GENERAL REVISION OF THE COPYRIGHT LAW,TITLE 17 OF THE UNITED STATES CODE

September 29, 1976.--Ordered to be printed

Mr. Kastenmeier, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 22]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 22) for the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

* * * * *

[Editor's note: The bill as reported out by the Conference Committee is omitted]

[69] JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S.22) for the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers, and recommend in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

COPYRIGHTABLE SUBJECT MATTER: PUBLICATIONS OF THE U.S. GOVERNMENT

Senate bill

Under section 105 of the Senate bill, both published and unpublished works of the United States Government were excluded from copyright protection.

House bill

The House bill retained the general prohibition against copyright in U.S. Government works, but made one specific exception in favor of any publication of the National Technical Information Service. The Secretary of Commerce was authorized to secure copyright in such works, on behalf of the United States as author or copyright owner, for a limited term not to exceed five years.

Conference substitute

The conference substitute conforms to the Senate bill. Because of the lack of senate hearings on the issue, the conferees recommended that the NTIS request for limited copyright in order to control foreign copying be considered at hearings early in the next session. In the interim, consideration should also be given to compensatory appropriations to NTIS in lieu of revenues lost as a result of unauthorized foreign copying.

The Department of Commerce testified on May 8, 1975 before the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice that the lack of copyright protection in publications of its National Technical Information Service (NTIS) posed special problems, since NTIS is required *(15 USC 1151-7*) to be self-**[70]**sustaining to the fullest extent feasible. Widespread copying of NTIS publications is especially prevalent in foreign nations. In Japan it is reported that NTIS reproductions are sold having a value of $ 3,000,000 annually. A United Kingdom copier sells nearly twice as many copiers of NTIS publications as NTIS does directly to the U.K. The USSR buys substantial volume of NTIS publications from European copiers for further copying in the USSR. The lack of copyright protection in NTIS publications also results in widespread foreign use of U.S. tax-funded research and development without any return to the U.S. U.S. organizations also sell NTIS publications to foreign buyers without recouping for the taxpayer, as represented by NTIS, monies adequately reflecting the value of the scientific, engineering, and technical information contained therein.

FAIR USE

Senate bill

The Senate bill, in section 107, embodied express statutory recognition of the judicial doctrine that the fair use of a copyrighted work is not an infringement of copyright. It set forth the fair use doctrine, including four criteria for determining its applicability in particular cases, in general terms.

House bill

The House bill amended section 107 in two respects: in the general statement of the fair use doctrine it added a specific reference to multiple copies for classroom use, and it amplified the statement of the first of the criteria to be used in judging fair use (the purpose and character of the use) by referring to the commercial nature or nonprofit educational purpose of the use.

Conference substitute

The conference substitute adopts the House amendments. The conferees accept as part of their understanding of fair use the Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with respect to books and periodicals appearing at pp.68-70 of the House Report (H. Rept. No. 94-1476, as corrected at p. H 10727 of the Congressional Record for September 21, 1976), and for educational uses of music appearing at pp. 70-71 of the House report, as amended in the statement appearing at p. H 10875 of the Congressional Record of September 22, 1976. The conferees also endorse the statement concerning the meaning of the word "teacher" in the guidelines for books and periodicals, and the application of fair use in the case of use of television programs within the confines of a nonprofit educational institution for the deaf and hearing impaired, both of which appear on p. H 10875 of the Congressional Record of September 22, 1976.

REPRODUCTION BY LIBRARIES AND ARCHIVES

Senate bill

Section 108 of the Senate bill dealt with a variety of situations involving photocopying and other forms of reproduction by libraries and archives. It specified the conditions under which single copies **[71]** of copyrighted material can be noncommercially reproduced and distributed, but made clear that the privileges of a library or archives under the section do not apply where the reproduction or distribution is of multiple copies or is "systematic." Under subsection (f), the section was not to be construed as limiting the reproduction and distribution, by a library or archive meeting the basic criteria of the section, of a limited number of copies and excerpts of an audiovisual news program.

