Opposition	9/3/91	Program Suppliers	Program Suppliers' opposition to motions to require production filed by NAB and PBS, and to the objections filed by Joint Sports.
Reply	9/3/91	NAB	Reply to Motion to Compel filed by the Program Suppliers on August 26, 1991.
Opposition	9/3/91	Joint Sports	Joint Sports submit opposition to Program Suppliers' Motion to Compel.
Response	9/3/91	PBS	Response of Public Broadcasting Service to motions to strike certain record designations.
Letter	9/4/91	MPAA	Submits viewing data for individual categories of programming in response to CRT's order.
Letter	9/4/91	MPAA	Attaches corrected page 14 in the exhibit of the Six Cycle Summary.
Reply	9/5/91	Program Suppliers & Music Claimants	Submits reply in support of their joint motion for termination of proceeding with respect to Syndex Fund.
ORDER	9/5/91	CRT	Makes rulings on motions and responses to motions, for production of underlying documents.
ORDER	9/6/91	CRT	1) Denies PBS' motion to require Program Suppliers to make available certain documents, and 2) grants PBS leave to file a reply.
Letter	9/10/91	Joint Sports	Submits unredacted copies of original survey response sheets underlying 1989 cable operator valuation study requested by CRT in Sept. 5 Order.

(Submission is not part of public record).

Motion	9/10/91	Canadian Claimants	Stipulation of Settlement of Claim of Canadian Claimants.
Motion	9/10/91	Canadian Claimants	Motion to Withdraw Direct Case and Distribute remainder of Canadian Claimants' Phase I share.
Motion	9/11/91	NPR	NPR's Motion for distribution to NPR of .18% of total amount remaining in the 1989 Cable Royalty Fund.
ORAL HEARING TRANSCRIPT	**9/12/91**	**Program Suppliers**	**Witnesses: Jack Valenti and Marsha Kessler - MPAA** **Exhibits submitted:** **Sports - 9X, 10X, 11X, 12X** **MAB - 24X, 25X** **PBS - PTV-1-X**
ORAL HEARING TRANSCRIPT	**9/13/91**	**Program Suppliers**	**Witnesses: Marsha Kessler and Allen Cooper - MPAA** **Exhibits submitted:** **MAB - 26X, 27X, 28X, 29X, 30X, 31X, 32X** **MPAA - provided revision to Page 144 of direct case**
ORAL HEARING TRANSCRIPT	**9/17/91**	**Program Suppliers**	**Witness: Allen Cooper** **Exhibits submitted:** **Sports - 13X, 14X, 15X**
Transfer	9/18/91	CDC	Cable Data Corporation picked up data provided to CRT by Joint Sports on 9/10/91.
ORAL HEARING TRANSCRIPT	**9/19/91**	**Program Suppliers**	**Witness: Allen Cooper** **Exhibits submitted:** **Sports - 16X, 22X, 23X** **Music - 24X** **MAB - 35X, 36X, 37X, 38X, 39X, 40X, 41X** **32X & 33X submitted, but not as part of record**

ORAL HEARING TRANSCRIPT	**9/20/91**	**Program Suppliers**	**Witness: Allen Cooper** **Exhibits submitted:** **PBS - PTV-2X, 3X, 4X, 5X, 7X, 8X, 9X, 10X, 12X, 13X, 14X** **Devotional - 13X**
Opposition	9/20/91	PBS	Further Response of Public Television in Opposition to Motion for Termination of Proceedings with respect to the 1989 Syndex Fund.
ORDER	**9/23/91**	**CRT**	**Schedule for remainder of the Phase I direct hearings.**
Motion	9/23/91	Joint Sports	Joint Sports Claimants' Motion to Strike Portions of Program Suppliers' Direct Case. Namely, all testimony and exhibits relying upon Nielsen 1989 NSI survey data.
ORAL HEARING TRANSCRIPT	**9/24/91**	**Sports**	**Witness: Paul Bortz** **Exhibits submitted:** **Program Suppliers 1X, 2X, 3X, 4X** **Also submitted Advisory Opinion from CRT 85-4-84CD, which was officially noted by the CRT.**
ORAL HEARING TRANSCRIPT	**9/25/91**	**Sports**	**Witnesses: Paul Bortz and Robert Crandall.** **Exhibits submitted:** **PBS - PTV 31X, 15X, 16X, 17X, 18X, 20X, 21X, 35X, 22X, 36X, 23X, 19X, 25X, 29X 28X, 37X**
Resubmission	9/25/91	Music Claimants	Music Claimants submit corrected direct case.

ORAL HEARING TRANSCRIPT	**9/26/91**	**Sports**	**Witnesses: Robert Crandall and Leonard Reid.** **Exhibits submitted:** **Prog.Supp. - 5X, 6X, 7X, 8X** **PTV - 26X**
ORAL HEARING TRANSCRIPT	**9/27/91**	**Sports**	**Witnesses: Roger Werner and Leonard Reid.** **Exhibits submitted:** **Prog. Supp. - 12X, 9X, 10X, 13X, 11X, 14X, 15X** **PTV - 39X, 40X, 41X**
ORDER	**9/27/91**	**CRT**	**Submits the schedule of the remainder of the 1989 Cable Distribution proceeding.**
Comments	9/30/91	Devotionals	Comments of Devotional Claimants in support of Joint Sports Claimants' motion to strike portions of Program Suppliers' direct case.
ORAL HEARING TRANSCRIPT	**10/1/91**	**Sports**	**Witness: Commissioner Francis Vincent - Baseball** **Exhibits submitted:** **Prog. Suppl. - 16X, 17X, 18X** **PBS - PTV 42X and Excerpts from PTV 37X**
ORAL HEARING TRANSCRIPT	**10/2/91**	**Sports**	**Witnesses: Commissioner David Stern - Basketball, and Robert Wussler** **Exhibits submitted:** **Prog. Supp. - 19X, 20X, 21X, 22X, 23X**
Comments	10/2/91	PBS	Comments of PBS on motion by Joint Sports Claimants to strike portions of the direct case of Program Suppliers. Supports motion.
Opposition	10/2/91	Program Suppliers	Program Suppliers Opposition to Joint Sports Claimants motion to strike testimony regarding Nielsen NSI survey.

ORAL HEARING TRANSCRIPT	**10/3/91**	**Sports**	**Witnesses: Samuel Book** **No exhibits submitted**
Letter	10/3/91	Midlen & Guillot	Requests CRT to send confirmation copy by mail of anything that is faxed to them.
ORAL HEARING TRANSCRIPT	**10/4/91**	**Sports**	**Witness: Dr. Peter H. Lemieux** **Exhibits submitted:** **Prog. Supp. - 24X** **PBS - 43X**
Reply	10/7/91	Program Suppliers & Music Claimants	Submits further reply in support of their motion to terminate the 1989 proceedings with respect to the syndex fund.
Motion	10/8/91	Joint Sports	Joint Sports Claimants' Motion to strike cross-examination testimony and exhibits based upon the questionnaires underlying the 1986, 1989 and 1990 JSC constant sum surveys.
Comments	10/11/91	PBS	Supplemental Comments of Public Television Claimants in Opposition to motion for Termination of Proceedings with respect to the 1989 Syndex Fund.
Motion	10/15/91	ASCAP, BMI & SESAC	Music Claimants' Motion for Distribution - 4.5% of total amount remaining in 3 funds.
Stipulation	10/15/91	ASCAP, BMI & SESAC	Stipulation of Settlement of Claim of the Music Claimants to 1989 Cable Royalty Fund.
Opposition	10/16/91	Program Suppliers	Opposition to Motion to strike cross-examination testimony and exhibits and cross-motion to strike portions of testimony and exhibits.
Opposition	10/16/91	PBS	Opposition of PBS to motion by Joint Sports claimants to strike cross-examination testimony and exhibits.

ORAL HEARING TRANSCRIPT	**10/16/91**	**Devotional**	**Witness: Pat Robertson**
ORAL HEARING TRANSCRIPT	**10/17/91**	**Devotional**	**Witnesses: Glyn Wooldridge & Myrtle Huggins**
ORAL HEARING TRANSCRIPT	**10/21/91**	**Devotional**	**Witnesses: Thomas Larson & Kimberly Leary** **Exhibit submitted:** **Prog. Supp. - 25X,**
ORAL HEARING TRANSCRIPT	**10/22/91**	**Devotional & NAB**	**Witnesses: Dr. David Clark** **Richard Ducey** **Exhibits submitted:** **Prog. Supp. 26X** **Devotional 13X, 14X**
ORAL HEARING TRANSCRIPT	**10/23/91**	**NAB**	**Witnesses: Richard Ducey & Lawrence De Franco** **Exhibits submitted by NAB:** **MPAA Exhibit #'s 27X, 28X, 29X, 30X, 31X, and PTV Exhibit 44X**
ORDER	**10/23/91**	**CRT**	**Schedule for PBS' direct case.**
Letter	10/23/91	PBS	Correcting small error that PBS discovered in its Direct Case filed on August 16, 1991.
ORAL HEARING TRANSCRIPT	**10/24/91**	**NAB**	**Witnesses: John Elkins & John Robinson** **No Exhibits submitted.**
Opposition	10/25/91	JSC	Opposition of Joint Sports Claimants to Program Suppliers' Motion to Strike.
ORAL HEARING TRANSCRIPT	**10/25/91**	**NAB**	**Witnesses: Robert Davies & Philip Viener** **Exhibits submitted:** **Prog. Supp. - 32X** **PBS - 45X & 46X**

ORDER	**10/28/91**	**CRT**	**CRT Grants PBS an opportunity to present its direct case on the syndex issue as submitted.**
Letter	10/28/91	MPAA	Letter from Dennis Lane, clarifying Mr. Cooper's statement concerning music videos (Tr. 580, September 19, 1991).
ORAL HEARING TRANSCRIPT	**10/30/91**	**PBS**	**Witnesses: Sharon Rockefeller & John Hull** **Exhibits submitted:** **Joint Sports: 24X, 25X** **MAB: 42X**
Letter	10/30/91	Joint Sports	Letter from Robert Garrett requesting Tribunal to order MPAA to produce confidence intervals for viewing estimates in MPAA viewing study.
ORAL HEARING TRANSCRIPT	**10/31/91**	**PBS**	**Witness: John Fuller** **Exhibits:** **PBS - JF-2** **Joint Sports - 26X, 27X, 28X, 29X, 30X** **Prog. Supp. - 33X, 34X, 35X, 36X, 37X, 38X, 39X, 40X, 41X, 42X, 43X, 44X**
ORAL HEARING TRANSCRIPT	**11/1/91**	**PBS**	**Witnesses: John Fuller, Arthur Unger & John Carey** **Exhibits submitted:** **Sports - 31X** **MAB - 44X, 45X, 46X, 47X, 48X** **Devo. - 15X, 16X**
ORDER	**11/4/91**	**CRT**	**Tribunal orders the Program Suppliers to produce the confidence intervals ASAP but no later than November 18, 1991.**

ORAL HEARING TRANSCRIPT	**11/4/91**	**PBS**	**Witnesses:** **Sen. Charles Mathias, Peggy Charren, Marsha Leopard, and Thomas Larson** **Exhibits submitted:** **Sports - 32X, 33X, 34X, 35X, 36X** **Prog. Supp. - 45X**
ORAL HEARING TRANSCRIPT	**11/5/91**	**PBS**	**Witnesses: Tom Larson & Jennifer Lawson** **Exhibits submitted:** **NAB - 49X** **Prog. Supp. - 46X, 47X** **PBS - TL-3, TL-4** **Sports - Exh. 3**
Letter	11/5/91	NAB	Attaches five pages from NAB's 1989 Exhibit 2, showing corrections raised by Mr. Lane.
ORDER	**11/6/91**	**CRT**	**Ruling on motions submitted by Joint Sports and Program Suppliers regarding access to Nielsen study and Borts study.**
Letter	11/8/91	Joint Sports	Letter from Robert Garrett providing for the record certain information requested by the Tribunal during the hearings.
Letter	11/8/91	Joint Sports	Letter from Robert Garrett explaining question of error in Sports Exhibit 36.
Letter	11/8/91	PBS	Letter from Tom Olson, providing additional information requested by the Tribunal.
Letter	11/8/91	Music Claimants	Letter from ASCAP, BMI & SESAC in response to letter of October 24 from Dennis Lane concerning Allen Cooper's testimony re music videos.
ORDER	**11/19/91**	**CRT**	**Accepting additions to the direct cases, and permitting testimony rebutting confidence intervals to be heard in January.**

Rebuttal Case	*11/19/91*	*Devotional*	*Phase I Rebuttal Case of the Devotional Claimants. 11 pgs.*
Rebuttal Case	*11/19/91*	*NAB*	*Phase I Rebuttal Case of NAB. 25 pgs.*
Rebuttal Case	*11/19/91*	*PBS*	*Phase I Rebuttal Case of PBS. 32 pgs.*
Rebuttal Case	*11/19/91*	*Joint Sports*	*Phase I Rebuttal Case of Joint Sports Claimants. 54 pgs.*
Rebuttal Case	*11/19/91*	*MPAA*	*Phase I Rebuttal Case of MPAA. 152 pgs.*
Motion	11/19/91	Joint Sports	Motion of the Joint Sports Claimants to Admit Exhibits into Evidence.
Letter	11/21/91	Joint Sports	Joint Sports Claimants are willing to waive further evidentiary hearings if all parties agree to do likewise.
Motion	11/21/91	Joint Sports	Joint Sports motion to strike the 1989 MPAA Study of viewing hours and all references to that Study in the record.
Letter	11/22/91	Devotional	Devotional Claimants are willing to waive further evidentiary hearings.
Letter	11/25/91	Program Suppliers	Program Suppliers does not agree with Joint Sports' letter proposing to waive rebuttal hearings, and also requests the Tribunal to extend the due date for proposed findings.
Motion	11/25/91	Program Suppliers	Program Suppliers motion to strike portions of rebuttal testimony of Joint Sports, Devotional and PBS.
Opposition	11/25/91	Program Suppliers	Program Suppliers Opposition to Joint Sports motion to strike 1989 Nielsen Study of viewing hours.

Opposition	11/25/91	Program Suppliers	Program Suppliers Opposition to Joint Sports motion to admit into evidence certain cross-examination exhibits.
Opposition	11/26/91	PBS	PBS' Opposition to motion filed by Program Suppliers on Nov. 25, requesting the Tribunal strike page 2 of the rebuttal testimony of Nat Katzman.
Letter	11/26/91	NAB	NAB supports proposal of Joint Sports claimants to waive rebuttal hearings.
Comments	11/26/91	Devo-tional	Comments of Devotional Claimants in support of Joint Sports Claimants' Motion to Strike.
Opposition	11/26/91	Joint Sports	Joint Sports' Opposition to Program Suppliers' Motion to Strike.
Reply	11/27/91	Joint Sports	Joint Sports' Reply to Opposition to admit exhibits into evidence.
Motion	11/27/91	NAB	Motion of NAB to admit cross-examination exhibits into evidence.
Reply	11/27/91	Program Suppliers	Program Suppliers' Reply in Support of Motion to Strike.
ORDER	**11/27/91**	**CRT**	**Schedule for rebuttal hearings.**
ORDER	**11/27/91**	**CRT**	**Rulings on Motions filed by the parties prior to the hearing of the rebuttal cases..**
Letter	11/2/91	Devo-tionals	Notifying that their witness, Craig Sherwood, will be unable to appear for tomorrow's hearing. Devotionals are withdrawing his rebuttal testimony.

ORAL HEARING TRANSCRIPT	12/3/91	PBS	Witness: Dr. Nat Katzman Exhibits submitted: Prog. Supp. - 1RX, 2RX, 3RX, 4RX PBS - NK-3, NK-4
ORAL HEARING TRANSCRIPT	12/4/91	PBS	Witness: Prof. Robert A.Peterson Exhibits submitted: NAB - Exhibit 52RX
ORAL HEARING TRANSCRIPT	12/5/91	NAB	Witnesses: Lea Thompson & Richard Ducey Exhibits submitted: Prog. Supp. - 5RX, 6RX, 7RX
ORAL HEARING TRANSCRIPT	12/9/91	Joint Sports	Witnesses: Dorothy Stein & William Rubens Exhibits submitted: Prog. Supp. - 8RX, 9RX
ORAL HEARING TRANSCRIPT	12/10/91	Joint Sports	Witness: Dr. Peter H. Lemieux Exhibits submitted: PTV - 1RX Prog. Supp. - 10RX, 12RX, 13RX
ORAL HEARING TRANSCRIPT	12/11/91	Program Suppliers	Witness: Dr. Stanley Besen Exhibits submitted: None
ORAL HEARING TRANSCRIPT	12/12/91	Program Suppliers	Witness: John Woodbury Exhibits submitted: None
ORAL HEARING TRANSCRIPT	12/13/91	Program Suppliers	Witnesses: Dr. Martin Frankel & Marsha Kessler Exhibits submitted: Prog. Supp. - MF-1R

ORAL HEARING TRANSCRIPT	**12/16**	**Program Suppliers**	**Witness: Alan Rubin** **Exhibits submitted: Joint Sports - 38RX**
Stipulation	12/16/91	Joint Sports & PBS	Joint Sports & PBS arrive at a stipulation with regard to certain data referred to in Prof. Peterson's testimony.
ORAL HEARING TRANSCRIPT	**12/17/91**	**Program Suppliers**	**Witness: Allen Cooper** **Exhibits submitted: None**
Motion	12/19/91	Devo-tionals	Devotional Claimants request Tribunal to admit into evidence Devo. Exhibits No. 15X and 16X.
Letter	12/20/91	Program Suppliers	Letter from Dennis Lane enclosing letter from Mr. Lindstrom which contains standard errors and relative errors (confidence intervals) for the viewing results of 1989 Nielsen Special Study.
Letter	1/6/92	NAB	Submits declarations for each witness who appeared on its behalf in the direct phase of the 1989 Phase I distribution proceeding.
ORDER	**1/7/92**	**CRT**	**Notifying parties that Paul Lindstrom will testify on January 14, 1992, completing the Phase I hearings.**
ORDER	**1/7/92**	**CRT**	**Orders that the unopposed motion of the Devotional Claimants to admit Exhibits 15X and 16X into evidence is granted.**
Letter	1/7/92	Program Suppliers	Letter submitting explanations of numbers contained in Mr. Lindstrom's 12/20/91 letter which contained the standard errors and relative errors in Nielsen Special Study.

ORAL HEARING TRANSCRIPT	**1/14/92**	**Program Suppliers**	**Witness: Paul Lindstrom (Last witness in direct case)** **Exhibits submitted:** **Joint Sports - 50RX, 51RX, 52RX, 53RX** **Prog.Supp. -P1-1RX**
Letter	1/15/92	NAB	Encloses a list of corrections to the transcripts of the hearing of its witnesses and the opening statement preceding NAB's direct testimony.
Motion	1/17/92	Joint Sports	Requests CRT to admit into evidence the attached "Affidavit of William S. Rubens", which addresses the issues raised by the belated submission of standard error estimates for the MPAA study.
Motion	1/22/92	Program Suppliers	Program Suppliers' response to JSC Motion to admit Rubens' affidavit into evidence. Requests this response be included in the record as a condition for acceptance of the Rubens Affidavit.
Letter	1/22/92	PBS	Encloses a set of corrections to the direct and rebuttal testimony of Public Television.
Letter	1/22/92	Devotionals	Motion to correct the transcripts of Devotional's Phase I hearings.
ORDER	**1/22/92**	**CRT**	**Order (1) accepting pleadings by NAB, PBS & Devotionals on corrections to transcripts, (2) accepting into the record filings by Joint Sports & Program Suppliers regarding William Rubens' affidavit, and (3) closing the record of Phase I of the 1989 Cable Royalty Distribution Proceeding.**

Letter	1/23/92	NAB	NAB's response to MPAA's "Response To Motion To Admit Rubens Affidavit Into Evidence." Does not object to evidence being admitted, but asserts MPAA makes certain erroneous statements.
ORDER	**1/23/92**	**CRT**	**CRT reopens record to admit NAB's comments of 1/23/92, and again closes the record.**
Letter	1/24/92	Devo-tionals	Notifies all parties of change of address and phone number of Gammon & Grange, counsel for In Touch Ministries, Coral Ridge Ministries Media Outreach Division, and Oral Roberts Evangelistic Assoc.
Proposed Findings	*1/24/92*	*Program Suppliers*	*Submits Proposed Findings of Fact and Conclusions of Law. (Phase I). 140 Pages*
Proposed Findings	*1/24/92*	*Joint Sports*	*Submits Proposed Findings of Fact and Conclusions of Law. (Phase I). 123 Pages*
Proposed Findings	*1/24/92*	*PBS*	*Submits Proposed Findings of Fact and Conclusions of Law. (Phase I). 93 Pages*
Proposed Findings	*1/24/92*	*NAB*	*Submits Proposed Findings of Fact and Conclusions of Law. (Phase I). 65 Pages*
Proposed Findings	*1/24/92*	*Devo-tionals*	*Submits Proposed Findings of Fact and Conclusions of Law. (Phase I). 53 Pages*
ORDER	**1/30/92**	**CRT**	**CRT on its own motion, strikes footnote 2 on page 2 of the Proposed Findings of Fact and Conclusions of Law of the Public Television Claimants.**
Verified Testimony	1/30/92	Joint Sports	Encloses verified copies of the testimony submitted in the Direct Case of the Joint Sports Claimants.

