the work is by an author who is a citizen or subject of a foreign state or nation and has been published in a foreign country, one complete copy of the best edition then published

in such foreign country, which copies or copy, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with."

No special time is set for deposit of copies, but it must take place "promptly" after publication, if the work is a published one. "Promptly" has been held by courts to mean "without unnecessary delay" and it is prudent for copyright claimants to attend to this matter at the earliest moment possible. Deposit in the mail, if properly addressed, is sufficient, even if the copies never reach the Copyright Office, the theory being, apparently, that the United States Post Office should assume the responsibility for delivery. [*Proof of deposit in the mail may be preserved by the postmaster's receipt provided for in Section 14 of the Copyright Act.*] The number of copies of published works required is two, except for foreign works, where, by a recent amend-

ment of the law, it has been reduced to one. The reason for this reduction is that the deposit requirement is regarded as an undue burden by foreign publishers, whose domestic laws do not usually require it as a condition of copyright. The intention was, on the one hand, to stimulate the flow of foreign works to the Library of Congress, and on the other, to relieve the foreign claimant of any unnecessary burden, as one copy of a foreign book is usually all the Library of Congress desires.

The deposit required in the case of a contribution to a newspaper or periodical is a complete copy of the issue containing it. It is not enough to clip the contribution and send it alone. The whole number of the periodical containing it should be sent.

The deposit called for by Section 11 will be taken up in connection with the discussion of that section.

The copies must be complete and of the best edition published at the time. Attempts have sometimes been made to secure copyright registration by depositing incomplete copies, proof sheets, preliminary prints, or copies of books without the illustrations or maps which they are supposed to contain. Such deposits are not in compliance with the law and the Attorney-General of the United States has so ruled. [*28 Opinions of the Attorney General, 176.*]

An example of the practical working of the provision that no action or proceeding shall be maintained until the deposit has been made is found in a case in which one New York newspaper sued another for

unauthorized publication of the story of Captain Amundsen's discovery of the South Pole. A temporary injunction was hastily obtained about midnight of March 8, but the required copies of the newspaper containing the copyrighted story were not mailed until early in the morning of March 9. Although the difference was only one of a few hours, it was held that the action had been brought before it was permissible and the injunction was held void. [*New York Times Co.* v. *Star Co., 195 Federal Reporter, 110; Same* v. *Sun Printing and Publishing Association, 204 Federal Reporter, 586.*]

Section 13 is intended to insure the deposit of copies by careless claimants, or those who are reluctant to part with very expensive works. It reads as follows:

"That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void."

Incidentally the length of time given for deposit after formal demand (three months within the United States, and six months elsewhere) may be thought to suggest what might be regarded as lack of "promptness" in the ordinary case.

The much discussed "manufacturing provisions" of the Act, relating to books in the English language are found in Section 15, *viz:*

"That of the printed book or periodical specified in section five, subsections (a) and (b) of this act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language

or languages other than English, or to books published abroad in the English language seeking ad interim protection under this act."

This section, with its adjunct, Section 16, requiring an affidavit of American manufacture for the works in question, owes its place in the law to the American printing and allied trades. It appeared in simpler form in the Copyright Act of 1891, along with the first removal of the copyright disabilities of aliens.

The courts construed the similar provisions in the Act of 1891 with strictness, holding that the requirement of American manufacture applied only to the classes of works expressly named therein, that is, books, photographs, chromos or lithographs, and consequently that dramatic compositions and music, though printed in book form, were not included in the requirement of American manufacture. [*Hervieu* v. *J. S. Ogilvie Co., 169 Federal Reporter, 978.*] It seems probable that a similar strictness of contruction would be applied under the present Act to the question of what are lithographs and photo-engravings and that pictures made in foreign countries by other processes of reproduction, although somewhat similar in their nature to lithography or photo-engraving, would be exempt from the manufacturing provisions. Lithographs and photo-engravings made abroad are themselves so exempt if they are reproductions of bona fide works of art located in a foreign country, or if they reproduce other objects so located and illustrate a scientific work.

The manufacture must take place "within the limits of the United States." This includes the Hawaiian Islands and Porto Rico, which now have a territorial status, but was held some years ago, in an opinion of the Attorney-General, not to include the Philippines. [*25 Opinions of the Attorney General, 25.*]

Instructions for making the affidavit of American manufacture, which must be filed with applications for copyright registration of books in the English language, will be found in the Rules for Registration issued by the Copyright Office. [*See Appendix B, p. 273.*]

Sections 59 and 60 of the Act provide for the disposal of articles deposited in the Copyright Office.

"SEC. 59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

"SEC. 60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after

due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: Provided, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided in this Act: And provided further, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it."

Thus it will be seen that the deposits which go to the Copyright Office may afterward be disposed of in a variety of ways. First, they may go into the permanent collections of the Library of Congress; second, they may go to the reserve collections of the Library, and thence be sold or exchanged; third, they may be transferred to other government libraries in the District of Columbia; fourth, they may be preserved in the Copyright Office; fifth, they may, after due notice to the copyright proprietor of record, be destroyed.

What has been said hitherto in this chapter has been applicable to what may be called the normal method of securing copyright—that of publication with notice. Section 11 of the Act provides a different method, not applicable to all classes of works, but

primarily to works which are not intended for publication in the usual way (by dissemination of copies). It reads as follows:

"That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or dramatico-musical composition; of a title or description, with one print taken from each scene or act, if the work be a motion-picture photoplay; of a photographic print if the work be a photograph; of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay; or of a photograph or other identifying reproduction thereof, if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies, under sections twelve and thirteen of this Act, where the work is later reproduced in copies for sale."

The classes of works for which copyright may be obtained by deposit of a copy, or identifying material, under this section are lectures, dramatic, musical and dramatico-musical works, motion pictures, photographs, works of art, plastic works and drawings, but not books, periodicals, maps, reproductions of a work of art or prints and pictorial illustrations.

Section 11 of the Copyright Act has been the subject of much discussion and of some criticism by writers

and courts. In the only decision of a court in which the section was considered generally, at some length, the judge seemed to be much puzzled by it. [*Universal Film Manufacturing Co.* v. *Copperman, 212 Federal Reporter, 301* .] It is the subject of a careful analysis by Mr. Weil, [*Weil, Copyright Law, pp. 289 et seq.*] whose conclusion is, as has been already stated, that the works referred to as "not reproduced in copies for sale" must nevertheless be published in order to secure copyright, but that the deposit of the required copy for the purpose of securing registration is a sufficient publication. He finds a difficulty in fitting this theory to the case of motion pictures, of which not a complete copy, but only a title, description and some prints are to be deposited. Hence he concludes that this class of works should be independently published before registration under Section 11 is made. Others have expressed the opinion that the section simply provides for registration to add the statutory remedies for infringement to those enjoyed under the common law. The difficulty with this view is that Congress cannot legislate to secure copyright except for a limited time, because of the restriction to that effect in the Constitution. Unless the period of protection is to be limited, Congress cannot touch the subject of author's rights. On the whole, it seems simpler to take the obvious view that a work not reproduced in copies for sale (or for other general distribution) is a work not published. There seems to be no

greater obstacle to this view than to the somewhat forced and technical construction which insists that publication is necessary for copyright—a view, it may be said, which proceeds very largely from the conservatism of lawyers and courts, who do not like to lose the benefit of the long line of decisions regarding publication, the accumulation of the century or more during which publication was a *sine quâ non* for copyright protection.

The "claim of copyright" referred to in Section 11 is simply an application for registration, similar to that required for published works. The description required for a motion picture is a brief synopsis, enough to identify it, and the entire scenario need not be deposited. Copies of oral works filed as deposits may be written or typewritten, but should be complete, neat and legible.

If the work is published in the usual manner after registration under Section 11 has been made, the law requires that the same formalities shall be complied with as if the work had never been registered before. Not only must there be a deposit of copies, but there must also be a new registration, although there cannot be a new copyright, and the period of protection must be regarded as already having begun to run from the time of the registration of the unpublished work. Applicants whose works have not been published, but who will probably obtain publication in the near future should weigh the advantages of copyright registration of the unpublished work against the undoubted unde-

sirability of two registrations, in which discrepancies of dates or other material statements are apt to occur and confuse the record. It may be just as well to rely on common law protection until publication with the copyright notice can be had.

Section 10 of the Act provides for copyright registration, in the following language:

"SEC. 10. That such person [the person entitled to copyright] may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act."

Registration furnishes permanent evidence, in the records of the Copyright Office and in the certificate issued to the copyright proprietor, that the requirements of the law for securing copyright have been complied with. The copyright, however, does not depend upon the registration, except in the case of renewal or extension, to be mentioned later.

No misconception regarding copyright is more prevalent than that which takes the piece of paper—the printed and written certificate of the Copyright Office—for the copyright itself. The difference between the copyright and the certificate of copyright registration is like that between a piece of land and the deed which testifies to its ownership, except that the land is visible and the copyright is not.

Section 53 of the statute authorizes the Register of Copyrights to make rules for registration, subject to the approval of the Librarian of Congress. Such rules have been issued and the printed pamphlet containing them (Copyright Office Bulletin No. 15), may be obtained on application to the Copyright Office. The rules will also be found in Appendix B of this volume, at pp. 263–278.

A question has been raised, but never conclusively answered, whether the Register of Copyrights is, in legal parlance, merely a "ministerial officer," required to perform, quasi-mechanically, the functions with which he is clothed by the statute; or whether he has discretion to decide that the law has or has not been complied with in the case of any work presented for registration, and to grant or withhold registration accordingly. A compromise between the two extremes is probably the correct view. The nature of the Register's office demands the exercise of some discretion, within the spirit of the law, and it is to the advantage of copyright claimants and the general public that registrations should not be made in a haphazard and mechanical manner, thus diminishing the value of the certificate and the record as evidence of valid copyright. Such exercise of discretion by the Copyright Office is the more necessary because there is no provision in the copyright law, as there is in the patent law, for scrutiny of applications or copies, to deter-

mine questions of originality or authorship. For such matters the word of the applicant has to suffice.

Section 54 of the statute provides for the keeping of record books in the Copyright Office in which all works deposited under the provisions of the Act are to be entered. Section 55 states what the certificate of registration is to contain. Among those items one of the most important is the title of the work. Mention should be made of a practice not uncommon among persons who copyright unpublished works—that of changing the title of the work after registration. This may cause trouble by breaking the link of identity between the work as registered, and as later circulated, sold or produced under a different title. The change of title should be avoided, but if it is necessary, then manuscripts with the new title should also refer to the old one.

Sections 56 and 57 give further details as to the method of recording and indexing copyright registrations, and provide for the issuance of a printed catalogue of copyright entries. This catalogue, apart from its legal aspect as evidence of the facts it contains, has marked value as a bibliographical record and will be found useful to persons interested in the current output of literature, music and art.

By Section 58 the record books and indexes of the Copyright Office, as well as the copies deposited for registration, are open to public inspection. Express provision is made for taking copies of entries from the

record books, but no provision for copies of deposits, which therefore the Copyright Office only permits on written authorization from the copyright proprietor, or on the order of a court. It is obvious that any other copying of a copyright deposit would be infringement.

The fee for copyright registration is $1.00.

Mention may here be made of the elaborate series of forms for applying for registration which are furnished by the Copyright Office. The variety of these forms is such that every class of work is specifically provided for. The Copyright Office is always ready to aid applicants, orally or by correspondence, in the proper presentation of their applications and in the general understanding of the law. In furtherance of this purpose a number of valuable and interesting bulletins and circulars have been published. The bulletins containing the Copyright Act, the Rules for Registration and the English Copyright Act, are distributed gratis, as are the circulars. Other bulletins can be had at nominal prices through the Government Printing Office at Washington. The most recent publication of the Copyright Office is the Drama List, containing the titles of all dramatic compositions copyrighted in the United States from 1870 to 1916. This work is invaluable for students of the drama, as well as for persons desiring to know whether any contemplated title has already been used.

The Copyright Office cannot adjudicate the validity of any copyright or give advice in cases of litigation, as these are matters outside its province and authority.

CHAPTER IV

Renewal and Transfer of Copyright

How renewals are obtained — Renewal term a new grant — Assignments — Bankruptcy — Licenses — Divisibility of copyright by means of licenses.

When copyright has been secured it lasts for a period of twenty-eight years, which is computed, in the case of a work copyrighted by publication with notice, from the date of publication, and in the case of an unpublished work, copyrighted by the deposit of a copy or identifying matter under Section 11, from the date of the deposit. At the end of the period a renewal of the copyright may be obtained for a second term of twenty-eight years. The sections of the Copyright Act relating to the duration and renewal of copyright, (Sections 23 and 24) read as follows:

"Sec. 23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: Provided, That in the case of any posthumous work or of any periodical, cyclopaedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual

author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopaedic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication."

"SEC. 24. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower or children of the author, if the author be not living, or if such author, widow, widower or children be not living, then

by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: Provided, however, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: Provided, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term."

Section 23 deals with the renewal of copyrights secured under the present Act. The earliest possible renewal to take effect under this section will therefore not begin until twenty-eight years after the date when the present Act went into effect, that is, not until July 1, 1937, and the earliest registration of such renewals will not be possible until a year sooner, July 1, 1936. Nevertheless the provisions of the section relating to renewals of posthumous, or periodical, cyclopædic or other composite works, and of works copyrighted by corporate bodies or employers for whom such works were made for hire, have a sort of anticipatory effect, in their bearing upon the form in which registrations may at present be made. For unless the original term of copyright is secured in the name of the proprietor (the person or corporation deriving its rights from the author) then the renewal term cannot be obtained by such proprietor, but must be taken by one of the regular beneficiaries

(author, widow, etc.) mentioned elsewhere in the section. This fact may influence the terms of contracts made with authors, in which provision is made for the renewal term. The author, as we shall see in discussing the following section, cannot directly grant the renewal term, which may never be his, but if he is employed under contract, for hire, to create the work, or if the copyright is obtained by a corporation, otherwise than by direct assignment or license from the author, then no question of the renewal rights of other beneficiaries than the proprietor can be raised.

Section 24 relates to the renewal and extension of copyrights which were already subsisting when the present Act went into effect. The acts under which such copyrights were obtained provided for a renewal of fourteen years and Section 24 provides that a further renewal may be obtained, so that the total period of protection will be the same as that obtainable for works copyrighted under the new Act, that is, fifty-six years. Where the subsisting copyright had been renewed, therefore, prior to the date when the new Act took effect (July 1, 1909), an extension of fourteen years could be secured. Where the original term of twenty-eight years had not expired on July 1, 1909, the renewal term is twenty-eight years.

The renewal term is an entirely new grant of protection, not merely a continuation of the old grant. Consequently the author or proprietor who has taken the original copyright cannot assign, *in futuro*, the rights to

be secured under the renewal. The renewal can only be obtained by the beneficiaries expressly named in the law, and by them in the order named, *i.e.*, the person having the first right is the author, if living at the end of the original term; if he is not living, then the widow or widower, is entitled to renew; if there is no widow or widower, the children come in; in their absence, the executor of the author's will; and finally in the absence of all other beneficiaries and the intestacy of the author, the author's next of kin are entitled to the renewal.

It will be seen that, although the renewal copyright is a new copyright, and not merely the continuation of the original copyright, yet the policy of the law is that it shall go to the author or to his relatives. It cannot in any case go to an administrator, for the general benefit of the author's estate, or for the payment of his debts. Much less can it go to an assignee of the author. [*White-Smith Publishing Co.* v. *Goff*, *187 Federal Reporter*, *247*.] Contracts between authors and publishers were formerly often made, by which the author undertook to grant not only the right to obtain the original copyright, but also the right to renew. It may be that if the author is living when the time for renewal arrives, he can be compelled to carry out the terms of his contract by taking out the renewal in his own name and then assigning it without further compensation to the publisher. But if he dies before the time for renewal registration arrives, *i.e.*, before the beginning of the last year of the original

twenty-eight year term, his obligations die with him, so far as the copyright law is concerned. His widow, or children, are not bound by his agreement and they receive the renewal copyright free of all incumbrance.

If there are several children who are entitled to take the renewal copyright, it seems that they take it as tenants in common, that is, each is entitled to deal with the copyright as he sees fit, without the consent of the others.

The renewal of copyright is absolutely dependent upon the filing of an application and registration of the renewal claim in the Copyright Office within the last year of the original term. If the application arrives one day too late, the renewal copyright is lost. But if an application is filed in time, it would seem that it can be subsequently corrected, if it fails to state the renewal claimant's name and capacity correctly. It is good policy, therefore, for any person who is interested in the preservation of the renewal rights to file an application in the name of the person whom he believes to be the proper beneficiary under the law, even if he has been unable to learn to a certainty of the existence of such person. No harm can be done by this procedure, and it may save the copyright from falling into the public domain.

When does the renewal right become vested? Is it when an application has been filed and the renewal has been registered in the name of a beneficiary entitled to renew? Or is it, as the language of the statute

implies, only on the expiration of the first term? Some nice questions arise on this point and they have not yet been conclusively answered. Suppose the author is living at the beginning of the last year of the first term of copyright. Then he can file an application for renewal which will be registered. But then, suppose he dies immediately afterward, before the first term of copyright runs out, and his widow also files an application. To whom does the renewal copyright go—to the author's estate, or to the widow absolutely?

Another question concerning the right of renewal has recently been decided by the United States Supreme Court, which held that the executor of the author can renew the copyright, even if the last year of the original term has not arrived at the time of the author's death. [*Fox Film Corporation* v. *Knowles, 261 U. S. Reports, 326.*] This decision reversed those of the courts below, which had held that the executor could only exercise the right of renewal when that right was vested in the author at the time of his death, *i.e.*, when the last year of the first term had arrived. The decision of the Supreme Court is consistent with the intention of Congress, as expressed in the report of the Committee which framed and presented the Act. They meant "to permit the author who has no wife or children to bequeath by will the right to apply for the renewal." But it rather upsets the conventional theory that the executor stands in the shoes of his testator.

So far as the Copyright Office is concerned, the

renewal will be registered in the name of any beneficiary named in the law. In the event of conflicting applications, no doubt both registrations would be made, leaving the parties to settle their rights in court.

Makers of anthologies or other compilations sometimes wish to know whether a given work is free for their use. A simple computation will tell them that, as fifty-six years is the utmost that any copyright can last, any work actually published that long before the date of the intended use must necessarily be out of copyright. If published within fifty-six years, the work may, or may not, be protected, depending on whether all required registrations and other formalities have been made. As to that, inquiry should be made at the Copyright Office.

The sections of the Copyright Act relating to assignments are as follows:

"SEC. 41. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

"SEC. 42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing

signed by the proprietor of the copyright or may be bequeathed by will.

"SEC. 43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand or official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument.

"SEC. 44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

"SEC. 45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

"SEC. 46. That when an assignment of the copyright in a specified book or other work has been recorded, the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act."

The provision that the copyright is distinct from the property in the object copyrighted recites what was the law under decisions of the courts prior to the enact-

ment of the present Act. Situations calling for its application arise most frequently in cases of works of art, which have themselves a large intrinsic value, in addition to the value of the right of reproduction. The painting or statue may go to one, the right to reproduce copies to another, although it would seem that where an artist has sold a painting, the purchaser might through merely refusing access to the reproducer nullify the value of the copyright. It is to be observed that, while the sale or conveyance of the object does not "of itself" constitute transfer of the copyright, yet in cases where the object is evidently intended only for reproduction, and where the author must be aware that his transfer of it was accepted for that purpose, the sale of the copyright would be implied from the sale of the object. Although this section does not apply to common law rights before copyright, there cannot be much doubt that the rule in regard to such rights (that the sale of a manuscript book, for example, without express restriction, carries the right of publication and copyright) would be applied in its interpretation. An implied conveyance of the copyright was held to be included in the conveyance of a painting, placed upon the walls of the Library of Congress, the court taking notice in its opinion of "the nature of governments and the habits of government officers," which were held to negative any idea that it was the intention to allow the artist to retain copyright in such a work so placed. [*Dielman* v. *White, 102 Federal Reporter, 892.*] The practical

lesson to be drawn from a consideration of this section of the Act and the decisions leading up to its enactment, is that a contract of sale of an original work for which copyright has been or is to be obtained should clearly state the disposition of the copyright, as well as that of the work itself.

The latter part of Section 41 has reference to the class of cases in which copyright proprietors have endeavored to tie a string to the copies of the work when selling them, by fixing the price at which, or the classes of purchasers to whom, the copies might be resold. Such restrictions are matters of private contract between seller and buyer, but the copyright law does not support them in any way and a violation of their terms cannot be prosecuted as an infringement of copyright. [*Bobbs-Merrill Co.* v. *Straus, 210 U. S. Reports, 339.*]

If the owner of the copyright becomes bankrupt, or makes an assignment for the benefit of creditors, the copyright passes to the trustee or receiver in bankruptcy, like any other property, and in such cases the order of the court declaring the copyright owner bankrupt, or insolvent, should be recorded in the Copyright Office, like any other assignment. But where a publisher becomes bankrupt, or insolvent, and copyrights in works which he is publishing are owned by the authors of such works, or other persons, the question whether the trustee or receiver gets any control over the copyrights depends upon the terms of the contract of publi-

cation. It has been held that a contract of publication is of a personal nature and that the rights granted to a publisher thereunder cannot be transferred by him without the author's consent. Therefore, if the contract was not in express terms made assignable, it does not pass to the trustee or receiver, and may doubtless be cancelled or rescinded by the author. Copies of the work in the publisher's hands at the time of bankruptcy cannot be sold without the author's consent. The author cannot, *in invito*, be divested of his statutory exclusive right to vend. And if such copies are held by a printer or binder, under a lien for materials or labor, the lienor cannot sell them, unless it be as waste paper. He can only continue to hold them until his lien is satisfied.

In this connection the question may be raised of the right of disposal of copies in the possession of an assignor after the date of his assignment, or of copies lawfully in the possession of the owner of the first term of copyright after renewal has been obtained by another. Drone (p. 339) argues that the assignor must stop selling copies from the date of the assignment, but it has been suggested that this rule may have been modified by the language of the Act of 1909 already referred to:

"but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained."

It seems probable that the opinion of Drone is still correct, the language quoted being intended to cover only cases where the right of vending has once been exercised, and where an attempt is made to restrict resales of the same copies.

Section 42 tells how assignments may be made. No special form is required, other than a writing signed by the proprietor of the copyright. Any words are sufficient which indicate the intention to transfer the copyright. The Copyright Office therefore does not furnish any forms for assignments, as the circumstances of each case dictate the language to be used. Whether a mere oral assignment of copyright is valid the law does not state, but as the recording of assignments is provided for and has important legal results, an oral assignment is at least undesirable, although possibly it might be held valid as between the parties. Regarding the passing of copyright by bequest or descent, no special comment is necessary. The rules governing personal property in general are applicable to copyrights upon the death of the owner.

Section 43 requires assignments of copyright executed in foreign countries to be acknowledged before a consular officer or secretary of legation. It has been suggested that this requirement is obligatory and that the assignment would be invalid if not so acknowledged, but it seems more probable that it was the intention of the law to provide merely for prima facie evidence of execution of the assignment, as stated in the

latter part of the section and that even in default of the certificate of acknowledgment mentioned, the execution of the assignment could be proved by other sufficient evidence.

The provisions of Section 44 requiring the recording of assignments in the Copyright Office are not mandatory. It is not necessary to the validity of an assignment as between the parties that it shall be recorded. But failure to record an assignment within the statutory period allowed—three months after the date of its execution, if within the United States, and six months if it is executed in a foreign country—"cuts off the equities" of the original assignee, if it is subsequently assigned to a third party who takes it in good faith, not knowing of the prior assignment. It is therefore to the interest of the assignee to have his assignment recorded promptly. Nevertheless many assignments of copyright are probably not recorded, for the reason that the parties do not wish to disclose the terms of their bargain.

It not infrequently happens that assignments are sent to the Copyright Office to be recorded more than three months after execution. Such delayed assignments will be recorded by the Copyright Office, but the effect of the delay has sometimes been debated. The situation may be explained as follows. The first assignee is protected against the claim of a subsequent assignee for a clear three months, whether he records his assignment or not; while after three months he is

protected only if he records, and then only against a purchaser whose assignment is subsequent to such recording. On the other hand, the subsequent purchaser must himself record within three months in order to prevail against the first, or other, purchaser who has not recorded. It is obviously prudent to record assignments promptly.

Section 45 speaks for itself. The fees mentioned are specified in Section 61 of the Act, which will be found in the Appendix.

Section 46 allows the substitution of the assignee's name for that of the assignor, in the notice of copyright on the copies of the work, after the recording of the assignment. This is a further advantage in recording assignments, from the assignee's point of view. For a nominal additional fee the Copyright Office also indexes the change in proprietorship of the copyrighted work.

A great deal of the business of commercial exploitation of copyrights is carried out by means of licenses. A license is distinguishable from an assignment by the fact that the assignment changes the legal ownership of the copyright, while the license merely makes the doing of certain things by the licensee lawful. The copyright owner excuses the licensee from the penalties of infringement. This is a matter of contract. A license is not transferable. The ordinary rule of law is that a licensee cannot sue, in his own name, for violation by another of the rights which he has been permitted to exercise. This rule was successfully invoked in a case

in which a magazine publisher had been given mere rights of publication by the copyright owner of a story which was infringed by publication in a newspaper. The magazine publisher, being merely a licensee, not an assignee, was not allowed to maintain the action. [*New Fiction Publishing Co. v. Star Co., 220 Federal Reporter, 994.*]

In an earlier case under the present statute, a licensee of dramatic rights in copyrighted cartoons was allowed not merely an injunction, as being a "party aggrieved," in the language of section 36 of the Act, but damages as well. [*Hill v. Whalen & Martell, Inc., 220 Federal Reporter, 359.*] But this decision must now be regarded as overruled by a later one, holding that an "assignee" of motion picture rights in a novel, being a grantee of less than the whole copyright, hence really only a licensee, could not sue in its own name even for an injunction, and that "any party aggrieved" in section 36 means a party having a legal cause of action under section 25, which a mere licensee cannot have. [*Goldwyn Pictures Corporation v. Howell Sales Company, 282 Federal Reporter, 9.*]

Through a series of licenses the various rights included in a single copyright may be parcelled out among a number of different licensees, and this is a means of realizing the fullest value of a copyrighted work. In the case of a book, for example, the following series of rights may be the subject of separate disposition by license: Rights of first, and of second, serial

publication; book publication; translation; dramatization, and the making of moving pictures. The copyright owner keeps the legal title to the parent copyright all the time, but he sells the right to use it in the various ways mentioned. There may also be a division of territory by license. A may be given the right to perform a play in New York and B on the road. This of course is a different thing from the assignment of foreign copyrights, *e.g.*, for Canada, for Great Britain, etc.

The Copyright Act does not expressly provide for the recording of licenses, but the Copyright Office will record them, as it will any instrument affecting the ownership of rights under a copyright, and such recording by the licensee would seem to be a prudent act.

CHAPTER V

THE SUBJECT MATTER OF COPYRIGHT

Works barred from copyright: (a) by statutory prohibition; works in the public domain, government publications; (b) by judicial decision; seditious or immoral works — Titles not protected by copyright, but in other ways — Statutory classification of copyrightable works.

What has been said in preceding chapters has been of general application to all copyrights, whatever their subject matter, except in so far as two different methods of securing copyright have been described as provided for published and for unpublished works. In this chapter and the following one consideration will be given to two correlative questions: first, what classes of works can be protected under the copyright law; second, what kinds of exclusive rights does the law grant to the copyright owner in dealing with these works. In the discussion of these two questions it will also be necessary to touch from time to time upon a third — that of infringement — since the definition of subjects of copyright and of the character of the protection given nearly always grows out of the question whether infringement has taken place. A more specific treat-

ment of infringement, however, will be given in a separate chapter.

Although the law gives protection in general to all the writings of authors, yet under certain circumstances copyright is denied to works normally coming under this head, either by reason of express statutory prohibition, or by decisions of the courts based on motives of public policy.

Copyright is expressly prohibited in certain works under Section 7 of the statute, which is as follows:

"SEC. 7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: Provided, however, That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor."

This is a statutory enactment of a view which would seem fairly obvious in any case, and which was already law by virtue of judicial decision, that when a work has once become open to the use of all, by publication without copyright it cannot be restored to the status of private property. And publication in a foreign coun-

try, even though copyright was obtained under the laws of that country, prior to March 4, 1909, when the present Act went into effect, likewise bars the work from copyright, unless obtained at the time of publication. Works originally published by the United States Government, or reprints of such works, are not subject to copyright, but are free to be made use of by the public, unless copyright had already been obtained for them before the United States Government published them. It would seem that even the omission of the copyright notice in the government edition of a copyrighted work would not deprive the copyright owner of his rights. Persons using government publications, therefore, should be careful to ascertain whether copyright for them was in existence before they were issued by the Government.

On similar principles it seems that there can be no copyright in the text of the opinions of State courts, although the editorial work of the reporter may be copyrighted. [*Banks* v. *Manchester, 128 U. S. Reports, 244.*]

It is a recognized rule of copyright law, laid down in a number of decisions of the courts, that protection will not be accorded to works of a seditious or immoral character. It is contrary to public policy to uphold property rights in such works. Notice may be taken, however, of the fact that standards of both private and public morals change from time to time and that in such matters courts usually reflect the public opinion

of the day, tinged with some legal conservatism. At present this opinion is a little broader in matters of personal morality, while a little more strict as to civic morality, than it was at the time when the last copyright decisions on these questions were made.

How strongly ethical considerations may influence courts is shown by a later case in which the court denied copyright to the writer of a story, a mere fiction, who published it as a true account of facts. It was held that as copyright cannot be claimed in an account of facts the author, who had deceived the public, including the infringer, was bound by the legal implications of such deception, and could not copyright his work. It would seem more correct in theory to hold that copyright was actually secured, though perhaps the author might be estopped from asserting it against any person actually deceived, who reproduced the matter in good faith. [*Davies* v. *Bowes, 209 Federal Reporter, 53. The decision was affirmed by the Circuit Court of Appeals on other grounds (219 Federal Reporter, 178).*]

This is perhaps as good a place as any to say that titles of works are not protected by copyright, but that they are protected under rules of common law or equity, relating to unfair competition, and also in some instances by statutes of the States. The titles of periodicals (but not the titles of books or plays) may be valid trade-marks, in which case they can be registered in the Patent Office, under the federal trade-mark law. But

the copyright law is applicable only to the substance of the work copyrighted, and not to its name.

The principle under which courts will grant injunctions to prevent the use of a title, at the suit of one who has already used it, is that the title so publicly used has come to have a "secondary meaning." It means not only what it says, but it means the particular play, moving picture, or other work, which the public has come to know under that title. The owner of the work has thus acquired a species of "good will" which it would be unfair for another person to appropriate by using the same title. The two works for which the same, or a similar, title is used must be within competing classes. A moving picture competes with a play, and vice versa. It has been held that a moving picture does not compete with a book, but it seems likely, from the tenor of recent decisions, that this decision would not now be followed, as the copyright owner of a book may intend at some time to have a motion picture made from it, and the right to use the title of the book for the "movie" would be reserved to him. The right of protecting a title does not rest on absolute priority in the use of the title. If the work for which it was first used was obscure and if a subsequent use has made it famous, the subsequent user ordinarily has a superior right. [*Of the many decisions dealing with protection for titles, two recent ones may be cited in illustration of the principles stated: National Picture Theatres* v. *Foundation Film Corporation, 266 Federal Reporter, 208, where protection for*

the title was allowed, and International Film Service v. *Associated Producers, 273 Federal Reporter, 585, where it was denied.*]

The question of the right to the use of a title is of great importance in relation to dramatic compositions and moving pictures, on account of the advertising value of the title. Authors of such works who wish to avoid the use of a title already used would do well to consult the list of copyrighted dramatic compositions published by the Copyright Office, which contains sixty thousand titles of dramas copyrighted between 1870 and 1916, and which may be found in the public libraries of the larger cities, or purchased from the Government Printing Office at Washington. If a search through this work, supplemented by an examination of the catalogue of copyright entries since 1916, fails to show the contemplated title, it will be fairly certain that it has not been publicly used in this country. On the other hand, if it is found to have been used a number of times, some of them a long time ago, it will be unlikely that it is the subject of an exclusive right in any user, hence it can be safely used again.

Two sections of the Copyright Act set forth what may be copyrighted:

"SEC. 4. That the works for which copyright may be secured under this Act shall include all the writings of an author."