House bill

The House bill amended section 108 to make clear that, in cases involving interlibrary arrangements for the exchange of photocopies, the activity would not be considered "systematic" as long as the library or archives receiving the reproductions for distribution does not do so in such aggregate quantities as to substitute for a subscription to or purchase of the work. A new subsection (i) directed the Register of Copyrights, by the end of 1982 and at five-year intervals thereafter, to report on the practical success of the section in balancing the various interests, and to make recommendations for any needed changes. With respect to audiovisual news programs, the House bill limited the scope of the distribution privilege confirmed by section 108(f)(3) to cases where the distribution takes the form of a loan.

Conference substitute

The conference substitute adopts the provisions of section 108 as amended by the House bill. In doing so, the conferees have noted two letters dated September 22, 1976, sent respectively to John L. McClellan, Chairman of the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights, and to Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The letters, from the Chairman of the National Commission on New Technological Uses of Copyrighted Works (CONTU), Stanley H. Fuld, transmitted a document consisting of "guidelines interpreting the provision in subsection 108(g)(2) of S.22, as approved by the House Committee on the Judiciary." Chairman Fuld's letters explain that, following lengthly consultations with the parties concerned, the Commission adopted these guidelines as fair and workable and with the hope that the conferees on S.22 may find that they merit inclusion in the conference report. The letters add that, although time did not permit securing signatures of the representatives of the principal library organizations or of the organizations representing publishers and authors on these guidelines, the Commission had received oral assurances from these representatives that the guidelines are acceptable to their organizations.

The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases, now or in the future. It is recognized that their purpose is to provide guidance in the most commonly-encountered interlibrary photocopying situations, that they are not intended to be limiting or determinative in themselves or with respect to other situations, and that they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment. With these qualification, the conference committee agrees that the **[72]** guidelines are a reasonable interpretation of the proviso of section 108(g)(2) in the most common situations to which they apply today.

The text of the guidelines follows:

PHOTOCOPYING-INTERLIBRARY ARRANGEMENTS

INTRODUCTION

Subsection 108(g)(2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted material but permits interlibrary arrangements "that do not have, as their purpose of effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108(g)(2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals--those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription of such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies [sic] or institutions, public or

private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

GUIDELINES FOR THE PROVISO OF SUBSECTION 108(G)(2)

1. As used in the proviso of subsection 108(g)(2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:

(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a requesting "entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These **[73]** guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "... such aggregate quantities as to substitute for a subscription to [such periodical]".

(b) With respect to any other material described in subsection 108(d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity--

(a) shall have in force, or shall have entered an order for a subscription to a periodical, or

(b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work,

material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

The conference committee is aware that an issue has arisen as to the meaning of the phrase "audiovisual news program" in section 108(f)(3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108(a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

Another point in interpretation involves the meaning of "indirect commercial advantage," as used in section 108(a)(1), in the case of **[74]** libraries or archival collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108(a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

LIMITATIONS ON RIGHTS OF PERFORMANCE AND DISPLAY

Senate bill

Section 110 of the Senate bill set forth eight specific exceptions to the exclusive rights to perform and display copyrighted works. The first four exceptions were roughly the equivalent of the "for profit" limitations on performing rights under they present law. Section 110(5) provided an exemption for public communication of a transmission received on an ordinary receiving set unless a direct charge is made or the transmission "is further transmitted to the public." Section 110(6) exempted performances of nondramatic music at nonprofit annual agricultural or horticultural fairs, and section 110(7) dealt with performances in connection with the retail sale of copies or records of musical works. Clause (8) of section 110 provided an exemption for performances of literary works "in the course of broadcast service specifically designed for broadcast on noncommercial educational radio and television stations to a print or aural handicapped audience," but did not contain, in section 112 or elsewhere, a provision allowing the making of copies or phonorecords for the purpose of such broadcasts to the blind or deaf.