Reply Findings	*2/3/92*	*Program Suppliers*	*Submits Reply Findings of Fact and Conclusions of Law. (Phase I). 61 Pages*
Reply Findings	*2/3/92*	*Joint Sports*	*Submits Reply Findings of Fact and Conclusions of Law. (Phase I). 57 Pages*
Reply Findings	*2/3/92*	*PBS*	*Submits Reply Findings of Fact and Conclusions of Law. (Phase I). 25 Pages*
Reply Findings	*2/3/92*	*NAB*	*Submits Reply Findings of Fact and Conclusions of Law. (Phase I). 31 Pages*
Reply Findings	*2/3/92*	*Devotionals*	*Submits Reply Findings of Fact and Conclusions of Law. (Phase I). 30 Pages*
Settlement	2/4/92	NAB	NAB has reached agreements in principle with other claimants in Program Suppliers and Devotional categories, which would resolve all remaining Phase II disputes.
FED. REG. NOTICE	2/11/92	CRT	Sunshine Act Meeting set for February 18, 1992 for the Adjudication of the 1989 Cable Distribution Proceeding.
Letter	2/24/92	Program Suppliers	Letter from Dennis Lane stating that Program Suppliers have resolved all Phase II differences with Multimedia and Home Shopping Network, as well as with NAB. No Phase II hearing will be necessary.
Joint Statement	2/28/92	NAB MPAA Multimedia	Joint Statement Regarding Distribution of Program Supplier Royalties on behalf of all parties asserting Phase II claims to 1989 Program Supplier royalty award.
Statement	3/5/92	Devotionals	Statement for the Record of Devotional Claimants Regarding Resolution of Phase II Controversy.

FINAL DETERMINATION	*4/20/92*	*CRT*	*Final Determination of 1989 Cable Royalty Distribution Proceeding. 82 Pages*
FED. REG. NOTICE	**4/27/92**	**CRT**	**Publication of Final Determination of 1989 Cable Royalty Distribution Proceeding.**
Motion	5/1/92	Devo-tionals	Devotional's Motion to Distribute the remaining 30% of the 1989 cable fund.
Comments	5/5/92	PBS	PBS supports motion by Devotionals for complete distribution of 1989 cable fund.
Comments	5/8/92	Joint Sports	Joint Sports supports motion by Devotionals for complete distribution of 1989 cable fund.
Comments	5/8/92	Program Suppliers	Program Suppliers supports motion by Devotionals for complete distribution of 1989 cable fund.
Reply Comments	5/12/92	Devo-tionals	Reply of Devotional Claimants to Program Suppliers' Response.
Comments	5/12/92	PBS	PBS' further comments in agreement with Program Suppliers with condition of returning any overpayment to proper party.
Comments	5/12/92	Joint Sports	Joint Sports' further comments on reimbursement of any overpayment.
Letter	5/12/92	NAB	Letter from NAB agreeing to reimburse any overpayment.

ORDER	5/13/92	CRT	CRT orders the distribution of the remaining 30% with the condition in the event of appeal and the percentages change, overpayment plus interest will be reimbursed, and denying Devotional's motion to reimburse by means of a reduction from funds from another year.
Letter	5/19/92	Multi-media	Letter from Arnold Lutzker agreeing to full distribution with agreement to reimburse any overpayment.

1991 SATELLITE CARRIER ROYALTY RATE ADJUSTMENT

DOCKET STATEMENT
91-3-SCRA

This proceeding began in May 1991 and continued through June 1992.

SUMMARY OF ACTIVITY

Category		Number of Pages
Post-Hearing Brief		*60*
Direct Cases	*(Review only)*	*784*
Oral Hearing Transcripts	*(Review only)*	*623*
Panel's Final Report		*36*
Petitions and Reply Petitions to Overturn Panel's Report		*203*
CRT Final Determination		*10*

Actual number of pages of briefs for each category is indicated throughout docket, shown in italics.

This docket does not include the Arbitration Panel's activity or oral hearing.

FILING	DATE	PARTY	SUBJECT
Motion	05/09/91	Copyright Owners	Request the Tribunal to publish a notice of intent to participate
FR NOTICE	05/20/91	CRT	Notice of Intent to Participate
Letter	06/03/91	Cole, Raywid & Braverman	Acknowledges this law firm as agents for Superstar Connection
Notice	06/05/91	Sidley & Austin	Notice of intent to participate in proceeding. Acknowledges this law firm as agents for Netlink USA.
Notice	06/06/91	PRIMESTAR Partners	Notice of intent to participate
Notice	06/10/91	Eastern Microwave	Notice of intent to participate. Designates SBCA as common agent.

Notice	06/12/91	National Rural Telecommunications Cooperative (NRTC)	Notice of intent to participate
Notice	6/17/91	Copyright Owners	Notice of intent to participate
Notice	6/17/91	ABC, NBC, CBS	Notice of intent to participate
Notice	6/18/91	PrimeTime 24	Notice of intent to participate
Letter	6/20/91	SBCA	Informing the CRT that the SBCA will act as an agents for several satellite carriers
FR Notice	7/01/91	CRT	Notice of initation of voluntary negotiation proceedings and listing of parties that filed an intent to participate in such proceedings.
Letter	7/2/91	White & Case	Informing the CRT that SESAC was omitted from the list of Copyright Owners on the FR Notice of July 1 and requesting that the CRT amend the service list to include Bernard Korman.
Sunshine Act/Notice	10/02/91	CRT	Calling for a pre-arbitration conference to discuss development of a list of qualified arbitrators & their payment.
Comments	11/15/91	Copyright Owners	Comments regarding qualifications of Arbitrators and Costs of Arbitration.
Notice	11/18/91	Satellite Carriers	Notice recommending arbitration procedures begin
Letter	11/18/91	Distributors	Informing CRT that Satellite Carriers and copyright owners are not negotiating with the Satellite Distributors.

Reply	11/19/91	Satellite Carriers	Reply to Copyright Owners' comments regarding qualifications and payments of arbitrators
FR Notice	11/20/91	CRT	Notice that the CRT has received comments from the Copyright Owners, Satellite Carriers and Distributors. Also concerning the payment of pre-abritations cost.
Letter	12/18/91	American Arbitration Association (AAA)	List of available arbitrators and their qualifications
FR Notice	12/31/91	CRT	List of available arbitrators
Filing	01/10/92	Copyright Owners, Satellite Carriers and Distributors	Selection of Arbitrators
Letter	01/10/92	CRT	Notice to the selected arbitrators that they must choose a chairman of the arbitration panel by January 21, 1991
Letter	01/13/92	David Horowitz	Mr. Horowitz' financial statement
Letter	01/14/92	CRT	Forwarding Mr. Horowitz' financial statement to all interested parties
Order	01/16/92	CRT	Notice that the parties may communicate by letter with the CRT their choice for chairperson of the Arbitration Panel
Letter	01/16/92	Satellite Carriers	Notifying CRT of their choice for chairperson of the Arbitration Panel
Letter	01/17/92	Copyright Owners	Notifying CRT of their choice for chairperson of the Arbitration Panel

Order	01/17/92	CRT	Notice that the chairperson of the Arbitration Panel has been choosen and that a pre-hearing conference will be held
Letter	01/22/92	CRT	Letter to Chairwoman of the arbitration panel allowing the panel to use the CRT hearing room
Letter	01/31/92	Satellite Distributors	Letter to Virginia Carson notifying the Arbitration Panel that NRTC is withdrawing from participation in this proceeding
Report	*03/02/92*	*Arbitration Panel*	*Final report of the Arbitration panel 36 Pages*
Order	03/04/92	CRT	Notice that all motions pertaining to the Arbitration Panel Report must be filed with the CRT by 3/18/92 and reply petitions filed by 3/27/92
Letter	03/10/92	Virginia Carson	Original signature page of the final report of the Arbitration panel
Petition	*03/18/92*	*Copyright Owners, Satellite Carriers*	*Petitions for the CRT to overturn or modify the Arbitration Panel's decision 203 Pages*
Letter	03/20/92	Virginia Carson	CC of a letter to Dennis Lane and Paul Glist requesting that they send extra copies of their written record to the CRT
Oral Hearing Transcripts	*03/20/92*	*Steven J. Horvits*	*Received at CRT Transcripts from the Arbitration Panel Hearing, Satellite Carriers Direct Testimony, and Post-Hearing Brief. (ORIGINAL ONLY). 623 Pages*
Filing	03/23/92	Copyright Owners	Submitted page 33 of the Copyright Owners Brief of 3/18/92

Direct Case	*03/23/92*	*Copyright Owners*	*Received at CRT - Copyright Owners submitting their Direct Case and Informational Filing (ORIGINAL ONLY)*
Letter	03/24/92	Steven J. Horvitz	Letter identifying the service list which Mr. Horvitz used to forward copies of the Arbitration Panel Report
Reply	03/27/92	Copyright Owners, Satellite Carriers	Reply petitions to the 3/18 filing to overturn or modify the Arbitration Panel's Decision
Response	04/01/92	Satellite Carriers	Further response to the petition of the Copyright Owners
Response	04/13/92	Copyright Owners	Further response to the further response of the Satellite Carrier
FR Notice	04/14/92	CRT	Sunshine Act Notice of a closed meeting
Order	04/14/92	CRT	Order giving notice that the Sunshine Act meeting will take place less than seven days prior to the publication of the Notice in the Federal Register
Fax	04/22/92	Arbitration Panel	Letter clarifying carriage of broadcast signals in their Final Report
FR Notice	*05/01/92*	*CRT*	*Final Determination accepting the Arbitration Panel's Final Report 10 Pages*
Letter	05/05/92	CRT	Notifying the participants that the Federal Register made a mistake in the printing of the Final Determination

FR Notice	05/18/92	Federal Register	Correction of mistake in the 1991 Satellite Carrier Rate Adjustment Final Determination
Letter	06/03/92	CRT	Notifying the participants of the Federal Register correction notice. Copy of notice sent also.

Date: June 3, 1992

1992 NONCOMMERCIAL BROADCASTING RATE ADJUSTMENT PROCEEDING

CRT DOCKET No. 92-2-PBRA

This proceeding began May 1992 and continued through December 1992.

SUMMARY OF ACTIVITY

Category	Number of Pages
Direct Cases	*879*
Proposed Findings	*71*
Final Determination	*22*

Actual number of pages of briefs for each category is indicated throughout docket, shown in italics.

FILING	DATE	PARTY	SUBJECT/DESCRIPTION
Letter	5/1/92	CRT	**Letter from Chairman Daub to the parties who participated in the 1978, 1982 and/or the 1987 Noncommercial Broadcasting Rate Adjustment Proceeding, asking for any progress on settlement by June 19, 1992.**
Letter	6/10/92	PBS	PBS and Harry Fox Agency, Inc. (HFA) have begun preliminary discussions with the hope of negotiating a mutually satisfactory agreement.
Letter	6/10/92	PBS	PBS and ASCAP have begun preliminary discussions with the hope of negotiating a mutually satisfactory agreement.
Letter	6/15/92	PBS & NPR	Public Broadcasting Service and NPR have begun preliminary discussions with BMI with the hope of negotiating a mutually satisfactory agreement.
Letter	6/18/92	ASCAP	ASCAP & ACE have made contacts with the hope of negotiating a mutually satisfactory agreement.
Letter	6/18/92	ASCAP	ASCAP, NFCB and NRB have made contacts with the hope of negotiating a mutually satisfactory agreement.

Letter	6/19/92	BMI	BMI has made preliminary contacts with organizations representing the noncommercial broadcasters not affiliated with PBS and NPR for the purpose of conducting settlement negotiations.
NOTICE	6/24/92	CRT	Notice of commencement of public broadcasting rate proceedings on June 30, 1992.
Letter	6/23/92	SESAC	SESAC, the NFCB and the NRB have discussed the 1992 proceedings and are hopeful that a negotiated agreement can be reached.
FED REG	6/30/92	CRT	Notice of commencement of public broadcasting rate proceedings on June 30, 1992.
Letter	8/6/92	PBS & NPR	Requests postponement of the Sept. 21, 1992 date for filing of written direct cases until October 19, 1992.
Letter	8/7/92	Harry Fox Agency & Natl. Music Pub. Assn.	Notice of Intent to Participate in the 1992 PBS Rate Adjustment Proceeding.
Notice	8/13/92	CRT	Notice extending the date for submission of direct cases until October 19, 1992, as requested by NPR & PBS.
Notice	8/13/92	SESAC	Notice of intention to appear and participate in 1992 PBS rate adjustment proceedings.
Notice	8/14/92	PBS & NPR	Notice of appearance in the 1992 PBS rate adjustment proceedings.
Notice	8/14/92	ASCAP	Notice of appearance in the 1992 PBS rate adjustment proceedings.
Notice	8/14/92	BMI	Notice of appearance and intent to participate in the 1992 PBS rate adjustment proceedings.

Notice	8/14/92	NRBNRMLC	Notice of intention to appear and participate in the 1992 PBS rate adjustment proceedings.
Notice	8/14/92	NFCB	Notice of appearance in the 1992 PBS rate adjustment proceedings.
Notice	8/12/92	Graphic Artists Guild & Amer. Soc. of Mag.Photo.	Wants to submit written testimony in lieu of appearance at proceeding, and if this is not acceptable, consider this a notice of appearance.
FED.REG.	**8/18/92**	**CRT**	**Federal Register Notice extending the deadline for submission of direct cases from September 21, 1992 to October 19, 1992.**
Notice	8/21/92	Harry Fox Agency	Notice of intention to participate in the 1992 PBS rate adjustment proceedings.
ORDER	**9/15/92**	**CRT**	**Orders any objections to Tad Crawford's request to dispose of the rate issue based solely on the basis of written testimony, by October 22.**
Direct Case	***10/19/92***	***BMI***	***BMI's voluntary agreement with PBS and NPR. 48 Pgs.***
Direct Case	***10/19/92***	***BMI***	***BMI's joint proposal with National Religious Broadcasters and National Federation of Community Broadcasting. 10 Pgs.***
Direct Case	***10/19/92***	***Harry Fox Agency & Natl. Music Pub. Assn.***	***HFA's voluntary agreement with PBS and NPR. 9 Pgs.***

Direct Case	*10/19/92*	*Coalition of Visual Artists*	*Paper disposition of 3 issues: 1) to abolish compulsory license; 2) to raise fees and to increase rates to reflect COLA. 3) to request the right to submit post-hearing statement 12 Pgs.*
Direct Case	*10/19/92*	*ASCAP & ACE*	*Joint Proposal for compulsory license fees. 9 Pgs.*
Direct Case	*10/19/92*	*ASCAP, NFCB & NRB*	*Joint Proposal for compulsory license fees. 9 Pgs.*
Direct Case	*10/19/92*	*SESAC, NRB, & NFCB*	*Joint Proposal for compulsory license fees. 6 Pgs.*
Direct Case	*10/19/92*	*PBS & NPR*	*Propose one flat rate 15% over average of prior rates. 776 Pgs.*
Correction	10/19/92	PBS	Submits exhibits which were inadvertently omitted from the direct case.
Correction	10/23/92	NPR	Submits exhibits which were inadvertently omitted from the direct case.
ORDER	**10/30/92**	**CRT**	**Summarizing direct cases received on October 22, and setting date of November 9 for filing of Proposed Findings and Conclusions.**
Proposed Findings	*11/9/92*	*PBS & NPR*	*Submits Proposed Rates and Supporting Proposed Findings of Fact and Conclusions of Law of PBS and NPR. 60 Pgs.*
Proposed Findings	*11/9/92*	*BMI*	*Submits Proposed Findings of Fact and Conclusions of Law. 6 Pgs.*
Letter	*11/9/92*	*ASCAP*	*Submits letter in lieu of submission of Proposed Findings of Fact and Conclusions of Law, advising that ASCAP has reached agreement with PBS & NPR. 2 Pgs.*

Letter	*11/16/92*	*ASCAP*	*Submits letter in lieu of submission of Reply Findings of Fact and Conclusions of Law, clarifying that the ASCAP-Public Broadcasting agreement specifies a license fee for a 5-year term, and does not contain annual license fees. 3 Pgs.*
NOTICE	**11/19/92**	**CRT**	**Notice of Proposed Rulemaking. Requests comments on proposed regulations which set forth the terms and rates for use by public broadcasting entities for the five-year period of 1993-1997. Comments are due Dec. 4, 1992.**
NOTICE	**11/24/92**	**CRT**	**Sunshine Act Meeting to be held on December 16 at 10:30 for formal rule making - adjustment of the public broadcasting rates and terms.**
FED. REG.	**11/25/92**	**CRT**	**Notice of Proposed Rulemaking in Adjustment of the 1992 Public Broadcasting Royalty Rates and Terms.**
FED. REG.	**11/27/92**	**CRT**	**Sunshine Act Meeting to be held on December 16 at 10:30 a.m. for formal rule making - adjustment of the public broadcasting rates and terms.**
Comments	12/4/92	ASCAP	ASCAP submits comments on the Notice of Proposed Rulemaking. (Fed. Reg. 11/25/92).
Comments	12/4/92	BMI	BMI submits comments in support of the Notice of Proposed Rulemkaing. (Fed. Reg. 11/25/92).
CORRECTION	**12/10/92**	**FED REG**	**Published corrections of typos made by the Federal Register in the Notice of Proposed Rulemaking.**

FINAL RULE	*12/16/92*	*CRT*	*Sent to Fed. Reg. Notice of Final Determination in the 1992 Adjustment of the Public Broadcasting Royalty Rates and Terms. 22 Pages*
FED REG	12/22/92	CRT	Published Final Determination in the 1992 Adjustment of the Public Broadcasting Royalty Rates and Terms.
CORRECTION	2/4/93	FED REG	Corrections made to the final rule published on December 22, 1993.
CORRECTION	2/17/93	FED REG	Published corrections of typos made by the Federal Register in the final rule.

APPENDIX 4.—LETTER FROM BRUCE D. GOODMAN, COMMISSIONER, COPYRIGHT ROYALTY TRIBUNAL, TO HON. WILLIAM J. HUGHES, CHAIRMAN, MARCH 29, 1993

The Honorable William J. Hughes
Chairman
Subcommittee on Intellectual
Property & Judicial Administration
207 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Hughes:

On March 3, 1993, I testified before the Subcommittee on Intellectual Property & Judicial Administration regarding H.R. 897, the "Copyright Reform Act of 1993". During that hearing, Cindy Daub, Chairman of the Copyright Royalty Tribunal, made certain allegations of impropriety against Commissioner Damich and me. Because those allegations were unrelated to the hearing, I chose not to respond to them, but to address only those issues relevant to H.R. 897.