"SEC. 5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopædic works, directories, gazetteers and other compilations;
(b) Periodicals, including newspapers;
(c) Lectures, sermons, addresses (prepared for oral delivery);
(d) Dramatic or dramatico-musical compositions;
(e) Musical compositions;
(f) Maps;
(g) Works of art; models or designs for works of art;
(h) Reproductions of a work of art;
(i) Drawings or plastic works of a scientific or technical character;
(j) Photographs;
(k) Prints and pictorial illustrations;
(l) Motion picture photoplays;
(m) Motion pictures other than photoplays:
Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act."

Without broadening this classification, but rather by way of further particularizing, we have

"SEC. 6. That compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this

Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works."

It is to be noted that Section 4 defines the subject matter of copyright as broadly as the language of the Constitution will permit, by making it include "all the writings of an author," and that the classification in Section 5 is not to be regarded as limiting copyrightable works to those which come under these classes. The classification is in fact primarily a matter of convenience in recording and indexing copyright registrations. Nevertheless it includes nearly everything which one can think of as coming by its nature within the sphere of copyright protection, and if an article is clearly outside any of the classes named, it may fairly be presumed that it is outside the copyright law. The burden of proving the contrary will at least rest with the applicant for copyright registration.

Let us glance briefly at the classes of articles enumerated in Section 5, and see what is embraced by each.

(a) *Books.* This is a very broad class, including practically any article consisting of words which has the requisite originality to be copyrightable, and is not otherwise classifiable. The size or form of the work is immaterial. A single page, paragraph, or even a single

sentence may be a "book." Each of Rochefoucauld's maxims, for example, if new today, would be so designated. But a mere statement of fact, such as anybody might make: Yesterday was the anniversary of the battle of Lexington; Dempsey knocked out Carpentier in four rounds; is not a book, because it lacks the element of authorship.

Books may also consist of figures, or arbitrary symbols, such as tables of mathematical computations, a stock example being a collection of logarithms. It may be said that it is the kind of authorship, the nature of the faculties employed in the creative act, which determines the classification of the work, at least as much as the character of the work itself. Thus a compilation of musical compositions, or of engravings, is classifiable as a book under the copyright law, where the basis of the claim of copyright is not the music or pictures, but their collection in a certain order.

"Articles designed rather for physical than intellectual use or enjoyment," in the language of Mr. W. B. Hale [*13 Corpus Juris, 1022*] are outside the sphere of copyright protection, hence outside the definition of the term "book," although they may have some of the characteristics of a book. Thus railroad tickets, index cards, dress patterns and blank books of account are not so classifiable, nor are they subjects of copyright at all. Such articles may sometimes include a quantity of explanatory text which is entitled to be called a book, and in case application is made for registration of copy-

right for such matter, care should be taken to distinguish the informative text matter from the article itself.

(b) *Periodicals.* The distinction between a periodical and a book rests in the serial nature of the former and perhaps to some extent in its composite character. In respect of the rights given by copyright, periodicals are like books. Their separate classification under Section 5 is only of importance in connection with their registration. All the contents of any issue of a periodical are protected under a single notice and a single registration. Reference has already been made to the provision for separate registration of contributions to periodicals, where the copyright has not been assigned to the proprietor of the periodical. In such cases a special notice should be printed in juxtaposition to the title of the contribution, and should contain the name of the actual owner of the copyright. Periodicals in the English language, like books, must be manufactured in the United States, under Section 15 of the Act, but an affidavit of such manufacture is not required.

(c) *Lectures, sermons and addresses, prepared for oral delivery.* Here again, the subject matter is like that of books, and if such works are published, they become books under the copyright law. And if they are prepared, not for oral delivery, but for publication, they may not be copyrighted as unpublished works under Section 11, but only by publication with the copyright notice, like other books.

(d) *Dramatic or dramatico-musical compositions.*

The term "dramatic composition" has been the subject of much discussion in litigation and is still rather vaguely defined. The dividing line between a dramatic composition and a book is hard to draw. The ordinary play, prepared for presentation on the stage and containing both speeches and directions for action, is a clear enough case, but there may be dramatic compositions without words to be spoken, *i.e.*, pantomimes; and there are many works in dramatic form which are intended only for reproduction in copies and are unsuited to actual performance, *e.g.*, Shelley's "Prometheus Unbound," although it is hard to say, in this day of ingenious stage craft, that any work is incapable of stage production. Not everything which may be presented on the stage is entitled to be called a dramatic composition under the copyright law. An acrobatic performance, for instance, would not be so classifiable, and under a former statute a dance, although containing elements of picturesqueness and color, was denied the protection of copyright. [*Fuller* v. *Bemis, 50 Federal Reporter, 926.*] On the other hand, a railroad accident scene, with practically no words spoken, was held to fulfill the conditions of protectable drama. [*Daly* v. *Palmer, 6 Blatchford's Reports, 256.*] A dramatic composition, in copyright law, must be intended for, or suited to, representation as distinguished from mere narration, it must tell a story, and its essence must be action. For the rest, one may notice an increasing tendency to liberal construction of the

law in recent decisions regarding the protection of performing rights. [*Green* v. *Luby*, *177 Federal Reporter*, *287*.]

A dramatico-musical composition is a dramatic composition with accompanying music, such as an opera, a musical comedy, or perhaps an oratoric or cantata. The classification makes it possible to secure a single copyright covering all the component parts of the work, literary, musical and dramatic.

(e) *Musical compositions.* It is important to observe that the rights granted by the law to musical compositions differ in some respects from those given to dramatico-musical compositions. This should be borne in mind when copyright is registered for individual numbers from a dramatico-musical composition. For in spite of the provision of Section 5, that errors in classification shall not invalidate or impair the protection secured, there is some possibility that the copyright claimant may be held to be bound by the classification he has selected and so restricted to the rights given by the law to works of that class. Further discussion of this matter will be found in connection with the treatment of the kinds of rights granted in different classes of works.

A musical composition may consist of music alone, or of music accompanied by words, and in the latter case both words and music are covered by a single copyright. But a "song" consisting of words only is classifiable as a book, not as a musical composition. This

very obvious fact would not be mentioned, were it not that the experience of the Copyright Office shows a widespread impression that "songs" without music are specifically entitled to copyright under that designation.

(f) *Maps.* The term includes what were formerly separately mentioned by the law as charts. A map is any cartographic work, representing a portion of the earth's surface, or perhaps even a portion of space with objects therein. There is a point, however, at which this class shades imperceptibly into that of drawings of a scientific or technical character and the distinction is of some practical importance, inasmuch as the latter class (i) may be copyrighted without publication, while this privilege is not granted to maps proper.

(g) *Works of art; models or designs for works of art.* Herein are included works of the fine arts, such as paintings, sculpture and drawings, but not works of the useful arts, which are within the sphere of patent protection. It would be desirable that the copyright law should contain special provisions for works of art applied to industry, and such legislation has been recommended, but so far not adopted. The design patent act, however, provides protection for "new, original and ornamental designs for articles of manufacture." [*U. S. Revised Statutes, sec. 4929.*]

Models or designs for works of art may also be protected pending their execution and completion.

(h) *Reproductions of works of art.* This class was intended to cover such works as engravings, lithographs,

etchings, and other reproductions in which the reproducer has embodied an element of original artistic labor, upon which the copyright in each separate reproduction is based. Such reproductions, in order to secure copyright, must be made with the consent of the copyright proprietor of the work reproduced, unless such work is in the public domain.

(i) *Drawings or plastic works of a scientific or technical character.* These are architects' or engineers' drawings or plans, relief maps or technical models, not within the sphere of the fine arts. Under this provision a claim for copyright has been sustained for a prismatic glass lamp shade, as a "plastic work of a scientific or technical character" [*Brock* v. *National Electrical Supply Co., Supreme Court of the District of Columbia, February 24, 1911 (not reported)*], but the decision seems to go to the very border line between the domain of copyright and that of patent, if not across it.

(j) *Photographs.* This class includes all pictures made by actual photographic processes, but not those made by derivative processes, *e.g.*, half-tone cuts, which are classifiable as prints.

(k) *Prints and pictorial illustrations.* In Class (k) are included all pictures made by any kind of printing process. They may be, and usually are, reproductions of works of art, or of photographs. In fact, Class (k) often overlaps Classes (g) or (h), but by far the greater number of pictures copyrighted are normally registrable in Class (k). Herein are included

lithographs and photo-engravings which, as mentioned in a previous chapter, must be manufactured in the United States, unless they are illustrations of a scientific work, or reproductions of works of art, and the objects represented are located in a foreign country.

(l) and (m) *Motion pictures*, additions to the subject matter of copyright, included by amendment in 1912. The distinction between Class (l), motion picture photoplays, and Class (m), motion pictures other than photoplays is that the former are of a dramatic character while the latter are merely pictorial.

CHAPTER VI

The Kinds of Rights Granted by the Copyright Act

(a) Rights of copying and disseminating: printing, reprinting, publishing, copying and vending — (b) Rights of transformation or modification: translation, dramatization, arrangement, making of mechanical music records—(c) Rights of performance or representation — Performance for profit — Radio broadcasting.

The different kinds of exclusive rights granted by the law to proprietors of copyright in the various classes of works which have been enumerated may be conveniently grouped under three heads:

(1) Rights of copying and dissemination of copies.
(2) Rights of modification, or transformation.
(3) Rights of performance, or representation.

Not all of these rights are accorded, or are indeed applicable, to all classes of copyrighted works. To ascertain what kinds of rights are given by the law for any particular work, both the nature and classification of the work and the language of the statute have to be considered. The grant of rights is set forth in the Copyright Act in its first section:

"That any person entitled thereto, upon complying wi the provisions of this Act, shall have the exclusive right:

(a) To print, reprint, publish, copy and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(e) To perform the copyrighted work publicly for profit if it be a musical composition; and for the purpose of public performance for profit, and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: Provided . . .

(Here follow the provisions of the Act relating to the mechanical reproduction of music, which, on account

of their prolixity and technicality, are not quoted here, but will be found in Appendix A, at page 234.)

The rights of copying and disseminating copies are contained in subsection (a), and only there, except for the provision as to vending any manuscript or record of a dramatic composition, contained in subsection (d). Subsection (a) contains the classical grant of rights under copyright, and its language is practically the same as that of the first copyright act of the United States, passed in 1790. The right to "print, reprint, publish, copy and vend" is not restricted to any special classes of works, but is applicable to all of them, so far as the nature of the work permits; (one could not, of course print a statue). Printing means not only printing from type, or plates, but also typewriting, mimeographing and kindred duplicating processes. Copying has an even broader significance, including the making of manuscript copies. The exclusive right of copying is not limited to the making of exact copies. A colorable alteration, as where a single figure is changed in a picture, and the balance of the picture copied, will not excuse an infringer. Nor is it necessary that the entire work be copied in order to violate the copyright owner's exclusive right to copy. If a substantial part of the work, or even a small, but very important part, is copied, that is infringement. [*Boosey* v. *Empire Music Co., 224 Federal Reporter, 646.*] The right to copy includes the right to make alterations in size, or to change the medium of reproduction. A work

of art is copied, in the sense of the law, when it is photographed. If the plot of a dramatic composition is copied in detail, although the names of the characters and even some of the speeches, are changed, that is a copying of the drama. [*Dam* v. *Kirke La Shelle Co.*, *166 Federal Reporter, 589.*] One who made and published a copy of a picture, based on the original sketch from which the copyrighted picture had been developed, was held to have copied the picture. [*Beifeld* v. *Dodge Publishing Co., 198 Federal Reporter, 658.*] Conversely, whoever copies a copy, copies the original.

The strict application of the law as to copying, however, is modified by what is known as the doctrine of fair use, which is, briefly, that any one may make such use of the work, if he has lawfully obtained a copy of it, as must have been reasonably expected by the copyright owner. One may quote extracts from a book, by way of illustration or criticism. One may consult a work in the preparation of other works of similar character, as in various cases which have come before the courts regarding the employment of directories in checking up lists of names. Reading aloud from a published book, even in public and for profit, is not yet one of the exclusive rights of the author. Whether reading an entire play in public might not in some circumstances be forbidden is a question, since that might be held an infringement of the performing right. It is well settled that a parody is not an infringement

of the right to copy. A test applied to determine whether a given amount of copying exceeds the limits of "fair use" is whether the demand for the original has been reduced. [*For a good discussion of the doctrine of fair use, see Drone on Copyright, pp. 386 et seq.*]

The right to vend, or sell, copies of the work is restricted, as to any particular copy, to a single act of sale. In other words, conditions as to the resale of the work cannot be imposed. The copyright owner has exercised his right, and exhausted it, when he has once sold the copy. [*Bobbs-Merrill Co.* v. *Straus, 210 U. S. Reports, 339.*]

The meaning of the word "publish" has already been discussed.

The second class of rights which has been mentioned —rights of modification or transformation of the copyrighted work—is covered by subsection (b) above quoted, by the portion of subsection (d) which relates to the making of transcriptions or records of a dramatic composition, from which it may be reproduced, and by the portion of subsection (e) which deals with the making of arrangements or settings of musical compositions, in which is included the making of "parts of instruments serving to reproduce mechanically the musical work," that is, phonograph records and rolls for piano players. These rights are restricted to the classes of works expressly mentioned as enjoying them. The making of translations, or "other versions,"

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is a right extended to any literary work, and this means any work in words, including not only books, but dramatic compositions and lectures, sermons or addresses. The "other versions" include abridgments, which could under former statutes be made without infringement of the copyright. The right to dramatize a non-dramatic work extends not merely to books, but also to a series of pictures, as has been held in regard to the "comic strips" of a famous cartoonist. This right also covers the making of moving pictures from non-dramatic works and the decision of the United States Supreme Court to that effect has added incalculably to the value of copyrighted works. [*Kalem Co.* v. *Harper Bros., 222 U. S. Reports, 55.*]

The right of dramatization was granted, if specially reserved by the author, in the Copyright Act of 1870, and without qualification in the Act of 1891. Hence all works copyrighted since 1891, and probably most of those copyrighted earlier, if the period of protection has not run out, are privileged to the exclusive right of dramatization, which includes the right to make motion pictures based on such works. [*See Chapter VII, post, pp. 112–113.*]

The right of arrangement of music calls for brief special comment. An "arrangement" in the language of musicians is a re-composition of music for a different instrument from that for which it was first composed. A mere transposition of key, involving only the mechanical, as distinguished from the creative, exercise of the musical mind, is not a new arrangement. The

Copyright Office, in practice, has recognized this fact by making a single registration to protect a musical composition in two or more keys, on deposit of a copy in each key.

The right to make arrangements of music "in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced" includes the right to make (or permit others to make) phonograph records or rolls for mechanical piano players, or other "parts of instruments serving to reproduce mechanically the musical work." This right, which is a new feature of copyright law, not given prior to the present Act, was added only after a prolonged struggle between the manufacturers of mechanical instrument records and the composers and publishers of music. The composers and publishers wanted a complete and absolute right; the manufacturers did not want any, and the provisions in question are therefore the result of a compromise. As the law stands, there are a number of restrictions on the grant. It applies only to compositions published and copyrighted after the law went into effect (July 1, 1909). It applies to the works of foreign composers, only when the country of which the composer is a citizen grants similar rights to citizens of the United States. It is exclusive only so long as not exercised: in other words, the copyright owner may refrain from making, or allowing others to make, "parts of musical instruments

serving to reproduce mechanically the musical work," but if he once makes, or permits another to make, such parts, he is compelled to allow any one else to do the same, on payment of a royalty fixed by the Act at two cents for each such part. The copyright proprietor is required to file in the Copyright Office a notice of his use of the musical work for the manufacture of such parts, or of his permission to another to use it. On the other hand, when such use has once taken place and another manufacturer desires to make records or rolls, he must file in the Copyright Office notice of his intention to do so and mail a copy to the copyright proprietor.

It has been suggested that this so-called "compulsory license" provision of the law is unconstitutional, because the right granted is not exclusive, and the Constitution provides that Congress may grant only exclusive rights. In answer it has been said that the right is exclusive when granted and only ceases to be so when it is exercised. [*Weil, pp. 61 et seq.*]

Not much litigation has arisen regarding the mechanical music provisions of the Copyright Act, and the question of their constitutionality has not so far been brought before the courts. It has been held that, while the mechanical reproducing parts (records or rolls) are not themselves subject of copyright protection, but only of copyright control, yet one who has a license to manufacture records from copyrighted music can enjoin the unauthorized reproduction of such

records—a decision a little difficult to understand. [*Aeolian Co.* v. *Royal Music Roll Co., 196 Federal Reporter, 926.*] It has also been held that a license to use copyrighted music in the manufacture of a piano player roll does not carry with it the right to print the words on the roll. It seems that this restriction, based on the exclusive right of copying the words which belongs to the copyright proprietor, does not apply to the licensee who manufactures a phonograph record, since such a record is not a copy. [*Standard Music Roll Co.* v. *Mills, 241 Federal Reporter, 361.*]

In an interesting series of decisions concluded not long ago, it was held that where an alien not entitled to the privilege of making, or licensing others to make, phonograph records of his copyrighted music, had the coöperation of an American citizen who wrote the words to his music in a popular song, the resulting musical composition was protected against unauthorized manufacture of records because the American could not be deprived of his rights through the mere fact of coöperation with the alien, the words and music constituting a single work. The force of the decision is lessened by the fact that the alien was later held to have been domiciled in the United States at the time of the composition of the music. It was also held that records for which all the steps in manufacture except the final one were taken in the United States were not released from the obligation to pay a royalty to the copyright proprietor merely through the fact that

the final step in manufacture was taken in a foreign country. [*G. Ricordi & Co.* v. *Columbia Graphophone Co., 256 Federal Reporter, 699; 258 Federal Reporter, 72; 263 Federal Reporter, 354.*]

It is to be noted generally regarding the second group of rights which we have considered—rights of modification and transformation—that their exercise usually results in the creation of a new work, which can in turn be copyrighted, for the protection of the intellectual labor of the person who has transformed, or modified the work. Thus a translation may be copyrighted for the protection of the work of the particular translator, although that copyright does not of itself prohibit the making of other translations, much less does it extend back to the original work. Such secondary, or derivative copyrights, are the subject of the provisions of Section 6 of the Act, which has already been quoted.

The third class of rights granted by the statute affords an example of the broadening scope of copyright to which reference has already been made. The right of performance of dramatic compositions was added to the copyright law in 1856 and the right of performance of music in 1897. The present law considerably enlarges these rights and adds a new class of works to those for which the right of public rendition is given—lectures, sermons, or addresses, prepared for oral delivery. It adds to the subject matter of copyright motion pictures, works partaking

of both pictorial and dramatic qualities. Performing rights are of special importance, involving perhaps more than half the litigation on copyright which comes currently before the courts, as well as much litigation regarding the interpretation of contracts dealing with copyright matter, though not directly raising points of copyright law. A great many of the questions which arise with respect to performing rights, and to motion pictures, have not so far been decided by the courts and must therefore be discussed on a general basis of reason and analogy drawn from judicial decisions on other subjects.

The rights under consideration are granted by subsections (c), (d) and (e) of Section 1 of the Copyright Act, already quoted. Subsection (c) gives to the copyright proprietor of a lecture, sermon, address or similar production the exclusive right to deliver it, or authorize its delivery, in public, for profit. It should be observed that this privilege does not extend to published books, but only to those unpublished works which are especially designed for oral delivery. Since, on publication, such works become books, within the meaning of the law, it would appear that the exclusive right of oral delivery is lost when they are published. The provision in question, however, has not yet been judicially construed.

Subsection (d) of Section 1 of the Act gives to the copyright proprietor the exclusive right "to perform or represent the copyrighted work publicly if it be a

drama," "and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever." Subsection (e) gives the right "to perform the copyrighted work publicly for profit if it be a musical composition." The right of public performance of a dramatic composition is absolute; the right of public performance of a musical composition is limited to performances which are given for profit. Dramatico-musical compositions, which combine the characters of drama and music, are entitled to the broad protection given to dramatic compositions.

The question, what is a performance for profit, and the distinction in this matter between the rights granted for musical and those for dramatico-musical compositions, were involved in two cases which reached final decision together in the United States Supreme Court in 1917. In both these cases copyrighted music had been performed without the consent of the copyright proprietor in a public restaurant for the entertainment of guests during meal times. The Supreme Court decided that such performances are "for profit." "If music did not pay," said Justice Holmes, in his opinion, "it would be given up. If it pays, it pays out of the public's pocket. Whether it pays or not, the purpose of employing it is profit, and that is enough." [*Herbert* v. *Shanley: Church* v. *Hilliard, 242 U. S. Reports, 591.*]

In each of these cases, the music performed was a single number from a dramatico-musical composition,

which had been copyrighted as a whole, the number in question having also been separately copyrighted under the classification musical composition, and sold in separate form. The Circuit Court of Appeals raised two questions regarding the situation so presented, as to one of the compositions (and it would seem the same questions might have been raised as to the other). First, whether a copyright for a single musical number from a previously copyrighted dramatico-musical composition was valid; second, whether, supposing it to be valid, the copyright proprietor had not abandoned his absolute right of public performance for the dramatico-musical composition, in favor of a right limited to performance for profit, emphasis being placed on the fact that the separately published number bore no statement of the fact that it was a part of a previously copyrighted work. The Supreme Court, in its opinion, did not pass upon these questions, and they remain undecided. But it is obviously a matter for careful consideration whether separate copyrights should be registered for the songs from a dramatico-musical composition, and whether the proprietor should not rather publish such songs with a notice of copyright corresponding to the notice on the complete work, and refrain from a new registration under another, and different, classification, by reference to which he might be held to have lost a portion of the rights originally acquired.

Performance for profit, therefore, is any perform-

ance out of which the person ordering it expects to make a profit, directly or indirectly. Public performance is performance in any place to which the public is admitted without restriction, whether admission is charged or not. Reference may be made here to the practice among amateur dramatic companies of performing any play of which copies can be obtained, on the easy assumption that no harm is done if no charge is made, or if the profits of the performance go to some charitable purpose. Both the idea and the practice are wrong and such performances are none the less infringements that it may not be worth the copyright proprietor's trouble to stop them, or obtain damages for them.

Public performance of certain classes of musical works, or dramatico-musical works, for charitable or educational purposes is, however, expressly permitted by Section 28 of the Copyright Act, to which further reference will be made when the subject of infringement is specially discussed.

The latest application of the right of public performance is that which has begun to take place in the new field of radio broadcasting. Owners of copyright in musical compositions have asserted their claim to control the performance of such works for transmission by radio, urging that the decision of the United States Supreme Court in the case of Herbert *v.* Shanley [*242 U. S. Reports, 591*] is broad enough to cover this method of exploitation. That case, as already pointed out,

held that the performance of music in a public restaurant, where a charge was made only for the food and not, ostensibly, for the music, was a public performance for profit, because the purpose of giving it was to attract custom and so incidentally to add to the profits of the restaurant. This reasoning is applicable to any public performance of music if the person causing the performance to be given either actually makes a profit from it, or intends to make one, whether such profit be direct or indirect.

It will be seen that there are two questions to be answered in applying the reasoning of Herbert *v.* Shanley to a radio performance of music (or a performance or rendition of any other class of work for which the law grants the right of performance, including dramatic and dramatico-musical compositions, and lectures, sermons and addresses prepared for oral delivery, but not including, up to the present time, works classifiable as "books"). These questions are: first, is such a performance public? second, is it for profit? Both questions must be answered in the affirmative, if the copyright proprietor is to be permitted to control the radio performance. At the time of this writing, the federal courts have passed upon these questions in two cases, with diametrically opposite results.

In Witmark *v.* Bamberger [*291 Federal Reporter, 776*], the District Court for New Jersey held the broadcasting an infringement. The defendant was in the business of selling radio equipment and at the beginning of

the performance announced its name and address. Hence the court held the purpose of the broadcasting was to advertise defendant's business, hence profit. The question whether this was a public performance was lightly passed over. In Remick *v.* American Automobile Accessories Co. [*298 Federal Reporter, 628*], decided somewhat later on similar facts, the District Court for the Southern District of Ohio passed over the question whether the performance was for profit and held that it was not public, within the meaning of the Copyright Act, as Congress did not have radio in mind when the Act was passed, and as a performance which took place on private premises, and not in a public place of assembly, could not be regarded as public.

The Remick case was appealed and on April 9, 1925, the Circuit Court of Appeals for the Sixth Circuit reversed the decision of the lower court, holding that the Act of 1909 is broad enough to apply to radio broadcasting, even though this method of dissemination was not developed when the Act was passed. "A performance, in our judgment," said Judge Mack, in rendering the opinion, "is no less public because the listeners are unable to communicate with one another or are not assembled within an inclosure or gathered together in some open stadium or park or other public place. . . . Radio broadcasting is intended to and in fact does reach a very much larger number of the public at the moment of the rendition than any other medium of performance. The artist is consciously

addressing a great though unseen and widely scattered audience and is therefore participating in a public performance."

The question whether any particular performance by radio is for profit, on the other hand, is one the answer to which depends on the circumstances of the performance. Radio broadcasting might be done by a charitable organization for a philanthropic purpose, by a learned institution for scientific experimentation, by an enthusiastic amateur for love of the game, or by a dealer in radio apparatus for the advertisement of his wares. In only the last named case would there be the purpose of making a pecuniary profit for the benefit of the person causing the performance. The other cases would probably be outside the intention of the statute and the reasoning of Herbert *v.* Shanley.

As the matter stands today, the great bulk of radio broadcasting is being done by companies which are directly interested in promoting the sale of receiving apparatus which they manufacture, and it is safe to say that their chief purpose in furnishing this service free to the public is to increase such sales and thus to enlarge their profits. "If it did not pay, it would be given up."

Another line of reasoning which may play a part in fixing the ultimate status of radio broadcasting under the copyright law is found in the opinion in the recent interlocutory decision of the District Court for the Southern District of New York, in the case of Remick

v. General Electric Co., final decision in which has not been reached when this book goes to press. The Court there suggested that all which is actually done by broadcasting is to increase the audience. The broadcasting itself is not a performance at all; it is only the transmission of a performance, just as telephoning would be. Hence the legal liability of the broadcaster may depend on the status of the performance which he broadcasts. If he procures a performance, without authorization, for the purpose of broadcasting, he is directly liable as an infringer (assuming that the performance is thus made public). If he broadcasts a performance which he did not procure, but which has not been authorized, he is liable only for contributory infringement, while if he merely broadcasts a performance which has been duly authorized, he may not be liable at all. The above observations are *obiter dicta*, thrown out during the course of an opinion denying a motion to dismiss the complaint, but they should be weighed with some care as an indication of the distinctions which may come to be made in dealing with broadcast performances.

While music has hitherto occupied the chief place on the programs of the radio broadcaster, an increasing quantity of other copyright material is being sent through the air, consisting of matter classifiable under the copyright law as books, lectures, etc., and dramatic compositions. The copyright law does not give the exclusive right of public reading to works classifiable as books, hence copyright owners cannot restrict the

broadcasting of such works. Copyrighted lectures, sermons or addresses, prepared for oral delivery, however, cannot be delivered in public (and therefore cannot be broadcasted, on the view that broadcasting is public performance) whether for profit or not, without the copyright owner's consent. This is probably also true of readings from copyrighted dramatic compositions, and the authors of plays should consider, in making their contracts, whether they wish to grant, or to retain, the right to exploit their works in this way. At present this is mainly a question of advertising policy, but the development of radio may make such performances a source of direct profit to the author in the near future.

The right to make motion pictures from a non-dramatic work is included in the right of dramatization, as has been stated, but the questions which have arisen in this connection, as well as those relating to representation of dramatic works by means of motion pictures, are of such novelty and importance as to call for treatment in a separate chapter.

CHAPTER VII

Motion Pictures

Making motion picture photoplays from a non-dramatic work is dramatization (Kalem Co. v. Harper Bros.) — The right of dramatization as granted by former statutes — Interpretation of contracts involving the right to make or produce motion pictures — Manners v. Morosco — Measure of protection for motion pictures and scenarios.

The rapidly increasing importance of motion picture rights in copyright law is an example, something like that of mechanical reproduction of music, of the way in which the progress of invention acts to enlarge the scope of copyright protection. The art of making and exhibiting motion pictures had been known for some years before it was finally settled, by the decision of the United States Supreme Court, in the case of Kalem Co. *v.* Harper Bros., in 1911, that the making of such a picture, based on a copyrighted work, was a dramatization of such work, and consequently, if not authorized, an infringement of the copyright. The right of dramatization had first been given in the copyright law by the Act of 1870, which permitted authors to reserve such right. How the reservation was to be made was not stated, but presumably it could be made either by a

notice in the copyrighted work ("All rights reserved." or the like), or, where the copyright was sold, by an express reservation in the contract of sale. If no such reservation was made, however, any one was free to dramatize the work. In 1891 the right of dramatization was enlarged by the provision that

"authors or their assigns shall have exclusive right to dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States."

It seems clear from this language that it was the intention of Congress not merely to grant the right of dramatization to all works copyrighted subsequent to the date when the Act of 1891 went into effect (July 1, 1891), but to enlarge retroactively the grant of rights obtained under previous copyrights. In other words, the effect of the Act of 1891 was to give an unqualified right of dramatization to all works in which copyright was then subsisting, or might thereafter be obtained. Such retroactive rights, however, could not, it is conceived, operate to destroy the property of persons who had, in good faith, made dramatizations of works for which the right of dramatization had never been granted (those copyrighted prior to 1870) or for which it had not been "reserved" during the period between 1870 and 1891. Such persons could not retroactively be made infringers, *ex post facto*, if they were not so under the law in effect at the time their dramatizations were made.

No copyright can now subsist in a work published prior to 1869. [*See Chapter IV, p. 69.*] In works published before 1869, therefore, there is now neither right of dramatization, nor any other right under the copyright law. Such works can be used freely by the public, in the making of motion pictures, as in all other ways.

As to works copyrighted between 1870 and 1891. the right of dramatization may have been reserved by the author, as permitted by the Act of 1870. If so, such reservation would include the right to make motion pictures. If no reservation was made, it is still probable that in the majority of cases the right of dramatization was retroactively obtained under the provisions of the Act of 1891. And even where the author failed to reserve the right, and some member of the public made a dramatization, it seems probable that after 1891 the author could prevent any further dramatizing of his work, although he could not interfere with the continued production of the stage version already in existence, or of motion pictures made from that version.

So much for works copyrighted before 1891. As to works copyrighted since that time, there can be no question since the decision of the Supreme Court in Kalem *v.* Harper. The right to make motion pictures is an inherent part of the copyright.

If the author himself has taken and retained the copyright in his work, the right of dramatization, including the right to make motion pictures, of course

belongs to him, and can be granted under a contract. In cases where a grant of the right of dramatization has been made, however, there frequently arises the question whether such grant includes the right to make motion pictures. In the determination of this question, nice distinctions have been made by the courts. As in all other cases involving the construction of contracts, the intent of the parties governs. The difficulty is that where contracts were made before the development of the art of motion pictures, neither party had them in mind. In the earlier litigation following the decision in Kalem *v.* Harper, courts showed some tendency, at least in dicta, to assume that a contract giving the exclusive right of dramatization included the right to make a version for motion picture production, but the more recent development of the law has been away from this theory and in the direction of the view that any language in a contract giving the right of dramatization which indicates that the parties had in contemplation only the spoken drama will be construed as saving the motion picture rights to the grantor.

The Kalem-Harper case was that of a book, Lew Wallace's "Ben Hur," and the right under construction was that of dramatization. But there has also been a good deal of litigation in cases where the work was a play and the right of production had been granted. In such cases the question for decision has been whether the intention of the parties, as exhibited in the language of their contract, was to transfer the right to produce

the play on the screen as well as on the stage. The law as laid down by courts has, in this class of cases, even more markedly than in cases involving the right of dramatization, proceeded towards the view that the owner of the copyright retains the right to produce the play by means of motion pictures, wherever the language of the contract indicated that the parties had the spoken, and not the silent, form of dramatic production in mind.

A curious development of the law on this point has been the theory that, while the owner of the play may retain his "movie" rights, yet he is bound by an implied covenant not to exercise them in such a way as to injure the owner of the right of stage production. In such cases both the grantor and grantee are mutually restrained from producing motion pictures, so long as the agreement granting the right of "production" is in force. This theory was first acted upon in a case in which the contract for production had been made in the infancy of the motion picture art, when neither party had the possibility of that form of production in mind. [*Harper* v. *Klaw, 232 Federal Reporter, 609.*] But it has also been applied in a case in which the contract was made after the art of motion picture production had become well developed and when, it is to be supposed, the parties to the agreement might have taken into account this form of exploitation of the drama. [*Manners* v. *Morosco: 254 Federal Reporter, 737; 258 Federal Reporter, 557; 252 U. S. Reports, 317.*]

The course of litigation in the last mentioned case is worth detailed mention, because it epitomizes the changing tendency of the law above mentioned, from the view that motion picture rights are presumed to pass, to the contrary view.