House bill

The House bill amended the last four clauses of section 110. With respect to clause (5), it made the exemption inapplicable to cases where there is a further transmission "beyond the place where the receiving apparatus is located." Clause (6) was amended to make the exemption applicable only to the governmental body or nonprofit organization sponsoring the fair, and the amendment of clause (7) was merely for purposes of clarification. The House bill amended clause (8) by limiting its application to nondramatic literary works, by clarifying the audiences to which the transmissions are directed, and by more narrowly defining the types of nonprofit transmissions within the exemptions. The House bill also added a new subsection (d) to section 112 to permit the making of ten recordings of performances exempted under section 110(8), their retention for an unlimited period, and their exchange with other nonprofit organizations.

Conference substitute

The conference substitute adopts the House amendments of clauses (6), (7), and (8) of section 110, and of section 112. It adds a new clause (9) to section 110 exempting nonprofit performances of dramatic works transmitted to audiences of the blind by radio subcarrier **[75]** authorization, but only for a single performance of a dramatic work published at least ten years earlier.

With respect to section 110(5), the conference substitute conforms to the language in the Senate bill. It is the intent of the conferees that a small commercial establishment of the type involved in *Twentieth Century Music Corp. v. Aiken, 422 U.S. 151 (1975),* which merely augmented a home-type receiver and which was not of sufficient size to justify, as a practical matter, a subscription to a commercial background music service, would be exempt. However, where the public communication was by means of something other than a home-type receiving apparatus, or where the establishment actually makes a further transmission to the public, the exemption would not apply.

SECONDARY TRANSMISSIONS, INCLUDING CABLE TELEVISION

Senate bill

Section 111 of the Senate bill dealt, among other secondary transmissions, with retransmissions of broadcasts by cable systems to subscribers. In general effect, it created a compulsory license for any cable retransmission authorized by the Federal Communications Commission; where the cable system repeatedly or willfully carried signals not permitted by the FCC, or where it failed to follow the compulsory licensing procedure set forth in section 111, the cable system was to be fully liable. Full liability would have been imposed on the carriage of any foreign, including Mexican or Canadian, signals. The Senate bill required cable systems to file quarterly statements of account, accompanied by payment of a royalty fee based on a sliding scale of percentages of gross receipts from subscribers (running from 1/2 of one percent of quarterly receipts up to $ 40,000 to 2 1/2 percent of quarterly receipts up to $ 160,000). A special reduced fee was provided for systems with quarterly gross receipts of less than $ 40,000. For purposes of computing royalty fees, no distinctions were made between retransmissions of local and distant signals or between network and other signals.

Taping for nonsimultaneous transmissions of broadcasts was permitted under a compulsory license for cable systems operating in certain areas outside the continental boundaries of the United States. The Senate bill contained no provisions dealing with alteration of program content or substitution of commercials by a cable operator. Section 501(c) gave a local broadcaster holding an exclusive license standing to sue for copyright infringement for cable retransmissions within its local service area. Under chapter 8 of Senate bill, the Copyright Royalty Tribunal was mandated to review the royalty schedule, established in section 111, and it basis, in 1980 and at ten-year intervals thereafter.

House bill

In addition to certain amendments aimed at clarification and procedural simplification, the House bill retained the basic compulsory licensing scheme envisioned in section 111 but changed it in a number of important respects. The compulsory license was extended to some, but not all, cable systems carrying Mexican or Canadian signals. Payments of royalty fees, which were to be semiannual, were deter-**[76]**mined by a formula based on a computation of the number of "distant signal equivalents" carried by the system. No payments were to be made for local signals, and different values were assigned to signals from distant independent, network, and education stations, with special provisions dealing with substitution or addition of signals under the mandatory and discretionary program deletion and substitution rules of the FCC. The special reduced royalty fee based on a percentage of gross receipts for systems with semiannual gross receipts of less that $ 80,000 was retained, but a similar reduction was added for systems with semiannual gross receipts of between $ 80,000 and $ 160,00.