In my opinion, the allegations were raised solely to sidetrack the hearings and to intimidate Commissioner Damich and me from: (i) reinstating a legislative rule which would end Ms. Daub's term as Chairman; and (ii) supporting H.R. 897, which would abolish the CRT and prematurely terminate Ms. Daub's employment.

The allegations are frivolous and completely lacking in merit. Therefore, I would like this letter specifically denying and rebutting those allegations to be included in the record. The following will set forth the facts regarding the claims made against me by Ms. Daub:

1. FYI NETWORK, INC. Ms. Daub alleged that I am conducting FYI's "business for profit within the CRT's offices".

The simple and straightforward answer is that I am not conducting FYI's business because there is no FYI business to conduct. In 1991, I developed an idea for a cable network and tried to get it started. FYI never got off the ground - it never had any employees and never had any revenues. When I joined the CRT, my partner at FYI started trying to find a company which might be interested in the idea of FYI. He continues to do so although, since I joined the CRT, I have never been present at any of the meetings he attends or involved in any of the

telephone calls. On infrequent occasion, however, I have received calls from friends with whom I spoke about FYI prior to joining the CRT and who suggest that they may have friends interested in funding FYI. It is my specific understanding that such efforts do not constitute inappropriate activity.

Ms. Daub never mentioned FYI to me. If she had asked me, I would have explained that it was not a going concern and I was not conducting business.

2. OFFICE. Ms. Daub alleges that there is a conflict because my office, prior to joining the CRT - and, in fact, well before I considered an appointment to the CRT - was located in the same area as a law firm which now practices before the CRT. I do not understand why a conflict results from that coincidence. To the extent that I have or had a personal relationship with any of the members of that firm, that friendship will not influence any decision I render at the CRT.

Ms. Daub never mentioned this purported conflict to me. If she had brought it to my attention. I would have assured her that I would not permit any friendship to have any influence on my decisionmaking at the CRT.

3. ORDERING PERSONAL ITEMS. Ms. Daub alleges that Commissioner Damich and I improperly ordered personal items such as computers, modems, speakerphones, and dictaphone equipment.

Again, I fail to see the improper nature of ordering equipment which is designed to perform CRT work. We ordered the computers because we stated that we intended to use them to write our opinions (which we have done); Commissioner Damich ordered the modem in order to do computerized legal research because our library is inadequate; we ordered the speakerphones because it would facilitate "telephone meetings" with distant parties; and we ordered dictaphone equipment in order to give instructions or dictation to our assistants, especially when we were working hours when they were absent.

Ms. Daub approved and ordered the computers and the modem and never mentioned the other equipment until she brought her allegations in the hearing.

4. MISUSE OF GOVERNMENT FUNDS. Ms. Daub alleges that we used government funds for our swearing-in ceremony. Although I had been advised previously that the CRT traditionally paid for a ceremony to introduce the new commissioners, we paid for the refreshments and even bought our own stationery to invite interested parties to a ceremony at the CRT.

Ms. Daub never mentioned this purported conflict to me, but, in fact, helped us plan the event at the CRT.

5. SIGNING FINANCIAL DISCLOSURE FORMS. Ms. Daub alleges that we illegally signed each others financial disclosure forms. In fact, we signed each others forms because: (i) the general counsel had resigned; (ii) there were no other lawyers at the CRT; and (iii) the CRT did not have an ethics officer. Moreover, we specifically informed the OGE in writing of our action in approving the forms and specifically discussed it with the OGE ethics officer.

Ms. Daub never mentioned this purported conflict to me. If she had brought it to my attention, I would have given her a copy of my letter to the OGE which stated my reasons for signing Commissioner Damich's form.

Accordingly and based on the facts set forth above, there is no merit to the allegations raised by Ms. Daub in the March 3, 1993 hearing before the Subcommittee re H.R. 897.

Very truly yours,

Bruce D. Goodman

APPENDIX 5.—LETTER FROM EDWARD J. DAMICH, COMMISSIONER, COPYRIGHT ROYALTY TRIBUNAL (WITH ATTACHMENTS), TO HON. WILLIAM J. HUGHES, CHAIRMAN, MARCH 30, 1993

The Honorable Congressman Hughes
341 CHOB
Washington, DC 20515-3002

Dear Congressman Hughes:

As you know, on March 3, 1993, at a hearing of the Subcommittee on Intellectual Property on the Copyright Reform Act of 1993 (H.R. 897), Ms. Cindy Daub, Chairman of the Copyright Royalty Tribunal, made specific allegations of misconduct against me. I was completely surprised by these allegations, and I did not think it appropriate to respond at the time, since I had been invited to testify on the bill. None of the Congressmen present at the hearing questioned me about these allegations. I categorically deny Commissioner Daub's accusations, and I request that this letter and attachments with the following refutation of her accusations be included in the record.

I. Purchase of Computer Equipment

Commissioner Daub has asserted that I, in conjunction with Commissioner Bruce D. Goodman, "demanded" that she "sign off on the purchase of expensive personal items which the agency did not need." She then identified these items as "personal computers and printers with additional parts, such as modems, that were compatible with home systems, for their private offices, requests for speaker phones and dictaphone equipment."

In fact, I requested that the Tribunal provide standard computer equipment for use in my Tribunal office for Tribunal business. When I arrived at the Tribunal, there were no computers provided in the offices of the Commissioners. I have been using a personal computer in my profession for approximately eight years. In my former place of occupation, George Mason University School of Law, each professor is automatically provided with a personal computer. It is the norm in Washington, D.C. for lawyers to work on personal computers, and I suspect that it is the same for lawyers in the federal government as well. I have used my personal computer in my office at the Tribunal to write opinions, official

letters, and other documents such as this one. The personal computer that I use in my office at the Tribunal cannot be reasonably construed to be a "personal item" nor can it be reasonably construed to be an item "the agency did not need."

The equipment consists of a central operating unit, a monitor, a keyboard, a printer (not laser), a modem, and ports for both large and small diskettes. None of this equipment can be reasonably construed to be extravagant. Commissioner Daub betrays her ignorance of computers by stating that modems are additional parts of printers. Despite her ignorance, she did not shrink from making the judgment that these components were not needed and were somehow "personal."

The modem on my office computer permits access to the Lexis/Nexis legal electronic data base. Since the Tribunal lacks a law library, this feature has proved invaluable for research. I have done research on Tribunal issues not only for myself, but also for Linda Bocchi, our General Counsel. I have made it available to our legal interns for Tribunal business as well. No one could reasonably construe access to a legal data base in the absence of other access to legal materials as unnecessary. Indeed, Commissioner Daub has approved agency budget requests for $10,000 for FY1994 to provide access to legal electronic data bases for the General Counsel. This will, of course, necessitate the purchase of a modem for the GC.

Of course, since my office computer is an IBM, it is compatible with the IBM computer that I have at home. I have worked on Tribunal business at home on the weekends and at night. The fact that my office computer has an extra port for large, floppy diskettes allows me to continue to work on documents at home. No one could reasonably construe ports for both size diskettes as an extravagance.

I believe that it is self-evident that one who is functioning on the Executive Level pay scale would find speakerphones and dictaphone equipment to be ordinary and necessary business expenses. I used the dictaphone extensively for short correspondence. We have never received speakerphones because Commissioner Daub illegally countermanded their purchase.

Of course, as chairman, Commissioner Daub signed off on the purchase of the equipment. Commissioner Daub suggests that she was compelled to purchase computers against her will, yet, as I have just stated, she countermanded the purchase of speakerphones. I am still waiting for file cabinets that I requested in September. As you know, Commissioner Daub is fully capable of defying the majority of the Tribunal when it comes to duly-enacted rule changes. Clearly, she was capable of protecting the Tribunal against the needless expense of computers if she felt as strongly then as she does now about unnecessary expenses. Although she disagreed with our judgment about the computers, she did not at the time manifest any shock or horror about purchasing them. In fact,

she demanded that funds be set aside for computer equipment for herself, if we were going to receive them.

Commissioner Daub states that "the agency had no money to purchase" computer equipment. This is simply not true. As is clear from the attached memo of Barbara Gray, the Staff Administrator, dated September 3, 1992, the Tribunal anticipated a budget surplus of between $16,000 and $27,000. From this surplus, the purchase of office equipment was anticipated, as stated on page two of the memo. In fact, we Commissioners met and decided to divide the surplus money between employee bonuses and office equipment. All of the employees received substantial bonuses *and* necessary office equipment was purchased. The hiring date of the General Counsel was delayed *one week* to make it consonant with the beginning of the new fiscal year (October 1, 1992), and the subsequent savings were added to the surplus in general, not to any individual item. This, too, was anticipated, as is clear from page two of the memo. Note that neither Commissioner Goodman nor I had joined the Tribunal when this memo was written.

It is not true that Commissioner Goodman and I forced Commissioner Daub to "make cuts from the agency employee's compensation" to purchase office equipment. The Commissioners decided on employee *bonuses*, not ordinary compensation. It was never suggested by any Commissioner, including Commissioner Daub, that all available surplus funds be used for employee bonuses. The amount of employee bonuses was arrived at by approximating the step increases that the employees had not received due to budget cuts, a method that Commissioner Daub also agreed to. That portion of the FY1992 surplus remaining after the payment of employee bonuses and the purchase of office equipment was returned to the U.S. Treasury.

II. Swearing-In Ceremony

Commissioner Daub labels the Swearing-In Ceremony "personal," and repeats her knowingly false statement that there was a "shortage of funds." There was, of course, a *surplus*, as just indicated. The Swearing-In Ceremony took place in the Tribunal offices; it was a joint ceremony; the overwhelming number of guests were representatives of the parties who appear before the Tribunal or were persons interested in its activities; and the ceremony was attended by Commissioner Daub and by the Tribunal's General Counsel, Linda Bocchi, both of whom were introduced to the assembled guests. Indeed, Commissioner Daub helped in planning the event. In essence, it was both an inauguration and a reception to allow interested persons to meet the new Commissioners.

In fact, no agency funds were used to purchase the refreshments. In fact, the stationery used for invitations was purchased by Commissioner Goodman and me.

The Swearing-In ceremony was an *official, Tribunal* event, not a personal event. There is nothing in the House Ethics Manual

about such receptions, and I had been advised that it was appropriate to use agency funds for a reception to introduce the new Commissioners to interested persons. (At the time of the planning of the event, there was no General Counsel at the Tribunal.) No objection was raised by Linda Bocchi, the new General Counsel, when she came on board.

Since arriving at the Tribunal, I have scrupulously separated postage for personal mail from postage for official Tribunal business.

III. Financial Disclosure Forms

It is true that I signed Commissioner Goodman's financial disclosure form and that I forwarded it to the Office of Government Ethics (OGE), but this was not improper under the circumstances. At the time, there was no General Counsel of the Tribunal, and thus no Ethics Officer. The only alternative was a review by one of the Commissioners. Commissioner Daub is not a lawyer, let alone an expert on government ethics. I was not friends with Commissioner Goodman before we joined the Tribunal. Nothing in Commissioner Goodman's financial disclosure form had changed since it had been reviewed by the Tribunal's former General Counsel, earlier in the year. Therefore, it made sense to me that I was the logical choice at the Tribunal to review his form.

I revealed that I had signed Commissioner Goodman's financial disclosure form in the transmittal letter to the OGE. (See attachment.) The OGE subsequently reviewed and approved his form. Thus, I was the most qualified person at the agency to review Commissioner Goodman's financial disclosure form, and I was an independent reviewer. Furthermore, it was reviewed by the OGE, an indisputably independent and competent reviewer.

V. Conclusion

From the above, it is clear that Commissioner Daub has misrepresented and distorted the facts to create the impression of wrongdoing, and, in the case of the shortage of funds claim, her statement is simply false.

Before the date of the hearing, Commissioner Daub never accused me of misconduct nor, to my knowledge, did she ever make these allegations to our Ethics Officer.

I cannot help but suspect that Commissioner Daub made these allegations to discourage me from advocating the abolition of the Tribunal, which would deprive her of three more years of light work at a salary in excess of $100,000 per year. Furthermore, misconduct on the part of the majority of the Tribunal would tend to excuse her repeated, illegal defiance of majority rule in the case of duly-enacted rule changes as another instance of defending the integrity of the Tribunal. Therefore, I was relieved that, in response to your questioning, she admitted that she had also defied

majority rule before Commissioner Goodman and I joined the Tribunal.

In all of my years in professional life, I have never been accused of impropriety. Commissioner Daub's allegations caused me great pain and embarrassment, and I am grateful to you for giving me the opportunity to refute them.

Sincerely,

Edward J. Damich

Edward J. Damich
Commissioner



1825 Connecticut Avenue, N.W.
Suite 918
Washington, DC 20009
(202) 606-4400
FAX (202) 606-4407

September 14, 1992

Mr. Stephen D. Potts
Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W.
Suite 500
Washington, D.C. 20005

Re: Agency Official's Review of Commissioner Goodman's Public Financial Disclosure Report

Dear Mr. Potts:

Ordinarily, the general counsel is the designated agency ethics official/reviewing official for the Copyright Royalty Tribunal. However, as the position of general counsel is currently vacant and I am the senior (and only) attorney in the agency other than Commissioner Goodman, who is filing this Report, I have reviewed his financial form SF 278.

Having completed my review of Commissioner Bruce Goodman's financial form 278, I certify that, in my judgment, none of the financial interests of Commissioner Goodman present any conflict of interest with his appointment to the Copyright Royalty Tribunal.

Very truly yours,

Edward J. Damich

Edward J. Damich

MEMORANDUM

TO : Cindy, Mario, JC

FROM : Barbara

DATE : September 3, 1992

SUBJ : Budget Matters

Commissioners, I need to be away from the office the week of September 28th. I believe the only matters pending now is the 90 cable distribution, budget adjustment decisions, and hiring of general counsel. The due date for the 90 cable funds is September 17. Budget adjustments need to be made asap. Contracts and Logistics has warned agencies about processing requisitions and making obligations for year-of-end spending; especially waiting a week or less to meet the September 30 deadline. There are possibilities that any obligations made too close to deadline will not be processed. Also possible date for gc entering on duty. Should the gc enter on duty 9/28, I will come in that morning to process papers and/or any process any other budget matters.

FY 1992 Budget:

As of today the year-end balance is $33,687 plus (rounded off).

Projected budget adjustments ($17,760):

Make money transfer to cover current obligations (phone, maintenance etc)	5,060.00
Projected salary expenses (leave payment): JC, Mike, Jill	10,700.00
General Counsel- EOD end of Sept	2,000.00

Should projected budget adjustments occur, the Tribunal has a year-end balance of approximately $16,000; should projected salary expenses not occur; year-end balance of approximately $27,000.

Therefore, decisions need to be made on the following:

Transfer monies to cover current obligations.

Staff cash bonuses and amount. Will need to transfer monies to cover bonuses. If cash bonuses are given, need to process asap. Also, I have within-grade forms for Mike and Deidre. I need to let the Library know if the within-grades should be processed.

If there are any purchases that need to be made — furniture, equipment, supplies, etc.. These obligations also should be made asap. We unable to renew subscriptions due to expiration date on some subscriptions which expire in fy 1993.

GC - if enter 9/28 - 3 days of salary and benefits will come out of fy 1992 budget; other than that, gc could enter on duty 10/4. Beginning of fy 1993 budget.

APPENDIX 6.—LETTER FROM RALPH OMAN, REGISTER OF COPYRIGHTS, COPYRIGHT OFFICE, TO HON. WILLIAM J. HUGHES, CHAIRMAN, MARCH 29, 1993

Dear Chairman Hughes:

I would like to comment for the hearing record on H.R. 897 about the testimony of the Adobe Corporation that they spent $400,000 to obtain registration of their copyright claims in digitized representations of typefaces.

The $400,000 of course does not represent costs assessed by the Copyright Office in registration proceedings. Adobe ultimately registered several hundred works at the usual fee of $20 per registration, which probably accounts for no more that $10,000 of their expenditure. The remainder they paid to their lawyers who petitioned the Copyright Office to overturn an unfavorable ruling in a difficult, razor's-edge case. Adobe chose to spend its efforts at the administrative level rather than litigate the issue in court, either against the Copyright Office or against an alleged infringer. Presumably the costs of an administrative petition were far less than the costs of litigation. Adobe did not have to obtain registration to have access to the courts. After the first refusal to register, it had the right to go to court either under the Administrative Procedure Act or against an alleged infringer pursuant to 17 U.S.C. §411(a). Adobe elected to petition the Copyright Office for reconsideration. The Office accommodated their requests.

Our reconsideration led us to re-open the public proceeding regarding digitized typeface registration practices, and finally to modify the earlier Policy Decision. This modification allowed us to register the Adobe claims.

The issue of registration for digitized typefaces is one of the most complex, technical policy issues faced by the Copyright Office. In 1976 Congress had considered and then rejected copyright protection for typefaces. The House Judiciary Committee in its report accompanying the 1976 revision bill said explicitly: "The Committee does not regard the design of typeface ... to be a copyrightable 'pictorial, graphic, or sculptural work' within the meaning of this bill...." [1976 House Report No. 94-1476, 94th Congress, 2nd Session at 55.]

In its consideration of claims to copyright in digitized representations of typeface, the Copyright Office always tried to make its decisions consistent with the Congressional admonition that typeface designs themselves are not copyrightable. If Adobe had had a computer program with instructions other than those dictated by the shape of the letters, we would have happily registered, as we had for other companies that generate digitized typeface. But Adobe wanted a broader registration, covering all aspects of its creativity except the actual shape of the letter. To achieve its objective, Adobe chose to press proprietary claims in a highly unsettled area of copyright law. It would have had to pay a lawyer either to seek a favorable administrative ruling or to litigate the issue in court. Adobe chose to pursue a favorable administrative ruling, and was successful.

I wanted to relay this history to you so you could put their complaint in perspective.

Sincerely,

Ralph Oman
Register of Copyrights

The Honorable William J. Hughes
House of Representatives
Washington, D.C. 20515-3002

APPENDIX 7.—LETTER FROM EDWARD J. DAMICH, COMMISSIONER, COPYRIGHT ROYALTY TRIBUNAL (WITH ATTACHMENTS), TO HON. WILLIAM J. HUGHES, APRIL 22, 1993

Mr. William Patry
Assistant Counsel
Subcommittee on Intellectual Property
& Judicial Administration
CHOB 207
Washington, DC 20515-6219

Dear Bill:

Accompanying this letter you will find a report on the activities of the Copyright Royalty Tribunal since its inception in 1977. The activities are set out in year-by-year charts, and there are charts at the end that summarize them. Of particular interest are the summary charts on pages 20 and 21. I hope that these will be helpful to you in your deliberations. I will shortly be sending copies to all the other Congressmen and Senators who are on the appropriate subcommittees. If you have any comments or questions, please do not hesitate to call.

Sincerely,

Edward J. Damich

Edward J. Damich
Commissioner

EJD/jg



1825 Connecticut Avenue, N.W.
Suite 918
Washington, DC 20009
(202) 606-4400
FAX (202) 606-4407

COPYRIGHT ROYALTY TRIBUNAL PROCEEDINGS: 1977 - 1993

APRIL, 1993

70-857 O - 93 - 18

FOREWORD

This report was prepared by Tanya M. Sandros, legal intern at the Copyright Royalty Tribunal at the request of Commissioner Edward J. Damich. The charts were compiled exclusively from information found in the *Federal Register*. The purpose of this report is to give as accurate a picture as possible of the amount of time actually spent by the Commissioners in the exercise of their official duties. Therefore, some *Federal Register* entries that were mere formalities were omitted from the charts. These include notices to ascertain whether a controversy exists, notices of partial distributions, notices of Sunshine Act Meetings, and notices of proposed rulemaking. None of this ordinarily involve serious or lengthy deliberations . Other entries that could conceivably be classified as mere formalities were retained, such as declarations that a controversy exists, since they provided benchmarks for the beginning of a proceeding.