In 1912 Hartley Manners, author of the play, "Peg o' My Heart," made a contract with Oliver Morosco for its production. The contract gave Morosco the right to "produce, perform and represent" the play, but made no mention of motion pictures, and contained provisions as to manner of performance, payment of royalties on gross receipts per week, the right of the author to control alterations of the text, and other matters, indicating that production on the stage was what the parties had in mind. A dispute having arisen as to who controlled the "movie" rights, the United States Court for the Southern District of New York decided that they belonged to Morosco, because of the broad force of the words of the grant—"produce, perform and represent"—and because it was not reasonable to suppose that Morosco would have consented to Manners' retaining the power of destructive competition with the play which the production of a motion picture might imply. Manners appealed from this decision and although it was affirmed by a majority of the judges in the Circuit Court of Appeals, one of the three judges dissented on the ground that, while the language used was broad enough to convey the screen rights, yet it must be construed with regard to what the parties

were actually contracting about, as indicated from other portions of the agreement. The case was then taken to the United States Supreme Court and there the decision of the lower court was reversed, Justice Holmes, who rendered the opinion, following the reasoning of the dissenting judge, Ward, in the Circuit Court of Appeals, but adding to his decree restraining Morosco from producing pictures, the condition that Manners be likewise restrained during the period of the agreement, on the theory of implied negative covenant above referred to.

The decision of the United States Supreme Court in the case of Manners *v.* Morosco represents the law in cases of this kind today, which may be stated as follows: Where the owner of copyright in a play has given by contract the right to produce, perform or represent it, such contract will not operate to divest him of the right to produce the work in motion pictures, when the language of the contract in general indicates that the parties had in mind stage production and not production on the screen. But the owner of the play will in such cases be restrained from producing motion pictures in competition with the stage production of the play, there being an implied negative covenant on his part not to do anything which will interfere with the profitable enjoyment of the rights which he has conveyed.

From a study of the decisions relating to contracts giving a right of dramatization of books or stories a

similar result may be deduced. Where the words "dramatization for the stage" are used, or where provision is made for payment by royalties based on weekly receipts, or for regulation of changes in the text, such language will be held to indicate, in the absence of anything to the contrary, that the parties contracted with the stage in mind, not the screen. [*Klein* v. *Beach, 239 Federal Reporter, 108.*] The screen rights being in many cases more valuable than the rights for spoken drama, it is not to be presumed that conveyance of the thing of less value will carry the thing of greater value without a clear expression of intention to that effect.

A question suggested by several cases, but not so far decided by the courts is this: The author of a book grants the right of dramatization, under which a play is made. By the provision of Section 6 of the Copyright Act, this play is to be considered as a new work and the dramatist may copyright it as such. Under the copyright he obtains the exclusive right of production in any manner. He can restrain not only the unauthorized production of his play on the stage, but also its unauthorized reproduction by means of motion pictures. But can he himself exercise the usual derivative right of a copyright proprietor and make a motion picture from his play and produce it without the consent of the author, or copyright proprietor, of the book from which the play was made? The answer, it is submitted, must be in the negative. The new copyright must be held

subject to the terms of the contract by which the dramatic rights were conveyed. The copyright owner of the play may protect himself against infringement of his rights, but he cannot turn about and infringe the rights of his grantor. And this view is borne out by the language of the latter part of Section 6 of the Copyright Act:

"but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works."

Having thus considered the question of the right to make and produce motion pictures based on other copyrighted works, we may now take up the pictures themselves, and see what kind of protection the law provides for them.

The scenario for a motion picture does not fall strictly within any of the classes of subject matter of copyright mentioned in the law. The class "book" is broad enough to include scenarios, but in order to protect a book, publication with the copyright notice must take place, and this is ordinarily inconvenient for a scenario. In the view of the Copyright Office, a scenario cannot properly be regarded as a dramatic composition, since it is only a preliminary step in the creation of a drama, and not, in itself, a complete work. In some cases, however, where scenarios have been elabo-

rately worked out, with details of action, registrations have been permitted for them as dramatic compositions not reproduced for sale. The circumstances of each case must determine whether a scenario is classifiable as a dramatic composition or not. Certainly a mere brief synopsis of plot and action is not entitled to such a classification.

In any event, a scenario is entitled to protection at common law against unauthorized use. The difficulty encountered in acting under the common law, without copyright, is to prove authorship and date of composition of the work. Authors should keep careful records of their compositions and should be prepared to prove by the testimony of others the identity of their productions, the time when they were completed and submitted and other pertinent facts of which the copyright certificate, in the case of copyrighted works, furnishes prima facie evidence. In the course of time it is to be expected that some way of including scenarios under copyright protection will be provided. The amount of skill and labor involved in their production is certainly as great as that required for most plays, and the technique of the motion picture scenario is by now sufficiently developed so that it should be possible to distinguish between the mere synopsis, or jotting down of ideas, and a complete scenario.

Reference has elsewhere been made to the fact that a completed motion picture embodies the work of many authors. In theory such persons are entitled to a joint

copyright, or would be if they coöperated on an equal footing. In practice they are almost always the employees of a producer who, whether an individual or a corporation, is entitled to copyright the complete picture as the "author," being, in the language of Section 61 of the Copyright Act, an "employer for hire." In rare cases, in which copyright is held jointly by several authors, it is important to remember that each such author is free to dispose of the copyrighted work by means of license without consent of the other authors, probably without even the necessity to account to them for the proceeds. From this point of view a joint copyright is undesirable, unless there is a careful agreement among the parties as to what shall be their respective dealings with the property, and their liabilities to each other.

A motion picture may be copyrighted either under the general provisions of the law governing published works—if in fact it is published—or under the provisions of Section 11 relating to works not reproduced in copies for sale. The leasing system under which most motion pictures are put in circulation permits of construction as publication, on the authority of decisions relating to books so circulated, but it may equally well be regarded as a dissemination of "copies not reproduced for sale." The Copyright Act, in which the amendatory provisions of August 24, 1912, first expressly mentioned motion pictures, seems to contemplate their classification as works not reproduced for

sale, inasmuch as the requirements for deposit were inserted in Section 11, dealing with such works. So many questions have arisen regarding the construction of that section, however, that it is suggested copyright proprietors of motion pictures will be safer to follow the procedure required for published works and deposit the two complete copies required in case of publication. The Copyright Office usually permits withdrawal of such deposits after the copyright registration has been made.

What rights are given to the copyright proprietor of a motion picture, in addition to the general grant of subsection (a) of Section 1 of the Act, "to print, reprint, publish, copy and vend" the work? Where the motion picture is a photoplay (Class L) it seems likely that it will be entitled to the exclusive right of performance and production, as granted in subsection (d) of Section 1 for "dramatic works," but the question must remain in doubt until passed upon by the courts. For motion pictures other than photoplays (Class M), including pictures of scenery, current events and animated cartoons, the scope of protection is presumably limited to that of cognate productions not intended for the screen, *i.e.*, photographs and works of art.

Whatever may be the rights secured by copyright, it has been held that the sale of a single copy of an uncopyrighted motion picture carries with it the right of representation on the screen, since that is a necessary incident of ownership in such a copy. [*Universal Film Manufacturing Co.* v. *Copperman, 218 Federal Reporter, 577.*]

CHAPTER VIII

MOTION PICTURES (*continued*)

The sale of motion picture rights — Analysis and criticism of some provisions found in the current form of motion picture producer's contract.

The usual contract between a motion picture producer and an author, or copyright proprietor, who sells motion picture rights, is, like the average landlord and tenant lease, rather a one-sided affair. But while in the landlord and tenant lease it is the seller—the landlord—who dictates the terms of the contract and on the whole gets the better of the bargain, in the motion picture contract the reverse is true. The buyer makes the contract and looks out for his own interests very carefully, while the seller, often not well informed as to his rights, takes the terms he can get.

Probably the ideal contract from the author's standpoint would provide for a license to produce a single picture, with a liberal cash payment when the contract was signed and further payments on a royalty basis, figured on gross receipts from the exploitation of the film. The time has not come when motion picture producers are willing to make such a contract, except in the case of very valuable works, such as successful

plays with a long Broadway run behind them, and even in such cases the producers prefer an outright purchase of all rights. As time goes on, authors will get better terms, but the changing conditions of the motion picture business make it almost impossible today to standardize a form of contract fair to both sides. Such standardization is pretty nearly an accomplished fact in the matter of book publication and that of stage production. In these two methods of exploitation of the author's work conditions have undergone no great change for a number of years past, while with the pictures all is in a state of flux and will remain so for some time to come. But although it is yet hardly possible to present a complete form of contract for the sale of motion picture rights, the provisions of which will be fair to both parties in all cases, we can at least lay down some general principles which should govern the negotiations and offer some criticism of provisions which at present are being incorporated in many contracts prepared by producers and offered to authors for their signatures. Circumstances will govern the feasibility in any particular instance of the suggestions here made. The author should be able to secure most of the advantages indicated in his behalf, if he presents his case intelligently.

The question of motion picture rights will not ordinarily arise for the beginning author until after his book or story has been published, or his play accepted for production. The value of the rights will depend

to a great extent upon the popular success of the book or play. This is one reason among many why the author should secure copyright before making any bargain for the picture rights in his work. In cases of increasing frequency, however, the picture rights are in contemplation when the work is written and the producers themselves are at present using a form of contract which, while broad enough to cover rights obtained under copyright, is also phrased in such a way as to cover rights at common law, before publication.

The producer's contract usually begins with a recital that the author named has written a certain named literary composition and that the producer desires to acquire the right of making motion pictures based on the said composition. If the composition has been published and copyrighted, the contract will so state, giving the circumstances of publication and the date and number of the copyright registration. Then follows a recital of the consideration (often not given in full) and a broad, general grant to the producer of all "motion picture rights" throughout the world, the right to make pictures, to sell them and to exhibit them or cause them to be exhibited being specifically named.

The contract is as a rule so worded as to divest the author of *all* motion picture rights, in *all* countries and for *all* time. This absolute relinquishment of his rights by the author should be avoided. Instead of granting the right to make pictures generally, the author will do well to grant the right to make one picture. The tech-

nique of motion picture production has changed so rapidly that pictures made five years ago are out of date, while the works on which they are based may be as fresh as ever. Hence "remake rights" are of much value and the author should keep control of them.

A limitation of time is also very desirable. The complete exploitation of a picture takes only a year or two, and if the author's work has acquired some reputation prior to the making of the contract, it will pay him to restrict the time of his grant to, say five years, which should be ample for the making of the picture and for the full realization of its value through exhibition, both at home and abroad. It should be provided that at the end of five years, more or less, depending on circumstances, the contract and all rights granted thereunder shall cease and determine and that no further distribution of the picture made shall take place. A new contract can then be made if desired, in which the proved value of the picture can be taken into consideration. Should such a limitation be impracticable, the contract should at least reserve to the author the right to "remake" after a reasonable time.

If the work in question has been copyrighted, the rights granted can in no case outlive the first term of copyright. The author may contract to renew the copyright and to make a new grant of rights under the renewal and if he is living when the time comes for renewal he may doubtless be compelled to carry out this contract. But if he should die before the time for

renewal arrives, the grantee has no recourse because the widow or other beneficiary will hold the copyright entirely free from encumbrances and can make a new and independent grant of rights. It is conceived that such renewal beneficiary could even proceed against the original grantee as an infringer, if distribution and exhibition of the picture were continued after renewal, and this notwithstanding the original grant had been made before copyright was secured. [*See Weil, pp. 541–42, and cases involving renewals, particularly White-Smith Music Publishing Company* v. *Goff, 187 Federal Reporter, 247. But see also as to common law rights granted "forever," Paige* v. *Banks, 13 Wallace, 608.*]

The grant of rights for all the countries in the world is objectionable in principle from the author's standpoint, but is probably unavoidable under present conditions of the motion picture business. If in the future it should become practicable to license or assign motion picture rights for each country or group of countries separately, as is now done with rights of book publication, dramatic production and public performance of music, it will probably be found to the author's interest to divide his grant in that way.

It will be prudent for the author to insert in the contract, at the conclusion of the general grant of rights, a statement to the following effect:

All rights not expressly granted herein are reserved to the author, including any rights not now in existence

which may hereafter accrue to the copyright by reason of changes in the law or new inventions by means of which the copyrighted work may be made a source of profit.

Such a clause, if included in contracts for dramatization of literary works, made before the invention of motion pictures, might have saved screen rights to the author in some cases where they have been lost.

Following the general grant of rights, a subsidiary grant is usually called for by the producer, of the right to obtain copyright in all countries for the motion pictures made pursuant to the contract. Such a provision is a necessary corollary of the grant of world rights. It has now been definitely established that the grantee of motion picture rights is a mere licensee until the picture has been copyrighted, and cannot bring suit in his own name. [*Goldwyn Pictures Corporation* v. *Howell Sales Co., 282 Federal Reporter, 9.*] Of course if copyright has already been secured by the author in various countries, that fact should be recited, as the producer will then hold his motion picture copyrights subject to the parent copyright of the literary composition.

In the stock form of contract under consideration there is likely to be a paragraph authorizing the producer "to adapt, arrange, change, transpose, add to and subtract from the composition and its title, as it may deem expedient in order to cause it to conform to the demands of motion pictures." This language is much

too broad. The garbling and mangling of an author's work in a picture version often does more harm than actual infringement, with which, indeed, it is not unlikely to be coupled. In this connection several recent decisions of the courts are instructive.

Curwood *v.* Affiliated Distributors, Inc. [*283 Federal Reporter, 219*] was a case in which the author, James Oliver Curwood, who had acquired a reputation for stories of the frozen north, relinquished to the defendant screen rights in a story written some years before the litigation arose, called "The Poetic Justice of Uko San." In granting the picture rights, Curwood gave permission "to elaborate on said story, with addition of characters, etc., however needed." The defendant produced a motion picture entitled, "I Am the Law," which it advertised as based on the story by Curwood. The author, however, alleged that not only was the picture not based on the story the screen rights of which he had sold, but that it was an infringement of other stories of his, already adapted to the screen. The defendant asserted that what it had bought and intended to buy was the right to use Curwood's name, and the name of the story, in its advertising, and that the changes from the story were covered by the right to "elaborate" granted in the contract. The court, however, declined to take this view of the matter and enjoined the defendant from using either Curwood's name, or the name of his story, in connection with the picture, "I Am the Law," saying, "The elaboration of a story means some-

thing other than that the same should be discarded and its title and authorship applied to a wholly dissimilar tale."

In International Film Service, Inc. *v.* Affiliated Distributors [*283 Federal Reporter, 229*], the plaintiff corporation was the owner of motion picture rights in Curwood's story "The Valley of Silent Men," and obtained an injunction against infringement by the same defendant, and the same picture, "I Am the Law."

The Appellate Division of the New York Supreme Court has recently upheld the suit of Frank L. Packard against the Fox Film Company, for damages for making important and unauthorized changes in a story for which he had granted film rights, and for changing the title of the story, "The Iron Rider," to "Smiles are Trumps."

The cases cited support the author's right to have his story presented in a picture version substantially as he wrote it, and with its original title.

A certain amount of change is of course necessary for the process of transferring a story to the screen, or, as the producer's contract often phrases it, "in order to cause it to conform to the demands of motion pictures." Some notion of how a court would be likely to interpret such a provision may be obtained from the case of Manners *v.* Famous-Players-Lasky Corporation [*262 Federal Reporter, 811*], relating to the motion picture version of the play "Peg o' My Heart," which was the subject of other litigation mentioned in an

earlier chapter. The contract for the screen production of the play contained a stipulation reading:

"No alterations, eliminations, or additions to be made in the play without the approval of the author."

In commenting upon this clause, the court discussed very instructively the kinds of changes which might be necessary in turning a play into a picture, with the following conclusion:

". . . there cannot be a substantial deviation from the locus of the play or the order and sequence of development of the plot. If these substantial features are retained, then such pictures as may be necessary to explain the action of the play, and as may be necessary in substitution for dialogue, may be entirely proper."

The point to be brought out is that the author, not the producer, should be the final judge of the necessity or desirability of the changes made in adapting his work to the screen. The provision regarding such changes should be phrased in the negative and read somewhat as follows:

No alterations, eliminations or additions are to be made in the work, or in its title, beyond what may be necessary for adaptation to the motion picture form. Such alterations, eliminations or additions as are made shall be approved by the author before the picture is released for exhibition.

It may be said that authors do not usually know enough

about the technique of motion picture making to be qualified to pass upon such matters. Then let the author secure the services of some one sufficiently skilled to advise him, not leave his work entirely in the hands of the producer.

For like reasons the author should stipulate that the cast of the picture shall be acceptable to him.

The contract will usually contain a provision empowering the producer to institute and prosecute suits for the infringement of the rights granted and to use the author's name in such suits. Such a provision is entirely proper so long as the motion picture has not been made, for, as was held in Goldwyn Pictures Corporation *v.* Howell Sales Co., cited above, the producer cannot sue in his own name until he has made and copyrighted the picture, being until then only a licensee under the copyright, or the common law right, of the author. But when the picture has been copyrighted the producer is able to sue in its own name for infringement of that picture, and no longer needs to join the author. A clause should therefore be added to the grant of rights to use the author's name in suing, to run somewhat as follows:

But these rights shall cease and determine as soon as the producer shall have secured copyright for the picture made hereunder, which the producer agrees to do immediately upon the completion of the picture.

The author is required, in many producers' contracts, to make certain warranties, *viz.*:

1. That he is the sole owner of the rights which he is granting as well as of the work itself and that he has not previously sold, mortgaged or otherwise encumbered such rights.

2. That he has the right to obtain copyright for the work throughout the world and that this right is not defective in any way.

3. That the title of the work is free for use in motion pictures.

4. That the composition is original in all respects and that no incident which it contains is based on any other composition.

The first three of these warranties should be qualified by the insertion of some such phrase as "to the best of my knowledge and belief." Inasmuch as a warranty is likely to be held an essential feature of the contract, a violation of which would invalidate it, the author should not guarantee the existence of conditions about which he probably knows nothing. His right to obtain copyright in foreign countries, for example, depends upon the legislation of those countries. At the time this book is written, the author could not obtain copyright in Russia, for the simple reason that the Soviet Government has abolished copyright.

The warranty of originality should not be made at all. It involves questions so difficult of decision and so likely to lead to dispute that it is better to leave it alone. Originality is a matter of treatment, rather than of theme. None of Shakespeare's plays could pass

muster under a condition so exacting as that of absolute originality in every detail, and it is probable that most works of importance, and many of the very greatest, contain some incident or episode which has been consciously, or unconsciously, borrowed. The number of dramatic situations is limited and the same "motifs" have been and will be repeated again and again. The decisions of the courts contain much discussion of theme, plot, incident, atmosphere, narrative, embellishments and so on, but so confused that the law can hardly be succinctly stated. Let the author, if he chooses, warrant that he has not infringed the copyright of another. Beyond that it is unsafe to go.

A customary clause in the contract requires the author to agree not to make any other contract or agreement in conflict with the terms of the one in question, nor to encumber the rights which he is granting. No objection can be offered to such a clause.

The author further is required to indemnify and save harmless the producer from any damages, claims, liabilities, expenses and loss which the producer may incur through the exercise of the rights granted, or through its dealings with the pictures made. Such an agreement, if made, should be so worded as not to go beyond the author's reasonable responsibility for the contents of his work, such as would be incurred if the author himself should publish and copyright it. If there is anything libellous in it, the author will share liability with the producer, but he should not assume

liabilities which might come from changes made by the producer and even from undertakings bearing no relation to the work itself.

There is another side to the question of indemnification. The author's reputation may be damaged in case his work is unduly changed. That may be taken care of by the provision above suggested, that the changes made are to be subject to the author's approval. But it would also be well to add a clause to the effect that the producer shall indemnify the author for any damages which may result, through no fault or negligence on the author's part, from the making, distributing and exhibiting of the picture. In this connection, the author's right of publication, which is not a part of the grant, should be carefully guarded. The length of extracts, synopses, or scenarios permitted to be published should be regulated, particularly where the author has granted publication rights to some one else, or expects to do so.

The producer will usually require that it shall be authorized to use the author's name in its publicity and on the film "for exposure long enough to be read." If the word "authorize" is used in this connection, the producer is left with the option to use the author's name, or not, as it sees fit. This is not enough. If the author has taken care that the contract includes a certain amount of supervision of the use of his work and is satisfied that the screen version will enhance his reputation, he should require the producer to agree abso-

lutely to use his name, and to display it in publicity and on the film with sufficient prominence to give his work its due share of importance, and not subordinate it to the work of the director, the scenario writer or other members of the producing staff.

We have been dealing with the case of screen rights only. If the question of stage rights is also involved in the contract the question is somewhat less simple. In accordance with the general rule already stated, the author should always seek to subdivide the rights included in his copyright and grant them separately, for in this way he stands to realize the fullest possible returns for his work. But we have seen that under the decision of the United States Supreme Court in Manners *v.* Morosco, an author cannot sell rights to a "screen" version of his work to be produced in competition with the stage version, rights for which he has already granted, unless the grantee of the stage rights consents to such an arrangement. The grantee of stage rights will usually want some control over the disposition of the screen rights. A solution of the difficulty may be sought in some such arrangement as the following.

Where the contract is primarily one for the sale of stage rights in a play, or for dramatization and stage production of a book or story, and the grantee of the stage rights is not willing to have the author retain screen rights unrestricted, let the contract provide for a reservation of the screen rights to the author,

not to be released by him for production during the term of the contract. Then let a clause be added providing that if the number of performances of the play in a given season shall fall below so many, or if the gross royalties payable to the author in any season shall fall below a specified sum, the author's agreement not to release the screen rights shall become void and he may sell them for production.

CHAPTER IX

INFRINGEMENT

Infringement generally — To what extent is the Copyright Act retroactive? — "Fair use" — Infringement of specific rights in particular classes of works — Remedies and procedure — Damages.

The Copyright Act nowhere defines infringement and the courts have been reluctant to do so, except under the limitations of the particular facts of the case they were deciding. Certain general principles, however, may be laid down, which are applicable alike to infringement of common law rights in literary property, and to rights secured under copyright statutes. At the outset the question is presented: Has the work of an author been used, without his consent, to the author's injury, or to the profit of some other person? If the answer is yes, a second question arises: Is the use which has been made of the work within the limits of "fair use"? If not we have a prima facie case of infringement.

If we are dealing with copyright claimed under a statute, however, our case must be cut down to fit the provisions of the statute. Unless the kind of use which has been made of the author's work is one to which the statute exclusively entitles him, he has no redress under

the statute. The text of the statute must be consulted, therefore, to see whether some one or more of the rights which it grants exclusively to the author has been violated. If the copyright in question was secured under some statute prior to the one in force when the question of infringement comes up, such prior statute must also be consulted, for it is possible that the author's rights may be measured by the laws in force at the time when he secured the copyright, and not by those in force when the infringement is committed.

There is no general rule regarding retroactivity in copyright statutes. All acts in conflict with the one now in force are repealed, but where there is no conflict they remain in force. From the language of the statute it appears that remedies are retroactive, while rights are not. Section 25 imposes certain liabilities upon infringers of copyright "in any work protected under *the copyright laws of the United States*," while the grant of rights in Section 1 is to persons "complying with *the provisions of this Act*," which provisions, especially as to the manner of securing copyright, are quite different from those of former acts. As copyright may now last as long as fifty-six years, it is possible, generally speaking, that any statute of the last fifty-six years may be pertinent to the consideration of the question of infringement.

It has been argued that the title of the Copyright Act of 1909, "An Act to Amend and Consolidate the Acts Respecting Copyright," as well as the express

negation of retroactivity with regard to the new rights of mechanical reproduction of music, is evidence of the intention of Congress to make other rights, as well as remedies, retroactive. [*Weil, pp. 579 et seq.*] Several decisions of the Courts, however, as well as the language of the Act above quoted, seem opposed to this view. [*Fitch* v. *Young, 230 Federal Reporter, 743; Witmark* v. *Standard Music Roll Co., 221 Federal Reporter, 376.*]

An express exception to the retroactivity of the remedial portions of the statute is found in the provision that causes of action for infringement committed before the statute went into effect are to be prosecuted in accordance with the mode of procedure previously provided. This provision is no longer very important and as time goes on will become less so.

Returning now to the question of "fair use," briefly mentioned in Chapter V. We have seen that the term means such use as the author must be supposed to have reasonably contemplated at the time when he created his work, notwithstanding the monopoly which the law allows him. The quotation of considerable extracts from a work under review, the use of directories in the compilation of selected mailing lists, the copying of legal forms from works giving examples of such forms, are all instances of fair use. A peculiar application of the doctrine is also found in the law relating to parodies, which often approach actual copying, but have always been held legitimate.

A test sometimes used to determine whether what has been done with the copyrighted work exceeds the limits of fair use is to inquire whether the demand for the original work has been diminished to a substantial extent through competition from the alleged infringement. In one case a compilation of "Opera Stories" was published, giving brief synopses of the plots of the copyrighted works. These were held not to infringe. They were only such accounts as a critic might give in reviewing a performance. [*G. Ricordi & Co.* v. *Mason, 201 Federal Reporter, 182; Ib. 184.*] In another case, topical headings and the method of development of the subject, with a phrase quoted here and there, were used in the preparation of a quiz course in economics, the result being to enable students to dispense with the work on which the course was based. This was held to be infringement. [*Macmillan Co.* v. *King, 223 Federal Reporter, 862.*]

It is convenient to distinguish between permissible use of a copyrighted work, which is any use the law does not forbid, and "fair use" strictly speaking, which is a use technically forbidden by the law, but allowed as reasonable and customary, on the theory that the author must have foreseen it and tacitly consented to it.

Innocence of intention to infringe does not excuse an infringer, but it may mitigate his liabilities. If he has been misled through the absence of the notice of copyright from the copy of the work he has used, he is not liable for damages, but he must give up his profits

and he will be enjoined from continuing the infringement, although, as a condition of such injunction, if the court sees fit, he may recover from the copyright proprietor "his reasonable outlay, innocently incurred." There is also a limitation of the amount of damages for infringement by means of motion pictures, when the infringer shows that he was not aware he was infringing and could not have reasonably foreseen it. The above limitations and conditions cease to apply and the infringer becomes fully liable after he has been notified to desist.

Intention is also a material element in criminal infringement, which is a misdemeanor, punishable by fine and imprisonment. And where intention to infringe can be shown, it is a material fact as evidence that infringement has actually taken place. [*Meccano Limited* v. *Wagner, 234 Federal Reporter, 912.*]

A license, as we have seen, in copyright as in patent law, may be described as an act of the copyright proprietor making that lawful, under certain conditions, which would otherwise be infringement. If the licensee violates the conditions, the copyright proprietor may sue him for breach of contract, or he may revoke the license and sue for infringement of copyright, just as though no license had been granted. The producer of a play contracted with the author that no alterations should be made without the author's consent. The producer permitted a motion picture production of the play in which considerable alterations were made and this

was held to be infringement. [*Manners* v. *Famous Players-Lasky Corporation, 262 Federal Reporter. 811.*] In another case the copyright proprietor had licensed the production of copyrighted plays by means of motion pictures. The licensee defaulted in his payments and the copyright proprietor sued in the state court, obtaining the annulment of the license and an accounting for the proceeds received from the production of the pictures. [*De Mille Co.* v. *Casey, 189 New York Supplement, 275.*]

Of the exclusive rights granted by the statute to the copyright proprietor the one most frequently involved in suits for infringement is that of copying. If the whole, or a substantial part, of the copyrighted work has been copied, infringement has taken place, and is only to be excused by proof of the copyright owner's consent, express or implied. Where the entire work has been taken bodily, the situation is a simple one, but where only a part has been taken, or where the copying deviates more or less from exactitude, the questions may arise, whether what has been copied is a substantial part of the work and whether the alleged infringer has done more than amounts to "fair use," perhaps in building upon the suggestions of the copyrighted work a new work of his own. Reference has already been made to the case of Macmillan *v.* King, where the portions of the copyrighted work actually copied were few and of slight extent, but where none the less infringement was held to have taken place. In

another case the statements of the copyrighted work, a manual of instructions for using a mechanical toy, were not literally copied, [*Meccano Limited* v. *Wagner, 234 Federal Reporter, 912.*] but paraphrased, so as to repeat the same instructions in different words, and here too, infringement was held to have taken place. On the other hand, a writer on the history of the great war was held not to have infringed the copyright of his earlier work on the subject, which was the property of its publisher, when he used similar language in writing a subsequent work dealing with the same subject. [*Kennerley* v. *Simonds, 247 Federal Reporter, 822.*] The court was of opinion that the similarity could not have been avoided unless the writer was to be denied the privilege of ever writing again on the events in question. The logic of the decision seems clear, but its result worked some hardship upon the publisher of the earlier work, who saw the value of his copyright destroyed through competition from the later work.

The appropriation of the plot of a copyrighted dramatic composition is an infringing copying, provided the plot is original, and this is true even where the characters, incidents and speeches in the infringing work are all different from those in the work infringed. And the whole plot need not be taken. The appropriation of the central situation constitutes infringement, as being the copying of a substantial part of the work. [*Dam* v. *Kirke La Shelle Co., 166 Federal Reporter, 589; 175 Federal Reporter, 902.*] Where the plot is

old, however, it may be used by any one, even if he has taken it from a copyrighted work. Such at least seems to be the result of the reasoning in a case decided some time ago. [*London* v. *Biograph Co., 231 Federal Reporter, 696.*] It might be more satisfactory from the standpoint of the legal theorist, to say that the use of a plot similar to that in a copyrighted play is not in itself evidence of infringement, when it can be shown that the plot might have been found elsewhere.

Distinction must be made between the plot of a play, which is the order of the occurrences set forth, and the general subject, atmosphere, or background of the work. Courts have taken notice, upon occasion, of the practice of playwrights to follow the fashion set by a successful play. At one time there is an epidemic of crook plays, at another of plays dealing with theories of telepathy, hypnotism, or other current hypotheses of psychology. Similarities necessarily exist among such works, and do not afford a basis for holding that infringement has taken place, for "an author cannot obtain control of a field of thought on a particular subject." [*Bobbs-Merrill Co.* v. *Equitable Motion Pictures Corporation, 232 Federal Reporter, 791.*] Copyright protection does not go that far. The safest guide in deciding whether infringement exists, in the absence of direct evidence, is to determine what is the fundamental theme of the play and see if it has been appropriated. [*Underhill* v. *Belasco, 254 Federal Reporter, 838.*]

It has happened that there have been in existence several versions of a play, of which only one was copyrighted. The appropriation of incidents found only in that particular version was infringement, although the use of matter found in other versions was not. The infringer, therefore, was allowed to continue the production of his version, after removing the infringing episodes. [*Stevenson* v. *Fox, 226 Federal Reporter, 990.*]

The above instance was an application of the general rule that when it is possible to separate the infringing portions of a work from those which do not infringe, the infringer will not be restrained from the production, or dissemination, of the whole work, but will be permitted to go on with its exploitation after eliminating the parts which infringe, although of course liable for damages for infringement up to the time when the matter is thus settled. If, however, such separation is not practicable, the entire work must be abandoned. Conversely, where a copyright proprietor has inextricably mingled copyright matter with matter which is free of copyright, he cannot obtain redress against one who copies the whole work, since by his own act he has made it impossible to distinguish the copyright from the non-copyright matter. These are applications of the rule in the law of personal property regarding "confusion of goods," that he who mingles his goods with those of another so that they cannot be separated must lose his part.

The foregoing statements regarding infringement by means of copying the copyrighted work have been illustrated by instances of literary or dramatic works, but the same principles apply to other kinds of works, with such modification as the class of work requires. Thus the rule that an author cannot monopolize the treatment of a certain subject merely because he has been the first to write upon it, finds its analogy in the rule regarding pictorial works, that one cannot obtain the exclusive right to represent an object, or to manufacture it, simply by copyrighting a picture of it.