Section 111(e) of the House bill established the conditions and limitations under which certain cable systems outside the continental United States can tape programs for nonsimultaneous retransmission under the compulsory license. The House bill also contained, in sections 111(c)(3), 501(d), and 509, provisions denying (with one exception) the compulsory license in any case where a cable system alters program content or commercials, extending standing to sue to additional classes of broadcasters, and providing the possibility of a special penalty in such cases. Under the substantially revised provisions of chapter 8 of the House bill, the Copyright Royalty Commission would review the rates established in the bill in 1980 and at five-year intervals thereafter; explicit limitations were placed on the factors the Commission could consider in making its periodic rate revisions, but rate adjustments could be made at any time if the FCC amends its rules and regulations governing the carriage of distant signals or its rules and regulations dealing with syndicated and sports program exclusivity.

Conference substitute

With one exception the conference substitute adopts the provisions of the House bill. Section 111(d)(3) is amended to require that the royalty fees held in a fund by the Secretary of the Treasury be invested in interest-bearing U.S. securities for later distribution with interest by the Tribunal. A corresponding amendment is made in subsection (c)(1) of section 116, the jukebox provision.

EXCLUSIVE RIGHTS IN SOUND RECORDINGS

Senate bill

The Senate bill, in section 114, limited the exclusive rights of the owner of copyright in a sound recording to those specified by clauses (1), (2), and (3) of section 106--that is, the rights to reproduce the work in phonorecords, to make derivative works, and to distribute phonorecords. It expressly denied the exclusive right of public performance under section 106(4) to sound recordings.

House bill

The House amendments to section 114 clarified the scope of the exclusive right to make derivative works in relation to sound recordings, and permitted the use of copyrighted sound recordings in the audio portions of educational radio and television programs under certain conditions. The House bill also required the Register of Copyrights to submit to Congress, on January 3, 1978, a report with recom-**[77]**mendations as to whether copyright protection for sound recordings should be expanded to include performing rights.

Conference substitute

The conference substitute adopts the House amendments of section 114.

COMPULSORY LICENSE FOR PHONORECORDS

The Senate bill provided in section 115 for a compulsory licensing system governing the making and distributing of phonorecords of copyrighted musical compositions. In general, subject to certain conditions and limitations, as soon as authorized phonorecords of a work have been publicly distributed, anyone could make phonorecords and distribute them to the public by following a compulsory licensing procedure and paying to the copyright owner a specified royalty. Under the Senate bill, the royalty would be payable on each record "manufactured and distributed," and would amount to two and one-half cents per composition, or one-half cent per minute of playing time, whichever is larger.

House bill

In addition to certain technical clarifications and procedural amendments, the House bill set the royalty at two and three-fourths cents per composition or six-tenths of a cent per minute; the royalty was made payable on each phonorecord "made and distributed," and a phonorecord would be considered "distributed" if the compulsory licensee has "voluntarily and permanently parted with its possession."

Conference substitute

The conference substitute adopts the House amendments except for the royalty rate to be applied in cases where the playing time of a composition governs; the rate in such cases is set at one-half cent per minute, the rate in the Senate bill.

NONCOMMERCIAL BROADCASTING

Senate bill

Section 118 of the Senate bill granted to public broadcasting a compulsory license for the performance or display of nondramatic musical works, pictorial, graphic, and sculptural works, and nondramatic literary works, subject to the payment of reasonable royalty fees to be set by the Copyright Royalty Tribunal. The Senate bill required that public broadcasters, at periodic intervals, file a notice with the Copyright Office containing information required by the Register of Copyrights, and deposit a statement of account and the total royalty fees for the period covered by the statement. The Register was to receive claims to payment of royalty fees, and to distribute any amounts not in dispute; controversies were to be settled by the Tribunal, which was also charged with reviewing and, if appropriate, adjusting the royalty rates in 1980 and at ten year intervals thereafter. Sec. 113 of the Transitional and Supplementary provisions would start the machinery for establishment of the initial rates immediately upon enactment of the new law. Section 118(f) also contained a provision permitting nonprofit educational institutions to **[78]** record educational television and radio programs off the air, for limited use in instructional activities during a week following the broadcast.