Just as the inclusion of all *Federal Register* entries would give a misleading impression of the Commissioners' workload, relying exclusively on such entries underestimates the Commissioners' workload because it does not reflect the amount of time spent in informal discussions, in reading briefs, reviewing General Counsel work product and, in the case of some Commissioners, in drafting opinions. Unfortunately, however, there is no formal record of such activities. Therefore, the reader should figure in a reasonable amount of time during the pendency of a proceeding for such activities.

Perhaps the most useful part of the report are the charts at the end that summarize Tribunal activity. The reader should bear in mind that "evidentiary hearings" means full-blown hearings where witnesses testify and are subject to cross-examination. "Formal meetings" include all oral hearings and all meetings express or implied from *Federal Register* entries. If anything, the report is over-inclusive in this respect. In 1992, for example, the "Total Formal Meetings and Evidentiary Hearing Days Per License Per Year" chart lists 7 for satellite. Turning to the 1992 chart, we see that there are 8 entries for satellite. This is because the March 1, 1992 entry is merely to acknowledge receipt of the arbitration report and, therefore, was not a meeting. On the other hand, the December 30, 1992 "final determination" was counted as a formal meeting, because it could have entailed a meeting, when, in actual fact, the final determination was agreed upon through a circulation of paper among the Commissioners and General Counsel. The actual method used, of course, was not reflected in the *Federal Register*, but it was thought better to err in exaggerating the number of meetings rather than in underestimating them.

Edward J. Damich
Commissioner
Copyright Royalty Tribunal

PURPOSE OF THE COPYRIGHT ROYALTY TRIBUNAL

HISTORY

The Copyright Act of 1976[1] created the Copyright Royalty Tribunal[2] to administer the four original statutory compulsory licenses. The Copyright Royalty Tribunal became a functional agency in November, 1977. Since the inception of the agency, Congress has expanded the duties of the agency twice. In 1988, Congress passed the Satellite Home Viewer Act[3] which created a fifth compulsory license; and more recently, the passage of the Audio Home Recording Act[4] created a sixth royalty fund for the Copyright Royalty Tribunal to administer.

FUNCTIONS

Under a compulsory license, a person may use the copyrighted work of another party without the consent of the owner of the copyright if the user pays the government set royalty rate to the appropriate fund for later distribution to parties with a valid entitlement to the royalties. Presently, the Copyright Royalty Tribunal administers the royalty fund created under the Audio Home Recording Act and the five compulsory licenses for:

1) secondary transmissions of broadcast signals by cable systems, 17 USC 111 ["CABLE"];

2) the making and the distribution of phonorecords, 17 USC 115 ["MECHANICAL"];

3) public performance of music on jukeboxes, 17 USC 116, 116A ["JUKEBOX"];

4) use of certain works in connection with public broadcasting, 17 USC 118 ["PB"];

5) secondary transmissions of broadcast signals to private home viewers by satellite, 17 USC 119 ["SATELLITE"].

Under the Copyright Act of 1976, the Copyright Royalty Tribunal has two main functions: 1) to adjust the copyright royalty rates of the compulsory licenses, and 2) to distribute the royalty fees collected under the compulsory licenses as mandated in the Copyright Act of 1976, the Satellite Home Viewer Act and the Audio Home Recording Act.

---

1 P.L. 94-553, 90 Stat. 2541.
2 17 USC Chap 8.
3 P.L. 100-667, 102 Stat. 3935.
4 P.L. 102-563, 106 Stat. 4237.

COMPULSORY LICENSE DISTRIBUTION AND RATE ADJUSTMENT SCHEDULE

. RATE ADJUSTMENT SCHEDULE

1. Noncommercial broadcasting [PB]

The Copyright Royalty Tribunal conducts a ratemaking proceeding at five year intervals. 17 USC 118(c). The next scheduled statutory ratemaking procedure shall occur between June 30 and December 31, 1997.

Additionally, the Copyright Royalty Tribunal shall make a cost of living adjustment annually to the royalty rates as follows:

a. On December 1, the Copyright Royalty Tribunal shall publish a notice of the change in the cost of living and a revised schedule of rates. The most recent Consumer Price Index published prior to December 1 provides the basis for the adjustment.

b. The adjusted schedule of rates becomes effective 30 days after publication in the Federal Register. 37 CFR § 304.10.

2. Coin operated phonorecord players [Jukebox]

On 3/22/90, parties entitled to receive royalties entered an agreement to suspend the annual compulsory license fee for a ten year period, January 1, 1990 - December 31, 1999, or until such time that the license agreement is terminated. 37 CFR § 306.3. *See also* 51 FR 27537, Aug. 1, 1986, as amended at 55 FR 28197, July 10, 1990.

3. Making and distributing phonorecords [Mechanical]

The rates are adjusted biannually to reflect changes in the Consumer Price Index according to the provisions specified at 37 CFR § 307.3(g). The next COLA adjustment is scheduled for November 1, 1993. *See* 56 FR 56158, Nov. 1, 1991.

4. Secondary transmissions by cable system [Cable]

The Copyright Royalty Tribunal conducts a ratemaking proceeding for inflation and for gross receipt limitations at five year intervals. 17 USC 804(a)(2)(A)(D). The next scheduled rate setting proceeding shall occur in 1995.

Upon petition by an appropriate party, the Copyright Royalty Tribunal may adjust the royalty rate to reflect any change in the rules and regulations of the Federal Communications Commission. 17 USC 804(a)(2)(B)(C). 37 CFR § Part 308. *See also* 47 FR 52146, Nov. 18, 1982.

5. Secondary transmissions by satellite carriers [Satellite]

The Copyright Royalty Tribunal does not have primary responsibility for setting rates for secondary transmissions by satellite carriers. Rather the Copyright Act of 1976 at 17 USC § 119 specifies three methods for determining the royalty rates under the compulsory license for secondary transmissions by satellite carriers: 1) voluntary negotiation, 17 USC § 119(c)(2), 2) compulsory arbitration 17 USC § 119(c)(3), or 3) judicial review 17 USC § 119(c)(4). The present rates were determined through compulsory arbitration and subsequently adopted by the Copyright Royalty Tribunal after their review. Should the Copyright Royalty Tribunal reject the determination of the arbitration panel, the Copyright Royalty Tribunal must set the royalty rates within 60 days after receiving the report of the arbitration panel consistent with the criteria set forth at 17 USC § 119(c)(3)(D) and the record compiled by the arbitration panel.

The present rates are effective until 12/31/94.

6. Audio Home Recording Act Royalty Fund [DART]

The initial royalty rates are set by the Act. 17 USC 1004. In the sixth year after the effective date and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Tribunal to increase the royalty rate. The first rate adjustment may occur between 11/97 and 11/98.

B. Distribution

Presently, the Copyright Royalty Tribunal distributes the royalty fees collected under the compulsory licenses for CABLE and SATELLITE to the appropriate copyright owners. The Tribunal also distributes jukebox royalties in those years when the voluntary jukebox license agreements are not in effect. The Tribunal does not distribute royalties for phonorecords or for public broadcasting. Instead, the parties distribute the fund among themselves privately.

The Tribunal will also administer the distribution of the royalty fund collected pursuant to the Audio Home Recording Act. An initial distribution of royalties collected in the last two months of 1992 under the Audio Home Recording Act may occur in the latter half of 1993. Another option, however, is the consolidation of the proceedings for the 1992 distribution with the 1993 distribution.

1993

Month	CABLE	SATELLITE	PB	JUKEBOX	MECHANICAL	DART*
Jan.						1/29 interim reg
Feb.			2/7 final rule 37 CFR part 304			
March						3/11 interim reg - reply comments
April	4/2 Jociare controversy 90 DIST					
May						
June						
July						
Aug.						
Sept.						
Oct.						
Nov.						
Dec.						

*DART = Audio Home Recording Act
-1/11 meeting re: amend internal personnel rules
-1/22 Final rule re: modification of rules of agency organization - 37 CFR Chapter III

1992

Month	CABLE	SATELLITE	PB	JUKEBOX	MECH*
Jan	1/22 close phase I record 89 DIST				
Feb	2/18 meeting 89 DIST				
March		3/1 receive arbitration report			
April	4/27 final rule 89 DIST	4/16 meeting 91 RATE			
May		5/1 adopt arbitration decision			
June			6/30 commence proceedings** 92 RATE		
July					
Aug.					
Sept.			9/15 set schedule 92 RATE		
Oct.		10/21 declare controversy 10/26 set schedule 89-91 DIST			
Nov.			11/18 & 11/27 meetings adj. PB rate 92 RATE		
Dec.		12/8 determ. issues - Phase I 12/21 settlement 12/30 final determination 89-91 DIST	12/22 final rule 92 RATE		

*MECH = MECHANICAL
**92 RATE - paper hearing only

1991

Month	CABLE	SATELLITE	PB	JUKEBOX	MECH*
Jan	1/18 withdrawal of all cable rate petitions 90 RATE	1/24 first claim filed			
Feb					
March	3/22 final rule adjust SYNDEX rule 8/16/90				
April	4/26 daytime counterprogramming 89 DIST				
May	5/14 cable phase I comm 89 DIST	5/3 declaratory ruling**			
June					
July		7/1 notice of initiation of voluntary rate setting			
Aug.					
Sept.					
Oct.		10/7 pre-arb. conference 91 RATE			
Nov.	11/5 cable hearings 25 days - Phase I 89 DIST		11/29 COLA		11/1 COLA
Dec.	12/17 cable hearings 10 days - Phase II 89 DIST	12/31 notice: need for arbitration 91 RATE			

* MECH = MECHANICAL

** Declaratory ruling - network programs are entitled to participate in 89 DIST

-1/23 Final rule re: filing of cable, jukebox and satellite carrier claim - 37 CFR Parts 301, 302, 305, 309

1990

Month	CABLE	SATELLITE	PB	JUKEBOX	MECHANICAL
Jan	Hearings 2 days - 87 DIST 1/10 commence proceeding 90 SYNDEX				
Feb	2/14 procedural meeting 90 SYNDEX 2/16 final determ. - phase II devotional cls. - 87 DIST 2/22 meeting - musical cl. 87 DIST			2/7 License suspension proposed* request comments	
March	3/7 commence proceedings 88 DIST 3/30 final determ. - phase II music claimants - 87 DIST			3/22 License suspended 10 years	
April					
May	Hearing 3 days 90 SYNDEX				
June	Hearing 1 day 90 SYNDEX				
July	7/12 meeting 90 SYNDEX				
Aug.	8/16 final determ. 90 SYNDEX				
Sept.					
Oct.	10/1 parties settle no controversy 88 DIST			10/5 no controversy parties settle 89 DIST	
Nov.					
Dec.	11/30 COLA				

* 7/10/90 Final Rule: Suspension of compulsory license - 10 years. 37 CFR § 306.3. *See also* 51 FR 27537, Aug. 1, 1986, as amended at 55 FR 28197, July 10, 1990.
No rate setting until 1999.

1989

Month	CABLE	SATELLITE	PB	JUKEBOX	MECHANICAL
Jan.					
Feb.	Hearings 4 days 86 DIST				
March	Hearings 4 days - 86 DIST 3/30 declare controversy 87 DIST				
April	4/3 meeting 4/21 final determination 86 DIST 4/24 phase I settlement 87 DIST				
May	5/26 petition to eliminate SYNDEX*	5/18 Notice: Proposed rulemaking		5/8 Final dist 87 DIST	
June					
July					
Aug.		8/10 Final rule**			
Sept.	9/5 request repetition on SYNDEX in '90				
Oct.	Hearings 2 days 87 DIST				
Nov.	Hearings 1 day 11/1 set schedule - music cl. 87 DIST			11/28 settlement no controversy 88 DIST	11/1 COLA
Dec.	Hearings 4 days - music claimants Hearings 2 days - devotional cls. 87 DIST		12/4 COLA		

* Petition filed in response to FCC action reinstituting syndicated exclusivity blackout rule
** Implement Satellite Home Viewer Act of 1988 - 37 CFR Parts 301 & 309
-3/28 Final rule re: modification of rules of agency organization - 37 CFR Parts 301, 302, 305, 308
-4/6 Final rule re: rule clarifying rotation of Chairman - 37 CFR - 301

1988

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan	1/13 meeting 85 DIST			
Feb				
March	3/4 final determination 85 DIST		3/1 Hearing 1 day 86 DIST	
April	4/21 declare controversy 86 DIST		4/8 meeting declaration - ACEMLA copyright owner 86 DIST	
May			5/18 Hearing 1 day 86 DIST	
June			Hearings 2 days 86 DIST	
July			7/20 meeting 86 DIST	
Aug.				
Sept.			9/19 final determination 86 DIST	
Oct.				
Nov.				
Dec.	12/5 phase I cases settled 86 DIST	12/1 COLA	12/15 controversy declared 87 DIST	

1987

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan			1/16 set schedule 85 DIST	
Feb	2/2 meeting 84 DIST			
March	3/17 final determination 84 DIST			3/18 petition to adjust 87 RATE*
April	4/22 declare controversy phase I & II - 85 DIST			4/7 CRT propose adjust 87 RATE
May			Hearings 3 days 85 DIST	
June		6/30 Begin proceeding 87 RATE	Hearings 3 day 85 DIST	6/15 adopt petition final rule - 87 RATE
July	7/17 terminate phase I & complete dist. - 85 DIST			
Aug.			8/20 meeting 85 DIST	
Sept.			9/1 meeting 85 DIST	
Oct.	Hearing 1 day phase II 85 DIST	10/8 Hearing 87 RATE		10/30 COLA
Nov.	Hearings 5 days phase II 85 DIST	11/12 meeting 87 RATE 11/6 file proposed rates: 11/10 replies		
Dec.		12/29 Final rule 87 RATE	12/4 final dist 85 DIST 12/7 controversy declared 12/14 set schedule 86 DIST	

* 87 MECHANICAL RATE - Paper hearing only

1986

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan	1/24 oral arg. 83 DIST			
Feb	2/5 final determination phase I 83 DIST			
March	Phase II Hearings: 3/6 - 3/19 83 DIST			
April	4/15 final determination phase II 83 DIST			
May				
June	6/19 declare controversy 84 DIST			
July	7/15 commence proceedings RATE adj.- determine TBS has significant interest			
Aug.	8/13 terminate proceedings TBS moves to discontinue adj.		8/1 COLA	
Sept.			9/20 meeting Hearing 5 days 84 DIST	
Oct.	Hearings 5 days 84 DIST		Hearings 1 day 84 DIST	
Nov.	Hearings 3 days 84 DIST			
Dec.	Hearings 5 days 84 DIST	12/3 COLA	12/23 final determination 84 DIST 12/9 declare controversy 85 DIST	

1985

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan			1/7 set schedule 83 DBT	
Feb				
March	3/25 TBS file petition to [illegible] sec 4(j).* 3/26 pre-hearing conference 83 DBT			
April	4/8 decision controversy 83 DBT			
May	5/1 inflation adj. 85 RATE			
June	6/7 pre-hearing conference 83 DBT			
July	7/29 CRT approve NPR settlement - 83 DBT			
Aug.			8/5 consolidate 82 REMAND & 83 DBT	
Sept.			Hearings 1 day 83 DBT	
Oct.	10/9 conclude hearings direct cases - 36 days 10/28 meeting 83 DBT		10/24 meeting Hearings 3 days 83 DBT	
Nov.			11/15 decision controversy 84 DBT 11/19 final dateon. 82 REMAND & 83 DBT	
Dec.	12/18 conclude hearings rebuttal - 17 days 83 DBT	12/3 COLA		

* issue whether Turner Broadcasting Station (TBS) had a "significant interest"

1984

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan	1/18 Hearing - Sports 79 DIST - remand issue Hearings - 6 days 81 DIST			
Feb				
March	3/2 final determination 81 DIST			
April				
May				
June				
July	Hearings - 5 days 82 DIST			
Aug.	Hearings - 4 days 82 DIST		8/31 final determination 82 DIST	
Sept.	9/16 TBS motion to intervene granted 9/25 final determination 82 DIST			
Oct.				
Nov.			11/5 decline controversy 83 DIST	
Dec.		12/5 COLA		

1983

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan	Hearings 5 days 80 DIST			
Feb	2/2 Hearing 1 day 80 DIST			
March	3/2 declare controversy 81 DIST 3/7 final determination 80 DIST	Notice: Proposed Amend. 82 RATE		
April				
May		5/12 meeting 5/20 adopt amend.* 82 RATE		
June				
July				
Aug.				
Sept.				
Oct.	10/12 declare controversy 82 DIST			
Nov.				
Dec.		12/1 COLA	12/13 declare controversy 82 DIST**	

* Final rule re: Adjustment of terms and rates for noncommercial broadcasters - 37 CFR Part 304
** 82 JUKEBOX DIST - paper hearing only

1982

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan	1/29 conclude phase II direct cases - 5 days 79 DST		1/18 controversy declared - IBC claim 80 DST*	
Feb	2/5 conclude phase II rebuttal cases - 3 days 79 DST			
March	3/8 final determination 79 DST 3/31 set schedule 81 RATE			
April			4/29 final determination 79 & 80 DST	
May	5/11 pre-hearing conference 81 RATE			
June	6/8 final determination 78 NPR Cable Royalty claim Hearings 9 days 81 RATE	6/30 commence Proceed. 82 RATE		
July	Hearings 10 days 81 RATE	7/30 COLA		
Aug.	Hearings 4 days 81 RATE			
Sept.				
Oct.	10/5 adopt resolution amending 80 RATE 10/5 cont org. - 81 RATE 10/29 final rule** - 81 RATE		10/8 docket controversy 81 DST*	
Nov.	Phase I Hearings direct cases 30 days rebuttal cases 7 days 80 DST	Hearings - 2 days 82 RATE	11/30 final determination 81 DST	
Dec.		12/20 meeting adopt final rule*** 82 RATE		

* 80 JUKEBOX DST - paper hearing only; IBC = Indian Bank Corporation, *See* 47 FR 18406
* 81 JUKEBOX DST - paper hearing only
** Final rule re: Adjustment of royalty rate for cable systems; FCC deregulation - 37 CFR Part 308
*** Adjustment of terms and rates for noncommercial broadcasting - 37 CFR Part 304

1981

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan	1/5 final rule 80 RATE 37 CFR Part 305		1/5 final rule 80 RATE 37 CFR Part 306	1/5 final rule 80 RATE 37 CFR Part 307
Feb				
March			3/10 pre-hearing meeting 79 DIST	
April	4/15 set schedule 4/21 meeting 79 DIST			
May				
June			Hearings 4 days 79 DIST	
July		7/30 COLA		
Aug.				
Sept.	9/23 conclude Hearings direct cases - 35 days 79 DIST			
Oct.	10/14 conclude Hearings rebuttal cases 7 days 79 DIST 10/14 declare controversy 80 DIST 10/21 commence proceedings 81 RATE*		Hearings 2 days 79 DIST	10/14 meeting 81 RATE
Nov.	11/14 Meeting 81 RATE		11/30 determine insuff. info. to make dist. - 79 DIST	11/3 begin proceed. 81 RATE
Dec.	12/1 final determination phase I - 79 DIST			12/9 meeting 12/15 adopts rule** 81 RATE

* 81 RATE adjustment in response to FCC rule change - repeal of distant signal carriage
** Final rule re: Automatic step increases - 37 CFR Part 307

1980

Month	CABLE	PB*	JUKEBOX	MECHANICAL
Jan	CRT develop questionnaire 80 RATE		1/2 commence proceedings 80 RATE	1/2 commence proceedings 80 RATE
Feb	2/14 pre-hearing conference 78 DIST		2/13 Meeting - discuss proposed economic survey 80 RATE	
March				3/10 set submit. 3/25 Hearing 80 RATE
April			Hearings 5 days 80 RATE	
May	5/7 set schedule 5/19 economic studies filed 78 DIST 5/29 phase I Hearings 15 days 80 RATE		Hearings 2 days 80 RATE	5/7 Hearings 46 days 80 RATE
June				
July	7/25 Full dist - phase I 78 DIST			
Aug.	Hearings 3 days phase II 78 DIST	8/1 COLA		
Sept.	9/23 final determination phase II 78 DIST			
Oct.				
Nov.	11/25 declare controversy 79 DIST		11/25 declare controversy 79 DIST	11/19 closing arg. 80 RATE
Dec.	12/1 final rule - cost adj. 80 RATE		12/10 final determination 80 RATE	12/10 meeting 12/18 & 19 Final determ. 80 RATE

* 1/22/80 Report to Congress on Noncommercial Broadcasting

1979

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan				
Feb				
March				
April				
May	5/23 Amend rule of 6/6/78			
June				
July				
Aug.		8/1 COLA		
Sept.				
Oct.	10/11 declare controversy 78 DIST 10/22 Final rule re: filing of claims			
Nov.				
Dec.				