It was formerly held that there could be no copyright in a rudimentary picture, such as a simple cut of an object, used in advertising. The present rule, more logical, is that copyright subsists in such trifles, to the extent of their originality. [*National Cloak & Suit Co.* v. *Kaufman, 189 Federal Reporter, 215.*] There is a point, however, in the progress toward simplicity, where copyright becomes practically worthless through the ease with which any one, without needing to copy, can produce a practically identical thing. This was true of copyrights claimed, not in pictures, but in cards used by "Christmas Savings Clubs," containing elementary computations of sums to be paid into a bank account at regular intervals, and their totals on specified dates. The plan of saving and the method of advertising by banks using the plan were not subjects of copyright protection, and once the idea had been spread abroad, it was a very simple matter for any one to duplicate the

copyrighted article, without actually copying it. [*Landis Christmas Savings Club* v. *Merchants' National Bank, 100 Southeastern Reporter, 607.*]

The ordinary photograph of a building or of a landscape is another illustration of the possibility of substantial duplication without copying, and hence without infringement. Two photographers, placing their cameras in the same position, at the same time of day, and under similar atmospheric conditions, will obtain photographs which are much alike, yet one will not infringe the other, unless there was a deliberate intention to copy, and in cases of this kind intention is an element of some importance. A photographer made a picture of a model in nearly the same pose and lighting as those shown in an earlier photograph of the same subject, the copyright of which he had sold. The court thought there was an obvious intention to produce a close imitation of the first work, and consequently held the second an infringement. [*Gross* v. *Seligman, 212 Federal Reporter, 930.*]

From the above example it will be seen that the infringing copy of a pictorial work need not be made directly from the copyrighted work. It may be made from a copy of that work, for to copy a copy is to copy the original. Per contra, copying the original is copying the copy, as in a case where a painting was copyrighted, but not a preliminary study from which it had been made, and which the artist gave away. Reproductions of this study were held to be infringements of the

copyrighted painting. [*Beifeld* v. *Dodge Publishing Co., 198 Federal Reporter, 658.*]

A case which seems to conflict with the above at first glance is one in which a clothing dealer gave an artist directions for making a color drawing for the cover design of an advertising booklet, and the artist registered copyright. The design did not satisfy the dealer who employed a second artist to express the same conception. When the picture was published, the first artist brought suit for infringement, but was unsuccessful, the court holding that the similarities were the necessary result of the fact that the same conception had been embodied independently in the two pictures. Perhaps the basis for the decision is to be found in the fact that the employer was the actual "author" of the work, hence the copyright in both pictures belonged in equity to him. [*McCarthy* v. *L. Adler Bros. & Co., 227 Federal Reporter, 630.*]

Any work may be copied by means of photography. A photograph of sculpture is a copy, hence an infringement, if the sculpture is copyrighted.

Of musical compositions it is especially true that a relatively small part may yet be a substantial part, and the appropriation of a single striking phrase has been held sufficient to infringe. [*Boosey* v. *Empire Music Co., 224 Federal Reporter, 646.*] Copying the words of a song of which both words and music were copyrighted together as a musical composition, under former law, was held not to be infringement because it was said

the words should have been copyrighted separately, as a book, in order to obtain separate protection. [*Witmark* v. *Standard Music Roll Co., 213 Federal Reporter, 532; 221 Federal Reporter, 376.*] The decision, although allowed to stand on appeal, seems wrong in principle. Words set to music form a single work and copying the words is certainly copying a substantial part of the composition. The court seems to have been misled by the fact that Section 3 of the Copyright Act, which provides for the protection of all the "copyrightable component parts of the work copyrighted" was not in existence at the time when the song was copyrighted. But this section, whether retroactive or not, merely enacted an already recognized rule of judicial decision—that the copying of any substantial part of a copyrighted work is infringement.

The right to vend the copyrighted work is a right which is exhausted as to any particular copy when it has once been sold. In other words, no restrictions can be attached to a sale of copies, under the copyright law, which will follow the copies into the hands of subsequent purchasers. Hence it is not infringement for a dealer who has purchased worn, second-hand copies of books to renovate and rebind them and sell them again, although he cannot reprint portions that are missing, for the sake of making complete copies. [*Ginn & Co.* v. *Apollo Co., 215 Federal Reporter, 772.*] If such renovated copies are sold as new, there is a misrepresentation which may be actionable as unfair competition, but

this is a matter outside the copyright law. [*Bureau of National Literature* v. *Sells, 211 Federal Reporter, 379.*]

Violation of any of the rights which have been referred to as rights of modification of the form of the copyrighted work, *i.e.*, translation, dramatization, the arrangement or adaptation of music, the novelization of a dramatic work, the completion, finishing or execution of a sketch, model, or design for a work of art, is infringement. But independent translations, dramatizations, etc., do not infringe each other.

The most important of the rights of modification, commercially, is the right of dramatization, which includes the making of motion pictures from literary works. The subject has already been discussed in Chapters VI and VII. It may be added here that the character of the right infringed by motion pictures depends upon the nature of the original work. If it is a book or story, the right of dramatization is infringed, but if it is a dramatic composition, the right infringed is that of production, or reproduction, under subsection (d) of Section 1 of the Act. The distinction may be material in the determination of the amount of damages recoverable for infringement.

The right of dramatization has been protected in a series of cartoons telling a story, and there seems in theory no bar to the enforcement of this right in the case of any work capable of furnishing the basis for dramatic production and exhibition.

Subsection (e) of Section 1 of the Copyright Act gives to the copyright proprietor of a musical composition the right "to make any arrangement or setting of it, or of the melody of it, in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced." The phraseology quoted applies to "parts of instruments serving to reproduce mechanically the copyrighted work," *i.e.*, phonograph records, piano player rolls and the like. The rights granted in this connection, however, are not strictly exclusive—or, at least, they are only exclusive so long as they are not exercised. As soon as the copyright proprietor has made, or expressly or impliedly permitted another to make, such records, then the law itself licenses any one else to do so under certain conditions, the most important of which is the payment of a fixed royalty of two cents for each part manufactured. Therefore one who makes a mechanical instrument record of a copyrighted musical composition before the copyright proprietor has authorized any person whatever to do so is an infringer. But one who makes such a record after another person has done so is only an infringer if he fails to comply with the conditions fixed by the statute for securing a compulsory license. And he may be excused by the failure of the copyright proprietor to comply with certain conditions required on his part.

The obligation of the copyright proprietor, if he uses the musical composition for the manufacture of

mechanical records, or permits or acquiesces in its use for this purpose by another, is to file a record of the facts in the Copyright Office. This record is called a "notice of user" and the purpose of its filing is to enable manufacturers who wish to use a copyrighted musical composition to learn by inquiry at the Copyright Office whether they must obtain a special license from the copyright proprietor, or whether they may rely on the license which the law grants. If the copyright proprietor fails to file the notice of user, he loses the right of action against infringement by mechanical devices, if committed by any person other than the original licensee.

A person who wishes to avail himself of the compulsory license provisions of the statute, after learning that the copyright proprietor has already made records, or permitted others to do so, is required to serve on the proprietor, at the address shown by the records of the Copyright Office, a notice of his intention to so use the copyrighted music, and to file a copy of this notice in the Copyright Office. Omission of these formalities renders him liable to special damages, in addition to the usual damages for infringement. He also becomes liable to special damages upon failure to pay the royalties due the copyright proprietor within thirty days after demand. Such royalties are due on the twentieth of each month following the month of manufacture, and the manufacturer must furnish monthly sworn statements of the number of parts manufactured, if the copy-

right proprietor requires them. Compliance with these conditions is a complete defense to a suit for infringement.

The compulsory license thus secured covers both music and words where the musical composition is composed of both, and where the license is for its use on instruments which mechanically reproduce the words as well as the music. But where it is for a piano player roll, it covers only the music and does not give the right to reprint the words.

The first license which the copyright proprietor grants is subject to any terms which he and the licensee agree upon, but the fact that compulsory licenses are, so to speak, standing in the background, waiting to step in as soon as the first, voluntary license is granted, will necessarily influence the terms which licensees are willing to accept. It seems further probable that parties are not precluded from making special license agreements at any time, although their intention to do so, and not to be bound by the terms of the compulsory license, must be clear. [*Leo Feist, Inc.* v. *American Music Roll Co., 251 Federal Reporter, 245.*]

The right of performance of the copyrighted work in public is given by the statute without restriction to the proprietor of a dramatic or dramatico-musical composition. If the work be a musical composition, however, the right is restricted to public performance for profit, this being the only case in which the Act of 1909 diminished the scope of copyright protection, the

law previously in effect having given the right of public performance of music generally, without qualification. The distinction between a mere musical composition, and a dramatico-musical composition, is therefore of much practical importance, and it is a distinction sometimes hard to draw. A dramatico-musical composition, *i.e.*, an opera, musical comedy, or cantata, always contains portions which can be isolated and separately published. Are such separate "numbers" still dramatico-musical compositions, or have they lost their dramatic quality and their prerogative under the copyright law, of being performed in public only by permission of the copyright proprietor, whether for profit or not? In England a song having dramatic qualities was held a "dramatic piece," but it seems doubtful whether our courts would go so far. On the other hand, it would seem that so long as a dramatico-musical composition has been copyrighted only as such, it would be infringed by the public performance of any substantial portion of it, that is, of any of the separate numbers. But where the copyright proprietor has published such numbers separately, and especially where he has registered copyright for them under the classification "musical composition," it may be doubted whether he has not tacitly waived the benefit of the broader protection obtainable for dramatico-musical compositions. [*Herbert* v. *Shanley Co., 229 Federal Reporter, 340.*]

The right of performance of a dramatic composition is infringed by its performance in a motion picture ver-

sion. It has been held, however, that a contract granting the exclusive right of translating a play and performing it in English was not violated by a motion picture performance, the latter not being a performance "in English." Apparently the court thought the contract intended to cover performance of the work as a spoken drama only. [*Underhill* v. *Schenck, 187 New York Supplement, 589.*]

Performance of a dramatic composition need not take place in costume in order to infringe.

Performance of a musical composition in a public restaurant, as an incident of the entertainment for which patrons pay is, as has been seen, a public performance for profit. [*Herbert* v. *Shanley, 242 U. S. Reports, 591.*] So is performance in a motion picture theater, as an accompaniment to the pictures. The profit need not be directly obtained from the music. [*Watterson, Berlin & Snyder Co.* v. *Tollefson, 253 Federal Reporter 859.*] It is enough if the musical performance is a factor in the general entertainment from which profit is intended to be derived.

The question whether radio broadcasting infringes performing rights in music and other works for which such rights are granted by the law, has already been discussed. [*See pp. 107–112.*] On principle a performance transmitted to the public in this way would seem to be a public performance, but the contrary has been held in one case [*Remick* v. *American Automobile Accessories Co., 298 Federal Reporter, 628*], and although that decision was reversed on appeal, the question can-

not be regarded as entirely free from doubt until it has been passed upon by the United States Supreme Court, or settled by new legislation.

The singing of a copyrighted song by a vaudeville artist, in imitation of the artist whose singing popularized it has been held to be infringement. [*Green* v. *Luby, 177 Federal Reporter, 287.*] The well-known practice of giving such "imitations" does not excuse the infringer, who must obtain the copyright proprietor's permission for such use of his music, or use music that is not protected by copyright.

The compulsory license granted under Section 1 (e) to reproduce the musical work on mechanical instruments does not extend to a public performance given by such instruments, but includes only the manufacture and sale of the records. Mechanical performance by means of coin-operated machines, however, is expressly excluded from the definition of public performance for profit, and is not infringement.

The remedies available to the owner of a copyright which has been infringed are stated in Sections 25 to 28 of the statute and the procedure to be followed to secure these remedies is set forth in Sections 34 to 40. These remedies are:

(1) an injunction to restrain the infringement;
(2) recovery of the damages sustained by the copyright proprietor;
(3) recovery of the profits made by the infringer;
(4) destruction of infringing copies and the means used for making them.

It appears from the language of the law, as well as from principles governing legal liability generally, that the copyright proprietor must himself sue for damages and profits; but an injunction is obtainable by "any person aggrieved," an expression which has been held broad enough to cover a licensee. In a decision under the present Act, a licensee of dramatic rights was allowed to recover a sum apparently awarded in lieu of damages and profits, [*Hill* v. *Whalen & Martell (Inc.), 220 Federal Reporter, 359.*] but this case is an anomaly and the correct view seems to be that stated in other decisions, that only one action for damages and profits is contemplated by the law, and that the copyright proprietor must be a party plaintiff in that action. [*New Fiction Publishing Co.* v. *Star Co., 220 Federal Reporter, 994.*]

A licensee of the particular rights infringed, may and indeed should, join with the copyright proprietor in his action for infringement, in accordance with the rule of equity procedure in the United States Courts, which makes all persons having an interest in the subject matter and in obtaining relief proper parties plaintiff. [*Gaumont Co.* v. *Hatch, 208 Federal Reporter, 378.*] Not so, however, where the licensee has no interest in the right violated, as in a decided case where the licensee had the right to produce a dramatic composition on the stage, while the infringer had produced it only by means of motion pictures. It was held that, as the copyright proprietor himself had not granted to the

licensee the particular right infringed, such proprietor was the only person having an interest in it, hence the only possible plaintiff. [*Tully* v. *Triangle Film Corporation, 229 Federal Reporter, 297.*]

What persons are liable for infringement? Generally speaking, all those who have participated in it, whether they knew of the copyright or not. [*Gross* v. *Van Dyk Gravure Co., 230 Federal Reporter, 412.*] The printer, the publisher, the distributor of the infringing work all are liable, not only jointly, but severally, since copyright infringement is a tort and each person who has a share in it is liable to the full extent of the damages suffered by the copyright proprietor. It has been held that profits can be recovered only from such infringers as actually made them. [*Haas* v. *Leo Feist, Inc., 234 Federal Reporter, 105.*] This view, which seems erroneous, was contradicted in a later case, and when damages and profits are merged in the statutory damages, granted in lieu of actual damages and profits, the question who made the profits becomes irrelevant.

It has been held that the lessor of a music hall in which an infringing performance of a copyrighted musical composition was given, who did not know at the time when the lease was made that such a performance was contemplated, is too remote from the infringement to be held liable. [*Fromont* v. *Aeolian Co., 254 Federal Reporter, 592.*]

Before instituting an action for infringement the copyright owner must have made the deposit of copies

and registration of his copyright which the law requires. The action may be brought in any judicial district of the United States of which the infringer, or his agent, is an inhabitant, or in which he may be found.

The courts having original jurisdiction in copyright cases are the United States District Courts, including those for Porto Rico, Hawaii and Alaska, and the courts of first instance of the Philippine Islands. Where the rights to be enforced are not claimed under the copyright statute, but under common law, suit must ordinarily be brought in a state court.

Copyright actions are usually brought under rules of equity, because an injunction, which only a court sitting in equity can grant, is a remedy almost always desired. Actions at law, with a jury trial, are also sometimes resorted to. Rules for the procedure to be followed in copyright suits have been promulgated by the United States Supreme Court, and are a part of the copyright law. [*Appendix A, p. 259.*]

If successful in his suit for infringement, the copyright proprietor recovers such damages as he has sustained, as well as the profits made by the infringer. But there are many cases in which it is difficult to prove actual damages and in which the infringer may not have made any profits. The statute provides that "in lieu of actual damages and profits," the copyright proprietor may recover "such damages as to the court shall appear just," with certain limitations:

(1) In the case of a newspaper reproduction of

a copyrighted photograph, not more than two hundred dollars nor less than fifty dollars;

(2) In the case of "innocent" infringement of an undramatized, or non-dramatic, work by means of motion pictures, not more than one hundred dollars;

(3) In all other cases, not more than five thousand dollars nor less than two hundred and fifty dollars. The maximum limits do not apply to infringements committed after the defendant has actual notice of the infringement.

The statute further names definite sums which may be allowed by the court for each infringing copy or performance. These sums are named merely by way of suggestion and aid to the court in fixing the amount of damages, and do not limit the court's discretion.

The provisions of the copyright law regarding so-called "statutory damages" (those in lieu of actual damages and profits) have been much discussed in judicial decisions. Following the enactment of the statute the courts were at first inclined to emphasize their discretionary power and the sense of justice in which the Act confides, rather than the limitations of the amounts fixed. In one case it was held that the Act could not mean to give the copyright proprietor more than nominal damages, if he had not suffered any. In another case the court adopted the sum set for a single infringing act as the measure of the damages, although this was much less than the minimum of two hundred and fifty dollars. The question was at length carried up

to the United States Supreme Court, where it was held that the statute means exactly what it says. The plaintiff is to have at least two hundred and fifty dollars in any case (except the cases of photographs or innocently infringing motion pictures) without being called upon to prove any damages whatever. [*L. A. Westermann Co.* v. *Dispatch Printing Co., 249 U. S. Reports, 100.*]

Another question decided in this case was what constitutes a single infringement. The plaintiff had copyrighted a number of drawings illustrating fashions. Each sketch was separately registered in the Copyright Office, and each as published bore the copyright notice. The defendant reprinted six of the cuts in its daily newspaper, five of them once each and the sixth at two different times. The trial court held that there were seven separate infringements, but awarded only ten dollars damages for each, this being the sum suggested by the statute for a single infringing copy of a "painting." On appeal it was held that the defendant's acts constituted a connected and fairly unitary invasion of the plaintiff's rights, hence only one infringement, but that the minimum of two hundred and fifty dollars damages should be awarded. The United States Supreme Court supported the opinion of the district court as to the number of infringements, and that of the circuit court of appeals as to the minimum to be awarded for each infringement, thus holding that there were seven infringements and that for each the minimum of two hundred and fifty dollars was recoverable.

The decision indicates the practical value of making copyright registrations for articles in the smallest units in which they are likely to be infringed. Had plaintiff copyrighted his sketches in groups, a practice sometimes followed with advertising cuts, he might have been allowed only two hundred and fifty dollars for each group, instead of for each picture.

Another point discussed, but not decided, during the course of this litigation, was whether or not the plaintiff can choose whether he will take actual damages and profits, or the statutory damages which may be awarded in lieu thereof; or whether the choice rests with the court. Pending a final determination of this question, it may be suggested that the choice should rest with the plaintiff. To deprive him of it would nullify the purpose of the provision, which is to insure the copyright proprietor obtaining sufficient damages in any case to warrant him in bringing suit when he has a good case. And it would be inconsistent that he should be allowed two hundred and fifty dollars damages in a case where he can prove no damages and yet be compelled to take, say, fifty dollars where that amount of damage can be proven.

The court may also award to the prevailing party in a copyright suit a reasonable attorney's fee as a part of the costs. The fees so awarded in cases reported have usually been small. [*For some cases in which counsel fees were awarded see Universal Film Mfg. Co.* v. *Copperman, 218 Federal Reporter, 577; Strauss*

v. *Penn Printing & Publishing Co., 220 Federal Reporter, 977; S. E. Hendrick Co.* v. *Thomas Publishing Co., 242 Federal Reporter, 37.*]

Where infringement is wilful and for profit, the statute makes it a misdemeanor, punishable by imprisonment of not more than one year, or by fine of not less than one hundred nor more than one thousand dollars, or both.

The fraudulent use of a copyright notice on an article not copyrighted, or its fraudulent removal or alteration from copies of any work for which copyright has been duly obtained, is punishable by fine of from one hundred to one thousand dollars, and the knowing issue, sale, or importation of a work bearing the copyright notice, but not copyrighted, is punishable by a fine of one hundred dollars.

Criminal proceedings must be brought within three years from the time when the cause of action arose, but no limitation of time is set for bringing civil actions. It has been held, however, in accordance with general principles of equity, that the copyright proprietor cannot sit by in silence, while profits are piled up by the infringer, as this is equivalent to speculating with another's money. [*Haas* v. *Feist, 234 Federal Reporter, 105.*] As in other cases, when he knows that his rights are being violated, the person injured must exercise reasonable diligence in seeking redress.

Mention may be made at this point of the provisions of the law prohibiting importation, first, of infringing

copies of a copyrighted work and, second, of copies not manufactured in accordance with the requirements of the statute, even if such copies are part of an edition published abroad with the authority of the copyright proprietor. Prohibition of infringing copies is a measure in aid of the copyright proprietor; prohibition of unlawfully manufactured copies is intended to aid in carrying out the protection to American printing and allied trades which the manufacturing provisions of the Act seek to secure. Violation of these provisions, however, is in any case an offense against the United States, not against any individual, since the importation of copies does not of itself appear to infringe any right which the statute expressly grants. And the fact that the plaintiff in a suit for infringement has unlawfully imported copies of the copyrighted work does not aid the infringer. [*Bentley* v. *Tibbals, 223 Federal Reporter, 247.*]

The enforcement of the provisions against unlawful importation is placed by the statute under the control of the Customs Division of the Treasury Department and the Postmaster General, and regulations governing procedure in such cases have been adopted by the two departments of the government concerned.

CHAPTER X

International Copyright Relations

Rights of foreign authors in the United States — Countries whose citizens can secure copyright — Statutory provisions affecting rights of aliens — Effects of the World War on international relations — Remedial Act of December 18, 1919 — Rights of American citizens abroad — Great Britain and the British Dominions — Canada — The International Copyright Union — "Pan-American" copyright conventions — The Philippine Islands.

International copyright relations may be conveniently discussed under two heads:

(1) The rights of foreign authors in the United States.

(2) The rights of American authors in foreign countries.

Before July 1, 1891, copyright could be secured only by citizens or residents of the United States. The foreign author had the same common law rights as the citizen, so long as his work remained unpublished, but he could not protect his work after publication, unless he happened to be a resident of the United States at the time of making application for copyright. Foreign authors, especially British authors, and the more liberal-minded among American authors and

publishers, engaged in a prolonged struggle to extend the privileges of the American copyright law to citizens of other countries, beginning in 1837, when the first bill to that effect was introduced in Congress by Henry Clay, and ending only in 1891, with the passage of the so-called "international copyright act." In fact, the struggle still goes on for, while the act of 1891 permitted copyright to be secured by citizens of foreign countries whose laws granted like privileges to Americans, it introduced at the same time the requirement of American manufacture and this restriction very much diminished the practical value of the new grant. The stringency of the manufacturing provisions has been relaxed by the present statute, which exempts works in foreign languages from this requirement, but the restriction still remains applicable to books and periodicals in English and to certain classes of pictorial works, and is a great hindrance to the protection of such works. The manufacturing provisions, moreover, prevent the United States from joining the International Copyright Union, and thus indirectly hamper the protection of American authors abroad.

Promptly on the passage of the Act of 1891 copyright relations were established with a number of the European countries. Others have been added from time to time and the list of States whose citizens can now obtain copyright under United States law is as follows: Austria, Belgium, Bolivia, Brazil, China, Chile, Costa Rica, Cuba, Denmark, Dominican Repub-

lic, Ecuador, France, Germany, Great Britain and possessions, Guatemala, Haiti, Honduras, Hungary, Italy, Japan, Luxemburg, Mexico, Netherlands and possessions, Nicaragua, Norway, Panama, Paraguay, Portugal, Salvador, Spain, Sweden, Switzerland, Tunis, Uruguay. [*See the list of presidential proclamations establishing relations with the states named, Appendix C, p. 279.*]

At the present time citizens of those countries which have not established copyright relations with the United States are in the same position as that which was occupied by all non-resident aliens before the passage of the Act of 1891. They enjoy common law rights and those rights they can assign. But since the right to obtain copyright does not belong to them, they cannot authorize an American citizen to secure copyright for their works. [*Bong* v. *Alfred S. Campbell Art Co., 214 U. S. Reports, 236.*] On the other hand, if copyright is obtained by an American citizen, or an authorized alien, it may be assigned to an alien who could not himself have obtained copyright for his own work. Once the copyright has come into existence, there can be no limitation of the right to transfer it. This latter fact has been made use of to secure copyright in a roundabout way for an alien who could not secure it, as in a case where an American citizen was employed to make a pianoforte arrangement of an opera by an alien, copyright being thus secured for the arrangement, although not for the original. [*Carte* v. *Evans, 27*

Federal Reporter, 861.] The principal countries with which, up to the present time, copyright relations have not been established are: Argentina, Bulgaria, Colombia, Czechoslovakia, Esthonia, Finland, Greece, Jugoslavia, Latvia, Lithuania, Peru, Poland, Roumania, Russia and Turkey. Citizens of these countries cannot secure copyright unless domiciled in the United States. It should be remembered, however, that copyrights secured by citizens of such countries as became independent during the World War, at a time when they were citizens of a country with which the United States had relations, are still valid. For example, a person formerly a citizen of Germany may have secured a copyright which remains valid although such person has since become a citizen of Poland.

Citizens of the Philippine Islands may also secure copyright, although manufacture in the Philippine Islands does not answer the requirement of manufacture within the United States. The Philippines are not a part of the United States for this purpose. [25, *Opinions of the Attorney General*, 25.]

Before the present statute was enacted the manufacturing restrictions had been somewhat mitigated by two pieces of legislation. The Act of January 7, 1904 [*33 U. S. Statutes at Large, Part I, pp. 4–5.*] provided a protection of two years, on compliance with certain formalities, including registration in the Copyright Office, for works exhibited at the Louisiana Purchase Exposition at St. Louis. The Act of March

3, 1905 [*33 U. S. Statutes at Large, Part I, pp. 1000–1001*], provided "ad interim" protection for one year for books published abroad in foreign languages, in order to permit arrangements to be made for manufacturing an American edition, either in the original or in translation, and copyrighting it here. Several thousand such ad interim copyrights were registered during the four years that the Act remained in effect. These two statutes are now of importance only in the tracing of titles and the computation of the period of protection of subsisting copyrights which began under them.

The provisions of the present statute which directly or indirectly affect the rights of foreign authors may now be taken up, *seriatim*.

Section 1 (e) of the Act provides that copyright control of the mechanical reproduction of music

"shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen grants . . . to citizens of the United States similar rights."

The mechanical reproducing rights for music are thus placed in a special category, separate from the other rights included in copyright, and special proclamation by the President of the United States is necessary to establish the reproducing rights in favor of citizens of any particular country. The countries whose citizens are at present entitled to such privileges are Austria,

Australia, Belgium, Canada, Cuba, Denmark, France, Germany, Great Britain, Hungary, Italy, Luxemburg, the Netherlands, New Zealand, Norway, South Africa, Sweden and Switzerland. [*See list of presidential proclamations establishing relations under Section 1 (e), Appendix C, p. 281, also text of proclamations relating to Great Britain, Canada and France, in Appendix C.*] Musical compositions published before the dates of the respective proclamations, or the dates fixed by them for the beginning of the privileges granted, are not protected against mechanical reproduction.

Section 7 of the Act provides that

"no copyright shall subsist . . . in any work which was published in . . . any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States."

This provision excludes from protection what European publishers call "new editions" of old works, but which are merely what we call in America new "printings," containing little or no change from the work as originally published. A new edition containing substantial changes, or new matter, may be copyrighted as a new work, as we have already seen, but the copyright protects only the new matter.

Section 8 sets forth in detail the conditions under which "the work of an author or proprietor who is a citizen or subject of a foreign state or nation" may secure copyright, *viz.:*

(1) when such foreign citizen is domiciled in the United States at the time of first publication of his work, and

(2) when the state of which he is a citizen

a grants copyright to citizens of the United States on substantially the same basis as to its own citizens (that is, on compliance with the same formalities), or

b grants protection substantially equal to that granted by this Act (that is, without regard to formalities), or

c is a party to an international agreement which provides for reciprocity in the granting of copyright, to which agreement the United States may, at its pleasure, become a party.

The existence of any one of the last three conditions is sufficient, and is determined by proclamation by the President of the United States. Until such determination, the existence of the conditions will not of itself entitle citizens of the country in question to obtain copyright. On the other hand, when once the President has issued a proclamation, it amounts to conclusive proof, which cannot be controverted in proceedings in court. [*Chappell* v. *Fields, 210 Federal Reporter, 864.*]

Domicile means residence, with the intention of remaining permanently. It is independent of citizenship, but a mere temporary sojourn in the United States is not domicile.

Under Section 12, as amended, a foreign author is required to deposit only one copy of his work, published in a foreign country, for registration in the Copyright Office, instead of two copies, as required for books by American authors. The purpose of the amendment was to encourage the copyrighting of foreign books, pictures, and other works, which are sometimes expensive. The requirement of a deposit of two copies was felt as a burden by foreign authors and publishers, whose domestic laws do not in most cases require any deposit of copies in order to secure copyright.

In case the Register of Copyrights makes a formal demand for copies of a work claiming copyright which have not been deposited promptly, as the law requires, the foreign copyright proprietor has a period of six months within which to comply with this demand, instead of only three months as in the case of works published in the United States. (Section 13.)

Section 15 contains the provisions for American manufacture of certain classes of works, already discussed. The courts have held that the manufacturing requirements are to be construed as strictly limited to the classes of works named therein. They apply (under the exceptions stated) to books, periodicals, lithographs and photo-engravings. They do not apply to dramatic or musical compositions, even though in book form, nor to pictures made by other processes than lithography or photo-engraving. As to the exceptions,

the first of these is limited to "the original text of a book of foreign origin in a language or languages other than English." Just what is meant by "original text" is not clear, but translations of books of foreign origin, or new editions of them containing new matter, can be copyrighted as new works. "Foreign origin" means foreign authorship as well as foreign publication and an American author is probably not exempt from the obligation to manufacture his book in the United States, even if it is written in a foreign language. The phrase "a language, or languages, other than English" does not exclude books containing some English, if it is subsidiary to the foreign language. An English-French dictionary, or instruction book, for example, is thought to be exempt from the manufacturing requirements.

The language of the exception in favor of certain lithographs and photo-engravings also calls for interpretation. The intention was to cover cases where the lithographer or photo-engraver reproduces subjects permanently located in a foreign country. It is asserted that access to the original is necessary in such cases, in order that the work of reproduction may be accurately done. Such originals may be either works of art, or objects reproduced to illustrate a scientific work. It is not the reproduction, but the original, which is the "work of art" referred to, a stock example being the paintings in the Sistine Chapel.

Section 21 provides a method of obtaining tem-

porary copyright protection for books in English originally published abroad, in order that sufficient time may be given for bringing out an American edition, printed in the United States and Section 22 provides for the extension of the temporary protection to the full term for such reprinted works. Section 21, as now amended, provides that if a copy of the foreign edition of a book in the English language be deposited in the Copyright Office within sixty days after publication, with a suitable application, an ad interim copyright shall be secured to run for a period of four months from the date of the deposit. By Section 22, the ad interim copyright is extended to the full term of twenty-eight years upon publication with the copyright notice of an edition of the book manufactured in the United States, followed by compliance with the usual formalities. The language of Sections 21 and 22 leaves a doubt as to the date from which the term of definitive protection is to be computed. There are three possibilities: first, the date of original publication abroad; second, the date of the deposit of the ad interim copy; third, the date of publication of the American edition. The earliest of these dates is believed to be the one from which the duration of the copyright is to be reckoned, otherwise a period of protection longer than twenty-eight years would be obtained.

The statutory notice of copyright is not required on books seeking ad interim protection. On the other

hand, its use is not forbidden and it would seem permissible and prudent to affix it.

Reference has been made in a previous chapter to the provisions of Sections 30 to 33 inclusive, governing the importation of copyrighted works, or infringing copies of them. While these provisions are not specially applicable to the alien copyright proprietor, they are frequently of much concern to him, particularly if the work in question is a book in the English language, for in that case, copies not printed in the United States cannot be imported for general sale or distribution. If so imported they are liable to seizure and forfeiture, or at least to re-exportation. It may be observed that the prohibition of importation of works contravening the manufacturing requirements of the Act does not extend to lithographs and photo-engravings.

A number of decisions of the Treasury Department and some opinions of the Attorney General of the United States relating to importation were digested in the Report of the Register of Copyrights for the year 1912–13. Most of them were rendered under previous statutes, but they furnish precedents which will be found helpful in similar cases arising under the present law.

Assignments of copyright executed in foreign countries must be acknowledged before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts.

Such acknowledgment is prima facie proof of the execution of the assignment. (Section 43.)

The law provides in Section 55 for the inclusion in the copyright certificate of a statement of

"the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile."

These facts, accordingly, must be stated in the application for registration.

The World War affected our international copyright relations in several ways. During the time while the United States was at war with Germany and Austria-Hungary, copyright relations with these countries, as established by treaty or presidential proclamation, were automatically suspended. The "Trading with the Enemy Act," [*40 U. S. Statutes at Large, Part I, pp. 411–426; 41 U. S. Statutes at Large, Part I, pp. 977, 1147*] however, provided for the continued filing of claims for copyright by citizens of the enemy countries during the war, as well as for the filing of suits for infringement. The same Act also provided for the seizure of enemy-owned copyrights by the United States, acting through the Alien Property Custodian, and for the issue of licenses by the Federal Trade Commission, to American citizens, for the exploitation of such copyrights. There has been no actual forfeiture of any copyright, or copyright claim, belonging

to subjects of the Central Powers, but the ultimate disposition of those copyrights which have been seized is still in doubt and if the title to any such copyright is to be traced information should be sought from the Bureaus of the Government concerned, including the Copyright Office, where the transfer of enemy-owned copyrights is recorded.