House bill

The House bill substantially changed the provisions of section 118, retaining a different form of compulsory licensing for the use in public broadcasting of nondramatic musical works and for pictorial, graphic, and sculptural works, but not subjecting the exclusive rights in non-dramatic literary works to compulsory licensing. Under the House bill, within thirty days after appointment of the Royalty Commission, the chairman was to initiate proceedings to determine "reasonable terms and rates" under the section for a period running through 1982. Copyright owners and public broadcasting entities that did not reach voluntary agreement were to be by the terms and rates established by the Commission.

In establishing those rates and terms, the Commission was to consider, among other relevant information, proposals put forward to it within specified time limits. The House bill deleted Sec. 113 of the Transitional and Supplementary Provisions of the Act, but provided in section 118(b)(4) that, during the period between the effective date of the Act and publication of the initial rates and terms, the status quo as to liability under the present law would be preserved.

Payment of royalties under section 118 were to be handled among the parties without government intervention. The royalty review cycle would begin in 1982 and continue at five-year intervals thereafter. Section 118(d)(3) retained the provision permitting off-the-air taping of public broadcasts by educational institutions, but with amendments clarifying and tightening the provision.

Although nondramatic literary works were not included in the compulsory licensing scheme of section 118, subsection (e) provided an exemption from the antitrust laws with respect to voluntary negotiations aimed at licensing agreements for the public broadcasting of such works. The subsection also required the Register of Copyrights, on January 3, 1980, to report upon the extent to which such voluntary agreements had been achieved, the problems that had arisen, and any recommendations for legislation that might be appropriate.

Conference substitute

The conference substitute adopts the House amendments.

SCOPE OF FEDERAL PREEMPTION

Senate bill

In establishing a single Federal system of copyright, section 301 of the Senate bill preempts all equivalent rights under State law in copyrightable works that have been fixed in tangible form. In stating the obverse of this proposition, section 301(b)(3) preserved rights under State law with respect to activities violating rights that are not equivalent to any of the exclusive rights within the general scope of copyright, "including rights against misappropriation not equivalent to any of such exclusive rights, breaches of contract, breaches of trust, ... [etc.]." The senate bill specifically excepted from the preemption "sound recordings fixed prior to February 15, 1972."

[79] *House bill*

The House bill deleted the clause of section 301(b)(3) enumerating illustrative examples of causes of action, such as certain types of misappropriation, not preempted under section 301. It revised the provision dealing with sound recordings fixed before February 15, 1972 to make the Federal preeemption of rights in such works effective on February 15, 2047.

Conference substitute

The conference substitute adopts the House amendment of section 301.

DEPOSIT OF RADIO AND TELEVISION PROGRAMS

Senate bill

The Senate bill contained no provisions for the deposit of unpublished transmission programs, or for the preservation of published and unpublished programs in a Federal archive.

House bill

The House bill amended section 407 to provide a basis for the Library of Congress to acquire, as a part of the copyright deposit system, copies or recordings of nonsyndicated radio and television programs. Under section 407(e) the Library would be authorized to tape programs off the air in all cases, and could under certain conditions obtain a copy or phonorecord from the copyright owner by gift, by loan for purposes of reproduction, or by purchase at cost. A correlative provision in Sec. 113 of the bill's Transitional and Supplementary Provisions established an American Television and Radio Archive in the Library of Congress to provide a repository for the preservation of radio and television programs.