1978

Month	CABLE	PB	JUKEBOX	MECHANICAL
Jan				
Feb				
March		Hearings 6 days 78 RATE*		
April		4/6 meeting		
May		Hearings 2 days 78 RATE		
June	6/6 Final rule re: filing requirements	6/6 Adopt rates Hearings 2 days 78 RATE		
July				
Aug.				
Sept.	9/11 Final rule re: proof of fixation of copyright work		9/12 Final rule re: access reg 37 CFR 303	
Oct.				
Nov.				
Dec.				

* 12/8/77 1978 RATE commence proceeding

TOTAL FORMAL MEETINGS AND EVIDENTIARY HEARING DAYS PER LICENSE PER YEAR

YEAR*	CABLE	JUKEBOX	MECHANICAL	PB	SATELLITE	TOTAL
1993	1	0	0	1	0	2
1992	2	0	0	5	7	14
1991	38	0	1	1	4	44
1990	15	3	0	1	0	19
1989	24	2	1	1	2	30
1988	3	8	0	1	0	12
1987	10	12	3	4	0	29
1986	30	8	0	1	0	39
1985	59	9	0	1	0	69
1984	18	2	0	1	0	21
1983	9	1	0	3	0	13
1982	78	4	0	5	0	87
1981	49	9	5	1	0	64
1980	27	11	52	1	0	91
1979	1	0	0	1	0	2
1978	0	0	0	12	0	12
TOTAL	364	69	62	40	13	548

* Calendar year
NOTE: DART - 2 days of formal meetings in 1993

TOTAL EVIDENTIARY HEARING DAYS PER LICENSE PER YEAR

YEAR*	CABLE	JUKEBOX	MECHANICAL	PB	SATELLITE	TOTAL
1993	0	0	0	0	0	0
1992	0	0	0	0	0	0
1991	35	0	0	0	0	35
1990	6	0	0	0	0	6
1989	17	0	0	0	0	17
1988	0	4	0	0	0	4
1987	6	6	0	1	0	13
1986	25	4	0	0	0	29
1985	53	4	0	0	0	57
1984	16	0	0	0	0	16
1983	6	0	0	0	0	6
1982	72	0	0	2	0	74
1981	42	6	0	0	0	48
1980	21	7	47	0	0	75
1979	0	0	0	0	0	0
1978	0	0	0	10	0	10
TOTAL	299	31	47	13	0	390

* Calendar year

TOTAL FORMAL MEETINGS AND EVIDENTIARY HEARING DAYS PER PROCEEDING

YEAR*	CABLE		JUKEBOX		MECHANICAL	PB
	DIST	RATE	DIST	RATE	RATE	RATE
1993	0	0	0	0	0	1
1992	0	0	0	0	0	5
1991	0	0	0	0	1	1
1990	1	8	0	2	0	1
1989	40	0	1	0	1	1
1988	2	0	1	0	0	1
1987	17	0	2	0	3	4
1986	13	0	9	1	0	1
1985	10	1	11	0	0	1
1984	16	0	7	0	0	1
1983	72	0	9	0	0	3
1982	12	0	2	0	0	5
1981	9	29	2	0	4	1
1980	46	20	2	11	53	1
1979	60	0	9	0	0	1
1978	8	0	Settled	0	0	12
TOTAL	306	58	55	14	62	40

* Year DIST fund collected or year rate set

NOTE: SATELLITE - 13 days of formal meetings: 7 days in 1992; 4 days in 1991; and 2 days in 1989
DART - 2 days of formal meetings in 1993

TOTAL EVIDENTIARY HEARING DAYS PER PROCEEDING

YEAR*	CABLE		JUKEBOX		MECHANICAL	PB
	DIST	RATE	DIST	RATE	RATE	RATE
1993	0	0	0	0	0	0
1992	0	0	0	0	0	0
1991	0	0	0	0	0	0
1990	0	4	0	0	0	0
1989	35	0	Settled	0	0	0
1988	Settled	0	Settled	0	0	0
1987	11	0	Settled	0	PH**	1
1986	8	0	4	0	0	0
1985	6	0	6	0	0	0
1984	13	0	4	0	0	0
1983	65	0	4	0	0	0
1982	9	0	PH	0	0	2
1981	6	24	PH	0	0	0
1980	43	18	PH	7	47	0
1979	54	0	6	0	0	0
1978	3	0	Settled	0	0	10
TOTAL	253	46	24	7	47	13

* Year DIST fund collected or year ran out.
** PH = paper hearing
NOTE: SATELLITE - no evidentiary hearing days since its inception in 1989
DART - Evidentiary hearings may occur in 1993 if a controversy exists over the 1992 DIST fund.

APPENDIX 8.—STATEMENT BY THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCALS 2477 AND 2910

The American Federation of State, County, and Municipal Employees (AFSCME) Local 2477 and Local 2910 appreciate the opportunity to submit its views on H.R. 897, the Copyright Reform Act of 1993. We represent over 400 employees of the Copyright Office, including clerks, technicians, catalogers, examiners, attorneys, and others.

We have serious concerns about those portions of H.R. 897 which would affect the copyright registration system. The Reform Act would eliminate two of the three current incentives for basic copyright registration. Without these incentives, registrations would plummet. This, we believe, would be the equivalent of tossing out the baby with the bathwater. Our present registration system, which deters infringement, would be damaged, as would our cataloging system upon which the public and copyright industries depend.

The proposed Copyright Reform Act would eliminate the requirement of registration before filing a copyright infringement action and the requirement of registration before infringement in order to secure statutory damages and attorney's fees. These incentives to register were placed in the copyright law after many years of study during the copyright law revision process, and serve as a foundation for our centralized registration system. The Reform Act proposes to eliminate these incentives, but puts nothing in their place. There has been no comprehensive study of the possible long range consequences of such a change.

Under the Copyright Reform Act, the only remaining statutory incentive supporting registration would be the prima facie evidence value of the certificate of registration. This benefit, moreover, could be secured by registering a copyright claim immediately before filing a copyright infringement action. (There are only approximately 1,800 copyright infringement actions filed each year)

Predictably, copyright registrations will decline substantially, particularly for published works. If registrations of published works decline by 50%, then it can be projected that over several years, approximately 100 jobs would be lost in the Examining, Cataloging, and Receiving and Processing Divisions. This job loss would represent 20% of the entire staff of the Copyright Office.

Substantial reductions in copyright registrations would affect the quality of the Copyright Catalog. Because of the current incentives supporting registration, the Catalog has grown to cover more than 24 million registrations. It has been online since 1978, and on April 30th of this year, the records from 1978 on became available on Internet, allowing worldwide access.

The Copyright Catalog is a complete and reliable source of information serving copyright owners and copyright users. It is also unique. Nowhere else can authors and owners determine definitively whether a work is protected by copyright. With the elimination of the copyright notice requirement in 1988, this source of information increased in importance.

If the Copyright Reform Act is enacted, the Copyright Catalog would no longer be comprehensive, and would thus lose much of its value as a reference tool and a safeguard against infringement. Subscribers to Internet would find themselves paying for incomplete information. Members of the public who come to the Copyright Office for information would leave without the definitive answers they seek. The process of determining the copyright status of a work would become much more difficult and expensive.

In 1990 copyright industries accounted for 5.8% of the Gross Domestic Product, and included such American industrial stalwarts as publishers of books, motion pictures, computer software, and sound recordings. While other industrial sectors have suffered, copyright industries have thrived. Often these vital industries depend on information available only from the U.S. Copyright Office. "Is the song we want to record protected by copyright?" "Who owns the rights to the bestseller our studio wants to turn into a motion picture?" These questions may be asked in New York, Nashville, or Hollywood, but the answers are found in Washington, D.C. in the Copyright Office.

Last year, 32,000 visitors came to the Copyright Office to search in our files and ask questions. We were there to assist them. The Copyright Office staff is experienced, professional, and service-oriented, and it is the heart of the copyright registration system. We open the mail and process the claim. We answer inquiries and help to educate the public on copyright issues. We examine the application and deposit, and help clarify the facts of authorship, ownership, and the extent of the claim. After registering 635,000 claims to copyright last year, we created accurate cataloging records for each one. And we did this work with a staff which is smaller than it was 13 years ago, when the work load was approximately 40% less than it is today.

Many of us who work in the Copyright Office are ourselves authors, and we are sympathetic to authors' needs. Our mission is to serve authors and owners, to minimize bureaucratic obstacles, and to put clear copyright claims on record.

Enacting the Copyright Reform Act of 1993 will reduce our ability to serve, and will damage the registration system which has worked well since 1870. AFSCME Local 2477 and Local 2910 believe no action should be taken on this bill without a thorough study of its impact.

We urge the Subcommittee to convene a panel which will examine these copyright registration issues in greater detail.

APPENDIX 9.—STATEMENT BY THE AMERICAN ASSOCIATION OF LAW LIBRARIES, THE AMERICAN LIBRARY ASSOCIATION, THE ASSOCIATION OF RESEARCH LIBRARIES, THE MEDICAL LIBRARY ASSOCIATION, THE NATIONAL COORDINATING COMMITTEE FOR THE PROMOTION OF HISTORY, THE NATIONAL HUMANITIES ALLIANCE, AND THE SPECIAL LIBRARIES ASSOCIATION

The American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, the National Coordinating Committee for the Promotion of History, the National Humanities Alliance, and the Special Libraries Association appreciate the opportunity to submit comments for the hearing record of March 3 and 4, 1993 on H.R. 897, the Copyright Reform Act of 1993. These associations, as described at the end of this statement, represent organizations in the library and scholarly communities.

Summary

Together, these organizations represent many thousands of entities and individuals—librarians, scholars, researchers, and others—concerned about this legislation's impact on the collection and preservation of the nation's intellectual heritage and, therefore, on the growth of knowledge and the creation of new intellectual works.

This statement discusses the potential of sections 102 and 103 of H.R. 897 for disruption of two long-standing and productive partnerships. The first is the partnership Congress has created between two government functions—the missions of the Copyright Office and the Library of Congress. The second is the partnership of the public and private sectors in cooperating to both protect intellectual property and make it available for the exchange of ideas and the stimulation of new creative and intellectual output.

These organizations take no position on other parts of the bill, except to note that issues related to the Copyright Royalty Tribunal could be addressed without making the major changes contemplated in regard to copyright registration and deposit and Copyright Office organization.

H.R. 897 proposes a major reorganization of government operations relating to copyright policy, the acquisitions policy of our national library, and judicial administration. No action should be taken on this bill without a thorough investigation of its impact and its cost in these three areas.

Benefits of Current System

The amendments in title I of H.R. 897 relating to copyright registration requirements will have a major impact on the operations of the Copyright Office and the Library of Congress.

The single most important factor which enabled Congress' own library to become a true national library was the congressional designation of the Library of Congress as a repository for U.S. copyright deposits. Copyright deposits have helped to develop the Library's collections since 1846, and except for a hiatus between 1859 and 1865, have continued to this day. A far-sighted Librarian of Congress, Ainsworth Rand Spofford, recognized that Congress' library should also be a national library, and saw the importance of a copyright deposit in developing a comprehensive collection of the nation's literature. The Copyright Act of 1870 centralized all copyright registration and deposit activities at the Library.

The result has been a national library with universal collecting responsibilities; one whose collections, in their breadth, depth, diversity, and multiplicity of formats are unrivalled by any other library in the United States or in the world. The Library of Congress is not only the beneficiary of copyright deposits, but organizes them, makes them widely known and available, and staffs its departments and reading rooms with highly skilled experts in the use of the materials.

The Copyright Office implements the Copyright Law, based on the constitutional directive 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. The Library of Congress' mission is to assemble universal collections which document the history and further the creativity of the American people; and to acquire, organize, provide access to, maintain, secure, and preserve these collections to sustain and contribute to the advancement of thought and knowledge throughout the United States and the world.

While this partnership between the Copyright Office and the Library of Congress may be unique among the countries of the world, the arrangement accrues very much to the benefit of the United States. Despite the relative youth of the United States as a nation, no other country has a national library which begins to approach the scope of the resources available at the Library of Congress. Among the communities which benefit:

Congress. As former Librarian Spofford paraphrased Jefferson, "there is almost no work, within the vast range of literature and science, which may not at some time prove useful to the legislature of a great nation." (Quoted in "Jefferson's Legacy: A Brief History of the Library," by John Y. Cole. *Library of Congress Information Bulletin*, Vol. 50, No. 7, April 8, 1991, p. 126.) The work of Congress benefits from access to the full range of the Library's collections. In our recent "one-world" climate, access to the Library's unparalleled collections of materials from other countries is increasingly important. These acquisitions often depend upon the Copyright Law provision which allows the Library to exchange duplicate materials received through copyright deposit for other needed materials. The international exchange program depends heavily on this provision.

Authors and Other Creators of Intellectual Property. The flow of copyrighted material to the Library of Congress through registration and deposit requirements includes both published and unpublished works. For many kinds of published works, and for much unpublished material, the Library of Congress may be the only place where the work is permanently collected, preserved, accessible, and its existence made known to potential users. Further, the Library of Congress' collections are not an end unto themselves, but constitute the most comprehensive source of research materials for those creating new intellectual works.

Publishers, Producers, and Distributors of Intellectual Property. Copyright proprietors (whether publishers or authors or others) benefit from the registration process. In the long run, and for a minimal burden and cost, publishers and producers also benefit from the universal collections of the Library of Congress, based on copyright deposits. The Library probably does not keep a record of those published works whose authors or editors cite, in the prefaces to their works, their appreciation to the Library of Congress, without which the work would not have been developed. It is sufficient to say that the quality and quantity of published output would suffer without the existence of the Library of Congress as a unique resource and a partner in the creative endeavor.

Other Libraries and Their Users. Since the turn of the century, the Library of Congress has served, not only as a comprehensive national collection, but also as the center of a network of American libraries, providing cataloging and bibliographic services. Beginning with the sale of surplus catalog cards to other libraries, the Library later pioneered in developing a national standard for computerized bibliographic records, and shares its computerized bibliographic and other data files with the broader library community. As a result, the Library's holdings are known to other libraries and their users throughout the country and the world. The Library's cataloging data reduces duplicative cataloging effort by other libraries; and the Library serves as the last resort for domestic interlibrary loan on behalf of users of other libraries.

Impact of Proposed Amendments

Section 102 and 103 of H.R. 897 would remove two of the three incentives for registration and deposit, remove the Register of Copyrights from appointment by the Librarian of Congress to appointment by the President, and remove from the Librarian of Congress any authority over Copyright Office regulations and staff.

Currently, copyright deposit functions in collaboration with the registration process. The Copyright Reform Act of 1993 would remove incentives for registration except for the basic evidence of validity that the registration certificate offers. The Copyright Office has provided evidence in its testimony that registrations will decline if these incentives are removed by showing what happened when registration incentives were changed in the recent past, and noting the low level of registration in Canada, a country that only offers evidence of validity as an incentive.

The Copyright Office also indicated that the value of the materials transferred to the Library from the copyright system last year exceeded $12 million. Combined with $14.5 million in registration fees, the total equals the approximate cost of operation of the Copyright Office.

Impact on Library of Congress. Provision for mandatory deposit of published works would remain in effect under the bill. However, with removal of incentives for voluntary registration, enforcement of mandatory deposit would be expensive, less timely, and much less than comprehensive. To identify and demand publications and other works from the myriad small publishers and producers would not be practical. The impact on the Library's collections of published works would be significant, resulting in a less usable, less comprehensive, less valuable, and potentially more costly record of the nation's creative and intellectual heritage. In this current budget climate, it is not at all certain that funds would be appropriated to make up the difference.

The Law Library of Congress would also be severely impacted, since it receives approximately 85 percent of its American receipts via copyright deposit, at an estimated value of just over $4 million per year. The lack of timely receipt of legal materials is also of concern. Relying on copyright receipts

already causes a delay in the upkeep of the law collection of the Library of Congress. But if the Law Library had to rely on Section 407 receipts and demand letters for material not voluntarily sent, the additional delay in the receipt of these legal materials would undermine the ability of the Law Library and the Congressional Research Service to fulfill their basic missions to Congress and the nation.

Further, no provision exists for mandatory deposit of unpublished works, even if they could be identified. Unpublished works are not limited to manuscripts and other prepublication formats, but include large classes of material such as architectural drawings, original music scores, and many audiovisual items. These materials are crucial to U.S. history and constitute important research resources, but they might be lost to the nation if H.R. 897 were enacted.

Many of the works not selected by the Library for its own use are used by the Library's exchange program, especially in exchange for foreign works through official exchanges. Lacking the incentive of material to exchange, the Library's foreign acquisitions would suffer. Purchase of foreign works is expensive and labor intensive.

Because the Librarian of Congress has supervisory authority over the Copyright Office, and because the incentives supporting registration are strong, the Copyright Office is able to acquire the highest quality edition of copyrighted works. Recently, the Copyright Office has been able to make registration and deposit more convenient for certain classes of depositors, such as photographers, while still meeting the Library's needs. This legislation would destroy that productive relationship.

Electronic Networked Environment. The medium of expression for intellectual and creative work is becoming ever more fluid. Some industry experts have mentioned informal estimates that by the year 2000 90 percent of all intellectual output will be in digital formats. The public registration system assists in an early determination of the copyrightability of new forms of creative expression.

The Copyright Office has recently begun to require deposit of digital works, including full-text files, and graphic and numeric data files. Many of these materials are and will remain unpublished, and may be unavailable to future generations without incentive for copyright registration and deposit for possible inclusion in the Library's permanent collections.

Impact on Other Libraries and Users. As U.S. libraries share resources to meet users' needs, the Library of Congress serves as the library of last resort. If a needed item can be found nowhere else in the informal but linked system of U.S. libraries, the user's home library may request the loan of the item at no cost from the Library of Congress. Thus, if the strongest link in the chain is weakened by this legislation, the interlinked system of meeting the nation's needs for library and information resources will be adversely affected.

The Library of Congress is also the strongest link in the shared system of creation of nationwide bibliographic databases through which libraries obtain cataloging data and discover where needed materials are located. If the Library does not receive prompt and comprehensive deposits of copyrighted material, it cannot create bibliographic records in a timely fashion. The burden on other libraries would be increased, and the bibliographic record of the nation's creative and intellectual resources will contain significant gaps.

Judicial Concerns. A mandatory deposit system with judicial enforcement would be clearly more costly and unwieldy than the current voluntary system where participants comply because it is in their best interest.

Further, the relatively low number of infringement suits filed compared with the number of works registered should be seen as a benefit of the current public registration system. Creating a public record of copyright claims, and providing front-end screening of such claims is highly cost effective. The potential under the bill for an increase in complex copyright litigation will burden the federal judiciary.

Conclusion

H.R. 897, the Copyright Reform Act of 1993, proposes a major reorganization of government operations relating to copyright policy, the acquisitions policy of our national library, and judicial administration. No action should be taken on this bill without a thorough investigation of its impact and its cost in these three areas.

Organizations endorsing this statement:

AMERICAN ASSOCIATION OF LAW LIBRARIES. AALL is a nonprofit educational organization with over 5,000 members dedicated to serving the legal information needs of legislators and other public officials, law professors and students, attorneys, and members of the general public.

AMERICAN LIBRARY ASSOCIATION. ALA is a non-profit educational organization of more than 55,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing all types and sizes of libraries and dedicated to the improvement of library and information services.