On the termination of the war (July 2, 1921) [*Joint Resolution of Congress, 42 U. S. Statutes at Large, Part I, p. 105.*] normal copyright relations were restored between the United States and Germany and Austria and the treaty with Hungary was formally revived on May 27, 1922; but the "Succession States" formed in whole or in part from former territory of the Central Powers have not entered into copyright relations with the United States at the time of this writing. Citizens of these new States—Poland, Czechoslovakia and Jugoslavia—who were formerly citizens of Germany, Austria or Hungary, and secured American copyright by virtue of our relations with those countries continue to enjoy such rights as they obtained, subject to the provisions of the Trading with the Enemy Act. But no further copyrights can be obtained by any citizens of the new countries until copyright relations have been established between their Governments and that of the United States. The same proposition applies to citizens of the portions of Roumania which were formerly a part of Hungary, and to citizens of the Free

City of Danzig, and of the "Memel strip," formerly part of Germany.

The interruption of commerce caused by the war, not only between America and the enemy countries, but also to a considerable extent between America and the other European countries, made it impossible for copies of copyrighted works to be sent with promptness or regularity either to or from Europe, hence the prompt deposit of foreign works required by the American law and the simultaneous publication required by the British law, and by the International Copyright Convention, could not take place. In view of this condition the Act of December 18, 1919, [*See Appendix A, p. 258*] was passed, providing that all works produced or published in foreign countries between August 1, 1914, and the date of the President's proclamation of peace (July 2, 1921) might secure copyright on compliance with the formalities required by the American law within a period running to fifteen months after peace (October 2, 1922), on condition like privileges were granted to citizens of the United States by foreign governments concerned. Rights acquired by the republication of foreign works in America prior to the approval of the Act were expressly saved. The foreign States which availed themselves of these provisions before the law went out of effect on October 2, 1922, were Austria, Denmark, Germany, Great Britain, Hungary, Italy and New Zealand.

Let us now pass to a consideration of the rights

which American authors enjoy in foreign countries, particularly in the English-speaking countries, which are naturally of most importance in this regard.

It may be stated as a general rule that the American author or proprietor who desires to secure copyright in a foreign country must comply with the copyright law of that country. If, however, he copyrights a work in some country which belongs to the International Copyright Union, by publishing it first, or "simultaneously," *i.e.*, not later than elsewhere, in that country, the work will be *ipso facto* protected in all the other countries of the Union. Great Britain belongs to the Union, and it is usually desirable and practicable to take the initial steps in that country.

The copyright law now in force in Great Britain was adopted in 1911. [*The text of the British Act has been published in Copyright Office Bulletin No. 16.*] It distinguishes between two general classes of works, published and unpublished. For a published work, copyright is secured by first publication in Great Britain; for an unpublished work it is secured by the fact of the author being a British subject, or resident, at the date of the making of the work. Common law protection for the works of authors is entirely done away with by the British statute and all rights claimed for literary, dramatic, musical and artistic works must be obtained by statutory copyright. The protection of the British law has been extended by the British Government to citizens or residents of the United States on

the same basis as to citizens or residents of Great Britain, with the proviso that the conditions and formalities required by the American law shall be accomplished. [*See British Order in Council, Appendix C, p. 289.*]

Accordingly two conditions are required to secure copyright in Great Britain for a published work—first publication in Great Britain, and the copyrighting of the work in the United States. But for an unpublished work only one condition is required—copyrighting in the United States.

First publication under the British law includes simultaneous publication in Great Britain and elsewhere, and simultaneous publication is defined by the British Statute as meaning publication in Great Britain within two weeks of publication in any other country. Inasmuch as publiication of a work by an American citizen in another country before it is published in the United States might imperil the American copyright, it is desirable to arrange that copies of the work go on sale in America on the same day that they do in England. The practical method of taking care of this matter is to place it in the hands of a publisher or agent in London, and that in turn can usually be best attended to by the American publisher.

The period of protection granted under the British law is the life of the author and fifty years after his death. But an American work can in no case enjoy

a longer period of protection than that secured for it by the American law.

The British Copyright Act of 1911 has been adopted, with some modifications, by all of the British "self-governing Dominions," namely, Australia, Canada, Newfoundland, New Zealand and the Union of South Africa. By Orders in Council, Australia, New Zealand and the Union of South Africa have given to American citizens the same rights under their copyright laws as are granted by Great Britain in the British Order in Council already referred to. In the Dominions which have issued such Orders in Council, American citizens obtain copyright in the same way as in Great Britain, *i.e.*, for their published works by first or simultaneous publication in the British Dominions coupled with compliance with the requirements for obtaining copyright in the United States; and for their unpublished works, simply by compliance with the law of the United States. Newfoundland has not yet followed the example of the other Dominions mentioned, and established relations with the United States, and it would appear that the unpublished works of American authors are not protected there. Their published works, however, may be protected by first or simultaneous publication on British territory.

As to Canada, the situation is different, and less favorable. Canada has not adopted the British Act of 1911 as a whole, but has enacted an independent copyright law, which went into effect January 1, 1924.

Copyright relations were established under this Act between Canada and the United States by the "certificate" of the Canadian Minister of Trade and Commerce, of December 26, 1923, and the corresponding Proclamation of the President of the United States, of December 27, 1923. [*See Appendix C, pp. 296–298.*] The certificate of the Canadian Minister declares, pursuant to the provisions of the Canadian Act, that the United States is to be "treated as if it were a country to which the said Act extends." The effect of this declaration is to permit citizens of the United States to secure copyright in Canada merely by the fact of publication in the United States and for their unpublished works without any conditions at all. Copyright is thus obtained, in the first instance, on even more liberal terms than those afforded by the laws of Great Britain and the other Dominions. But although so obtained, it can only be enjoyed, as to published works, under onerous conditions.

The Canadian Act provides that if books (including by definition music, maps and charts), and articles published in periodicals, are not printed in Canada to begin with, any person may apply to the Commissioner of Patents at Ottawa for a license to reprint them in Canada on such terms as may be fixed by the Commissioner after hearing the parties. When an application for such a compulsory license is filed, the owner of the copyright is given two months within which to have the work printed in Canada and if he does not do so, the

license will be issued. The compulsory license provisions are supported by prohibition of importation of works printed in the United States—absolutely, for two weeks after publication, and continued thereafter if application for a license is made. To this prohibition there is an exception in favor of works imported for the use of the Government, and also in favor of periodicals, newspapers and magazines containing original matter not licensed to be printed in Canada, although accompanied by matter which is so licensed.

The licensing provisions are the result of a long threatened policy of retaliation by Canada against the compulsory manufacturing provisions of the United States Copyright Law. They do not apply to citizens of countries belonging to the International Copyright Union, and if the United States should join the Union the difficulty would be removed. This, however, can only be done if we abrogate our own manufacturing provisions, at least as regards citizens of other countries.

Another feature of the Canadian Act which may be mentioned is the provision for registration in the Copyright Office at Ottawa, which, while not obligatory, is desirable, as securing *prima facie* evidence of protection and facility in bringing suit for infringement. There is also a requirement that all assignments and licenses shall be recorded, before the assignee or licensee can bring suit.

The Canadian Act has been printed by the Copyright

Office at Washington as Bulletin No. 20, and copies may be had on request. Detailed information as to the procedure required under the law should, however, be sought from the Registrar of Copyrights at Ottawa.

When copyright has been secured by an American citizen in Great Britain or in any other country belonging to the International Copyright Union, by first publication of his work in such country, it is automatically extended to all the countries belonging to the Union, which are as follows: Austria, Belgium, Brazil, Bulgaria, Czechoslovakia, Danzig, Denmark, France, Germany, Great Britain, Greece, Haiti, Hungary, Italy, Japan, Liberia, Luxemburg, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland and Tunis. Where member countries have colonial possessions, the protection secured by the Union extends as a rule to these also.

The International Copyright Union was established by a convention signed at Berne, Switzerland, in 1886. The convention was revised at Berlin in 1908 and its principal features are now as follows: Authors of any country belonging to the Union enjoy in the other countries the rights granted by such countries to their own citizens. Authors of a country not belonging to the Union secure the rights granted by the Convention —a uniform minimum grant of protection agreed to by all the countries which signed the convention—provided they publish their works first or simultane-

ously in a country of the Union. No formalities of any kind are required to secure this protection, and it is even independent of copyright in the country where the work originates. [*Appendix C, p. 299.*] The United States is not yet a member of the Union.

The United States has joined with a number of the other American republics in a series of conventions for the protection of literary property in the western hemisphere. The most important and most recent of these conventions is that signed at Buenos Aires in 1910, [*Appendix C, p. 284*] which is now effective between the United States and Bolivia, Brazil, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay and Uruguay. The chief features of this convention are: Authors of any member country who have secured copyright at home enjoy in the other countries the rights accorded by their respective legislation, the duration of which, however, is not to be longer than it is in the country of origin of the work. The only formality required to secure the protection (apart from whatever may be necessary to secure the initial copyright in the home country) is the appearance in the work of "a statement indicating the reservation of the property right," *i.e.*, a notice of copyright. It appears that works of American citizens or residents copyrighted under our law automatically obtain protection in the other countries above named, which have ratified the convention. No doubt it will be prudent, however,

in case copyright is to be claimed in any of these countries, to arrange the matter in advance of publication with an agent acquainted with the local law and conditions in the country where the protection is sought.

A copyright statute enacted by the legislature of the Philippine Islands went into effect on the date of its approval, March 6, 1924. [*The Act has been published by the Philippines Government as H. No. 1024, Sixth Philippine Legislature, Second Session. No. 3134.*] It follows rather closely the more important provisions of the Act of 1909, but is shorter. Among its leading features are the following:

Copyright may be secured by citizens of the Philippine Islands and those of the United States, as well as by citizens of countries with which reciprocal relations have been established. Registration, publication with notice and deposit of copies are required and no copyright in any work is to be considered as existing until the provisions with respect to deposit and registration shall have been complied with. The term of protection is thirty years from registration or, for works issued in volumes or series, forty years from the registration of the first volume or number, with privilege of renewal for a like period. There is no requirement for manufacture in the Philippine Islands, but the application for registration must be accompanied by an affidavit, made in the Philippine Islands, showing where the work was manufactured. The administrative officer, with whom registration and deposit of copies are to be made,

is the Director of the Philippine Library and Museum at Manila.

This Act, the authority for which must be found in the organic act of Congress establishing a civil government for the Philippine Islands, approved August 29, 1916, [*39 U. S. Statutes at Large, 545.*] would seem to be purely local in its effect. It is not believed that it can modify in any way the operation of the copyright law of the United States, under which, as has been stated, protection in the Philippine Islands is secured.

CHAPTER XI

CONTRACTS

Necessity and importance of contracts between producers and exploiters of intellectual property — Contracts for publication of books, musical compositions and works of art — Contracts of employment — Contracts for the production of plays — The literary agent's contract.

Creators of intellectual property seldom have the business ability required for the successful exploitation of their own works. Publishers have sometimes succeeded in authorship, but authors have usually failed in the publishing trade. Among the writers who have lost in the market place what they had earned in the study, two famous names may be recalled. Sir Walter Scott and Mark Twain were compelled to resume the labor of literary composition after they had reached middle life and earned the means of leisure, because of obligations of indebtedness resulting from partnership in publishing houses which had become bankrupt.

Dramatists, perhaps inspired by Shakespeare's example, have had a larger measure of success as theatrical producers than have authors as publishers. Among artists and musicians, hardly a single instance of com-

bined creative and commercial capacity can be named.

It is thus a practical necessity for the creator of literary property to hand his work over to some one else in order to earn money by its exploitation before the public, and the relationship between author and exploiter thus set up always involves a contract. The contract may be merely oral, or it may consist simply in the author's exchange of his manuscript for cash, as is the case with much of the work sold to magazines and newspapers. Such transactions raise an implied contract under which the rights of the parties are governed by their intentions, as construed from the circumstances of the sale. It is preferable, however, even in such cases, that a written contract, though brief and simple, should be made, expressing clearly what rights the author parts with and what the purchaser is expected to do in return. Such a contract may take the form of an exchange of letters, the author transmitting his manuscript with a statement of the terms he will accept, whether he wishes copyright taken in his own name, whether he proposes to retain the right of making motion pictures, or plays, and whether, if the copyright be taken by the magazine, a reassignment to the author after publication is desired. The editor of the magazine should be requested to reply, accepting the proposal or rejecting such portions of it as may be inacceptable. A second exchange of letters may then be necessary. When both parties have reached an agreement, the contract is complete and the correspondence

should of course be preserved as evidence of what the agreement was.

Of more elaborate contracts, the most important has in the past been that between the author of a book and its publisher, although the contract for motion picture production, already dealt with in a preceding chapter, is rapidly becoming of almost equal consequence. The importance of the book contract proceeds from the fact that copyright for books is obtainable only on their publication, hence the ownership or control of the various rights included in the copyright is fixed when publication takes place.

As the novel has hitherto been the typical modern form of literary work, so the contract for publication of a novel may be regarded as the typical book contract, giving the key for other book contracts which differ from it here and there according to the character of the work, be it history, poetry, criticism, scientific treatise, or what not. The leading features of a standard form of contract for the publication of a novel at the present time are as follows:

First comes a preamble, stating the names and residences of the parties, the title of the work, the author's ownership as arising out of his creation of the work, and the purpose of the agreement, that is, to have the work published.

Next comes the author's grant of the right to publish the work in book form. As in the motion picture contract, the author is required to make certain war-

ranties—that he himself has written the work, that it does not infringe the literary property rights of any one, that it contains nothing libellous or contrary to any law. The author may also be required to warrant that he will save the publisher harmless from any suits brought as a result of the character of the work, although the necessity or expediency of this last warranty is doubtful. Express warranties, as we have seen, are of the essence of the contract and if broken will make it void. Hence the author should not warrant the existence of facts or conditions outside his knowledge or control.

The author then agrees to furnish a complete manuscript, neat and legible (typewriting being usually required) and ready to print. The manner and style of publication are specified, and the date by which, or time during which, the work is to be published is stated, being usually fixed at not more than six months after receipt of the manuscript, or during a certain "season." It is in the author's interest that there should be a provision permitting him to terminate the contract if publication does not take place within the time stated, on notice of say twenty days. It may be provided that if the author does not give such notice within a certain time, the contract remains in force for publication within another six months, or during the following season.

The publisher will agree to furnish proofs within so many days or weeks after receipt of the manuscript

and the author will agree to correct and return them within a named time after they are received by him. As a check on the careless author it is usually provided that corrections by the author amounting to more than ten per cent of the total cost of composition shall be charged to the author's account. If the author fails to return the proofs within the time set, the publisher may have them corrected and charge the author's account with such excess over composition cost. The author may stipulate that the publisher will make no corrections without the author's consent, except in accordance with the terms of the contract.

Next we have the important and at present much mooted question: In whose name shall copyright be obtained? The answer must be, by all means in the author's name. This course, as the law now stands, is not free from difficulties, but it is more nearly so than any other, and it has the conspicuous advantage of leaving the author in legal control of his own property.

Until quite recently the copyright of books issued at the publisher's expense has almost always been taken in his name and it has been said that a copyright notice in the author's name was the hallmark of a publication paid for by the author and hence undesirable in other cases, as tending to throw doubt on the merit of the book. The practice of obtaining copyright in the publisher's name, however, has come under increasing criticism with the growing value of subsidiary rights. These rights publishers as a rule do not wish to acquire. All

they want is the right of publication in book form and the right to protect themselves against infringement. But the right of suit as the law now stands is inseparable from the ownership of the copyright. Hence a dilemma and various methods of attempted extrication therefrom in the shape of compromises between complete retention of the copyright by the author and its complete relinquishment to the publisher.

One such method is for the author to grant to the publisher the right to obtain copyright, with an express reservation to the author of all rights except that of publication in book form. The objection to this from the author's standpoint is that he, in turn, is deprived of the right to sue in his own name for the protection of the rights he has reserved. Unless the contract is carefully worded there may also be an objection from the publisher's point of view, there being much doubt whether the right to obtain copyright can be granted except as incidental to a grant of the entire common law right. [*See Dam* v. *Kirke La Shelle Co., 175 Federal Reporter, 902; Fitch* v. *Young, 230 Federal Reporter, 743; Public Ledger Co.* v. *New York Times, 275 Federal Reporter, 562.*] But if copyright is so obtained, the publisher presumably becomes a trustee for the author, holding the legal title to the copyright, so that the rights reserved by the author cannot be conveyed by him to another except through the publisher's act. These are only some of the possible legal complications involved in this method.

A second method is for the publisher to take the copyright absolutely, but to agree to reassign it to the author as soon as publication has taken place, or whenever the author shall so request. After such reassignment the publisher continues as a licensee of the author under the terms of the contract. One objection to this is that the copyright notice at once becomes inconsistent with the fact of ownership by the author. A more serious danger is that the assignment will not coincide at all points with the original contract so that some right will be lost out in the process of transfer. A form of reassignment now used by a leading periodical publisher recites the reconveyance to the author of all rights not originally granted to the publisher, but conspicuously omits to use the word "copyright." The legal effect of such an assignment is doubtful, but it is probably no more than a license by the publisher of certain rights, the copyright itself, with its incidental right of suit, remaining in the publisher's hands. The necessity of compliance with the provisions of the law for recording assignments, in order to protect the assignee against subsequent purchasers without notice creates another complication and there is further the objection that two contracts—the original contract and the assignment back to the author—have to be construed in order to arrive at a determination of the respective rights of the parties.

One of the gravest dangers incurred by authors who allow copyright in their works to be taken by publishers

is the possibility of the publisher going into bankruptcy, in which case the author is likely to lose not only unpaid royalties, but all possibility of future profits. The attempt to forestall this contingency by a clause in the contract is a weak substitute for the protection given to the author by ownership of the copyright.

The difficulties presented are to some extent inherent in the law and cannot be entirely overcome except by its amendment to permit separate assignment of separable rights and to do away with the artificial distinction between copyright and common law rights in unpublished works. But enough has probably been said on this subject to make it clear that authors should copyright their works in their own names, granting to publishers, by means of license, such rights as are necessary for their protection, and retaining the copyright itself.

In addition to the original right of copyright, the right of renewal has also to be considered. To be sure, the statute regulates renewal rights with seeming exactitude, but attempts continue to be made to dispose of them *in futuro*, the author usually being made to say that he grants the right of renewal along with the original copyright. This he really cannot do, since he does not have this right at the time when the contract is made. It might be held, however, that he would be estopped to claim the renewal as against his grantee, if he should be living at the time when the renewal could be obtained. If the author wishes to tie up the renewal

term, which is of questionable policy from his point of view, the way to do it is for him to agree that when the time comes he will renew the copyright and grant the renewal to the publisher. Performance of such a contract could be specifically enforced against the author, and possibly against his executor, in case he died leaving no widow or children. But it could not be enforced against the widow or children, or the next of kin, in cases where they were entitled to renew. [*See Chapter IV, pp. 66–67.*]

After disposing of questions regarding ownership of the copyright, the contract will deal with the important matter of royalties, this being the almost universally adopted method of compensating the author in cases of book publication. Royalties are calculated on the retail catalogue, or "list" selling price of the book. Their rate is of course a matter to be agreed on in each case, but a frequent scale of rates for novels is ten per cent on the first two thousand copies, fifteen per cent on up to ten thousand copies, and twenty per cent on all over ten thousand. On copies exported, or sold in large quantities at special discounts, the royalties are computed, not on the list price but on what the publisher actually receives. No royalties are payable on copies given away for review or for advertising purposes, or as samples.

The author is usually allowed ten or twelve copies gratis and has the privilege of purchasing additional copies at cost, but may not sell them.

The publisher usually stipulates for the right to bring out a cheap edition of the book after a certain length of time, varying from two to five years. This may be done by leasing the plates to some other publisher, who makes a specialty of such editions, or the original publisher may bring out a cheap edition himself. If the first method is taken, the author ordinarily receives half the amount for which the plates are leased; in case of the second method, a reduced royalty, usually ten per cent, is paid. The advertising received through motion pictures, for works on which such pictures are based, has lately stimulated the demand for cheap editions of novels, and contracts in future are likely to reduce the length of time within which such editions may be brought out, and possibly provide that they are to come out simultaneously with the motion picture.

The contract may be terminated by either party at the end of a specified period, say five years, in which event the author is given the option of buying the plates at cost, or a fraction over, failing which the publisher is at liberty to destroy them.

Statements of account are usually sent to the author semi-annually, about February 1 and July 1, but payments are not made until three or four months after these dates, due to the fact that long credits are customarily given by publishers to booksellers. Sometimes the author is given the right to examine the publisher's books, such examination to be at his own expense, if only slight errors are found. In other cases

the publisher employs an accountant to do this work and sends the author a certified statement. The contract will usually contain a specific provision covering this matter.

The contract will bind the author's heirs, executors and assigns, and the publisher's successors and assigns. It is customary to provide that either party may assign his share of the contract, with the consent of the other party, but only as a whole. The possibility of the publisher's bankruptcy, or liquidation, may be provided for by a special clause permitting the author, in such case, to buy back the rights he has granted at a value to be impartially appraised. (But, as already stated, this is an unsatisfactory way of providing for such a contingency, and is unnecessary if the author retains the copyright.)

It is necessary to have an agreement as to who shall institute suit for infringement, if need arises. This right, as has been noted, belongs primarily to the owner of the copyright, whether author or publisher, but the character of the infringement may be such that it is a matter of more concern to the licensee—the person who owns only certain rights—than to the copyright proprietor. For example, the author may have parted with the copyright, including the right of publication, but retained dramatic and motion picture rights. Then if the infringement consists in the unauthorized making and presentation of a stage, or motion picture, version of the work, the publisher is not immediately affected

and would have no interest in bringing suit. The best way of providing for such contingencies is to give the owner of each class of rights the right to sue for the infringement of the rights owned by him, joining the other party, to which it is prudent to add a general agreement for coöperation between the parties in all cases of infringement, the expenses, as well as the amounts recovered, if any, to be shared in proportion to the efforts and interests of each party.

A clause is customary binding each party to execute any further agreements which may be necessary to effectuate the purposes of the contract.

The effect of any breach not expressly provided for may be referred to arbitrators for settlement.

The laws of the United States and of the State where the contract is made will be made applicable in construing the agreement.

Other provisions inserted by careful parties include the reversion of all rights to the author in case of any breach by the publisher not cured within thirty days, after notice and demand, the publisher's option to reproduce plates destroyed by fire, failing which the rights also revert to the author, and the requirement of a written instrument to make waiver of any right under the contract effective.

If the book is not a work of fiction, the author may be called upon by the contract to undertake its revision after a certain length of time, or, if he does not wish to do so, to give the publisher the right to employ some one

else for the work and charge the amount paid to the author's royalties. In the latter case, the author should stipulate that the name of the person revising the work is to be stated in the new edition.

A clause sometimes inserted to which the author has a right to object is one binding him not to produce a competing work during the life of the contract. The author may be a specialist, writing only on the subject treated in the book. It is hardly fair that he should be compelled to desist entirely from writing, and it would seem that the most he should be bound to do is to refrain from a substantial reproduction of the plan and language of the work.

In contracts for works of fiction, particularly by new authors, publishers very often insert in the contract a provision giving them an option on the author's next two or three works, on the same terms as those given in the contract. Such a provision is not of advantage to the author. If his first book is successful, he will be able to get better terms for the succeeding ones, while if it is a failure, the publisher will not take the next one and this fact may hinder the author from finding another publisher. The argument from the publisher's side is that he is gambling on the success of an unknown author. But the author is also gambling his time and effort on his own success. It is as fair for one as for the other.

Contracts for the publication of music are framed on the same lines as those for the publication of books,

but are briefer and simpler. After the preliminary recitals of authorship and ownership, including a reference to the copyright, if any, there are warranties of originality and of the composer's right to dispose of the work. Then comes the grant of rights. It is to be observed that the copyright law permits the copyrighting of musical compositions before publication, and it is desirable that the composer should secure copyright for his manuscript composition before entering into a contract for its publication, as his rights are then fixed under the statute and can be dealt with more certainly and intelligently. At present, however, this is seldom done. The publisher almost invariably takes copyright in his own name.

The customary royalty for music of the popular kind is two cents for each copy of the pianoforte version, whether with or without words. Publishers usually stipulate that they are not to pay royalty on sales of arrangements for other instruments, or for orchestra or band versions. It would seem that the composer ought to get a share of the profits which may come from such arrangements and this matter should not be overlooked in making the contract.

On mechanical reproductions (phonograph records and piano player rolls) the composer gets one-third of the royalties received by the publisher, but he gets no royalties where the composition is used on the same record or roll with others.

The right of public performance for profit is

usually not mentioned in the publisher's contract. Until recently no charge was usually made for such performances, but the increased number of motion picture theaters using music and the sudden growth of radio broadcasting have given the right of performance an importance in the case of popular music which it did not formerly have, and the attempt is now being made to collect royalties for such use of copyrighted music. The result of this has been agitation for abrogation of the right of public performance. It is not believed that this right, which is a fundamental part of copyright in all countries, will be taken away. It should be the subject of express provisions in the contract for publication of music and if it is a source of income to the publisher, the composer should receive his share of, say one-third to one-half the performing royalties.

If the musical composition contains words which are copyrighted by some one other than the composer, the copyright owner of the words should have his own royalty, or a share in that of the composer. The contract should take care of this matter. The most convenient method of doing this would probably be to obtain a permanent license from the owner of the words to use them with the music and pay him a lump sum for it.

If the musical composition has been copyrighted by the composer, before publication, the copyright law requires, none the less, that copies of the published work shall be deposited in the Copyright Office, and the rules

of the Office call for another registration for the published version. The contract should provide that the publisher will look after this matter, but the composer would do well to follow it up and see that the required deposit and registration are made, otherwise the copyright protection may be jeopardized.

Contracts for the publication of reproductions of works of art usually grant the right of reproduction and publication and the right to copyright the reproduction when published. The artist may be called upon to warrant that neither the work nor any reproduction of it has been copyrighted, but of course if he has taken the prudent step of copyrighting the unpublished original painting or drawing, this clause will be omitted. He may also be called on to warrant that no other person has the right to publish the work and that the proposed reproduction and publication will not infringe any other copyright. The remarks already made with reference to such warranties in other contracts apply here. The artist should be careful to warrant absolutely only facts within his own knowledge, leaving the legal interpretation of such facts to the publisher.

The artist will perhaps be required to bind himself not to make any duplicate, or replica, of the work, which seems entirely fair, as he is in a different position from the writer on a special topic. He has a free choice of subjects and has no need to repeat his work. It would seem, however, from several decisions of the courts, that such repetition has been rather common,

more particularly in the case of commercial photographs, where the same model is used. [*See Gross* v. *Van Dyk Gravure Co., 230 Federal Reporter, 412.*]

It is important to observe, in connection with contracts for the reproduction of pictorial works, that each form of reproduction involving an added artistic element, may be the subject of a special copyright. Thus the same work may be reproduced by lithography and by etching, and the lithograph and the etching may each be copyrighted. Ordinarily the publisher will desire only the right to bring out one particular form of reproduction, but he may wish to prevent any other form from being made. If the artist has achieved a reputation, however, such a restriction will not be desirable for him. Every one will recall instances of pictures which have obtained a popular vogue and have been reproduced in a variety of mediums. If the creator of such a work has guarded his rights carefully, he will be in a position to realize on each different kind of reproduction.

It is also well to remember when a contract of this kind is made that the copyright law distinguishes expressly between the copyright and the physical property in the work of art, and that a transfer of the copyright will not of itself transfer the ownership of the work. The contract for reproduction should specifically provide whether the original work is to remain the property of the artist, or other owner, or whether it is to pass to the publisher.

A very large proportion of literary property is produced under contracts of employment. Nearly all newspaper work and much magazine work, both text and pictures, the detail of motion picture production, the arrangement of music, the drawing of maps and plans for scientific works and the writing of articles for encyclopedias are examples of copyright material produced in this way. The worker seldom thinks of the fact that he is creating intellectual property and inasmuch as the copyright law specifically provides that "the word 'author' shall include an employer in the case of works made for hire," it might seem that the employee is not concerned with the rights involved. Nevertheless, he will do well to give the matter careful thought, in the first place to see that his contract, which should always be reduced to writing, specifically defines what he is to do, first so that there will be no question as to his ownership of rights in works made outside the scope of his employment, and in the second place to make sure whether his contract is strictly one of hire only, or whether it is a contract for the disposal of rights in works to be produced by him. The distinction may be brought out by reference to two cases decided by the courts.

A man was engaged for a period of one year to write articles for a law encyclopedia. He was to be paid by the page, but he agreed to work a certain number of hours daily, to write on any subject which might be assigned to him, and to permit the editing of his

work in any manner his employers desired. It was held that the terms of the agreement negatived the idea of any kind of control by the author over the articles which he had prepared and that he had no property rights whatever in the result of his labors. He was simply an employee for hire. [*Jones* v. *American Law Book Company, 125 Appellate Division Reports (N.Y.), 519.*]

That famous purveyor of theatrical entertainment to a former generation, Dion Boucicault, made an agreement with Stuart, manager of the Winter Garden Theater in New York, to write one or more plays for production at that theater and to contribute his own services and those of his wife in the acting of them, "as long as they would run," receiving as compensation half the profits. Pursuant to this agreement, Boucicault wrote "The Octoroon," which proved highly successful. A dispute arose over the ownership of the copyright in the play, which Stuart claimed he had hired Boucicault to write, and the court decided that Stuart had only a right to produce the play, the copyright in which belonged to its author. [*Boucicault* v. *Fox, 5 Blatchford's Reports, 87.*]

A famous composer of military marches once told the writer how he successfully claimed the possession of works which he had composed during the term of his enlistment as a musician in a military band. The young officer who attempted to prevent the composer from removing his works insisted that the Government

had paid him for all of his time and that all he had produced during that time was the property of the Government. The musician's quick-witted reply was that he had purchased with his own money the manuscript paper on which the compositions were written and that his physical possession of this paper (including what was written on it) could not be interfered with. The answer nonplussed the officer and the composer got his manuscripts, but the true ground for his undoubted right to the compositions was that he had been enlisted to play music, not to compose it, and as the compositions were works made outside the scope of his employment, the Government had no claim upon them.

The above examples indicate some of the points which should be covered in a contract for the production of literary property. Such a contract should make clear the measure of control which the producer is to have over choice of subject, method of treatment, hours of work, and rapidity of production. Whether the author, artist or composer is to have the final power of revision, whether his name is to be used, and whether he is to be paid by the week, by the column, page or sheet are all matters upon which definite agreement is desirable. It is to be remembered that if the contract is purely one of hire, the employer automatically becomes the owner of all rights in the work, including the right to obtain copyright, as fast as the work is made. But if the contract is simply one for the use of the author's

work, then the question of who is to have copyright should be expressly settled in unmistakable terms.

The various kinds of contracts hitherto discussed in this chapter have in every case involved the right of publication of the work in copies for sale. The contract of hire may, of course, cover other rights as well, but the right of publication is nearly always the immediate and important thing in contemplation.

We now come to the contract for production of a play, in which the right of public performance is the governing consideration. After the usual recitals of authorship and ownership, with specific reference to the copyright, if it has been obtained, the grant of rights is made. This is usually expressed in the words "the sole and exclusive license and liberty to produce, perform and represent the work on the stage," usually for Canada as well as the United States. (Production in other countries will be the subject of a separate agreement.) Performances in Canada are subject to Canadian law and it may be observed that common law rights do not now exist in Canada, apart from copyright.

A lump sum, usually from $500 to $1000, is paid to the author at the time when the agreement is signed, as an advance on royalties, which are based on gross box-office receipts, reckoned, and payable, by the week. The rate of royalty, which varies with the amount of the receipts, on a sliding scale, will be fixed by the contract. The following rates are often adopted: five

per cent on the first $4,000, seven and a half per cent on the next $2,000 or $3,000, and ten per cent on all additional sums. Weekly statements of box office receipts are provided for, certified as correct by the management of the theater in which the performances are given.