Conference substitute

The conference substitute adopts the House amendments.

REMEDIES FOR COPYRIGHT INFRINGEMENT

Senate bill

Chapter 5 of the Senate bill dealt with civil and criminal infringement of copyright and the remedies for both. Subsection (c) of section 504 allowed statutory damages within a stated dollar range, and clause (2) of that subsection provided for situations in which the maximum could be exceeded and the minimum lowered; the court was given discretion to reduce or remit statutory damages entirely where a teacher, librarian, or archivist believed that the infringing activity constituted fair use. Section 506 provided penalties for criminal infringement of a fine of up to $ 2,500 and imprisonment of up to one year for a first offense, with higher penalties for recidivism, special penalties for record and film piracy, and provision for forfeiture and destruction upon conviction. Section 509 of the Senate bill contained expanded provisions dealing with seizure and forfeiture in cases of criminal copyright infringement. Sec. 111 of the Transitional and Supplementary Provisions amended the provisions of the Criminal Code dealing with counterfeit phonograph record labels *(18 U.S.C.§ 2318)* to provide higher criminal penalties and to make the seizure and forfeiture provisions of section 509 of the new copyright law applicable in such cases.

[80] *House bill*

Section 504(c)(2) of the House bill required the court to remit statutory damages entirely in cases where a teacher, librarian, archivist, or public broadcaster, or the institution to which they belong, infringed in the honest belief that what they were doing constituted fair use. The general and special penalties provided by section 506(a) were changed, with the maximum terms of imprisonment being decreased. Section 509 of the Senate bill was deleted, and section 506(b) was expanded to incorporate some, but not all, of the provisions on seizure and forfeiture previously in section 509. Conforming changes were made in the amendments to the Criminal Code provided by Sec.111.

Conference substitute

The conference substitute adopts the House amendments with respect to statutory damages in section 504(c)(2) and the fines and terms of imprisonment provided by section 506(a)and Sec. 111. With respect to the provisions on seizure and forfeiture, the conference substitute adopts the Senate bill with certain modifications.

MANUFACTURING REQUIREMENTS

Senate bill

The Senate bill retained the manufacturing clause of the present law, but substantially narrowed its scope and ameliorated its effect. Nondramatic literary material by American authors would, as a general rule, be required to be manufactured in the United States or Canada to be entitled to full and unqualified copyright protection in the United States, but the requirement would be subject to a number of exceptions and limitations, and the sanctions for enforcement involved import restrictions and loss of remedies rather than loss of copyright.

House bill

The House bill adopted section 601 of the Senate bill, with an amendment further ameliorating its effect on individual American authors whose works are first published abroad. However, the requirement would be retained only through the end of 1980, and would cease to apply on January 1. 1981.

Conference substitute

The conference substitute adopts the House amendments of section 601, but moves the effective date of the phase-out of the manufacturing clause back to July 1, 1982.

Canada is specifically exempted from the provisions of Section 601, the so-called "manufacturing clause" of the Bill, at least until 1982. This exemption is included as a result of an agreement reached in Toronto in 1968 among

representatives of American and Canadian publishers, printing trade unions, and book manufacturers. Upon addition of the Canadian exemption in American legislation, that agreement contemplates Canadian adoption of the Florence Agreement and prompt joint action to remove high Canadian tariffs on printed matter and the removal of other Canadian restraints on printing and publishing trade between the two countries, as well as reciprocal prompt action by U.S. groups to remove any remaining U.S. **[81]** barriers to Canadian printed matter. The Canadian exemption is included in Section 601 with the expectation that these changes will be made. If for any reason Canadian trade groups and the Canadian Government do not move promptly in reciprocation with U.S. trade groups and the United States Government to remove such tariff and other trade barriers, we would expect Congress to remove the Canadian exemption.

COPYRIGHT OFFICE

Senate bill

Chapter 7 of the Senate bill dealt with the administrative responsibilities of the Copyright Office. It contained no provision dealing with the applicability of the Administrative Procedure Act to the Copyright Office.