ASSOCIATION OF RESEARCH LIBRARIES. ARL is an association of 119 research libraries in North America. ARL programs and services promote equitable access to, and effective use of, recorded knowledge in support of teaching, research, scholarship, and community service.

CHIEF OFFICERS OF STATE LIBRARY AGENCIES. COSLA is a non-profit organization of the chief officers of state and territorial agencies designated as the state library administrative agency and responsible for statewide library development.

MEDICAL LIBRARY ASSOCIATION. MLA is a non-profit professional association of over 5,000 for-profit and non-profit members including librarians, corporations, and institutions (including medical libraries and allied scientific libraries) in the health sciences field which seeks to ensure that information vital to medical education, research, and the health needs of the nation can be accessed by individuals all over the world.

NATIONAL COORDINATING COMMITTEE FOR THE PROMOTION OF HISTORY. The NCC is an umbrella organization for 50 historical and archival organizations and serves as their central advocacy office. The NCC is committed to working on issues of federal policy and legislation that affect historical research, including access to federal information.

NATIONAL HUMANITIES ALLIANCE. NHA is a coalition of 76 organizations: scholarly and professional associations; organizations of libraries, museums, historical societies, higher education, and state humanities councils; university and independent centers for scholarship and other organizations concerned with national humanities policies.

SPECIAL LIBRARIES ASSOCIATION. SLA is an international association serving more than 14,000 members of the information profession, including special librarians and information managers, brokers, and consultants. Special librarians provide their information expertise to corporations, government agencies, trade and professional associations, hospitals, museums, universities, and other types of organizations with specialized information needs.

APPENDIX 10.—STATEMENT BY VISUAL ARTISTS AND GALLERIES ASSOCIATION, INC.

My name is Martin Bressler, I am the founder and vice-president of the Visual Artists and Galleries Association, Inc. (VAGA), the licensing organization and copyright collective that represents visual artists against unauthorized reproductions of their work. This statement is presented in support of H.R. 897 and S.372. These bills are essential in the effort to bring our copyright legislation in conformity with the laws of the majority of other nations. We have abolished the requirement that works contain notices of copyright; we have retroactively abolished the requirement to renew copyrights of works created and copyrighted before 1978; we have adopted something akin to a droit moral for the visual arts. The time has now come to implement this new protection by permitting the aggrieved party a true capability to be compensated for the wrong inflicted on him. By doing so, we will hopefully be persuading purveyors that permission had best be obtained before they reproduce creative works.

The requirement that authors must register their works, either before an infringement or within three months of publication in order to obtain the benefits of statutory damages and payment of attorney's fees is vestigial. A work is now protected on creation. Formalities for protection are fast disappearing. What purpose other that the accumulation of registered works by the library of Congress is gained by such registration? We suggest that there are no substantive benefits gained by such registration.

The requirement that there be registration in order to obtain statutory damages and attorney's fees is destructive of the essence of copyright protection in two ways:

A. Very few creators register their works within three months following publication or prior to infringement. By not doing so their recovery is limited to actual damages and

lost profits, both of which are frequently difficult to prove even if established.

B. Purveyors, knowing of this infirmity frequently reproduce a work without permission knowing that if pushed, they could always pay a fee and reproduce the work with impunity. These users are thus relying upon de facto compulsory licenses. The creator is forced to grant permission for a use he may neither like nor want simply because he cannot afford to pay a lawyer to sue and at best receive a small sum in damages if successful.

In thirty-five years of practice in the copyright field, and in the seventeen years that VAGA has been attempting to protect against unauthorized reproductions of its members' works, I have seen hundreds of instances where creators have been compelled to either grant permission for an unwanted use or to remain silent if the user has simply said "sue me."

I am sure that this committee will hear from others who will convey "horror stories." Without my hearing them I can assure this committee that they are true. A copyright infringement suit where there has been no registration within three months of publication or prior to infringement can be brought when either the creator is rich or when the defendant has profited handsomely by its infringement. The present law does not truly benefit the creator against the defiling of his creation because he has no practical way to stop it.

It is for the creative artist to determine when his work is to be reproduced, how it is to be reproduced, and by whom it is to be reproduced. As it currently stands, unless the technicalities of registration are observed, the best the creator can usually hope for is that he

be compensated a bit by a user who assumes domain over a work and reproduces it as it wishes. The statute as it stands puts the creator in a disadvantageous position with the potential user. The creator simply cannot enforce in a meaningful way the rights given to him by statute. The potential user knows this. The plain is not level. The creator has to accept channels of commerce he may not want and a lack of quality he may truly feel damaging to him. In reality there is very little that he can do.

The proposed legislation will prevent this. The infringement becomes the issue - not the technicality of time of registration. Users will know that the creator has a new capability to protect himself and will assumedly be reluctant to infringe because of such capability. It will conclude that a license, if granted, will be less expensive than a lost lawsuit. If it is not granted a license, the user can seek another work created by someone more prone to grant it one. In such an instance, the creator will have exercised his newly found option to say "no."

Of course, it could be argued that there will be more lawsuits in our already crowded courts if these bills become law. That could be true initially. In the long term, however, less users will infringe, thus giving rise to fewer claims. Yet if there are more lawsuits it will be because more creators are asserting their rights - rights which they could not afford to enforce in the past.

On behalf of VAGA and its 500 members and foreign affiliates, I strongly support the proposed legislation and urge passage.

Thank you.

APPENDIX 11.—STATEMENT BY DOUGLAS J. BENNET, PRESIDENT, NATIONAL PUBLIC RADIO

Mr. Chairman, thank you for this opportunity to comment on H.R. 897, The Copyright Reform Act of 1993. We submit this testimony on behalf of National Public Radio ("NPR") and its 467 member stations and the Public Broadcasting Service ("PBS") and its 347 member stations.

National Public Radio provides award-winning news, information and cultural programming to 14.5 million listeners each week. NPR receives its funding from member stations and other sources; less than 2% of its budget comes from federal resources. NPR's member stations are noncommercial, non-profit radio stations funded by listeners (21%), corporations and foundations (20%), the Corporation for Public Broadcasting (17%), and colleges and universities, state and local governments and other sources. Stations are important local institutions bringing the finest radio programming available in the U.S. to communities across the country.

Public Broadcasting Service provides quality children's, cultural, educational, nature, news and public affairs programming to 51.4 million homes and provides college-credit TV courses to more than 300,000 students each year through a partnership with public television stations and more than 2,000 colleges and universities nationwide.

PBS' funding also comes from member stations and other sources; 81.3% of its budget comes from non-federal sources. PBS member stations are non-commercial, non-profit television

stations funded by viewers (21%), businesses, corporations and foundations (31%), the Corporation for Public Broadcasting (13%) and colleges and universities, state and local governments and other sources.

Since the Copyright Royalty Tribunal's ("CRT" or "Tribunal") inception, NPR and PBS -- on behalf of themselves and their member stations -- have been claimants in the annual cable royalty distribution proceedings before the Tribunal. Although the royalties NPR and PBS have received in those proceedings for the retransmission of its programming by cable television systems have been relatively small (NPR currently receives .18% of the total cable royalty fund; PBS receives 4%), those royalties are an important source of revenue to NPR and PBS and their member stations, totalling around $5 million in 1989. A large percentage of royalty funds are shared annually with NPR and PBS member stations. The funds retained by NPR and PBS each year are extremely important to their operations; our respective budgets were $45 million and $128 million in FY 1992. In addition, public broadcasters rely upon the Tribunal to set rates under Section 118 for public broadcasting's use of music owned by various copyright holders.

In addition to our financial interest in the activities of the CRT, NPR and PBS have, by virtue of their participation in CRT proceedings over the past fifteen years, acquired a body of knowledge on the workings of the Tribunal that could be helpful to the Subcommittee in assessing whether to replace the Tribunal, and, if so, with what to replace it.

While the CRT has had its problems over the years, in general, NPR and PBS have few complaints about the way it has functioned. Indeed, we believe that in some sense the success of the CRT has contributed to this discussion. The Tribunal's irregular workload is to a large extent the result of the frequency of settlements among the parties to CRT proceedings. We believe these settlements are a result of the stability and predictability provided by the CRT.

In general, NPR and PBS believe that the arbitration panel model suggested in the bill is not workable in copyright royalty proceedings, especially for small claimants. In addition, we believe that the copyright royalty ratemaking and distribution process should remain precedent-based and governed by the Administrative Procedure Act ("APA") and by formal procedural rules.

PRECEDENT AND PROCEDURAL PREDICTABILITY

NPR and PBS believe that any measures designed to improve the existing copyright royalty distribution mechanism must employ standards and procedures that result in predictable outcomes and a legitimate process in the eyes of the affected parties. A stable legal and procedural backdrop against which to assess litigation risks and the prospects for settlement is particularly important to smaller claimants, such as NPR and PBS.

Precedent

As pointed out by other witnesses at these hearings, it is extremely important that any system for the adjudication of disputes between copyright royalty claimants be bound to take precedent into account. Over time, the Tribunal has developed a body of substantive precedent that guides its deliberations, establishes the framework for the parties' submissions and arguments, and lends predictability to its outcomes. Without this reliance on precedent, incentives to settle would be greatly diminished, and the amount and costs of litigation would increase.

Procedural Predictability

The bill takes away procedural protections that ensure fairness in copyright royalty proceedings and imposes few due process requirements on the arbitration panels. The current scheme, which applies the Administrative Procedure Act to CRT proceedings, has contributed to the regularity of the Tribunal's proceedings. The parties before the Tribunal know what to expect when litigating before the Tribunal, what they must file, and when they must file it. The rules greatly enhance the parties' ability to plan for their participation in CRT proceedings, and to predict the costs and burdens that litigation will entail -- important factors in deciding whether

to settle or go forward with claims.

Under H.R. 897, these procedures would no longer be in place. Panels would operate in accordance with "such procedures as they may adopt." In addition, review of arbitration panel decisions would be limited: a panel's decision could be overturned only if it were "arbitrary," a standard significantly more limited than the traditional APA standards of "arbitrary, capricious or contrary to law," and "unsupported by substantial evidence." This would provide little protection to parties who believed the arbitration process had treated them adversely without substantial factual support or contrary to law.

ARBITRATION PANELS ARE NOT SUITED FOR THIS PURPOSE

Borrowing a concept common in bilateral commercial and labor arbitration, the legislation calls for selection of two arbitrators from lists submitted by the parties, and selection of a third arbitrator by the two party-nominated arbitrators. While this system works well in typical one-on-one commercial disputes, we are concerned about its applicability to the cable royalty distribution proceedings.

The hallmark of the CRT's proceedings in general, and the cable royalty distribution in particular, is that they are not simply face-offs between two parties, but proceedings with multiple parties, each pursuing its own objectives in a zero-sum game. The cable royalty distribution proceeding typically has involved eight claimant groups of varying sizes, each of which

seeks to maximize its own share of the royalty fund. If two arbitrators are to be selected by the Register of Copyrights from lists submitted by the parties, two of the distinct parties, at most, will have a nominee on the panel. Resolution of all claims will be decided by arbitrators who were presumably nominated because of their disposition to favor their sponsoring party.

We believe that the arbitration system outlined in the bill will tend to favor larger claimants at the expense of parties with smaller claims. The likelihood that an arbitrator nominated by NPR and PBS (with a share of .18% and 4%, respectively, in the 1989 cable royalty fund) would be selected over one nominated by claimants who have traditionally received much larger shares (e.g., one claimant received over 60% of the fund in 1989) seems small. It is inevitable that the nomination of arbitrators would be a matter of gamesmanship and intrigue, and would itself add to the time, expense, and burden of the process.

Ad hoc panels are troubling because of the lack of continuity they would provide. Parties likely would be more inclined to litigate each claim every year, in the hope that a new set of arbitrators might see the issues differently. In the cable royalty distribution proceeding, smaller claimants might be squeezed out as the costs of repetitive litigation exceeded the amounts they could likely realize.

Ad hoc panels would face daunting learning curves, especially without staff support as provided currently by the CRT's general counsel.

Comparison to Section 119 Arbitration

We understand that the proposal to assign the CRT's tasks to arbitrators stems in part from the view that arbitration has worked effectively for the establishment of satellite royalty rates under 17 U.S.C., Section 119. It is our belief that the success of the arbitration procedure in that instance does not necessarily indicate that arbitration can successfully replace all of the CRT's functions.

The Section 119 proceeding, as compared to the cable royalty distribution proceeding, involves relatively modest stakes and few separate interests. Indeed, on the one occasion in which the Section 119 arbitration procedure was invoked, the parties' interests were aligned so that the arbitration essentially was a two-sided contest.

We believe that in a complex, multilateral dispute with stakes high enough to motivate the parties to litigate aggressively, the arbitration system set up by this bill would not be workable.

COST OF THIS PROPOSAL

Saving tax dollars by replacing a full time Tribunal with ad hoc arbitration panels is also a stated goal of this legislative proposal. If cost is a major factor, we would support funding all costs of the Tribunal, or an entity that replaces it, through the royalties it distributes. NPR understands that at present, 85% of the costs of the Tribunal are supported by the funds the Tribunal administers. The remaining 15% could be paid from these same funds, relieving the taxpayers of any burden of supporting the agency.

Moreover, the cost to the claimants is likely to increase. NPR and PBS probably have as great a stake as any claimants in ensuring that procedures for distribution are as economical as possible. Here are a few cost considerations we observed when studying this proposal:

- The arbitration system likely would require additional administrative and legal staff for the Register of Copyrights. We believe it is desirable for any replacement for the CRT to have the advice of a permanent general counsel and sufficient staff to handle administrative tasks (including those preceding the initiation of formal litigation over royalty funds). This needs to be considered when figuring cost savings.

- o Arbitrators would have little incentive to settle a dispute quickly, since they would be paid for their time -- very likely at law firm hourly rates. Given that, the savings from using ad hoc panels might not be significant.
- o A two-tier process for copyright royalty decisions would become a three-tier process with review by the Register of Copyrights before judicial review. This could add to claimant costs.
- o As discussed earlier, the uncertainties caused by ad hoc panels and the lack of established procedures could greatly increase the costs of litigation.

PRESIDENTIAL APPOINTMENT OF REGISTER OF COPYRIGHTS

We have some concerns that presidential appointment of the Register of Copyrights might politicize the Copyright Office. If the Register does become a presidentially appointed position, it will be important to set a reasonable term of office in this legislation to ensure accountability.

CONCLUSION

The Copyright Royalty Tribunal has generally served public broadcasting well. However, if Congress determines it is best to change the copyright royalty ratemaking and distribution mechanism, it should adopt a system suited to multi-party proceedings, bound by precedent, and incorporating procedural safeguards. We hope you

will also consider the impact of any changes on small claimants such as NPR and PBS.

Thank you for the opportunity to comment on H.R. 897. We would be pleased to answer any questions.

APPENDIX 12.—LETTER FROM RALPH OMAN, REGISTER OF COPYRIGHTS, COPYRIGHT OFFICE, TO HON. WILLIAM J. HUGHES, CHAIRMAN, MARCH 16, 1993

Dear Mr. Chairman:

At the March 4 hearing on the proposed Copyright Reform Act of 1993, you heard testimony on, and inquired about, the Copyright Office's failure to permit multiple issues of daily newsletters to be registered with a single application and fee. As you know, a group registration option is available for daily current events newspapers published in microfilm format. I responded that the group option had not been extended to daily newsletters for two equally important reasons: first, because group registrations are more administratively burdensome and therefore more costly for the Office; and, second, because daily newsletters are generally not material that the Library wants for its collections. Let me explain further.

Although the Register has broad power to vary by regulation the nature of the Congressionally mandated two deposit copies required to accompany an application for registration of a published work, 17 U.S.C. Section 408,(b)(c), this power has infrequently been exercised to permit group registrations with a single application and fee. In an operation receiving a heavy volume of work (667,362 claims during FY '92), the most efficient means of processing work is that which is most uniform. Exceptions are costly. Thus, group registrations are permitted only in two narrowly circumscribed cases for corporate clients: (1) for 3 months' worth of weekly or monthly serials (magazines and journals), and (2) for one full month's worth of daily current events newspapers. In each case, the works are desired on a timely basis for the Library's collections (especially by CRS), and the additional processing costs and burdens borne by the Copyright Office are offset by potentially substantial savings to the Library from receiving copies through Copyright rather than ordering subscriptions.

Thus, for group serials, the remitter must give the Library two complimentary subscription copies in addition to a third copy that accompanies the application. Under the group procedure for dailies, the remitter must submit one full month's worth of issue dates on a 35mm microfilm within 3 months of the last publication date in order to qualify for the reduced fee. Applicants that cannot meet these conditions must register their works singly, as other applicants do.

The Library benefits from receiving works that it would otherwise need to purchase in a timely manner and in the format it

stores. In the case of weekly and monthly serials, it receives two complimentary subscription copies; for daily current events papers, it expects to receive the majority of the 305 dailies currently purchased in microfilm at an annual cost of about $150,000.[1]

At the same time, Library officials echoed the strong reluctance of Copyright Office management to extend group daily registrations to include newsletters. The Library averred that from a random sample of 1190 daily non-newspaper formats known to the Library, only 3% are kept for the Library's permanent collection. Because of the "high administrative costs for Library offices such as the Serial Record Division...", the Library concluded that "...the group registration process would not be the most cost-effective means for the Library to obtain these materials."

Copyright has resisted group procedures because they garner smaller fees ($1.33 per issue in the case of group dailies; $10.00 per issue for group weeklies and monthlies, as compared with $20.00 per work for all other claims) and are administratively far more burdensome than single claims. Through accounting, processing, examination, certificate production, and cataloging, all works in a group must be kept together. If one issue is lost, all must be held until the missing copy is located. Similarly, if one requires correspondence, all must be held until the problem is resolved. Finally, even if the registration is problem-free, each issue must be examined, cataloged, and tracked separately. In the case of group serials, this means as much as 14 times the normal work for one-half the fee. For group dailies that require more time-consuming examination of microfilm, the workload is as much as 30 times the normal, for only twice the fee. In addition, because group registration procedures and fee structures are aberrations from the norm, our automated tracking system must be modified to accommodate other than standard fee service.

In terms of manpower and money, group procedures are more costly than the norm. Absent a strong showing of countervailing benefits to the national Library's collection, the Office has narrowly circumscribed their availability. Nonetheless, we are aware that daily newsletter publishers are keenly interested in price and paperwork breaks, and complain that they are effectively frozen out of the current

---

[1] Representatives of the National Newspaper Association stated at a March 1, 1991 meeting with the Office that 70 to 80 percent of its membership would register at reduced fee, and thereby save the Library at least $100,000 in purchase costs every year.

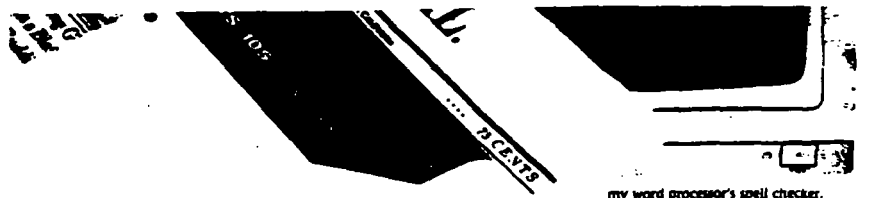
copyright system. Because you, Mr. Chairman, at the recent House hearings, have focused attention on newsletter concerns, we remain receptive to further discussions of registration options. In fact, Mr. Warren plans to visit the Copyright Office this Friday. We approach the meeting with an open mind, and I will give you a full account of our discussions immediately thereafter.

Sincerely,

Ralph C[illegible]
Register of Copyrights

The Honorable William J. Hughes
Chairman, Subcommittee on Intellectual
Property and Judicial Administration
House of Representatives
Washington, D. C. 20515-6216

APPENDIX 13.—MAGAZINE ARTICLE, "RIP-OFF ARTIST LEARNS TO READ!" AND ADVERTISEMENTS



Snatch a photograph, sales chart and even a quote from the newspaper. Now you can create powerful documents with this breakthrough scanning system.