An important point which should be covered in the contract is the fixing of a limit of time within which the play must be produced, depending somewhat upon the time when the contract is made and the elaborateness of the production. About six months is an average time, although a shorter period is not infrequent with plays not requiring any considerable outlay for scenery and costumes. If the play is not produced within the time stipulated, or such extension as the author may grant, all rights should revert to him and his manuscript should be returned.

The number of performances to be given in a season (usually from October 1 to June 1) should also be provided for and if it falls below a certain named minimum—say seventy-five performances—all rights should revert to the author.

It is sometimes agreed that after a certain amount in royalties has been paid, the play is to become the property of the producer. If such an agreement is made, the author should reserve his right of publication, or rather, if he has taken the copyright himself, as he should do, the right of production only should

go permanently to the producer, who thus will become an exclusive licensee for the life of the copyright.

As in the case of the motion picture contract, no alterations, eliminations or additions should be made without the author's consent, and his name should appear with due prominence in all advertising and other printed matter used in connection with the presentation of the play which, it may be further required, shall be presented only in a first-class manner, and in first-class theaters.

There may also be stipulations that the cast shall be satisfactory to the author and that rehearsals and the production generally shall be subject to his supervision. But such rights as these can usually be expected only by authors of established reputations, to whom producers are willing to make exceptional concessions for the sake of exploiting their work.

Provision should be made for the release of the play, in due course, for the use of stock companies, such release being usually made only when the play has ceased to be profitable on the road.

Stock theaters acquire the right to use plays on payment of royalties, which are ordinarily divided evenly between author and producer.

It will save trouble if the effect of the breach of any condition in the contract is expressly provided for. Generally speaking, the breach of any important provision, if not cured within a reasonable time—say thirty

days, after notice and demand—should cause the rights granted to revert to the author.

Contracts for the production of plays are often made to run for from three to five years, with an option to the producer for renewal at the end of the period. This option is not usually desirable from the author's point of view.

The last kind of contract which will be referred to here is that of author with literary agent or play broker, for the marketing of rights in a work. Such contracts should not dispose of any rights, but merely grant a power of agency, for a limited time, generally not more than a year. The rights to be disposed of should be expressly set forth. The contract, being purely personal, will not bind the heirs or assigns of either party, and will terminate automatically if either party dies, or becomes bankrupt or makes an assignment for the benefit of creditors. The usual agent's commission in such cases is ten per cent of all sums he receives for the author, which commission is to include and cover all the agent's expenses.

CHAPTER XII

Advice to Authors

Whether to copyright or not — Advantages and disadvantages of common law protection — Steps necessary to obtain copyright for various classes of works — Scenarios — Errors, fatal and curable: defective notice; attempted division of ownership; mixing copyright with non-copyright matter; repeated registration; wrong classification of work; failure to renew in time; variances between application for registration and copies of work.

A book of this kind would hardly be complete without a succinct statement of the steps required to secure protection for copyrightable works, which may profitably be supplemented by some discussion of the more frequent errors of procedure committed by authors and copyright proprietors, a subject with which the present author is familiar through an experience of a good many years in the Copyright Office and some years spent in the practice of copyright law.

Let the reader return, if he please, to that stage of our consideration of copyright at which the author, composer, or artist has completed his work, looked upon it and pronounced it good—good enough, that is, to be worth offering to the public. The first question to

be decided is whether he will obtain copyright or not. There are certain classes of works—dramatic compositions, lectures to be given to a limited audience (such as a professor's lectures to his students) and manuscript musical compositions—with regard to which this question should be carefully weighed. As long as publication has not taken place—and publication means placing copies where the public can have access to them without distinction of persons—the protection of the common law applies. The advantages of common law protection are, first, that it is perpetual; second, that it is not dependent on formalities of any kind. Its disadvantages are that it is sometimes difficult to prove the facts necessary for its enforcement, and that the remedies for its infringement are confined to an injunction and actual damages. Copyright, on the other hand, is limited to a period of not more than fifty-six years and is absolutely dependent on statutory formalities, including, in the case of published works, notice, deposit of copies and registration. But it is easy of proof, the certificate of registration being *prima facie* evidence of compliance with the required formalities, and on proof of infringement the owner is certain of minimum damages of $250, or can recover the profits made by the infringer in addition to such actual damages as he can prove.

The particular danger in relying upon common law protection lies in the possibility of unintentional publication, or neglect to comply with the formalities required at the time of publication, through which all the author's

rights are lost irrevocably. Nevertheless, the author who intends to keep his unpublished work carefully in his own control, or is satisfied that it will not be inadvertently published, may do well to postpone the taking of copyright until such time as he gets ready to publish, as in this way he will prolong by so much the period of protection. Dramatic compositions and musical compositions of the more elaborate kind are often so dealt with, publication being deferred until a profit has been taken from other methods of exploitation. In the meantime the work may be revised and touched up, so that when copies are finally placed on the market, they will represent the author's mature judgment, aided by the criticism of performers and of the public.

Let us suppose, however, that the work is of such a kind that the author must publish in order to obtain the reward of his labor—a book, a short story or essay, or a poem—how is he to protect himself when he sends out his manuscript? In the first place, he should keep a record of the date of completion of the work and show it to persons by whose testimony he can prove his authorship, if need should arise. When he submits it to a publisher, he should send with it a letter, retaining a copy, stating on what terms he offers the material for publication. He may type on the first page of the manuscript a statement to the following effect:

This work is protected at common law against unauthorized use of any kind. Section 2 of the copyright act confirms the right of an author "to prevent the copy-

ing, publication or use of his unpublished work without his consent, and to obtain damages therefor."

To this he may add:

The author stipulates, as one of the conditions on which he offers his work for publication, that the copyright notice in the form required by the law (Copyright, 19—, by ———), shall be printed on all copies when published.

As soon as he knows that publication has actually taken place, the author should assure himself that the required copy, or copies, are sent to the Copyright Office for registration. In case the work is published in a newspaper, or magazine, one copy of the issue in which it appears should be sent. If published in book or pamphlet form, two copies should be sent. The copy, or copies, should be accompanied by a remittance of one dollar, to pay the statutory registration fee. The Copyright Office advises that this remittance be sent in the safe and convenient form of a post-office money order. Owing to regulations of the Treasury Department relative to the accounts which the Register of Copyrights has to render, checks, unless certified, cannot be received as fees.

The application for registration must contain a statement of the facts relative to the work and its authorship which constitute a "claim of copyright" under the statute and which are necessary to enable the Copyright Office to record the copyright and to issue the certificate of registration. The Copyright Office fur-

nishes the necessary blank forms for making applications, printed on small cards so that they may be filed in the Office as an index, after the registrations have been made. A list of the different kinds of forms which have been devised to suit various classes of works will be found in the "Rules for Registration of Claims to Copyright," Bulletin No. 15 of the Copyright Office (printed as Appendix B in this book, at pp. 263–278). The forms are furnished without charge and it is preferable for the applicant to procure the suitable form in advance and send it, filled out, along with the copy, or copies, of his work and the fee; but if he does not feel sure what form to use, he may send the copies and fee with a letter requesting registration, and the necessary form will be sent to him. The application may be made either by the author himself, or by any other person who knows the facts and has authority from the author to make it. It is not necessary for the author, or his agent, to appear personally at the Copyright Office, or to employ an attorney to prosecute the application. The matter of obtaining registration is ordinarily a simple one and can be attended to by correspondence.

If the work for which copyright is to be registered is a book in the English language, it will be necessary to file with the application for registration an affidavit of American manufacture, including statements as to type-setting, printing and binding. A suitable form for this affidavit is printed on the reverse of the Copyright Office

application form for books (form A 1). The term "book" in this connection covers any printed text matter of original authorship, with or without illustrations, except dramatic compositions and periodicals, for which the affidavit is not required. The affidavit may be made by the author or other copyright owner, by the printer of the book, or by any person authorized to act as the author's agent for the purpose. It should be sworn to before a notary, or other officer empowered by law to administer oaths and having a seal, which should be affixed.

For all other classes of works which are reproduced in copies for sale, or public distribution, including periodicals, dramatic or dramatico-musical compositions, musical compositions (whether consisting of music alone or of words and music together), maps, printed pictures, and photographs, the procedure is substantially the same as that above outlined, except that the affidavit is required only for a book.

If the copyright work is sold outright to the publisher, it is of course his business to print the required notice on all copies at the time of publication, and to see that registration is promptly made. The author, however, has an interest in making sure that the required action is taken, in order to protect his rights in the way of royalties or otherwise, as well as his prospective renewal rights, for the renewal cannot be secured unless the original copyright was obtained. It is advisable for authors to keep complete records of the copyrights

secured for their works, whether by themselves or their publishers, and this may be done by getting duplicate certificates of registration from the Copyright Office, the fee for which is fifty cents.

If the work is not to be published, and if it belongs to one of the classes named by the law as privileged to secure copyright without publication, the author may think it preferable to obtain copyright rather than trust to common law protection. The procedure is then somewhat different from that above described. One copy of the work should be sent to the Copyright Office with the suitable application and fee. In the case of drawings, paintings or sculpture, a photographic or other identifying reproduction should be sent. It is not required by law that the copyright notice be affixed to unpublished works, but it is prudent to affix it to all copies as soon as the certificate of registration has been received. The author should not send his only copy of a work to the Copyright Office for registration, as it cannot ordinarily be returned.

A word as to motion picture scenarios. These are protected at common law, like other unpublished writings. If it is desired to copyright them, the procedure to be followed depends on their form and character. If a scenario is prepared in dramatic form, with dialogue, directions for action and other paraphernalia of a play, it can be copyrighted without publication, but in most cases this is not done, the work being in narrative form like any other story. The only procedure possible

to secure copyright for such narrative scenarios is that required for works classifiable as books, that is, publication with notice, either in some periodical or in separate form, followed by deposit and registration as above described.

The mistakes made by persons seeking to obtain copyright are of two kinds. There are the curable errors of procedure, resulting in nothing more serious than loss of time and trouble, and perhaps some unnecessary expense; and there are the radical and fatal errors which prevent the copyright from ever coming into existence, or invalidate it after it has been obtained. The mortal sins of copyright procedure are usually committed before the work is sent to the Copyright Office; the venial ones are those connected with the steps taken to obtain registration.

It has perhaps already been made sufficiently clear that the one sin in copyright matters for which there is no *locus penitentiæ* is publishing the work without a copyright notice, or with such omissions or errors in the notice as invalidate the protection. The warning against such action, however, cannot be repeated too often. The author, or other person interested in the copyright, should, before taking any steps to publish the work, examine the provisions of the statute (sections 18 and 19 particularly) relating to the notice, make up his mind definitely which of the different forms provided he wishes to use and the exact position which the notice should have, and then see to it personally that it is

printed in that place. This, as already indicated, he should do, whether he takes the copyright himself or not.

Next in order of importance to errors in regard to the notice are the errors made in transferring rights in the work before it is published—errors of which evidence often appears in the shape of an erroneous notice —but which proceed from a failure to provide in the contract of publication exactly who is to own, and register, the copyright, or from a failure to carry out the provisions made. Examples of this class of errors have already been presented in an earlier chapter [*Mifflin* v. *Dutton and Mifflin* v. *White*. *See p. 41 supra*]. A recent case of the same kind is that of Public Ledger Co. *v.* Post Printing and Publishing Co. [*294 Federal Reporter, 430*] where the contract between the author, James W. Gerard, formerly American ambassador to Germany, and Cyrus H. K. Curtis, owner of all but one share of the stock of the Philadelphia Public Ledger Company, provided that the copyright for Gerard's book, "My Four Years in Germany," which was to be published serially in the *Ledger*, might be obtained by, and in the name of, either Curtis or Gerard. Instead, it was actually obtained by and in the name of the Public Ledger Company, the name of the Company appearing in the copyright notice. The court held that the copyright was void because there was no authority granted to the Ledger to obtain it.

Instances of a similar kind are to be found in

cases where the common law rights in an unpublished work have been split up between author and publisher, so that neither is the owner of the entire right. The statute provides that copyright may be obtained by an "author or proprietor," the word "proprietor" being in this connection equivalent to "assignee." Serious doubt has been expressed whether the owner of less than the whole common law right is a "proprietor" in the meaning of the law. If not, he is unable to obtain copyright. and publication of the work with his name in the notice will throw it into the public domain. Either the author should obtain copyright, granting the right of publication on such conditions as may be agreed upon, or, if that is not practicable, the entire common law right should be granted to the publisher, with a provision requiring him to reassign to the author, after copyright has been obtained, such rights as he is not to exercise. This subject has been fully covered in Chapter XI on contracts. [*See p. 195, supra.*] It was there stated, but may be repeated here, that the publisher may take the copyright as trustee for the author, for all the rights included in the copyright, or for a portion of them. But he must in that case be the owner of the complete legal title to the common law rights, and not merely the assignee of a portion of such rights. (The point has not been entirely settled, whether the right to obtain copyright can be separated from other rights at common law, but dicta in several cases indicate that it cannot, and they seem to be in accordance with sound

theory.) [*See Dam* v. *Kirke La Shelle Co., 175 Federal Reporter, 902; Fitch* v. *Young, 230 Federal Reporter, 743.*]

The question is frequently asked, what should be the contents of the copyright notice where a work has been first registered in its unpublished form and is afterwards to be registered again on publication, or where a new edition of a work is published, which contains new copyright matter together with matter covered by copyright previously obtained and still subsisting. In all such cases, the safe course is to print a notice on the work giving the date of the earliest copyright obtained, and additional notices with dates of later copyrights. It may be sufficient, however, to print only one notice, including all the dates involved. The principle to be observed is that the facts regarding the dates when copyrights were obtained should be fully disclosed, and not concealed from the public, which has a right to know when the term of copyright began and when it will expire.

Another course of action which may result in loss of copyright, or what often amounts to the same thing —failure to recover on suit for infringement—is the publication of matter which is in the public domain along with copyright matter, the two being so intermingled that no one can tell by mere inspection what is protected and what is not, only one copyright notice being used for the entire work, and that without specification as to the matter which it covers. In such a

case it has been held that the copyright owner cannot complain if an infringer takes the copyright along with the uncopyrighted matter. [*Bentley* v. *Tibbals*, *223 Federal Reporter, 247.*]

Of the errors which take place in connection with registration in the Copyright Office, one of the most serious is that of repeated, unnecessary registration. "Double copyrighting," so called, under the law in force prior to 1909, consisted in entering the title of the work and depositing copies a second time after these steps had already been taken once, and was held to result in the forfeiture of protection in the case of Caliga *v.* Interocean Publishing Co. [*215 U. S. Reports, 182*]. The theory on which the decision rests is that there can be but one copyright in a given work, and the setting up by registration of a second claim for a new copyright is inconsistent with the original copyright, besides being an apparent attempt to claim a longer term of protection than the law allows. Under the statute now in force, if copyright is obtained by publication with notice, repeated registrations do not involve the same danger, but in the case of unpublished works, where copyright is secured by the deposit of a copy and registration, the doctrine of Caliga *v.* Interocean would still seem applicable. At all events, such repeated registrations are undesirable because of the confusion of the records which results from them and when they are made upon a mere change of title, they may even invalidate the protection on the theory that the public

is misled by a claim of copyright for a work under one title, coupled with its publication under another title. [*See Collier* v. *Imp. Films Co., 214 Federal Reporter, 272.*] Where substantial additions have been made to a work, the statute affords ground for a new registration, but where only slight alterations have taken place, such action is of doubtful value and may be dangerous. It is difficult to state briefly the extent of revision which calls for a new copyright. It is believed that the correction of errors, or slight improvements in phraseology, do not call for such action. The rewriting of an entire act in a play, however, would seem to justify a new registration. In all such cases the danger connected with repeated registrations may be avoided by giving in the application for the new registration, or on the copy of the work itself, or both, a reference to the previous registrations and a statement of what is new in the new version.

The question of the proper classification of the work in the application for registration is one of some importance. Section five of the statute requires the applicant to specify to which of the classes enumerated his work belongs. It provides, to be sure, that an error in classification shall not invalidate or impair the copyright protection. But where different rights are given for different classes of works, and the copyright owner has elected under which class he will register, it is possible that he will be estopped to claim any rights beyond those granted for the class in question. This is a matter of

special importance with reference to musical numbers originally covered by the copyright of a dramatico-musical composition of which they were component parts, but subsequently published and sold separately. The law gives to the copyright owner of a dramatico-musical composition the unrestricted right of public performance, while this right, in the case of a musical composition, is limited by the condition that such public performance must be for profit. The copyright owner of a dramatico-musical composition may therefore find his rights somewhat curtailed if he puts out separate numbers and registers them separately as "musical compositions" without reference to the copyright obtained for the original dramatico-musical composition of which they formed a part. [*See Herbert* v. *Shanley* (*C.C.A.*), *229 Federal Reporter, 340, which so held, although the United States Supreme Court, in reversing the judgment, expressly declined to pass upon the point.*] The remedy for this possible loss of rights as a result of a legitimate, and even necessary, method of publication would seem to lie in the use of a notice on each separate song number identical with that used on the originally copyrighted dramatico-musical composition, coupled, perhaps, with an express statement that the number was part of such and such a dramatico-musical composition for which copyright was duly registered.

A somewhat similar danger may exist as between the class "book" and the classes "lecture, sermon, or

address," and "dramatic composition." Since the law does not grant for books the exclusive right of delivery or performance, it might be held that the copyright owner was estopped to claim such rights for his work, though properly classifiable as a lecture or play, if he deliberately registered it as a "book," or, in other words, that he thus dedicated his right of performance or oral delivery to the public.

Registration in the names of joint authors, following publication with notice containing such names, while a permissible procedure under the law, is undesirable for the reason that it results in a tenancy in common of the copyright, by virtue of which each joint author can license the use of the work without consulting the others. In order to preserve the respective rights of joint authors, it is probably best to select a trustee and assign the copyright to him, under a contract carefully providing for a division of the proceeds from the exploitation of the work.

The registration of renewal copyrights is fraught with special dangers in that the application must be filed and "duly registered" in the Copyright Office within the final year of the original term. If the application is received in the Copyright Office so much as one day late, it cannot be registered, and the twenty-eight years of renewal term are irretrievably lost. It not infrequently happens that there is a doubt as to the identity of the proper renewal beneficiary, or that the publisher of a work, desiring to have the copyright continued,

is unable to get in touch with the beneficiary, although certain of his existence and identity. In such cases there would seem to be no objection to the filing of an application in the name of the person who is believed to have the renewal right. It is probable that the publisher would then be held to be a trustee for the beneficiary. If not, it would seem there could be no penalty for his unauthorized action beyond failure of the protection, which would result in any event from failure to file the application for renewal.

Of minor errors with which the Copyright Office has to deal, none is more frequent than the "variance" between application and copies of the work, sometimes in the statements of the names of author or composer, sometimes—which is more important—in the statements of the name of the copyright owner as given in the application and in the notice of copyright. Such a variance of course raises a question as to which is correct, the copies or the application, and registration cannot be made until this uncertainty has been removed. The Copyright Office will make the registration in the form requested by the applicant, upon a clear statement that he understands the question involved. It is to be noted that where such registration is finally made in a name other than that in the notice, the presumption must be that the notice is wrong, and that the copyright will be invalidated unless steps are promptly taken to correct the error.

APPENDIX

A. Copyright Statutes of the United States.

B. Rules and Regulations for Registration of Claims to Copyright.

C. International Copyright Relations.

APPENDIX A

THE COPYRIGHT STATUTES OF THE UNITED STATES OF AMERICA, BEING THE ACT OF MARCH 4, 1909 (IN FORCE JULY 1, 1909) AS AMENDED BY THE ACTS OF AUGUST 24, 1912, MARCH 2, 1913, MARCH 28, 1914, AND DECEMBER 18, 1919. TOGETHER WITH RULES FOR PRACTICE AND PROCEDURE UNDER SECTION 25 BY THE SUPREME COURT OF THE UNITED STATES.

Act of March 4, 1909, with Amendments.

AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING COPYRIGHT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure

the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(e) To perform the copyrighted work publicly for profit if it be a musical composition: and for the purpose of public performance for profit, and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided*, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: *And provided further, and as a condition of extending the copyright control to such mechanical reproductions*, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further

contribution to the copyright except in case of public performance for profit: *And provided further*, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defense to any suit, action, or proceeding for any infringement of such copyright.

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times such amount.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs.

SEC. 2. That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

SEC. 3. That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act.

SEC. 4. That the works for which copyright may be secured under this Act shall include all the writings of an author.

SEC. 5. That the application for registration shall specify

to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopædic works, directories, gazetteers, and other compilations;

(b) Periodicals, including newspapers;

(c) Lectures, sermons, addresses (prepared for oral delivery);

(d) Dramatic or dramatico-musical compositions;

(e) Musical compositions;

(f) Maps;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints and pictorial illustrations;

(*l*) *Motion-picture photoplays;*

(*m*) *Motion pictures other than photoplays:*[1]

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

SEC. 6. That compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

SEC. 7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign

[1] The changes marked, and the addition of the words printed in italics are authorized by the amendatory Act of August 24, 1912.

country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however*, That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor.

SEC. 8. That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act: *Provided, however*, That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

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

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

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

SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright

proprietor, except in the case of books seeking ad interim protection under section twenty-one of this Act.

SEC. 10. That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act.

SEC. 11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or *dramatico-musical* composition; *of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay*; of a photographic print if the work be a photograph; *of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay;*[1] or of a photograph or other identifying reproduction thereof, if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies, under sections twelve and thirteen of this Act, where the work is later reproduced in copies for sale.

SEC. 12. That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, *or if the work is by an author who is a citizen or subject of a foreign state or nation and has been published in a foreign country, one complete copy of the best edition then published in such foreign country*, which copies *or copy*,[2] if the work be a book or periodical, shall have been produced in accordance with the manufacturing pro-

[1] The words printed in italics indicate the amendments authorized by the amendatory Act of August 24, 1912.

[2] The words printed in italics in Section 12 are inserted by the amendatory Act of March 28, 1914, which also provides "That all Acts or parts of Acts in conflict with the provisions of this Act are hereby repealed."

visions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.

SEC. 13. That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

SEC. 14. That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

SEC. 15. That of the printed book or periodical specified in section five, subsections (a) and (b) of this act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any

kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this act.

SEC. 16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process or printing and binding were performed and the date of the completion of the printing of the book or the date of publication.

SEC. 17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall know-

ingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

SEC. 18. That the notice of copyright required by section nine of this act shall consist either of the word "Copyright" or the abbreviation "Copr.," accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.

SEC. 19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided*, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

SEC. 20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins

an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct.

SEC. 21. That in the case of a book *first* published abroad in the English language *on or after* [March 3, 1921], the deposit in the copyright office, not later than *sixty* days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of said book, shall secure to the author or proprietor an ad interim copyright which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of *four months* after such deposit in the copyright office.[1]

SEC. 22. That whenever within the period of such ad interim protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section fifteen of this Act, and whenever the provisions of this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this Act.

SEC. 23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be

[1] Section 21 as amended by the Act of December 18, 1919.

entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopædic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

SEC. 24. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: *Provided, however*, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the Copyright Office and duly registered

therein within one year prior to the expiration of the existing term.

SEC. 25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(a) To an injunction restraining such infringement;

(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated. but in[1] case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, *and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and fifty dollars*, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty. *But the foregoing ex-*

[1] The word "the" before the words "case of a newspaper reproduction," etc., was struck out by the amendatory Act of August 24, 1912.

ceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery applying to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.[1]

First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Second. In the case of any work enumerated in section five of this Act, except a painting, statue, or sculpture, one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery;

Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance;

(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order;

(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to

[1] The words printed in italics indicate the amendments authorized by the amendatory Act of August 24, 1912.

reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section one, subsection (e), of this Act: *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this Act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section one, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States.

SEC. 26. That any court given jurisdiction under section thirty-four of this Act may proceed in any action, suit or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.

SEC. 27. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

SEC. 28. That any person who willfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the court: *Provided, however*, That nothing in this Act shall be so construed as to prevent the

performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools. church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir. school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit

SEC. 29. That any person who, with fraudulent intent. shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

SEC. 30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

SEC. 31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is hereby, prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply:

(a) To works in raised characters for the use of the blind;

(b) To a foreign newspaper or magazine, although con-

taining matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

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

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

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

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale:

Provided, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 32. That any and all articles prohibited importation by this Act which are brought into the United States

from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

SEC. 33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

SEC. 34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the circuit courts of the United States, the district court of any Territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

SEC. 35. That civil action, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

SEC. 36. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or

judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

SEC. 37. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

SEC. 38. That the orders, judgments, or decrees of any court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

SEC. 39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

SEC. 40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

SEC. 41. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

SEC. 42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

SEC. 43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument.

SEC. 44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

SEC. 45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

SEC. 46. That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act.

SEC. 47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

SEC. 48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers

issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

SEC. 49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unpaid balances.

SEC. 50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

SEC. 51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

SEC. 52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

SEC. 53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act.

SEC. 54. That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

SEC. 55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain the name and address of said claimant, *the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author* (*when the records of the copyright office shall show the same*), the title of the work *which is registered* for which copyright is claimed, the date of the deposit of the copies of such work, *the date of publication if the work has been reproduced in copies for sale, or publicly distributed,* and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit, as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for *in the case of all registrations made after this Act goes into effect and in the case of all previous registrations so far as the copyright office record books shall show such facts,*[1] which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same. Said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request. without additional fee, a receipt for the copies of the work deposited to complete the registration.

[1] The words printed in italics indicate the amendments authorized by the amendatory Act of March 2, 1913.

SEC. 56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration.

SEC. 57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

SEC. 58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be pre-

scribed by the register of copyrights and approved by the Librarian of Congress.

SEC. 59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

SEC. 61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a

certificate is not demanded. For every additional certificate of registration made, fifty cents. For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in section one, subsection (e), or for any copy of such assignment or license, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. For recording the notice of user or acquiescence specified in section one, subsection (e), twenty-five cents for each notice if not over fifty words, and an additional twenty-five cents for each additional one hundred words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

SEC. 62. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire.

SEC. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such

causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

SEC. 64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Approved, March 4, 1909.

NOTE TO SECTION 18, PROVISO

The Act of June 18, 1874, provides that the notice of copyright to be inscribed on each copy of a copyrighted work shall consist of the following words:

"Entered according to Act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington"; or, . . . the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B."

AMENDATORY ACT OF DECEMBER 18, 1919

AN ACT To amend sections eight and twenty-one of the Copyright Act, approved March 4, 1909.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 8 and 21 of the Act entitled "An Act to amend and consolidate the Acts respecting copyright," approved March 4, 1909, be amended to read as follows:

"SEC. 8. That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act: *Provided, however*, That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign State or nation only:

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

"(b) When the foreign State or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United

States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign State or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

"The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require: *Provided, however, That all works made the subject of copyright by the laws of the United States first produced or published abroad after August 1, 1914, and before the date of the President's proclamation of peace, of which the authors or proprietors are citizens or subjects of any foreign State or nation granting similar protection for works by citizens of the United States, the existence of which shall be determined by a copyright proclamation issued by the President of the United States, shall be entitled to the protection conferred by the copyright laws of the United States from and after the accomplishment, before the expiration of fifteen months after the date of the President's proclamation of peace, of the conditions and formalities prescribed with respect to such works by the copyright laws of the United States: Provided, further, That nothing herein contained shall be construed to deprive any person of any right which he may have acquired by the republication of such foreign work in the United States prior to the approval of this Act.*

"SEC. 21. That in the case of a book *first* published abroad in the English language *on or after the date of the President's proclamation of peace*, the deposit in the copyright office, not later than *sixty* days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an ad interim copyright which shall have all the force and effect given to copyright by this Act, and

shall endure until the expiration of *four months* after such deposit in the copyright office."

Approved. December 18, 1919.

NOTE.—For a list of presidential proclamations establishing reciprocal protection under the Act of December 18, 1919, see Appendix C, p. 282.

COPYRIGHT OF LABELS AND PRINTS DESIGNED TO BE USED FOR ARTICLES OF MANUFACTURE

The new copyright law approved March 4, 1909, going into effect on July 1, 1909, did not repeal the Copyright Act of June 18, 1874, according to the opinion of the Attorney-General, of December 22, 1909. Labels or prints designed to be used for articles of manufacture should therefore be registered in the Patent Office.

Section 3 of the Act of June 18, 1874, reads as follows:

SEC. 3. That in the construction of this act the words "engraving, cut, and print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of record, under the seal of the Commissioner of Patents, to the party entering the same.

RULES ADOPTED BY THE SUPREME COURT OF THE UNITED STATES FOR PRACTICE AND PROCEDURE UNDER SECTION 25 OF AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING COPYRIGHT, APPROVED MARCH 4, 1909. TO GO INTO EFFECT JULY 1, 1909.

1

The existing rules of equity practice, so far as they may be applicable, shall be enforced in proceedings instituted under section twenty-five (25) of the act of March fourth, nineteen hundred and nine, entitled "An act to amend and consolidate the acts respecting copyright."

2

A copy of the alleged infringement of copyright, if actually made, and a copy of the work alleged to be infringed, should accompany the petition, or its absence be explained; except in cases of alleged infringement by the public performance of dramatic and dramatico-musical compositions, the delivery of lectures, sermons, addresses, and so forth, the infringement of copyright upon sculptures and other similar works and in any case where it is not feasible.

3

Upon the institution of any action, suit, or proceeding, or at any time thereafter, and before the entry of final judgment or decree therein, the plaintiff or complainant, or his authorized agent or attorney, may file with the clerk of any court given jurisdiction under section 34 of the act of March 4, 1909, an affidavit stating, upon the best of his knowledge, information, and belief, the number and location, as near as may be, of the alleged infringing copies, records, plates, molds, matrices, etc., or other means for making the copies alleged to infringe the copyright, and the value of the same, and with such affidavit shall file with the clerk a bond executed by at least two sureties and approved by the court or a commissioner thereof.

4

Such bond shall bind the sureties in a specified sum, to be fixed by the court, but not less than twice the reasonable value of such infringing copies, plates, records, molds, matrices, or other means for making such infringing copies, and be conditioned for the prompt prosecution of the action, suit or proceeding; for the return of said articles to the defendant, if they or any of them are adjudged not to be infringements, or if the action abates, or is discontinued before they are returned to the defendant; and for the payment to the defendant of any damages which the court may award to him against the plaintiff or complainant. Upon the filing of said affidavit and bond, and the approval of said bond, the clerk shall issue a writ directed to the marshal of the district where the said infringing copies, plates, records, molds, matrices, etc., or other means of making such infringing copies shall be stated

in said affidavit to be located, and generally to any marshal of the United States, directing the said marshal to forthwith seize and hold the same subject to the order of the court issuing said writ, or of the court of the district in which the seizure shall be made.

5

The marshal shall thereupon seize said articles or any smaller or larger part thereof he may then or thereafter find, using such force as may be reasonably necessary in the premises, and serve on the defendant a copy of the affidavit, writ, and bond by delivering the same to him personally, if he can be found within the district or if he can not be found, to his agent, if any, or to the person from whose possession the articles are taken, or if the owner, agent, or such person can not be found within the district by leaving said copy at the usual place of abode of such owner or agent, with a person of suitable age and discretion, or at the place where said articles are found, and shall make immediate return of such seizure, or attempted seizure, to the court. He shall also attach to said articles a tag or label stating the fact of such seizure and warning all persons from in any manner interfering therewith.

6

A marshal who has seized alleged infringing articles, shall retain them in his possession, keeping them in a secure place, subject to the order of the court.

7

Within three days after the articles are seized, and a copy of the affidavit, writ and bond are served as hereinbefore provided, the defendant shall serve upon the clerk a notice that he excepts to the amount of the penalty of the bond, or to the sureties of the plaintiff or complainant, or both, otherwise he shall be doomed to have waived all objection to the amount of the penalty of the bond and the sufficiency of the sureties thereon. If the court sustain the exceptions it may order a new bond to be executed by the plaintiff or complainant, or in default thereof within a time to be named by the court, the property to be returned to the defendant.

8

Within ten days after service of such notice, the attorney of the plaintiff or complainant shall serve upon the defendant or his attorney a notice of the justification of the sureties, and said sureties shall justify before the court or a judge thereof at the time therein stated.

9

The defendant, if he does not except to the amount of the penalty of the bond or the sufficiency of the sureties of the plaintiff or complainant, may make application to the court for the return to him of the articles seized, upon filing an affidavit stating all material facts and circumstances tending to show that the articles seized are not infringing copies, records, plates, molds, matrices, or means for making the copies alleged to infringe the copyright.