House bill

The house bill made the Adminstrative Procedure Act applicable to the Copyright Office with one exception, and adopted several technical amendments dealing with administrative matters in chapter 7.

Conference substitute

The conference substitute adopts the House amendments.

COPYRIGHT ROYALTY TRIBUNAL

Senate bill

Chapter 8 of the Senate bill established a Copyright Royalty Tribunal in the Library of Congress, for the purpose of periodically reviewing and adjusting statutory royalty rates with respect to the four compulsory licenses provided by the bill, and of resolving disputes over the distribution of royalties for cable transmissions and jukebox performances. Upon certifying the existence of a controversy concerning distribution of statutory royalty fees, or upon periodic petition for review of statutory royalty rates by an interested party, the Register of Copyrights was to convene a three-member panel to constitute a Copyright Royalty Tribunal to resolve the controversy or review the rates, Determinations by the Tribunal were to be submitted to the two Houses of Congress, and were to be final unless voted upon and rejected by one of the two houses within a specified period. Rate adjustments were not subject to judicial review, and the grounds for judicial review of royalty distributions were limited to misconduct or corruption of a Tribunal member.

House bill

The House bill amended chapter 8 to provide for a permanent three-member Copyright Royalty Commission, which was to be an independent body but would receive administrative support from the Library of Congress. The commissioners were to be appointed by the President for staggered five-year terms, and the Commission's proceedings were made generally subject to the Administrative Procedure Act. Any final determinations of the Commission would be reviewable by the U.S. Court of Appeals on the basis of the record before the Commission. Under sections 111, 116, and chapter 8 of the House bill, the Register of Copyrights was to perform the recording functions and do the paperwork and initial accounting connected with the compulsory licensing procedures established for cable transmissions and jukebox **[82]** performances. However, after the Register had deducted the costs involved in these procedures and deposited the royalties in the U.S. Treasury, the Commission would assume all duties involved in distributing the royalties, regardless of whether or not there were a dispute.

Conference substitute

The conference substitute conforms in general to the House bill, but with several changes. The body established by chapter 8 is to be named the Copyright Royalty Tribunal, and is to consist of five commissioners appointed for staggered seven-year terms by the President with the advice and consent of the Senate. The Tribunal is to be an independent agency in the legislative branch; a new section defines the responsibilities of the Library of Congress to provide administrative support to the Tribunal, and establishes specific regulatory authority governing the procedures and responsibilities for disbursement of funds. The House receded on its language appearing in the last sentence of section 801(b)(1), and the conference agreed to a substitute for that language.

ORNAMENTAL DESIGNS OF USEFUL ARTICLES AND WORKS OF APPLIED ART

Senate bill

Title II of the Senate bill proposed to establish a new form of protection for "original ornamental designs of useful articles." The title, which consisted of 35 sections, offered a limited short-term form of protection for designs. This protection was based on copyright principles but was provided separately from the copyright law itself.

House amendments

The House amendment deleted title II of the bill entirely, together with two subsections of section 113 dealing with the interrelationship between titles I and II. It revised the definition of "pictorial, graphic, and sculptural works" in section 101 to clarify the distinction between works of applied art subject to protection under the bill and industrial designs not subject to copyright protection.

Conference substitute

The conference substitutes adopts the House amendments.

ROBERT W. KASTENMEIER,
GEORGE E. DANIELSON,
ROBERT F. DRINAN,
HERMAN BADILLO,
EDWARD W. PATTISON,
TOM RAILSBACK,
CHARLES E. WIGGINS,
Managers on the Part of the House.

JOHN L. MC CLELLAN,
PHILIP A. HART,
QUENTIN N. BURDICK,
Hugh Scott,
Hiram L. Fong,
Managers on the Part of the Senate.

1. Editor's note: Original pagination is indicated in brackets.