NOW WITH OPTICAL CHARACTER RECOGNITION

Rip-Off Artist Learns to Read!

Lift a photo, logo or drawing and transfer it to a report, manual or article. And now, with the included $495 Optical Character Recognition (OCR) package, you can scan books, encyclopedias and newspapers right into your own word processor. Read on and discover how you can use this phenomenal technology to add persuasive graphics and authoritative text to everything you write for the breakthrough price of just $[illegible]

By Drew Kaplan

It's a technological miracle! Imagine scanning a newspaper article and inserting the words directly into your customer letters.

Imagine 'reading' sales figures from a spreadsheet and instantly putting them into your sales proposals.

And, imagine snatching a logo, illustration, chart or map and slipping it into your monthly production report.

Now you can create attention-demanding reports, proposals and letters with a complete scanning system that not only scans graphics but actually 'reads' text!

Just run this advanced scanner across a page. Instantly the text you've scanned appears on your computer's screen. Then you can edit the text in your word processor.

Plus, you can snatch eye-riveting art, illustrations, photographs and maps right off a page and into all your work.

But before we examine mind-grabbing, persuasive graphics, let's explore the sophisticated text-snatching power of this incredible scanning system.

TEXT-SNATCHING TECHNOLOGY EXPLAINED

It's revolutionary. It's called OCR (Optical Character Recognition). It's a scanning innovation designed to 'read' the loops, bars and stems of printed words on a page.

But, instead of interpreting them as graphics (like other scanners), OCR actually identifies these components as individual letters, words and sentences.

Only a few years ago, top-of-the-line scanning systems using this phenomenal OCR technology cost a staggering $40,000.

But, the price and technology barriers have been blasted. And now, we can all thrill to the same text-snatching power as multimillion-dollar publishing houses, law firms and multinational conglomerates.

Simply run the Mustek scanner across a newspaper or magazine article, catalog page, encyclopedia page or book.

This scanning system instantly 'reads' the text and displays it on-screen.

You can then save your scanned text as a WordPerfect® or WordStar® file. Or, you can choose to save it as the universal ASCII (pronounced as-kee) format.

Either way you'll effortlessly incorporate your scanned text into virtually any word processor, spreadsheet or database you wish.

And, look at this. Unlike the early OCR scanners, this OCR system can read virtually any font used in the business world!

So whether the text is Courier, Helvetica or any other font (fixed or proportionally spaced), this OCR scanning system can 'read' it with uncanny accuracy.

Plus, this 4.13"-wide scanner makes incredible 8½" x 11" full-page scans! Just make two quick passes over a page. This scanning system automatically puts the pieces together right on the screen.

How accurate is it? I've found you'll get an astounding 99% or better accuracy. So I always run my just-scanned text through my word processor's spell checker. That way I know it'll be perfect.

OCR PRODUCTIVITY IN ACTION

Forget laboriously hand-typing pages of text. With this advanced OCR scanning system, you can save valuable time while creating sit-up-and-take-notice reports, newsletters, articles and term papers.

If you're a contractor, you can scan your client's request form. Then using the text as a 'skeleton,' you can create a concise bid complete with equipment requirements, dates, numbers and costs.

If you're a lawyer, now you can scan briefs that were written before the age of computers (or from other law firms) to help you build new briefs for the nineties.

And, if you're a student, now you can easily research information for school papers and college theses. (Remember to always footnote the source.)

Plus, with permission, you can integrate information you find from magazines, newspapers and journals into all your work—even in column format!

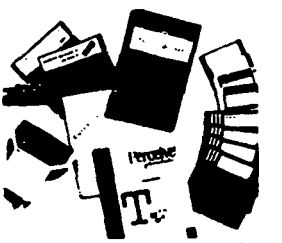
Fast Database Libraries, too. Now you can keep comprehensive records of business-boosting information. Just scan newspaper articles, journal reports and advertisements into your database.

You'll have a complete record of business trends, declines and surges to help you precisely plan your next corporate move.

Caution: It's illegal to use copyrighted material from newspapers, magazines and books for most commercial purposes. So please ask permission and credit the source whenever you use this material.

This OCR scanning system is also perfect for linking incompatible computer systems.

Whether your clients or associates create documents on a Macintosh, Commodore, mainframe or typewriter, it doesn't matter.



The Rip-Off Artist OCR and Graphics Scanning System lets everything you'll need to create scan charts, diagrams, photos, magazine articles and more.



forget spending hours hand-typing copies. Figures and information into your computer. Now using new OCR technology you can grab words right off a page and insert them into your word processor, spreadsheet or database files. Or, with the flick of a switch...

...you can effortlessly supercharge all your business reports, newsletters and sales proposals with the attention-commanding power of maps, charts, diagrams, illustrations and logos you've scanned with pin-sharp 100-, 200-, 300- or even 400-dpi resolution.

This OCR scanner system will convert any documents you choose into THE FORMAT you and your computer can work with.

But, hold on. You can also add eye-opening 400-dpi graphics instantly to all your reports and proposals. Here's how.

CAPTIVATE YOUR READERS WITH HIGH-RESOLUTION GRAPHICS

Capture your reader's attention and never let go! This easy-to-use OCR scanning system is also a 400-dpi graphics scanner!

Now you can grab a picture of yourself and instantly place it on brochures, business letters or handbooks.

Now you can copy drawings, diagrams and maps out of encyclopedias, journals and almanacs for your club newsletters.

And, now your children can turn in A+ term papers complete with compelling illustrations, photographs, charts and diagrams.

Remember, graphics, like text, are subject to copyright laws. So please get permission and credit the source before you begin to scan copyrighted material.

You can even scan your logo and create personalized stationery on your continuous feed paper or single feed paper.

Signatures, too! Now you can scan your own signature to add a truly personalized touch to your thank-you notes and fund-raising letters direct from your printer.

Plus, if you have a fax card in your computer or a modem, you can scan reports, memos, letters, cancelled checks, photos or anything you can think of. Then you can fax or upload your scanned images quickly and easily anywhere.



With the Rip-Off Artist's outstanding 100-, 200-, 300- and 400-dpi resolutions, all the text and graphics you scan and print will be sharp and easy to read.

UNEQUALED SCANNING HARDWARE

It's unlike any ordinary hand scanner. Musteck's half-page scanner uses a newly improved yellow-green LED light to precisely scan both graphics and text.

So whether the graphic or text you're scanning is black-and-white or in full color, you'll capture a great-looking black-and-white copy every single time.

Plus, the scanner has a window (so you can see exactly what you're scanning) and guide rollers that ensure you always get accurate, finely detailed, distortion-free images.

You can even adjust the resolution of your image to 100, 200, 300 or 400 dpi.

SOPHISTICATED SOFTWARE RUNS THE WHOLE OPERATION

The brain behind this jaw-smacking, graphics-loading operation is the included advanced software—one program for scanning text and two for scanning graphics.

Perceive Personal. This incredible $495 OCR software is the heart of this scanning system. With Perceive Personal, you can effortlessly scan typewritten, typeset, laser-printed and dot matrix text in either fixed or proportional spacing.

Plus, it's smart. It recognizes and interprets multiple columns, portrait (vertical) and landscape (horizontal) pages.

ScanKit. With ScanKit, you can match graphics and then customize them any way you want. You can capture any graphics image, resize it and crop it.

PC Paintbrush. You can also capture graphics with PC Paintbrush. But, unlike ScanKit, you can also edit them, add text and then "paint" them with a palette of vivid colors or patterns.

And, once scanned, you can incorporate your graphics into any other program using the .PCX, .IMG or .PIX formats.

INSTANT INSTALLATION

Simply slip the included scanner card into any open expansion slot of your IBM PC/AT/386 or compatible computer with standard Hercules, EGA or VGA graphics. Load the software. Plug in the Musteck scanner. And, you're ready to go.

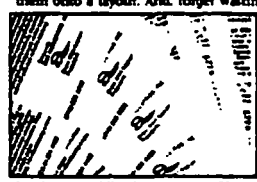
The easy-to-understand manual makes it all simple to do. A hard drive and a minimum of 640K memory are required.

The Musteck OCR and Graphics Scanning System is compatible with virtually all dot matrix, ink jet, HP LaserJet Plus and Series II or compatible laser printers.

It's engineered by Musteck, Inc. and backed by their standard limited warranty.

RIP OFF GRAPHICS (AND NOW TEXT) RISK-FREE

Forget cutting up drawings and pasting them onto a layout. And, forget wasting



I read in Home Office Computer (Jan. 1991) that some people are charging $40 just to scan your signature and send it back to you on a disk. Why waste $40? With the Rip-Off Artist you can effortlessly do it yourself (plus scan graphics, logos and text). Then instantly "sign" your signature on hundreds of "personalized" letters.

hours hand-typing pages of text.

Simply pass this 4.13"-wide hand scanner over anything you want. You'll astound your readers with stunning graphics and text.

If you're not absolutely amazed with the Rip-Off Artist's OCR and graphics capabilities, simply return it to DAK in its original box within 30 days for a courteous refund.

To order your Rip-Off Artist OCR and Graphics Scanning System including the Musteck 400-dpi Hand Scanner, Newly Released $495 Perceive Personal, PC Paintbrush, ScanKit, Expansion Card and more risk-free with your credit card, call toll-free 1-800-325-0800 or send your check for DAK's stardust-blasting price of just $349.99 ($9 P&H).

Use Order No. 5844 for 5¼" disks. And, use Order No. 5850 for 3½" disks.

You'll see text magically flow into your word processor, database or desktop publisher seconds after you've scanned it.

Plus, you'll grab your reader's attention with eye-catching photos, drawings and charts you've scanned into your documents.

FINAL CLOSEOUT NOW JUST $99.99

Use Order No. 5844 or 5850 ($9 P&H)

If you've been wanting to buy a Rip-Off Artist, now is the time to do it. Now you can save a whopping $50 off my original industry-blasting price.

Musteck and its registered trademarks or trademarks pending Musteck Hardware

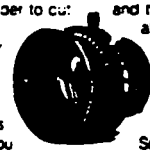


WE UNDERSTAND THAT IN THE DOG-EAT-DOG WORLD OF PHOTOGRAPHY, YOUR LENS HAS GOT TO CUT THE MUSTARD!

If your competitors are going for your throat, your best friend is a Schneider lens. No matter how doggone difficult the shot, you can count on Schneider to cut the mustard.

When it comes to lens design, Schneider is simply top dog. We combine the latest in computer engineering with superior mechanical craftsmanship. And we put every incredibly sharp Schneider lens through stringent testing procedures, so you get the best of the best.

At Schneider we've been on a roll for more than 80 years, consistently coming up with winners such as the Apo-Symmar, the Super-Symmar HM, and the Macro-Symmar HM. We're learning tricks all the time, like the exciting new 58mm and 90mm f/5.6 Super-Angulon XL's. And here's something else you'll relish: Schneider's *lifetime warranty* on nearly every lens!



We're still best in show after 80 years, and doggedly determined to retain the title. Schneider Corporation of America, 400 Crossways Park Drive, Woodbury, NY 11797 (516) 496-8500.

Schneider KREUZNACH
SHOOT FOR THE BEST.

Information supplied
compliments of Ron Leven
We Understand that the World of Used Cars Has
Always Appeared to be DOG-EAT-DOG. That's Why
You Can Always Count on a JM Pre-Owned ...
it's Guaranteed to Cut the Mustard!!!
ONE-PRICE – NO HAGGLE SELLING
1-800-966-7738
INCREDIBLE BUYS!!!
GREAT DEAL - NO NEGOTIATION
WORLD CLASS CARS!!!
JM'S PRE-OWNED
LEXUS LEAGUE

APPENDIX 14.—ARTICLES SUBMITTED BY JOSHUA KAUFMAN, ESQ.

ART BUSINESS NEWS January 1993

SO WHOSE PRINTS ARE THEY, ANYWAY?

by Joshua J. Kaufman

A recent private ruling handed down by the United States Copyright Office on a dispute involving the reproduction of artwork has the potential to throw the ownership of hundreds of thousands of posters, limited edition prints, and photographs into question.

The effect of this ruling could be to divest artists and publishers of ownership in reproductions made by outside printing firms. This ruling could also represent a windfall to many unsuspecting printers.

The Copyright Office recently rejected a series of copyright applications by an artist who sought to register her underlying artwork and the photo-mechanical offset reproduction made by her printer.

On The Law

For the last decade, the artist has been registering her underlying artworks and the prints made from them on a single application, following instructions provided to her by the Copyright Office. In order to comply with state print disclosure laws, the artist included, in small print at the bottom of the reproduction print (in an area usually covered by the frame), the size of the edition, the method of reproduction, and the name of the printer.

While reviewing some of her recent applications, the Copyright Office noticed the name of the printer and contacted the artist. After ascertaining the reproductions had not been printed by the artist herself, it ruled the printer's contribution added enough originality to the process to make the reproductions derivative works (a position disputed by the artist), and that the copyrights in the reproductions were therefore owned by the printers.

The artist, in a series of phone conversations and correspondence with the Copyright Office, explained the printer's contribution in creating the offset lithograph was merely mechanical, that its sole contribution was to reproduce the original as closely as possible, and that she had the absolute right of approval on all aspects of the final prints.

The Copyright Office, notwithstanding these explanations of the nature of the contribution of the printer or of the artist's actual control over the final product, maintained its holding that the amount of originality necessary to hold a copyright in a derivative work is minimal, and that the printer owns the copyrights in the prints.

The Copyright Office maintained its holding that the amount of originality necessary to hold a copyright in a derivative work is minimal, and that the printer owns the copyrights in the prints.

The artist dealt with this ruling in a pragmatic fashion: she had the printers she had hired assign any and all rights they may have had in the prints back to her, thus avoiding the expense and necessity of suing the Copyright Office in federal court to try to force a change in the ruling.

Taking the position of the Copyright Office to its logical conclusion, not only would a printer be deemed the reproduction copyright owner, but so would a copy center that makes color copies for which an operator had adjusted the contrast, tint, and other [illegible]

If one accepts the Copyright Office position, an artist or publisher that asks a printer or atelier to create a reproduction of a pre-existing work is granting them a copyright license for the creation of a derivative work.

A derivative work is "a work based upon one or more pre-existing works, such as a translation . . . art reproduction . . . or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions . . . or other modifications, which, as a whole, represent an original work of authorship, is a derivative work."

Whoever creates an authorized derivative work is generally entitled to copyright it in their own name. For example, if a movie is based on a book, the film is considered a derivative work of the book, and the copyright in a movie will be held by the movie company, not the book's author.

The same would hold true for songwriters and record companies. The composer may own the copyright in the song itself, but the record company will own the copyright in the sound recording.

The owner of a derivative work has the same rights to its work as any other copyright owner, except if limited in its original grant of rights. All such limitations should be clearly expressed in any license agreement.

In a situation such as noted in this column, there was probably no discussion whatsoever regarding the nature of the license being granted to the printer, as the artists and/or printers probably had no idea the printer was being granted any rights in the underlying reproductions.

The right to publicly distribute a copyrighted work is one of the rights inherent in the copyright owner. By returning the limited edition prints, reproductions, or photos to the artist or publisher, the printer has probably granted them an implied license to distribute the reproductions. However, since any copyright license that is not in writing is deemed non-exclusive, the printer could also grant distribution rights to others.

In addition, as with many other contracts, a copyright license without a specified term or time limit may be considered terminable at will. Thus, a printer could cut off an artist's rights to distribute the works and deny the artist the right to acquire additional copies of the work.

The precious rights held by the printer and the artist or publisher will vary from case to case, depending on the nature of the correspondence, purchase orders, and conversations between the parties. However, what is clear is printers do have certain rights in the reproductions they have created.

What can an artist or publisher do?

As to pre-existing works, a legal analysis must be used to determine whether the rights of the printer are sufficient to cause a problem. If they are, the artist and publisher would need to negotiate an assignment of all rights the printer may have in the derivative work.

Depending on the relationship of the parties, this might be an easy, economical, insubstantial matter, or it might be a complex problem which could end in expensive litigation. It is something that needs to be closely examined on a case-by-case basis.

ART BUSINESS NEWS January 1993

Every artist and/or publisher should, as a matter of routine in dealings with printers, obtain an assignment of any and all rights in and to the derivative work before any work is performed.

Prospectively, each and every artist and/or publisher should, as a matter of routine in dealings with printers, obtain an assignment of any and all rights in and to the derivative work (i.e., reproductions made by the printer) before any work is performed.

While the assignment can be and should be part of any contract or purchase order, a separate document of assignment should also be obtained. This document would not have to contain any of the financial aspects of the transaction. It would be a public document to be recorded with the Copyright Office.

It is important to note copyright assignments must be in writing to be valid. Thus, the oral agreement of the printer to assign all its rights will not necessarily be recognized or effective.

Under the Copyright Office's current policy, to register an artwork one would still use the standard form VA and could use the lithographic reproductions as copies of the best editions for the purposes of deposit. A derivative work owned by the printer would require a separate registration.

If you acquire an assignment and register the reproduction, in form VA, section 4, under "Transfers," you would state you acquired the copyright by assignment and could attach the assignment to the application. In section 6 of the form, under "6A, Pre-existing Material," you would list the name and nature of the underlying artwork, e.g., watercolor by Jane Doe, and in "6B, Material Added to this Work," you would put "reproduction of watercolor by photo-lithography."

While the Copyright Office's position may or may not be correct, its implications will likely cause some major waves in the art world, depriving artists and publishers of copyrights they thought they had, and giving those rights to printers who neither asked for or bargained for them. □

Joshua Kaufman, Esq., is an art law expert. He successfully argued the 1989 landmark copyright case, CCNV vs. REED, before the United States Supreme Court. He has taught art law at the Corcoran School of Art and teaches entertainment law at the American University Law School. He is the Executive Director of Volunteer Lawyers for the Arts, D.C., and is based in Washington, D.C.

YOUR CLIENT HAS GONE BANKRUPT-A BLESSING IN DISGUISE?

By Joshua Kaufman, Esq.

Early one morning you open the paper and find, to your horror, that one of your best clients has just filed for bankruptcy! The client owes you a significant amount of money and has licenses for some of your best works. Does the fact that the client has declared bankruptcy mean you must forfeit the money owed you? Does it mean you have lost your rights in your artwork? Can they keep using your work without paying royalties? Just what rights do you have?

First, let's explore what actually happens when someone declares bankruptcy. There are several forms of bankruptcy. Chapter 13 is consumer bankruptcy, Chapter 7 is total dissolution, and Chapter 11 is reorganization. (Chapter 11 is used when a business feels overwhelmed by its debts, but believes that if it is provided some relief, it will be able to get back on its feet). This article will concentrate on the effects on an artist when one of his or her creditors files under Chapter 11.

Creditors can also force a debtor into bankruptcy to protect their interests if they feel that the debtor's activities jeopardize their ability to be repaid. In either bankruptcy situation, voluntary or involuntary bankruptcy, papers are filed with the appropriate bankruptcy court. Bankruptcy courts are Federal courts.

In most Chapter 11 bankruptcies, your client is "a debtor in possession," in which they are entitled to continue operating their business and remain in possession of their assets. You would be considered a creditor, that is, an entity that has a claim against the debtor; the claim is defined as a right to payment, whether secured or unsecured debt. The court will enter an automatic stay, to provide the debtor with a breathing spell, which is needed in order for the business to get back on its feet. An automatic stay halts all collection efforts, harassments, foreclosures, or litigation. An automatic stay may also benefit creditors by ensuring that the remaining assets of the debtor are property maintained and that no single creditor is paid in a manner that favors one creditor at the expense of others. The automatic stay remains in effect until the case is closed, dismissed, or discharged.

If you appear as a creditor on your client's books, you should automatically receive notices from the courthouse, allowing you to file a document known as a Proof of Claim, in which you may list the monies owed to you by your client, the debtor. If you have not heard from the bankruptcy court, and you are owed money by someone who you heard has filed bankruptcy, be sure to call visit the court to find out if a bankruptcy proceeding is going on. In order for you to recover under bankruptcy, your Proof of Claim must be filed by a specific date, or you may be barred from ever recovering any sums from the debtor.