10

Thereupon the court in its discretion, and after such hearing as it may direct, may order such return upon the filing by the defendant of a bond executed by at least two sureties, binding them in a specified sum to be fixed in the discretion of the court, and conditioned for the delivery of said specified articles to abide the order of the court. The plaintiff or complainant may require such sureties to justify within ten days of the filing of such bond.

11

Upon the granting of such application and the justification of the sureties on the bond, the marshal shall immediately deliver the articles seized to the defendant.

12

Any service required to be performed by any marshal may be performed by any deputy of such marshal.

13

For services in cases arising under this section, the marshal shall be entitled to the same fees as are allowed for similar services in other cases.

APPENDIX B

Rules and Regulations for the Registration of Claims to Copyright Adopted by the Register of Copyrights, Under the Authority of Sec. 53 of the Act of March 4, 1909.

1. Copyright under the act of Congress entitled: "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909,[1] is ordinarily secured by printing and publishing a copyrightable work with a notice of claim in the form prescribed by the statute. Registration can be made *after* such publication, but the statute expressly provides, in certain cases, for registration of manuscript works.

Who May Secure Copyright

2. The persons entitled by the act to copyright protection for their works are:

(1) The *author* of the work, if he is:

(*a*) A citizen of the United States, or

(*b*) An alien author domiciled in the United States at the time of the first publication of his work, or

(*c*) A citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation.[2]

[1] Amendatory acts were approved August 24, 1912 (providing for the registration of *motion pictures*), *March* 2, 1913 (*amending Section* 55, *with regard to the* certificate of registration), March 28, 1914 (amending Section 12, to provide for deposit of only one copy in case of works of foreign authors published abroad in foreign languages), and December 18, 1919.

[2] Presidential copyright proclamations have been issued securing copyright privileges in the United States to the citizens or subjects of the following countries: Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and the British possessions, Hungary, Italy, Luxemburg, Mexico, Netherlands (Holland) and possessions, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis.

The commercial treaty with China of October 8, 1903, proclaimed by the President on January 13, 1904, contains Article XI relating to copyright. A copyright convention with Japan was signed at Tokyo, November 10, 1905, and proclaimed in the United States on May 17, 1906. Two additional treaties with Japan, which were

(2) The *proprietor* of a work. The word "proprietor" is here used to indicate a person who derives his title to the work from the author. If the author of the work should be a person who could not himself claim the benefit of the copyright act, the proprietor can not claim it.[1]

(3) The *executors*, *administrators*, or *assigns* of the above-mentioned author or proprietor.

Registration

3. Promptly after the publication of any work entitled to copyright, the claimant of copyright should register his claim in the Copyright Office. An action for infringement of copyright can not be maintained in court until the provisions with respect to the deposit of copies and registration of such work shall have been complied with.

A certificate of registration is issued to the claimant and duplicates thereof may be obtained on payment of the statutory fee of fifty cents.

Subject Matter of Copyright

4. The act provides that no copyright shall subsist in the original text of any work published prior to July 1, 1909, which has not been already copyrighted in the United States, "or in any publication of the United States Government, or any reprint, in whole or in part, thereof" (sec. 7).

signed at Washington May 19, 1908, and proclaimed August 11, 1908, deal with the protection of patents, trade marks, and copyrights in China and Korea, respectively. The copyright convention with Hungary was signed at Budapest on January 30, 1912, and was proclaimed by the President on October 15, 1912.

The convention to protect literary and artistic property signed at Mexico on January 27, 1902, was proclaimed by the President on April 9, 1908, who announced the ratification of this treaty also by Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador. The Pan American Copyright Convention signed at Buenos Aires on August 11, 1910, was proclaimed on July 13, 1914, announcing its ratification also by the Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, and Panama. Since that date announcement has been made of the adhesion to this convention of Bolivia, Brazil, Costa Rica, Haiti, Paraguay, and Uruguay.

Copyright proclamations under Section 1 (e), "to secure copyright controlling the parts of instruments serving to reproduce mechanically musical works" have been issued in behalf of Austria (March 11, 1925), Australia (April 3, 1918), Belgium (June 14, 1911), Cuba (November 27, 1911), Denmark (December 9, 1920), France (May 21, 1918), Germany (December 9, 1910), Great Britain (January 1, 1915), Italy (May 1, 1915), Luxemburg (June 14, 1911), the Netherlands (February 26, 1923), New Zealand (December 1, 1916), Norway (June 14, 1911), the Union of South Africa (June 26, 1924), Sweden (February 27, 1920), and Switzerland (November 22, 1924). Protection under this section is also included in the copyright convention with Hungary, proclaimed on October 15, 1912.

[1] The copyright act provides that "the word 'author' shall include an employer in the case of works made for hire." (Section 62.)

Section 5 of the act names the thirteen classes of works for which copyright may be secured. as follows:

(*a*) *Books.*—This term includes "composite and cyclopædic works. directories, gazetteers, and other compilations." and, generally, all printed literary works (except dramatic compositions), whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term "book" as used in the law includes tabulated forms of information, frequently called charts tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables, etc., single poems, and the words of a song when printed and published without music; descriptions of motion pictures or spectacles: catalogues; circulars or folders containing information in the form of reading matter, and literary contributions to periodicals or newspapers.

5. The term "book" can not be applied to:

Blank books for use in business or in carrying out any system of transacting affairs. such as record books. account books, memorandum books, blank diaries or journals. bank deposit and check books; forms of contracts or leases which do not contain original copyrightable matter: coupons: forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness.[1]

6. (*b*) *Periodicals.*—This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies, etc., which appear regularly at intervals of less than a year: and, generally, periodical publications which would be registered as second-class matter at the post office. Serial publications which are not clearly "periodicals" should be registered as *books* and the application for registration should be accompanied by the required affidavit.

7. (*c*) *Lectures. sermons. addresses,* or similar productions, prepared for oral delivery.

[1] The United States courts which have jurisdiction in cases arising under the copyright laws have held that blank forms or blank books or similar articles for use in themselves are not subject to copyright, and hence are not registrable in this office. (See Baker *v.* Selden. 101 U. S. Reports, 99; Everson *v.* the Librarian of Congress, 26 Washington Law Reporter. September 1, 1898. 546; The Amberg File and Index Co. *v.* Shea, Smith and Co., 82 Federal Reporter, 314; Munson *v.* Mayor of New York, 18 Blatchford's Reports, 237; and Stover *v.* Lathrop, 33 Federal Reporter, 348.)

8. (*d*) *Dramatic and dramatico-musical compositions*, such as dramas, comedies, operas, operettas, and similar works.

The designation "dramatic composition" does not include the following: Dances, motion-picture shows; stage settings or mechanical devices by which dramatic effects are produced, or "stage business"; animal shows, sleight-of-hand performances, acrobatic or circus tricks of any kind; scenarios for, or descriptions of motion pictures or of settings for the production of motion pictures. (These, however, when printed and published, may be registrable as "books.")

9. *Dramatico-musical compositions* include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung.

10. (*e*) *Musical compositions*, including vocal and instrumental compositions, with or without words and separately published songs from operas and operettas, when not intended to be acted.

The words of a song printed alone should be registered as a "book," not as a "musical composition."

"Adaptations" and "arrangements" may be registered as "new works" under the provisions of section 6. Mere transpositions into different keys are not provided for in the copyright act.

11. (*f*) *Maps.*—This term includes all cartographical works, such as terrestrial maps, plats, marine charts, star maps, but not diagrams, astrological charts, or landscapes.

12. (*g*) *Works of art and models or designs for works of art.*—This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

The protection of productions of the industrial arts utilitarian in purpose and character even if artistically made or ornamented depends upon action under the patent law; but registration in the Copyright Office has been made to protect artistic drawings notwithstanding they may afterwards be utilized for articles of manufacture.

Toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or similar articles, are examples. The exclu-

sive right to make and sell such articles should not be sought by copyright registration.

13. (*h*) *Reproductions of works of art.*—This term refers to such reproductions (engravings, woodcuts, etchings, casts, etc.) as contain in themselves an artistic element distinct from that of the original work of art which has been reproduced.

14. (*i*) *Drawings or plastic works of a scientific or technical character.*—This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, relief maps, etc.

15. (*j*) *Photographs.*—This term covers all photographic prints, but not half tones or other photo-engravings.

16. (*k*) *Prints and pictorial illustrations.*—This term comprises printed pictures, such as lithographs, photo-engravings, etc.

17. (*l*) *Motion-picture photoplays.*

18. (*m*) *Motion pictures other than photoplays.*

Postal cards can not be copyrighted as such. The pictures thereon may be registered as "prints or pictorial illustrations" or as "photographs." Text matter on a postal card may be of such a character that it may be registered as a "book."

Trade-marks can not be registered in the Copyright Office. Application should be made to the Commissioner of Patents.

Labels and prints for articles of manufacture are required by the Act of June 18, 1874, to be registered for copyright in the Patent Office. The Copyright Office will register a claim of copyright in a pictorial drawing to protect such drawing; but if it is used for a label or print, the label or print should be registered at the Patent Office.

How to Secure Registration

19. Copyright registration may be secured for:
(1) Unpublished works.
(2) Published works.

Unpublished Works

Unpublished works are such as have not at the time of registration been printed or reproduced in copies for sale or

been publicly distributed. They include only the works enumerated in section 11: Lectures, sermons, addresses, or similar productions for oral delivery; dramatic, musical and dramatico-musical compositions; photographs; works of art (paintings, drawings, and sculptures); plastic works; motion-picture photoplays; and motion pictures other than photoplays.

In order to secure copyright in such unpublished works, the following steps are necessary:

20. (1) In the case of lectures, sermons, addresses, and dramatic, musical, and dramatico-musical compositions, deposit one complete copy of the work.

This copy (which may be written or typewritten) should be in convenient form, clean and legible, the leaves securely fastened together, and should bear the title of the work corresponding to that given in the application.

The entire work in each case should be deposited. It is not sufficient to deposit a mere outline or epitome, or, in the case of a play, a mere scenario, or a scenario with the synopsis of the dialogue.

21. (2) In the case of unpublished photographs, deposit one copy of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

22. (3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photograph or other identifying reproduction.

(4) In the case of motion-picture photoplays, deposit a title and description, with one print taken from each scene or act.

(5) In the case of motion pictures other than photoplays, deposit a title and description, with not less than two prints taken from different sections of the complete motion picture.

In each case the deposited article must be accompanied by a claim of copyright (an application for registration) and a money order for the amount of the statutory fee.

23. Any work which has been registered under section 11, if published, *i.e.*, reproduced in copies for sale or distribution, must be deposited a second time (accompanied by an application for registration and the statutory fee) in the same manner as is required in the case of works published in the first place.

Published Works

DEPOSIT OF COPIES

24. Promptly after first publication of the work with the copyright notice inscribed, two *complete* copies of the best edition of the work then published must be sent to the Copyright Office, with a proper application for registration correctly filled out and a money order for the amount of the legal fee.[1]

The statute requires that the deposit of the copyright work shall be made "promptly," which has been defined as "without unnecessary delay." It is not essential, however, that the deposit be made on the very day of publication.

25. Published works are such as are printed or otherwise produced and "placed on sale, sold, or publicly distributed." Works intended for sale or general distribution should first be printed with the statutory form of copyright notice inscribed on every copy published or offered for sale in the United States.

The following works can not be registered until after they have been published: Books, periodicals, maps, prints and pictorial illustrations.

NOTICE OF COPYRIGHT

26. The ordinary form of copyright notice for books, periodicals, dramatic and musical compositions is "Copyright, 19— (the year of publication), by A. B. (the name of the claimant)." The name of the claimant printed in the notice should be the real name of a living person, or his trade name if he always uses one (but not a pseudonym or pen name), or the name of the firm or corporation claiming to own the copyright.

27. In the case of maps, photographs, reproductions of works of art, prints or pictorial illustrations, works of art, models or designs for works of art, and plastic works of a scientific or technical character, the notice may consist of the letter C, inclosed within a circle, thus ©, accompanied by the initials, monogram, mark, or symbol of the copyright pro-

[1] Since March 28, 1914, one copy of work by foreign author.

prietor. But in such cases the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work.

28. The prescribed notice must be affixed to each copy of the work published or offered for sale in the United States. But no notice is required in the case of foreign books printed abroad seeking *ad interim* protection in the United States, as provided in section 21 of the Copyright Act.

American Manufacture of Copyright Books

29. The following works must be manufactured in the United States in order to secure copyright:

(*a*) All "books" in the English language and books in any language by a citizen or domiciled resident of the United States must be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text of such books be produced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States: and the printing of the text and binding of the book must be performed within the limits of the United States.

(*b*) All *illustrations* within a book produced by lithographic process or photo-engraving process and all *separate lithographs* or *photo-engravings* must be produced by lithographic or photo-engraving process wholly performed within the limits of the United States, except when the subjects represented in such illustrations in a book or such separate lithographs or photo-engravings "are located in a foreign country and illustrate a scientific work or reproduce a work of art."

30. Books by foreign authors in any language other than English are not required to be printed in the United States.

In the case of books printed abroad in the English language an *ad interim* term of copyright of four months from registration made in the Copyright Office within sixty days after publication abroad may be secured; but in order to extend the copyright to the full term of protection, an edition

of the work must be PUBLISHED in the United States within the four months *ad interim* term. printed or produced within the limits of the United States as required in section 15 of the copyright act.

APPLICATION FOR REGISTRATION

31. The application for copyright registration required to be sent with each work must state the following facts:

(1) The *name*. nationality, and exact address of the claimant of copyright.

(2) The name of the country of which the author of the work is a citizen or subject.

(3) The *title* of the work.

(4) The name and address of person to whom certificate is to be sent.

(5) In the case of works reproduced in copies for sale or publicly distributed, the actual date (year, month, and day) when the work was published.

32. In addition, it is desirable that the application should state for record the name of the author. If, however, the work is published anonymously or under a pseudonym and it is not desired to place on record the real name of the author, this may be omitted. By the nationality of the author is meant citizenship, not race; a person naturalized in the United States should be described as a citizen. An author, a citizen of a foreign country having no copyright relations with the United States, may only secure copyright in this country, if at the time of publication of his work he is domiciled in the United States. The fact of such domicile in the United States should be expressly stated in the application, including a statement of this place of domicile. Care should be taken that the title of the work, the name of the author, and the name of the copyright claimant should be correctly stated in the application, and that they should agree exactly with the same statements made in the work itself.

APPLICATION FORMS

33. The Copyright Office has issued the following application forms, which will be furnished on request, and should be used when applying for copyright registration:

A1. New book printed and published for the first time in the United States; also United States edition of English book.

A2. Book reprinted in the United States with new copyright matter.

A3. Book by foreign author in foreign language.

A4. *Ad interim* copyright for book published abroad in the English language.

A5. Contribution to a newspaper or periodical.

A6. Book now republished in the United States.

B1. Periodical. For registration of single issue.

B2. Periodical. For use with trust fund.

C. Lecture, sermon, or address.

D1. Published dramatic composition.

D2. Dramatic composition not reproduced for sale.

D3. Published dramatico-musical composition.

D4. Unpublished dramatico-musical composition.

E. New musical composition published for the first time.

E1. Musical composition republished with new copyright matter.

E2. Musical composition not reproduced for sale.

F. Published map.

G. Work of art (painting, drawing, or sculpture); or model or design for a work of art.

I1. Published drawing or plastic work of a scientific or technical character.

I2. Unpublished drawing or plastic work of a scientific or technical character.

J1. Photograph published for sale.

J2. Photograph not reproduced for sale.

K. Print or pictorial illustration.

L1. Motion-picture photoplay reproduced for sale.

L2. Motion-picture photoplay not reproduced for sale.

M1. Motion picture, not a photoplay, reproduced for sale.

M2. Motion picture, not a photoplay, not reproduced for sale.

R1. Renewal of a copyright for twenty-eight years.

R2. Extension of a renewal for fourteen years.

U. Notice of use of music on mechanical instruments.

Affidavit of Manufacture

34. In the case of books by American authors and all books in the English language the application must be accompanied by an affidavit, showing the following facts:

(1) That the copies deposited have been printed from type set within the limits of the United States; or from plates made within the limits of the United States from type set therein; or if the text be produced by lithographic process or photo-engraving process, that such process was wholly performed within the limits of the United States, stating, in either case, the place and the establishment where such work was done.

(2) That the printing of the text has been performed within the limits of the United States, showing the place and the name of the establishment doing the work.

(3) That the binding of such book (if bound) has been performed within the limits of the United States, showing the place and the name of the establishment where the work was done.

(4) That the completion of the printing of said book was on a stated day, or that the book was published on a given date.

Section 62 of the copyright act defines the date of publication (in the case of a work of which copies are reproduced for sale or distribution) as "the earliest date when copies of the first authorized edition *were placed on sale, sold, or publicly distributed* by the proprietor of the copyright or under his authority."

35. The affidavit may be made before any officer authorized to administer oaths within the United States who can affix his official seal to the instrument.

The affiant and the officer administering the oath for such affidavit are specially requested to make sure that the instrument is properly executed, so as to avoid the delay of having it returned for amendment. Experience shows that among the common errors made by applicants are the following:

Failure to write in the "venue"—that is, the name of the county and State—and to make sure that the notary's statement agrees.

Reciting a corporation or partnership as affiant. Oaths can be made only by individuals.

Failure to state in what capacity the affiant makes the oath, whether as claimant, agent of the claimant, or printer. Where a corporation or firm is the claimant, the affiant should swear as agent.

Failure to state the *exact date* of publication or completion of printing. The month alone is insufficient.

Failure to sign the affidavit. The signature should correspond exactly with the name of the affiant stated at the beginning. Corporation or firm names must not appear in this place.

Failure to obtain signature of the notary after swearing to the contents.

Failure to obtain the seal of the notary.

Swearing before an officer not authorized to act in the place stated in the venue, or an officer who has no official seal.

Variance between names and dates as stated in the affidavit and the application.

An affidavit which states the date of publication must never be made *before* publication has taken place.

36. The affidavit may be made by: (1) The person claiming the copyright; or (2) his duly authorized agent or representative residing in the United States: or (3) the printer who has printed the book.

The person making the affidavit should state in which of the above-mentioned capacities he does so.

37. In the case of a foreign author applying for a book in a language other than English, no affidavit is required, as such books are not subject to the manufacturing clause. In the case of a foreign author applying for a book in the English language, the same affidavit must be made as in that of an American author, except where a book is deposited for *ad interim* protection under section 21. In such cases the affidavit must be filed when the *ad interim* copyright is sought to be extended to the full term by the publication of an edition printed in the United States.

The affidavit is only required for BOOKS.

Periodicals (form b)

38. Application should be made in the same manner as for books. depositing two copies, but no affidavit is required.

Separate registration is necessary for *each number* of the periodical published with a notice of copyright. and can only be made *after publication*. It is not possible to register the title of the periodical in advance of publication.

Contributions to Periodicals (form a5)

39. If special registration is requested for any contribution to a periodical, *one* complete copy of the number of the periodical in which the contribution appears should be deposited promptly after publication.

The entire copy should be sent; sending a mere clipping or page containing the contribution does not comply with the statute.

The date of publication of a periodical is not necessarily the date stated on the title-page. The application should state the day on which the issue is "first placed on sale, sold, or publicly distributed," which may be earlier or later than the date printed on the title-page.

Ad Interim Applications (form a4)

40. Where a book in the English language has been printed abroad, an *ad interim* copyright may be secured by depositing in the Copyright Office one complete copy of the foreign edition, with an application containing a request for the reservation and a money order for one dollar. Such applications should state: (1) Name and nationality of the author; (2) Name, nationality, and address of the copyright claimant; (3) Exact date of original publication abroad.

The deposit of the work must be made not later than sixty days after its publication abroad. Whenever, within the four months' period of *ad interim* protection, an authorized edition manufactured in the United States has been published and two copies have thereafter been promptly deposited, the copyright claim therein may be registered the same as any other book (Form A1).

Mailing Applications and Copies

41. All deposits and other material intended for the Copyright Office should be addressed to the "Register of Copyrights, Library of Congress, Washington, D. C." Letters dealing with copyright matters should not be addressed to clerks or individuals in the Copyright Office.

The copies of works sent to be registered for copyright may be mailed to the Copyright Office free (under sec. 14 of the copyright law) if directly delivered for that purpose to the postmaster, who will attach his frank label to the parcel. The Copyright Office can not furnish franking labels.

The money order (or other remittance) to pay the statutory registration fee is not entitled to free postal transmission according to the ruling of the Post Office Department. This with the application should therefore be forwarded in an envelope, to which letter postage has been affixed, addressed to the Register of Copyrights.

Fees

42. The fee required to be paid for copyright registration is one dollar, except that in case of photographs it is only fifty cents when no certificate of registration is desired.

All remittances to the Copyright Office should be sent by money order or bank draft. Postage stamps should not be sent for fees or postage. Checks can not be accepted unless certified. Coin or currency inclosed in letter or packages if sent will be at the remitter's risk.

Publishers may for their own convenience deposit in the Copyright Office a sum of money in advance against which each registration will be charged.

Assignments of Copyright

43. When a copyright has been assigned the instrument in writing signed by the proprietor of the copyright may be filed in this office for record within six calendar months after its execution without the limits of the United States or three calendar months within the United States.

After having been recorded the original assignment will be returned to the sender with a sealed certificate of record

attached. The assignment will be returned by registered mail, if the post-office registration fee (10 cents) is sent for that purpose.

44. The fee for recording and certifying an assignment is one dollar up to three hundred words; two dollars from three hundred to one thousand words; and another dollar for each additional thousand words or fraction thereof over 300 words.

45. After the assignment has been duly recorded, the assignee may substitute his name for that of the assignor in the copyright notice on the work assigned. Such substitution or transfer of ownership will be indexed in this office upon request at a cost of ten cents for each work assigned.

Notice of User of Musical Compositions

46. Whenever the owner of the copyright in a musical composition uses such music upon the parts of instruments serving to reproduce it mechanically himself or permits anyone else to do so, he must send a notice of such use by himself or by any other person to the Copyright Office to be recorded.[1]

47. Whenever any person in the absence of a license intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce the same mechanically, the act requires that he shall serve notice of such intention upon the copyright proprietor and must also send a duplicate of such notice to the Copyright Office.

Application for the Renewal or Extension of Subsisting Copyrights

48. Application for the renewal or extension of a subsisting copyright may be filed within one year prior to the expiration of the existing term by:

(1) The author of the work if still living;

(2) The widow, widower, or children of the author if the author is not living;

(3) The author's executor, if such author, widow, widower, or children be not living;

[1] Numerous presidential proclamations have been issued under section 1 (e), securing "copyright controlling the parts of instruments serving to reproduce mechanically the musical work." For list of countries, see footnote on page 261.

(4) If the author, widow, widower, and children are all dead, and the author left no will, then the next of kin.

49. If the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor is entitled to the privilege of renewal and extension.

50. The fee for the recording of the renewal claim is fifty cents. Application for the renewal or extension of copyright can not be recorded in the name of an assignee nor in that of any person not expressly mentioned in section 24 of the act.

SEARCHES

51. Upon application to the Register of Copyrights search of the records, indexes, or deposits will be made for such information as they may contain relative to copyright claims. Persons desiring searches to be made should state clearly the nature of the work, its title, the name of the claimant of copyright and probable date of entry; in the case of an assignment, the name of the assignor or assignee, or both, and the name of the copyright claimant and the title of the music referred to in case of notice of user.[1]

The statutory fee for searches is fifty cents for each full hour of time consumed in making such search.

[1] NOTE.—The law provides as follows: "That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress." (Section 58, Act of March 4, 1909.)

DEPOSIT OF ONE COPY OF FOREIGN BOOK

By the act of March 28, 1914, only one copy is required to be deposited "if the work is by an author who is a citizen or subject of a foreign state or nation and has been published in a foreign country."

APPENDIX C

International Copyright Relations

PRESIDENTIAL PROCLAMATIONS

Establishing Copyright Relations with Foreign Countries

The following proclamations have been issued by the President, by which copyright protection is granted in the United States to works of authors who are citizens or subjects of the countries named. It is to be noted that this protection does not include "copyright controlling the parts of instruments serving to reproduce mechanically the musical work" provided in Sec. 1 (e) of the Act of March 4, 1909, except in the case of the countries named in the second part of this list.

July 1, 1891—Belgium, France, Great Britain and the British possessions, and Switzerland. (Stat. L., vol. 27, pp. 981–982.)

April 15, 1892—Germany. (Stat. L., vol. 27, pp. 1021–1022.)

October 31, 1892—Italy. (Stat. L., vol. 27, p. 1043.)

May 8, 1893—Denmark. (Stat. L., vol. 28. p. 1219.)

July 20, 1893—Portugal. (Stat. L., vol. 28, p. 1222.)

July 10, 1895—Spain. (Stat. L., vol. 29, p. 871.)

February 27, 1896—Mexico. (Stat. L., vol. 29. p. 877.)

May 25, 1896—Chile. (Stat. L., vol. 29, p. 880.)

April 11, 1899—Spain. (Treaty of peace, Art. XIII.) (Stat. L., vol. 30, pp. 1754, 1760–1761, 1762.)

October 19, 1899—Costa Rica. (Stat. L., vol. 31, pp. 1955–1956.)

November 20, 1899—Netherlands and possessions. (Stat. L., vol. 31, p. 1961.)

November 17, 1903—Cuba. (Stat. L., vol. 33, pt. 2, p. 2324.)

January 13, 1904—China. (Treaty of October 8, 1903, Article XI.) (Stat. L., vol. 33, pt. 2, pp. 2208. 2213—2214.)

July 1, 1905—Norway. (Stat. L., vol. 34, pt. 3, pp. 3111–3112.)

May 17, 1906—Japan. (Treaty of November 10, 1905.) (Stat. L., vol. 34, pt. 3, pp. 2890–2891.)

September 20, 1907—Austria. (Stat. L., vol. 35, pt. 2, p. 2155.)

April 9, 1908—Convention between the United States and other powers on literary and artistic copyrights. signed at the City of Mexico, January 27, 1902. (This treaty had previously been ratified and the ratifications deposited by the following countries: Guatemala, Salvador, Costa Rica. Honduras, and Nicaragua.) (Stat. L., vol. 35, pt. 2, pp. 1934–1946. English, French, and Spanish texts.)

August 11, 1908—Japan. (Treaty of May 19, 1908, for protection in China.) (Stat. L., vol. 35, pt. 2, pp. 2044–2046.)

August 11, 1908—Japan. (Treaty of May 19, 1908, for protection in Korea.) (Stat. L., vol. 35, pt. 2, pp. 2041–2043.)

April 9, 1910—Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland. (Stat. L., vol. 36, pt. 2, pp. 2685–2686.)

June 29, 1910—Luxemburg. (Stat. L., vol. 36, pt. 2, p. 2716.)

May 26, 1911—Sweden. (Effective June 1, 1911.) (Stat. L., vol. 37, pt. 2, pp. 1682–1683.)

October 4, 1912—Tunis. (Stat. L., vol. 37, pt. 2, p. 1765.)

October 15, 1912—Hungary. (Copyright convention between the United States and Hungary, effective October 16, 1912, including protection under Sec. 1 (e).) (Stat. L., vol. 37, pt. 2, pp. 1631–1633.)

July 13, 1914—Copyright convention between the United States and other American Republics, signed at Buenos Aires, August 11, 1910. (This convention is understood to be in effect as between the United States and Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Hon-

duras, Nicaragua. Panama. Paraguay. and Uruguay.) (Stat. L., vol. 38, pt. 2, pp. 1785–1798. Spanish. English. Portuguese, and French texts.)

PRESIDENTIAL PROCLAMATIONS UNDER SECTION 1 (e).

December 8. 1910—Germany. (Stat. L.. vol. 36. pt. 2, pp. 2761–2762.)

June 14, 1911—Belgium (effective July 1. 1909), Luxemburg (effective June 29. 1910). and Norway (effective Sept. 9, 1910). (Stat. L.. vol. 37, pt. 2. pp. 1687–1690.)

November 27, 1911—Cuba. (Stat. L.. vol. 37, pt. 2. pp. 1721–1722.)

October 15. 1912—Hungary. (See above.)

January 1. 1915—Great Britain. (British order in council issued Feb. 3, 1915, effective Jan. 1. 1915.) (Stat. L., vol. 38, pt. 2, pp. 2044–2045.)

May 1, 1915—Italy. (Stat. L.. vol. 39, pt. 2. pp. 1725-1726.)

February 9, 1917—New Zealand (effective December 1, 1916). (Stat. L.. vol. 39. pt. 2. pp. 1815–1816.)

April 3. 1918—Australia. and the territories of Papua and Norfolk Island (effective Mar. 15, 1918). (Stat. L., vol. 40. pt. 2, pp. 1764–1766.)

May 24, 1918—France. (Stat. L., vol. 40. pt. 2. pp. 1784–1785.)

February 27. 1920—Sweden (effective Feb. 1, 1920). (Stat. L., vol. 41. pt. 2. pp. 1787–1788.)

December 9, 1920—Denmark. (Stat. L., vol. 41, pt. 2, pp. 1810–1812.)

February 26. 1923—The Netherlands. (Effective Oct. 2, 1922.)

December 27. 1923—Canada. (Effective Jan. 1, 1924.)

June 26, 1924—The Union of South Africa. (Effective July 1, 1924.)

November 22. 1924. Switzerland.

March 11, 1925. Austria. (Effective Aug. 1, 1920.)

UNDER THE ACT OF DECEMBER 18, 1919

The following Presidential Proclamations have all been issued on the dates stated, under the authority of the Amendatory Copyright Act approved December 18, 1919.

April 10, 1920, Great Britain and her Colonies and Possessions (except Canada, Newfoundland, Australia. New Zealand and South Africa).
December 9, 1920—Denmark.
May 25, 1922—Germany.
May 25, 1922—New Zealand.
May 25, 1922—Austria.
June 3, 1922—Hungary.
June 3, 1922—Italy.

PRESIDENTIAL PROCLAMATION OF APRIL 9, 1910

Copyright

By the President of the United States of America

A PROCLAMATION

Whereas it is provided by the act of Congress of March 4, 1909, entitled "An act to amend and consolidate the acts respecting copyright," that the benefits of said act, excepting the benefits under section 1 (*e*) thereof, as to which special conditions are imposed, shall extend to the work of an author or proprietor who is a citizen or subject of a foreign State or nation, only upon certain conditions set forth in Section 8 of said act, to wit:

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

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

And whereas it is also provided by said section that "The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time as the purposes of this act may require":

And whereas satisfactory evidence has been received that in Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland the law permits and since July 1, 1909, has permitted to citizens of the United States the benefit of copyright on substantially the same basis as to citizens of those countries:

Now, therefore, I, WILLIAM HOWARD TAFT, President of the United States of America, do declare and proclaim that one of the alternative conditions specified in Section 8, of the act of March 4, 1909, is now fulfilled, and since July 1, 1909, has continuously been fulfilled, in respect to the citizens or subjects of Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland, and that the citizens or subjects of the aforementioned countries are and since July 1, 1909, have been entitled to all of the benefits of the said act other than the benefits under section 1 (*e*) thereof, as to which the inquiry is still pending.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this ninth day
[SEAL.] of April, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

WM. H. TAFT.

By the President:
P. C. KNOX,
Secretary of State.

In "The Statutes at Large of the United States of America, from March, 1909, to March, 1911." Vol. 36, part 2. 8vo. Washington, 1911, pp. 2685–2686.

COPYRIGHT CONVENTION BETWEEN THE UNITED STATES AND OTHER AMERICAN REPUBLICS

Signed at Buenos Aires, August 11, 1910; ratification advised by the Senate, February 15, 1911; ratified by the President, March 12, 1911; ratification of the United States deposited with the Government of the Argentine Republic, May 1, 1911; proclaimed July 13, 1914.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, a Convention on Literary and Artistic Copyright between the United States of America and the Argentine Republic, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, and Venezuela was concluded and signed by their respective Plenipotentiaries at Buenos Aires on the eleventh day of August, one thousand nine hundred and ten, the original of which Convention, being in the Spanish, English, Portuguese and French languages, is word for word as follows:

FOURTH INTERNATIONAL AMERICAN CONVENTION

LITERARY AND ARTISTIC COPYRIGHT

Their Excellencies the Presidents of the United States of America, the Argentine Republic, Brazil, Chile, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela;

Being desirous that their respective countries may be represented at the Fourth International American Conference, have sent thereto the following Delegates duly authorized to approve the recommendations, resolutions, conventions and treaties which they might deem advantageous to the interests of America:

[Here follow the names of the respective delegates, omitted.]

Who, after having presented their credentials and the same having been found in due and proper form, have agreed upon the following Convention on Literary and Artistic Copyright.

ARTICLE 1. The signatory States acknowledge and protect the rights of Literary and Artistic Property in conformity with the stipulations of the present Convention.

ARTICLE 2. In the expression "Literary and Artistic works" are included books, writings, pamphlets of all kinds, whatever may be the subject of which they treat, and whatever the number of their pages: dramatic or dramatico-musical works: choreographic works: musical compositions with or without words: drawings, paintings, sculpture, engravings; photographic works: astronomical or geographical globes: plans, sketches or plastic works relating to geography, geology or topography, architecture or any other science; and, finally, all productions that can be published by any means of impression or reproduction.

ARTICLE 3. The acknowledgment of a copyright obtained in one State, in conformity with its laws, shall produce its effects of full right in all the other States without the necessity of complying with any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right.

ARTICLE 4. The copyright of a literary or artistic work, includes for its author or assigns the exclusive power of disposing of the same, of publishing, assigning, translating, or authorizing its translation and reproducing it in any form whether wholly or in part.

ARTICLE 5. The author of a protected work, except in case of proof to the contrary, shall be considered the person whose name or well known nom de plume is indicated therein; consequently suit brought by such author or his representative against counterfeiters or violators, shall be admitted by the Courts of the Signatory States.

ARTICLE 6. The authors or their assigns, citizens or domiciled foreigners, shall enjoy in the signatory countries the rights that the respective laws accord, without those rights

being allowed to exceed the term of protection granted in the country of origin.

For works comprising several volumes that are not published simultaneously, as well as for bulletins, or parts, or periodical publications, the term of the copyright will commence to run, with respect to each volume, bulletin, part, or periodical publication, from the respective date of its publication.

ARTICLE 7. The country of origin of a work will be deemed that of its first publication in America, and if it shall have appeared simultaneously in several of the signatory countries, that which fixes the shortest period of protection.

ARTICLE 8. A work which was not originally copyrighted shall not be entitled to copyright in subsequent editions.

ARTICLE 9. Authorized translations shall be protected in the same manner as original works.

Translators of works concerning which no right of guaranteed property exists, or the guaranteed copyright of which may have been extinguished, may obtain for their translations the rights of property set forth in Article 3d but they shall not prevent the publication of other translations of the same work.

ARTICLE 10. Addresses or discourses delivered or read before deliberative assemblies, Courts of Justice, or at public meeting, may be printed in the daily press without the necessity of any authorization, with due regard, however, to the provisions of the domestic legislation of each nation.

ARTICLE 11. Literary, scientific or artistic writings, whatever may be their subjects, published in newspapers or magazines, in any one of the countries of the Union, shall not be reproduced in the other countries without the consent of the authors. With the exception of the works mentioned, any article in a newspaper may be reprinted by others, if it has not been expressly prohibited, but in every case, the source from which it is taken must be cited.

News and miscellaneous items published merely for general information, do not enjoy protection under this convention.

ARTICLE 12. The reproduction of extracts from literary or artistic publications for the purpose of instruction or

chrestomathy, does not confer any right of property, and may, therefore, be freely made in all the signatory countries.

ARTICLE 13. The indirect appropriation of unauthorized parts of a literary or artistic work, having no original character, shall be deemed an illicit reproduction, in so far as affects civil liability.

The reproduction in any form of an entire work, or of the greater part thereof, accompanied by notes or commentaries under the pretext of literary criticism or amplification, or supplement to the original work, shall also be considered illicit.

ARTICLE 14. Every publication infringing a copyright may be confiscated in the signatory countries in which the original work had the right to be legally protected, without prejudice to the indemnities or penalties which the counterfeiters may have incurred according to the laws of the country in which the fraud may have been committed.

ARTICLE 15. Each of the Governments of the signatory countries, shall retain the right to permit, inspect, or prohibit the circulation, representation or exhibition of works or productions, concerning which the proper authority may have to exercise that right.

ARTICLE 16. The present Convention shall become operative between the Signatory States which ratify it, three months after they shall have communicated their ratification to the Argentine Government, and it shall remain in force among them until a year after the date when it may be denounced. This denunciation shall be addressed to the Argentine Government and shall be without force except with respect to the country making it.

In witness whereof, the Plenipotentiaries have signed the present treaty and affixed thereto the Seal of the Fourth International American Conference.

Made and signed in the City of Buenos Aires on the eleventh day of August in the year one thousand nine hundred and ten, in Spanish, English, Portuguese and French, and deposited in the Ministry of Foreign Affairs of the Argentine Republic, in order that certified copies be made for transmission to each one of the signatory nations through the appropriate diplomatic channels.

[Here follow the signatures (omitted) of the delegates of the United States of America and the other nineteen contracting states: Argentine Republic, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, Venezuela.]

And whereas, the said Convention has been ratified by the government of the United States, by and with the advice and consent of the Senate thereof, and by the Governments of the Dominican Republic, Guatemala, Honduras, Panama, Nicaragua, and Ecuador,[1] and the ratifications of the said Governments were, by the provisions of Article 16 of the said Convention, deposited by their respective Plenipotentiaries with the Government of the Argentine Republic;

Now, therefore, be it known that I, Woodrow Wilson, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of July in the year of our Lord one thousand nine
[SEAL.] hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-ninth.

WOODROW WILSON.

By the President:
W. J. BRYAN,
Secretary of State.

[1] This copyright convention, signed at Buenos Aires, August 11, 1910, is understood to be in effect as between the United States and Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay and Uruguay. (Text of the treaty in the Spanish, English, Portuguese, and French languages, is printed in Stat. L., v. 38, pt. 2, pp. 1785–98.)

GREAT BRITAIN

Order in Council under the Copyright Act. 1911 (1 & 2 *Geo.* 5, *c.* 46), *regulating Copyright Relations with the United States of America.*

At the Court at Buckingham Palace, the 3d day of February, 1915

Present, THE KING'S MOST EXCELLENT MAJESTY, LORD PRESIDENT, VISCOUNT KNOLLYS, LORD CHAMBERLAIN, MR. SECRETARY HARCOURT, MR. ARTHUR HENDERSON, SIR WILLIAM MACGREGOR, LORD JUSTICE BANKES.

Whereas by a Proclamation of the President of the United States of America, dated the 9th April, 1910, the benefits of the United States Act of 1909, entitled "An Act to Amend and Consolidate the Acts respecting Copyright," were extended to the subjects of Great Britain and her possessions, but no provision was made therein for the protection of the musical works of British subjects against reproduction by means of mechanical contrivances:

And whereas His Majesty is advised that the Government of the United States of America has undertaken, upon the issue of this Order, to grant such protection to the musical works of British subjects:

And whereas by reason of these premises His Majesty is satisfied that the Government of the United States of America has made, or has undertaken to make, such provision as it is expedient to require for the protection of works entitled to copyright under the provisions of Part 1 of the Copyright Act, 1911:

And whereas by the Copyright Act, 1911, authority is conferred upon His Majesty to extend, by Order in Council, the protection of the said Act to certain classes of foreign works within any part of His Majesty's Dominions, other than self-governing dominions, to which the said Act extends:

And whereas it is desirable to provide protection within the said dominions for the unpublished works of citizens of the United States of America:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred

upon him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:

1. The Copyright Act, 1911, including the provisions as to existing works, shall, subject to the provisions of the said Act and of this Order, apply—

(a) to literary, dramatic, musical and artistic works the authors whereof were at the time of the making of the works Citizens of the United States of America, in like manner as if the authors had been British Subjects:

(b) in respect of residence in the United States of America, in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) The term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the United States of America:

(ii) the enjoyment of the rights conferred by this Order shall be subject to the accomplishment of the conditions and formalities prescribed by the law of the United States of America:

(iii) in the application to existing works of the provisions of Section 24 of the Copyright Act, 1911, the commencement of this Order shall be substituted for the 26th July, 1910, in subsection 1 (b).

2. This Order shall apply to all His Majesty's Dominions, Colonies and Possessions, with the exception of those hereinafter named, that is to say:

The Dominion of Canada.
The Commonwealth of Australia.
The Dominion of New Zealand.
The Union of South Africa.
Newfoundland.

3. This Order shall come into operation on the 1st day of January, 1915, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary Orders accordingly.

ALMERIC FITZROY.

PROCLAMATION OF THE PRESIDENT REGULATING COPYRIGHT RELATIONS WITH GREAT BRITAIN

COPYRIGHT—GREAT BRITAIN

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas it is provided by the Act of Congress of March 4, 1909, entitled "An Act to Amend and Consolidate the Acts Respecting Copyright," that the provisions of said Act, "so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights":

And whereas it is further provided that the copyright secured by the Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only upon certain conditions set forth in section 8 of said Act, to wit:

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

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

And whereas it is also provided by said section that "The existence of the reciprocal conditions aforesaid shall be deter-

mined by the President of the United States, by proclamation made from time to time as the purposes of this Act may require":

And whereas satisfactory official assurance has been given that, by virtue of the authority conferred by the British Copyright Act, 1911, a British Order in Council has been issued of even date with this Proclamation directing:

1. That "the Copyright Act, 1911, including the provisions as to existing works, shall, subject to the provisions of the said Act and of this Order, apply—

(a) to literary, dramatic, musical and artistic works the authors whereof were at the time of the making of the works citizens of the United States of America, in like manner as if the authors had been British subjects:

(b) in respect of residence in the United States of America, in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) the term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the United States of America:

(ii) the enjoyment of the rights conferred by this Order shall be subject to the accomplishment of the conditions and formalities prescribed by the law of the United States of America:

(iii) in the application to existing works of the provisions of Section 24 of the Copyright Act, 1911, the commencement of this Order shall be substituted for the 26th July, 1910, in subsection 1 (b)."

2. That "this Order shall apply to all His Majesty's dominions, colonies and possessions with the exception of those hereinafter named, that is to say: The Dominion of Canada, The Commonwealth of Australia, The Dominion of New Zealand, The Union of South Africa, Newfoundland."

3. That "this Order shall come into operation on the first day of January, 1915, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary Orders accordingly."

Now, therefore, I, Woodrow Wilson, President of the United States of America, do declare and proclaim that one of the alternative conditions specified in section 8 (b) of the Act of March 4, 1909, now exists and is fulfilled in respect to the subjects of Great Britain and the British dominions, colonies and possessions, with the exception of Canada, Australia, New Zealand, South Africa, and Newfoundland, and that such subjects shall be entitled to all the benefits of section 1 (e) of the said Act, on and after January 1, 1915.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this first day of January, in the year of our Lord one thousand nine
[SEAL.] *hundred and fifteen, and of the Independence of* the United States of America the one hundred and thirty-ninth.

WOODROW WILSON.

BY THE PRESIDENT:
W. J. BRYAN,
Secretary of State.

In "The Statutes at Large of the United States of America, from March, 1913, to March, 1915." Vol. 38, part 2. 8vo. Washington, 1915, pp. 2044–2045.

RT. HON. ARTHUR BALFOUR TO HON. W. H. PAGE

[LONDON] FOREIGN OFFICE, S. W. 1, *May 17, 1918.*

"YOUR EXCELLENCY:

With reference to your note no. 411 of March 20th, I have the honour to state that the object of the Order in Council of the 3rd February, 1915, was to provide protection within the Dominions to which the British Copyright Act extends for the *unpublished* works of citizens of the United States of America, and by the issue of such order, to obtain from the Government of the United States of America protection against reproduction by means of mechanical contrivances for the works of British subjects.

2. The operative part of the Order accordingly places American authors upon the same footing as British authors in respect of unpublished works, subject to certain conditions.

3. In the case of *published* works the copyright conferred by the British Act is dependent upon the place of publication of the work and

not upon the nationality of the author; and the Order in Council contains no provision making first publication in the United States equivalent to first publication in the parts of His Majesty's Dominions to which the Act extends. * * * American authors, therefore, can still only obtain protection in this country for their published works by first (or simultaneous) publication in the parts of His Majesty's Dominions to which the Act extends, or in Allied or neutral countries belonging to the International Copyright Union under the provisions of the Order in Council under the Copyright Act relating to the foreign countries of the Union. Further, the publishers of books by American authors published in the United Kingdom must still comply with the requirements of section 15 of the Act as to deposit of copies in certain libraries. * * *"

For the Secretary of State (signed) VICTOR WELLESLEY.

NOTE.—Orders in Council and Proclamations of the President establishing reciprocal relations under Section 1 (e) with Australia, Canada, New Zealand and South Africa (see list at p. 281 *supra*), are of like purport to those establishing relations with Great Britain.

PROCLAMATION OF THE PRESIDENT OF THE UNITED STATES ESTABLISHING COPYRIGHT RELATIONS WITH FRANCE WITH RESPECT TO MECHANICAL REPRODUCTION OF MUSIC

COPYRIGHT—FRANCE

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas it is provided by the Act of Congress of March 4, 1909, entitled "An Act to amend and consolidate the Acts respecting copyright," that the provisions of said Act, "so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights":

And whereas it is further provided that the copyright

secured by the Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only upon certain conditions set forth in section 8 of said Act, to wit:

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

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

And whereas it is also provided by said section that "The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require":

And whereas satisfactory official assurance has been given that in France the law now permits to citizens of the United States similar rights to those accorded in section 1 (e) of the Act of March 4, 1909:

Now, therefore, I, Woodrow Wilson, President of the United States of America, do declare and proclaim that one of the alternative conditions specified in section 8 (b) of the Act of March 4, 1909, now exists and is fulfilled in respect to citizens of France, and that the citizens of that country are entitled to all the benefits of section 1 (e) of the said Act, including "copyright controlling the parts of instruments serving to reproduce mechanically the musical work," in the case of all musical compositions by French composers published and duly registered in the United States on and after the date hereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this twenty-fourth day of May, in the year of our Lord one
[SEAL.] thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-second.

WOODROW WILSON.

BY THE PRESIDENT:
ROBERT LANSING.
Secretary of State.

NOTE.—Proclamations extending the privileges of Section 1 (*e*) of the Copyright Act to citizens of various foreign countries, other than Great Britain and Dominions (see list at p. 281 *supra*), are of like purport to the above.

PROCLAMATION OF THE PRESIDENT OF THE UNITED STATES ESTABLISHING COPYRIGHT RELATIONS WITH CANADA WITH RESPECT TO MECHANICAL REPRODUCTION OF MUSIC

COPYRIGHT—CANADA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas it is provided by the Act of Congress approved March 4, 1909, entitled "An Act to amend and consolidate the acts respecting copyright," that the copyright secured by the act, except the benefits under section 1 (e) thereof as to which special conditions are imposed, shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only upon certain conditions set forth in section 8 of the said Act, to wit:

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

(*b*) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal

to the protection secured to such foreign author under this Act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto;

And whereas it is provided by section 1 (*e*) of the said Act of Congress, approved March 4, 1909, that the provisions of the Act "so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement or law, to citizens of the United States similar rights";

And whereas the President is authorized by the said section 8 to determine by proclamation made from time to time the existence of the reciprocal conditions aforesaid, as the purposes of the act may require;

And whereas satisfactory official assurances have been received that the Minister of Trade and Commerce of Canada issued, pursuant to section 4 (2) of the Canadian copyright act assented to June 4, 1921, a certificate dated December 26, 1923, to become operative on January 1, 1924, declaring that for the purposes of the rights conferred by the said act, the United States shall be treated as if it were a country to which the act extends.

Now, therefore, I, CALVIN COOLIDGE, President of the United States of America, do declare and proclaim

That on and after January 1, 1924, the conditions specified in section 8 (*b*) and 1 (*e*) of the Act of March 4, 1909, will exist and be fulfilled in respect to the citizens of Canada and that on and after that date citizens of Canada will be entitled to all the benefits of the Act of March 4, 1909, including section 1 (*e*) thereof and the acts amendatory of the said Act.

Provided that the enjoyment by any work of the rights and benefits conferred by the Act of March 4, 1909, and the acts amendatory thereof, shall be conditional upon compliance with the requirements and formalities prescribed with respect

to such works by the copyright laws of the United States.

And provided further that the provisions of section 1 (*e*) of the Act of March 4, 1909, in so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically musical works shall apply only to compositions published on or after January 1, 1921, and registered for copyright in the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 27th day of December in the year of our Lord one thousand
[SEAL.] nine hundred and twenty-three, and of the Independence of the United States of America the one hundred and forty-eighth.

CALVIN COOLIDGE.

BY THE PRESIDENT:
CHARLES E. HUGHES.
Secretary of State.

CERTIFICATE OF THE CANADIAN MINISTER OF TRADE AND COMMERCE EXTENDING TO CITIZENS OF THE UNITED STATES THE BENEFITS OF THE CANADIAN COPYRIGHT ACT, 1921

CANADA

THE COPYRIGHT ACT, 1921

EXTENSION TO THE UNITED STATES OF AMERICA

I, Thomas Andrew Low, Minister of Trade and Commerce for the Dominion of Canada, do hereby certify pursuant to subsection 2 of section 4 of the Copyright Act, 1921, that the United States of America is a country which grants or has undertaken to grant either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by the said Act, and from the first day of January, 1921, the said country

shall for the purpose of the rights conferred by the said Act be treated as if it were a country to which the said Act extends.

THOS. A. LOW.

Ottawa, 26th December, 1923.

(*In* the Canada Gazette, v. 57, no. 26. December 29, 1923. Ottawa, Canada, page 2157.)

CONVENTION CREATING AN INTERNATIONAL UNION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, SIGNED AT BERLIN, NOVEMBER 13, 1908

ARTICLE 1

The contracting countries are constituted into a Union for the protection of the rights of authors in their literary and artistic works.

ARTICLE 2

The expression "literary and artistic works" includes all productions in the literary, scientific or artistic domain, whatever the mode or form of reproduction, such as: books, pamphlets and other writings; dramatic or dramatico-musical works: choreographic works and pantomimes, the stage directions ("*mise en scène*") of which are fixed in writing or otherwise; musical compositions with or without words; drawings, paintings: work of architecture and sculpture; engravings and lithographs: illustrations: geographical charts; plans, sketches and plastic works relating to geography, topography, architecture, or the sciences.

Translations, adaptations, arrangements of music and other reproductions transformed from a literary or artistic work, as well as compilations from different works, are protected as original works without prejudice to the rights of the author of the original work.

The contracting countries are pledged to secure protection in the case of the works mentioned above.

Works of art applied to industry are protected so far as the domestic legislation of each country allows.

ARTICLE 3

The present convention applies to photographic works and to works obtained by any process analogous to photography. The contracting countries are pledged to guarantee protection to such works.

ARTICLE 4

Authors within the jurisdiction of one of the countries of the Union enjoy for their works, whether unpublished or published for the first time in one of the countries of the Union, such rights, in the countries other than the country of origin of the work, as the respective laws now accord or shall hereafter accord to natives, as well as the rights specially accorded by the present Convention.

The enjoyment and the exercise of such rights are not subject to any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the stipulations of the present Convention, the extent of the protection, as well as the means of redress guaranteed to the author to safeguard his rights, are regulated exclusively according to the legislation of the country where the protection is claimed.

The following is considered as the country of origin of the work: for unpublished works, the country to which the author belongs; for published works, the country of first publication, and for works published simultaneously in several countries of the Union, the country among them whose legislation grants the shortest term of protection. For works published simultaneously in a country outside of the Union and in a country within the Union, it is the latter country which is exclusively considered as the country of origin.

By published works ("*œuvres publiées*") must be understood, according to the present Convention, works which have been issued ("*œuvres éditées*"). The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art and the construction of a work of architecture do not constitute publication.

ARTICLE 5

Authors within the jurisdiction of one of the countries of the Union who publish their works for the first time in

another country of the Union, have in this latter country the same rights as national authors.

ARTICLE 6

Authors not within the jurisdiction of any one of the countries of the Union, who publish for the first time their works in one of these countries, enjoy in that country the same rights as national authors, and in the other countries of the Union the rights accorded by the present Convention.

ARTICLE 7

The term of protection granted by the present Convention comprises the life of the author and fifty years after his death.

In case this term, however, should not be adopted uniformly by all the countries of the Union, the duration of the protection shall be regulated by the law of the country where protection is claimed, and cannot exceed the term granted in the country of origin of the work. The contracting countries will consequently be required to apply the provision of the preceding paragraph only to the extent to which it agrees with their domestic law.

For photographic works and works obtained by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection is regulated by the law of the country where protection is claimed, but this term may not exceed the term fixed in the country of origin of the work.

ARTICLE 8

Authors of unpublished works within the jurisdiction of one of the countries of the Union, and authors of works published for the first time in one of these countries, enjoy in the other countries of the Union during the whole term of the right in the original work the exclusive right to make or to authorize the translation of their works.

ARTICLE 9

Serial stories ("*romans-feuilletons*"), novels and all other works, whether literary, scientific or artistic, whatever may

be their subject, published in newspapers or periodicals of one of the countries of the Union, may not be reproduced in the other countries without the consent of the authors.

With the exception of serial stories and of novels ("*romans-feuilletons et des nouvelles*") any newspaper article may be reproduced by another newspaper if reproduction has not been expressly forbidden. The source, however, must be indicated. The confirmation of this obligation shall be determined by the legislation of the country where protection is claimed.

The protection of the present Convention does not apply to news of the day or to miscellaneous news having the character merely of press information.

ARTICLE 10

As concerns the right of borrowing lawfully from literary or artistic works for use in publications intended for instruction or having a scientific character, or for chrestomathies, the provisions of the legislation of the countries of the Union and of the special treaties existing or to be concluded between them shall govern.

ARTICLE 11

The stipulations of the present Convention apply to the public representation of dramatic or dramatico-musical works and to the public performance of musical works, whether these works are published or not.

Authors of dramatic or dramatico-musical works are protected, during the term of their copyright in the original work, against the unauthorized public representation of a translation of their works.

In order to enjoy the protection of this article, authors, in publishing their works, are not obliged to prohibit the public representation or public performance of them.

ARTICLE 12

Among the unlawful reproductions to which the present Convention applies are specially included indirect, unauthorized appropriations of a literary or artistic work, such as adaptations, arrangements of music, transformations of a

romance or novel or of a poem into a theatrical piece and vice-versa, etc., when they are only the reproduction of such work in the same form or in another form with non-essential changes, additions or abridgments and without presenting the character of a new, original work.

ARTICLE 13

Authors of musical works have the exclusive right to authorize: (1) the adaptation of these works to instruments serving to reproduce them mechanically; (2) the public performance of the same works by means of these instruments.

The limitations and conditions relative to the application of this article shall be determined by the domestic legislation of each country in its own case; but all limitations and conditions of this nature shall have an effect strictly limited to the country which shall have adopted them.

The provisions of paragraph 1 have no retroactive effect, and therefore are not applicable in a country of the Union to works which, in that country, shall have been lawfully adapted to mechanical instruments before the going into force of the present Convention.

The adaptations made by virtue of paragraphs 2 and 3 of this article and imported without the authorization of the parties interested into a country where they are not lawful, may be seized there.

ARTICLE 14

Authors of literary, scientific or artistic works have the exclusive right to authorize the reproduction and the public representation of their works by means of the cinematograph.

Cinematographic productions are protected as literary or artistic works when by the arrangement of the stage effects or by the combination of incidents represented, the author shall have given to the work a personal and original character.

Without prejudice to the rights of the author in the original work, the reproduction by the cinematograph of a literary, scientific or artistic work is protected as an original work.

The preceding provisions apply to the reproduction or production obtained by any other process analogous to that of the cinematograph.

ARTICLE 15

In order that the authors of the works protected by the present Convention may be considered as such, until proof to the contrary, and admitted in consequence before the courts of the various countries of the Union to proceed against infringers, it is sufficient that the author's name be indicated upon the work in the usual manner.

For anonymous or pseudonymous works, the publisher whose name is indicated upon the work is entitled to protect the rights of the author. He is without other proofs considered the legal representative of the anonymous or pseudonymous author.

ARTICLE 16

All infringing works may be seized by the competent authorities of the countries of the Union where the original work has a right to legal protection.

Seizure may also be made in these countries of reproductions which come from a country where the copyright in the work has terminated, or where the work has not been protected.

The seizure takes place in conformity with the domestic legislation of each country.

ARTICLE 17

The provisions of the present Convention may not prejudice in any way the right which belongs to the Government of each of the countries of the Union to permit, to supervise, or to forbid, by means of legislation or of domestic police, the circulation, the representation or the exhibition of every work or production in regard to which competent authority may have to exercise this right.

ARTICLE 18

The present Convention applies to all works which, at the time it goes into effect, have not fallen into the public domain of their country of origin because of the expiration of the term of protection.

But if a work by reason of the expiration of the term of protection which was previously secured for it has fallen

into the public domain of the country where protection is claimed, such work will not be protected anew.

This principle will be applied in accordance with the stipulations to that effect contained in the special Conventions either existing or to be concluded between countries of the Union, and in default of such stipulations, its application will be regulated by each country in its own case.

The preceding provisions apply equally in the case of new accessions to the Union and where the term of protection would be extended by the application of Article 7.

Article 19

The provisions of the present Convention do not prevent a claim for the application of more favorable provisions which may be enacted by the legislation of a country of the Union in favor of foreigners in general.

Article 20

The governments of the countries of the Union reserve the right to make between themselves special treaties, when these treaties would confer upon authors more extended rights than those accorded by the Union, or when they contain other stipulations not conflicting with the present Convention. The provisions of existing treaties which answer the aforesaid conditions remain in force.

Article 21

The international office instituted under the name of "Bureau of the International Union for the Protection of Literary and Artistic Works" ("Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques") is maintained.

This Bureau is placed under the high authority of the Government of the Swiss Confederation, which controls its organization and supervises its working.

The official language of the Bureau is the French language.

Article 22

The International Bureau brings together, arranges and publishes information of every kind relating to the protection

of the rights of authors in their literary and artistic works. It studies questions of mutual utility interesting to the Union, and edits, with the aid of documents placed at its disposal by the various administrations, a periodical in the French language, treating questions concerning the purpose of the Union. The governments of the countries of the Union reserve the right to authorize the Bureau by common accord to publish an edition in one or more other languages, in case experience demonstrates the need.

The International Bureau must hold itself at all times at the disposal of members of the Union to furnish them, in relation to questions concerning the protection of literary and artistic works, the special information of which they have need.

The Director of the International Bureau makes an annual report on his administration, which is communicated to all the members of the Union.

Article 23

The expenses of the Bureau of the International Union are shared in common by the contracting countries. Until a new decision, they may not exceed sixty thousand francs per year. This sum may be increased when needful by the simple decision of one of the Conferences provided for in Article 24.

To determine the part of this sum total of expenses to be paid by each of the countries, the contracting countries and those which later adhere to the Union are divided into six classes each contributing in proportion to a certain number of units, to wit:

1st class	25 units
2d class	20 units
3d class	15 units
4th class	10 units
5th class	5 units
6th class	3 units

These coefficients are multiplied by the number of countries in each class, and the sum of the products thus obtained furnishes the number of units by which the total expense

is to be divided. The quotient gives the amount of the unit of expense.

Each country shall declare. at the time of its accession, in which of the above-mentioned classes it desires to be placed.

The Swiss Administration prepares the budget of the Bureau and superintends its expenditures, makes necessary advances and draws up the annual account, which shall be communicated to all the other administrations.

ARTICLE 24

The present Convention may be subjected to revision with a view to the introduction of amendments calculated to perfect the system of the Union.

Questions of this nature, as well as those which from other points of view pertain to the development of the Union, are considered in the Conferences which will take place successively in the countries of the Union between the delegates of the said countries. The administration of the country where a Conference is to be held will, with the coöperation of the International Bureau, prepare the business of the same. The Director of the Bureau will attend the meetings of the Conferences and take part in the discussions without a deliberative voice.

No change in the present Convention is valid for the Union except on condition of the unanimous consent of the countries which compose it.

ARTICLE 25

The States outside of the Union which assure legal protection of the rights which are the object of the present Convention, may accede to it upon their request.

This accession shall be made known in writing to the Government of the Swiss Confederation and by the latter to all the others.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages stipulated in the present Convention. It may, however, indicate such provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, as it may be judged necessary to sub-

stitute provisionally, at least, for the corresponding provisions of the present Convention.

ARTICLE 26

The contracting countries have the right to accede at any time to the present Convention for their colonies or foreign possessions.

They may, for that purpose, either make a general declaration by which all their colonies or possessions are included in the accession, or name expressly those which are included therein, or confine themselves to indicating those which are excluded from it.

This declaration shall be made known in writing to the Government of the Swiss Confederation, and by the latter to all the others.

ARTICLE 27

The present Convention shall replace, in the relations between the contracting States, the Convention of Berne of September 9, 1886, including the Additional Article and the Final Protocol of the same day, as well as the Additional Act and the Interpretative Declaration of May 4, 1896. The conventional acts above mentioned shall remain in force in the relations with the States which do not ratify the present Convention.

The States signatory to the present Convention may, at the time of the exchange of ratifications, declare that they intend, upon such or such point, still to remain bound by the provisions of the Conventions to which they have previously subscribed.

ARTICLE 28

The present Convention shall be ratified, and the ratifications shall be exchanged at Berlin, not later than the first of July, 1910.

Each contracting party shall send, for the exchange of ratifications, a single instrument, which shall be deposited, with those of the other countries, in the archives of the Government of the Swiss Confederation. Each party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries who shall have taken part therein.

ARTICLE 29

The present Convention shall be put into execution three months after the exchange of the ratifications and shall remain in force for an indefinite time, until the expiration of one year from the day when denunciation of it shall have been made.

This denunciation shall be addressed to the Government of the Swiss Confederation. It shall be effective only as regards the country which shall have made it, the Convention remaining in force for the other countries of the Union.

ARTICLE 30

The States which introduce into their legislation the term of protection of fifty years[1] provided for by Article 7, paragraph 1, of the present Convention, shall make it known to the Government of the Swiss Confederation by a written notification which shall be communicated at once by that Government to all the other countries of the Union.

It shall be the same for such States as shall renounce any reservations made by them in virtue of Articles 25, 26, and 27.

In testimony of which, the respective Plenipotentiaries have signed the present Convention and have attached thereto their seals.

Done at Berlin, the thirteenth of November, one thousand nine hundred eight, in a single copy, which shall be deposited in the archives of the Government of the Swiss Confederation, and of which copies, properly certified, shall be sent through diplomatic channels to the contracting countries.

ADDITIONAL PROTOCOL

TO THE INTERNATIONAL COPYRIGHT CONVENTION OF BERLIN, NOVEMBER 13, 1903, SIGNED AT BERNE, MARCH 20, 1914

(ENGLISH TRANSLATION)

The countries, members of the International Union for the protection of literary and artistic works, desiring to authorize

[1] Article 7 provides for a general term of protection for life and fifty years.

an optional limitation of the extent of the Convention of November 13, 1908, have by mutual agreement adopted the following Protocol:

1. When a country not belonging to the Union does not protect in a sufficient manner the works of authors within the jurisdiction of a country of the Union, the provisions of the Convention of November 13, 1908, can not prejudice, in any way, the right which belongs to the contracting countries to restrict the protection of works by authors who are, at the time of the first publication of such works, subjects or citizens of the said country not being a member of the Union, and are not actually domiciled in one of the countries of the Union.

2. The right accorded to the contracting States by the present Protocol, belongs also to each of their transmarine possessions.

3. No restriction established by virtue of No. 1, above, shall prejudice the rights which an author has acquired in one of the countries of the Union prior to the putting into force of this restriction.

4. The countries which, by virtue of the present Protocol, limit the protection accorded to authors, shall notify the Government of the Swiss Confederation by a written declaration indicating the countries against which the protection is restricted, and also the restrictions to which the rights of authors belonging to these countries are subject. The Government of the Swiss Confederation will at once communicate the fact to all the other States of the Union.

5. The present Protocol shall be ratified, and the ratifications shall be deposited at Berne within a maximum period of twelve months from its date. It shall enter into force one month after the expiration of this period and shall have the same force and duration as the Convention to which it relates.

In witness whereof the Plenipotentiaries of the countries members of the Union have signed the present Protocol, of which a certified copy shall be transmitted to each of the Governments of the Union.

Done at Berne, the 20th day of March, 1914, in a single copy, deposited in the Archives of the Swiss Confederation.

Signed by the representatives of the following eighteen countries: Belgium, Denmark, France, Germany, Great Britain,

Haiti, Italy, Japan, Liberia, Luxemburg, Monaco, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis.

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