Meetings are held periodically at which creditors have the right to examine the debtor regarding their assets and the status of the reorganization. In a large bankruptcy, a creditors' committee is usually formed and an attorney representing the individual debtors committee is usually

hired. In Chapter 7 bankruptcies a trustee is appointed. The trustee will review the various claims filed and decide which ones to acknowledge and which ones to contest.

Claims also are grouped according to whether they are secured and unsecured. A secured *claim is a money claim which has specific collateral assigned to support it.* This generally will not be the case with a commercial artist and his or her client. By and large, artists are deemed unsecured creditors, which puts you at the bottom of the list in terms of collecting. This is the case if you have completed and transferred the artwork and/or trademarks and copyrights to a client for a lump sum payment and your client has completed all contractual obligations to you except for paying you. You can expect to recover little, if anything, for your troubles.

However, many if not most commercial artists will find themselves in a situation where all obligations under their contracts are not completed. Such contracts are known as "executory contracts" and provide an artist with a greater opportunity to collect monies due. In such cases, the artist, notwithstanding the bankruptcy, may very well be in a position not only to collect back monies owed, but if the client intends to continue using the artwork, also to be paid at his or her full rate for future use, plus be provided additional assurances that the bankrupt client will be able to maintain the payment schedule.

The specific legal definition on an executory contract differs from jurisdiction to jurisdiction. However, the basically accepted definition is that "an executory contract is a contract under which the obligations of both the bankrupt, and the other party to the contract, are so far unperformed that the failure of either to complete performance would constitute a material breach, excusing the performance of the other." In the commercial artist/client contract, clauses that may make a contract executory would require the artist to provide notice of any infringement suits, provide notice of any additional licenses granted for the same or similar art, defend any infringement suit brought against the client, hold the client *harmless from liability for breaches of warranties set out in the agreement,* or require the client to pay royalties, make quarterly reports on sales to the artist, maintain books and records, keep aspects of the license confidential, and furnish the artist with an accounting. Many of these requirements will be familiar to anyone who regularly grants artistic licenses. It must be emphasized that no two cases are handled in the same manner, and that while this list is compiled from existing cases, *it is offered by way of illustration only.*

If a contract is deemed executory, the bankrupt client has the right either to accept the contract, or to reject it. If they reject it all rights revert to the artist, who may make future use of the work, and if any funds are owed, the artist can try to collect them as an unsecured creditor. (However, it is often the case that the artwork and logos provided by artists are essential to the bankrupt client and to their continuation in business. The client may continue to use the artist's work only if they fulfill three legal requirements: First, they cure any current default, such as overdue royalties (or provide the artist with adequate assurances that the default will promptly cured.) Second, the debtor must provide compensation, or adequate assurances of compensation, to the artist for any actual monetary loss that resulted from the prior default. Finally, the debtor must provide adequate assurances of future performance under the contract. This puts the artist in a very good

position, better than most people in a typical bankruptcy situation (and perhaps even better off than they would have been without a bankruptcy, especially if the client has been slow in paying).

The timeframe for acceptance or rejection of executory contracts differs based on the nature of the bankruptcy. In Chapter 7 bankruptcy, in which the debtor is winding down their business, there is a 60-day period after entry of the order, to provide time to decide whether to accept or reject a contract. In a Chapter 11 bankruptcy, a debtor in theory, has 120 days, but this is often extended for a period of years. The extra time is granted so that a proper reorganization plan may be created. There are techniques and methods available to protect the artist if the debtor continues to use the artwork during the determination period and then ultimately rejects the license. If, in a Chapter 11 situation, the artist feel, that he or she is being abused that or she can file motions with the court requesting that the rejection or acceptance of the agreement be made a at time certain. The artist can petition the court to change the bankruptcy from a Chapter 11 to a Chapter 7, or request that a trustee be appointed, even in a Chapter 11 bankruptcy. Also, the monies owed for using the artwork while the debtor is deciding whether to accept or reject the executory contract may be deemed an "administrative claim," which is one of the highest priority claims and one in which the likelihood of being paid is greatly enhanced.

One common clause seen in many contracts, is known as the "ipso facto" financial default provision. It reads something like "... in the event of a bankruptcy, or insolvency, the appointment of a trustee, the license granted herein shall immediately terminate." These clauses are unenforceable. It is amazing, even though the unenforceability of such statements has been a part of the law for several years, how many contracts still contain such language in their "standard boilerplate forms."

Another general rule in bankruptcy is that the non-assignability clauses in contracts are not enforceable. Non-assignability clauses seek to prevent your clients from assigning use of your artwork to other people without your prior consent. However, there is an exception to the bankruptcy law refusal to honor non-assignability clause, that is, if they are covered by other "applicable laws." Courts have held that the non-assignability language found in copyright and trademark laws are "applicable laws." Therefore artists, unlike other creditors, can prevent a debtor from assigning the license or right to use the artwork or logos.

Many of these special benefits to artists are contingent on the language used in their agreements. Two contracts covering the same transaction but in different language might provide drastically different results in a bankruptcy situation. Therefore, it is important that you review your contracts to ensure that if your client goes bankrupt, you are provided with the maximum number of rights available. This is all the more important when dealing with start-up clients or clients who you feel might be confronting financial difficulties.

If your client declares bankruptcy, and you do not have an executory contract, be sure to file the appropriate papers, and perhaps attend the creditor meetings. While in many instances it is true that unsecured creditors get pennies, if anything, on their debt, there are many cases in which unsecured creditors who are diligent can collect hefty sums.

If a client of yours does declare bankruptcy and your contract with them is still executory, and if they continue to use the art work, they will be required to bring themselves current, continue paying you, and provide assurances that you will continue to be paid, or rights in the artwork revert to you. Ironically, under some circumstances your client's bankruptcy may in fact be a blessing in disguise.

Copyright Joshua Kaufman 1992

Down By Law

Courts Put Art Copycats, Samplers on the Run

by Joshua Kaufman

For the last decade, and at an accelerated rate the past five years, an appropriation, using other people's images in one's own work, has become an important issue in the art business.

Well-known visual artists have been openly and blatantly appropriating the works of others, making few, if any, modifications, and assimilating the work into their own. Within the music industry, rap artists, in particular, have been snatching bits and pieces of recorded songs and incorporating slightly modified versions into their own works. The practice is known as "sampling."

VIEWPOINT

Numerous articles have appeared in law reviews and trade journals, with both sides voicing the artistic basis for allowing or not allowing the incorporation of pre-existing artworks into subsequent works by different artists. Pro-appropriation arguments generally range from "art is for the people" to "all art is derivative and appropriation is just the logical extension of an accepted concept."

Many artists whose works have been used without their consent do not share the altruistic approach of the appropriators. They feel their rights have been infringed upon, and that appropriation is nothing short of theft.

While the art and music world have discussed these as abstract issues, a number of artists and musicians have taken the more serious route and filed lawsuits.

So far, and with uncommon uniformity, the courts have not been persuaded by the artistic arguments used by appropriators in their own defense. Instead, the courts have found, under a variety of legal theories, that appropriating and incorporating others' work is a violation of both copyright *and* trademark law.

The courts are not only repudiating appropriation, but are expanding the legal basis under which artists may protect their work. In fact, for the first time in the United States, a court has ruled that an artist with a distinct style who has acquired a wide following can stop others from creating works in a highly similar or imitative manner.

Two recent cases in the visual arts, along with several in the music field, all using different legal theories, have virtually closed the door on appropriation.

> *The courts are not only repudiating appropriation, but are expanding the legal basis under which artists may protect their work.*

The first is a New York case which held that the renowned artist, Jeff Koons, deliberately and unlawfully copied a photograph that had appeared on a greeting card by using it as the basis for a sculpture. The image in question was created by California photographer Art Rogers in 1980 and depicts a couple holding a litter of puppies. Koons' sculpture was virtually identical to the photo.

In 1990, a lower court ruled against Koons, and a recent appellate court ruling upholding the lower court's decision seems to have put the matter to rest in New York state. (New York's art law is usually followed by other states.) For Koons, his stance is typical of those artists who believe they have a right to appropriate the work of others in the name of art.

"Since when do judges qualify as art critics?....(This ruling) not only hurts me, but every other artist. It was only a post card photo, and I gave it spirituality, animation, and took it to another vocabulary....If I was greedy, I would have copied a Picasso....The ruling will have a chilling effect on artists who seek to transform everyday images into art," Koons stated.

Through his counsel, Koons said he believed his work "was a parody and was protected by federal law," though three federal judges on the appellate panel not only found no legal merit in Koons' arguments, but specifically chastised him for piracy.



The Poetic Paintings of Pati Bannister

New Masters Publishing Co. Inc. (Artist's Agent)
Suite 105 Markham Building • 2301-14th Street • Gulfport MS 39501 (601) 863-5145 • 1-800-647-9578 • FAX 601-863-5145

SHOWN ABOVE BED OF ROSES IMAGE SIZE 16 3/4" x 20 1/8" S/N EDITION 663

Circle 63 on reader service card

DOWN BY LAW

continued from page 90

arrogance, and greed. In addition, in remanding the case back to the lower trial court, the appellate judges took an unusual step. The panel directed the trial judge to ascertain whether Rogers would be entitled to "enhanced damages" because Koons' behavior was so egregious.

The Koons case was decided under copyright law and was based on the accepted principles that direct copying is an infringement, even if the second work is in a different medium.

In a second case, the Tarkay case, the court expanded the rights of original creative artists beyond what has been the generally accepted boundaries.

The Tarkay case deals with imitation of style more so than a direct copying of a specific work. The suit was filed by Romm Art Creations and London Contemporary Art Ltd., the licensed distributors of Itzchak Tarkay's posters and limited edition prints, respectively, against Simcha International Inc.

Simcha was marketing a line of prints that the Tarkay representatives claimed were extremely similar in style to their artist's work. The ensuing lawsuit, however, was not based on copyright at all, it was based on trademark law, which is based on the federal law known as the Lanham Act.

The law goes beyond the right to protect a logo or simple trademark, also covering the overall impression a product's look and design have among the viewing public. The underlying test in all trademark cases is the "likelihood of confusion on the part of the consuming public as to the source or origin of a particular product."

The plaintiffs, Romm Art and London Contemporary in this case, referred to several theories under the Lanham Act; and under a similar type of state action called dillusion; and also under unfair competition and deceptive trade practices, another state cause of action. The plaintiffs claimed the work sold by the defendants was for the "willful and calculated purpose of trading upon plaintiffs' good will."

The Tarkay side was successful, and the court granted a preliminary injunction barring defendants from publishing the series of works deemed to be too similar in style to Tarkay's. If the case, scheduled for a trial by jury beginning in September, does not settle, the matter will go forward based on these issues.

It is important to note the court did not write a sweeping opinion in which it stated that no one could copy the style of another artist. Instead, it limited the scope of its ruling. The court stated that it is necessary to find that the look (style) of the first artist's work is distinctive, and that it has acquired a "secondary meaning" (secondary meaning is a trademark term signifying the artist and his style are so distinct and so well known that the purchasing public has come to identify that unique and distinct style with a specific artist.)

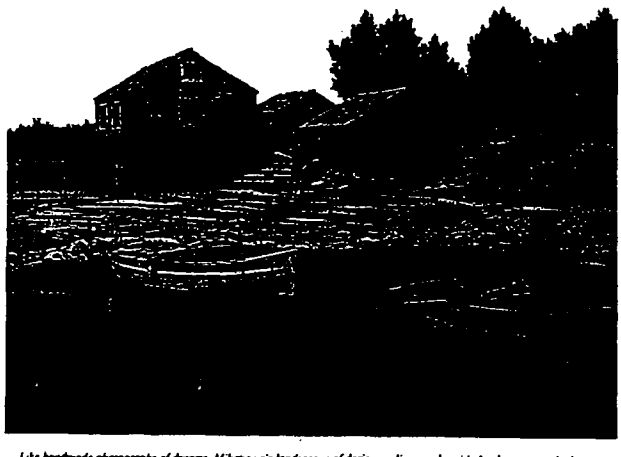
In a second case, the Tarkay case, the court expanded the rights of original creative artists beyond what has been the generally accepted boundaries.

Additionally, the style for which protection is sought must serve only aesthetic gratification and have no express purpose other than to identify the creator of the artwork. The court also held that there, of course, must be a similarity between the works.

The court ruled, "It is the combination of features as a whole, rather than a difference in some of the details which must determine whether the competing product is likely to cause confusion in the mind of the public." The court examined color patterns, shading, placement of figures, the physical attributes of the characters, the depiction of the characters in their sitting and reclining positions, the characteristics of clothing vis-a-vis the different works—and concluded there was a sufficient similarity between the products.

The court also indicated that there must be a direct competition between the two products, as that increases the likelihood of confusion. Another factor the court considered was the "junior user's good faith," i.e., whether

Zvonimir Mihanović



Like handmade photographs of dreams, Mihanovic's landscapes of dozing realism awake with the dawn or settle down with the dust. Emerging from the night in peace and silence a tiny fishing hamlet is touched by the rose-fingered dawn.

"First Light" Limited Edition Lithoserigraph, Image Size 24" X 18". Printed in Milan, Italy on 100% Rag Arches-Rives.

MIHANOVIĆ

GRAPHICS, INC.

P.O.BOX 771115 HOUSTON, TEXAS 77215-1115 713/780-8479 713/977-7474 FAX

Circle 69 on reader service card

DOWN BY LAW

continued from page 92

the secondary user was aware of the original user's trademark (style) when the adoption took place.

The court held that in the case of an artist as popular as Tarkay, it would be difficult for a competitor in the print market not to have been aware of his works. In addition, the court looks at the quality of the junior user's product. If it is of a lower caliber, the rights of the original user are more likely to be enforced.

In the Tarkay case, the quality of the defendants' prints was not at issue, as they were of the same quality as Tarkay's. However, in cases where the junior user's works are of an inferior quality, an additional cause of action for damaged reputation may be recognized.

The sophistication of the purchasers was another factor the court examined closely, and whether they have the ability to evaluate the differences between the products. The less sophisticated the buyer, the greater the likelihood the court would find confusion on the part of the purchasing public.

This court's position on the matter is embodied in the following statement: "One salutary purpose of the Lanham Act in this context is to protect the creative artist's right in his or her creation and thus provide incentive to be creative ...protecting and fostering creativity....stimulates rather than stifles competition."

As stated above, the court protected Tarkay's style under trademark law, but not under copyright law. A new body of law is developing, however, in the area of computer law which may afford stylistic protection to artists under copyright law as well.

A number of computer lawsuits have held that copyright not only protects the actual text of a computer program, but also protects the "look and feel" of the program. In "look and feel" cases, the courts have looked to the organization of the work, the way it is set out, and how it appears on the screen to the computer user. Thus, even if a computer program's code is not copied, but the look and feel of a competing program is similar to that of the first, an infringement may be found.

Extrapolating these legal principles from the computer arena into the art world, we would see rulings which would hold that, even if one does not copy an artwork directly, but rather the overall "look and feel" of it (which I read as style), it may in fact violate the copyright of the original artist.

Another area of appropriation where the original artists have been victorious is with "cut-outs". A number of companies engage in cutting out an artists' images from tearsheets, advertisements, books, catalogues, posters, and calendars, and then frame them or mount them to tile, blocks, or other objects to sell them in these new formats. In the last few years, the courts have kept fairly uniform in holding these types of use as prohibited under the copyright law.

The emerging trend has artists, publishers, or galleries on notice that artistic appropriation is not considered by the courts to be "fair use" or "a reasonable artistic expression."

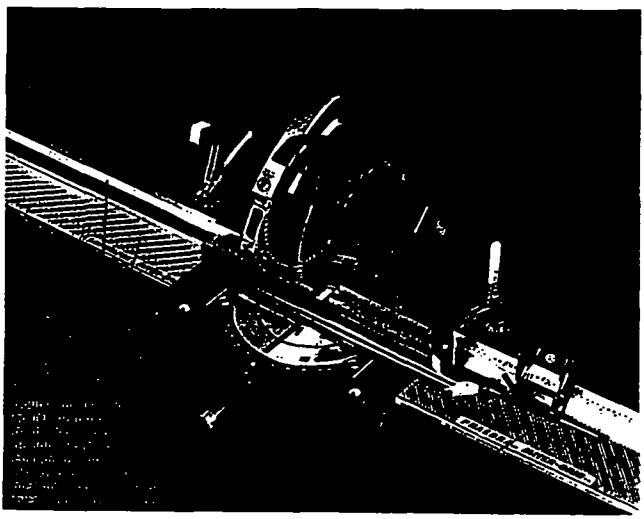
There is also a lesson to be learned from those cases in the music industry where appropriating rap artists have been losing cases.[1]

The emerging trend has artists, publishers, or galleries (all three would be liable in an infringement suit) on notice that artistic appropriation is not considered by the courts to be "fair use" or "a reasonable artistic expression," but rather an illegal, actionable activity. While esoteric art appropriation arguments may play well in art circles and at gallery openings, they have been falling on deaf ears in courthouses across the country.

Using the artwork of another, or closely imitating it, is now frowned upon under U.S. law. Let the appropriator beware. ☐

Joshua Kaufman is a partner in the Washington, D.C. firm of Goldfarb, Kaufman & O'Toole, and his specialty is art law.

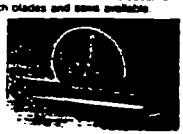
1. In 1991, a copyright suit was brought by Grand Upright Music Ltd. against Bel Silvestre for use of the sampling of the song Alone Again. The issue was used without permission in the Bel Silvestre rap song I Need a Haircut. The court not only found a copyright infringement, but referred the matter to the U.S. Attorney for consideration of a criminal prosecution under federal law.



PHAEDRA™ is sold with or without the saw and blade, and fits any miter saw. It comes with a great guarantee and is built tough enough for factory use. We use steel where others use plastic. Available with a wide range of the finest saws and blades, PHAEDRA™ can do more types of work than any other framing system.

PORTABILITY

Professional picture framing blades. Up to 120 teeth in carbide blades. The finest woodi/metal combo blades. 10 to 15 inch blades and bores available.



Multi-sided frames and deep shadow boxes. Wood, metal and composition frames. Don't cut yourself short!



Patented self squaring coupler—



PHAEDRA™ can set up, knock down in 60 seconds - saves space, more versatile.

PHAEDRA™ Shrink Wrap system



Many models and features. Super clear, faster shrinking film saves time and makes you money.

From American Design and Engineering Inc.
Miter Systems • Saws • Blades • Cutting Lubricants • Shrink Wrap • V Nail Machines
900 3rd St. #123, St. Paul, Park, MN 55071
Toll Free 1-800-441-1388 or 1-612-459-7400

A New Artist Right: Access

What happens when an artist needs a copy of one of their works of art in order to put it in a catalogue reasonne of their works? What does a publisher of an artist's work who would like to include several of the artist's older works, which have been sold to museums or individuals, do to get transparencies. When a dealer is selling an artist's work and would like to put together a brochure or catalogue for prospective buyers, how do they get slides of earlier works? In any of the above examples if the artist has not maintained publication quality transparencies of their work they will need access to the art works in order to have them professionally photographed. The situation is common but it has posed a great problem for artists, museums and dealers. The reason being that artists, even though they retain the copyright to their work, have not had right of access to their own creations.

Prior to January 1, 1978, when major changes occurred in the copyright law, when an artist sold an art work they lost any and all rights they might have to the work including copyrights or any other rights against destruction or alteration. Under the old regime when someone bought an art work they bought it in a complete and total fashion. As of January 1, 1978, the copyright law changed and provided that the physical embodiment of a work and the copyright were separate and distinct. Thus when one purchased a painting or other work of art they did not purchase the copyright and did not have any right to reproduce it in any fashion. The right of reproduction stayed with the artist. The copyright law was silent, however, as to how an artist could exercise their rights. If the artist had maintained good quality transparencies of their works they would simply use them in order to create reproductions. However, if they had not or lost the slides and needed access to their sold works they were at the mercy of the owner of the work. The copyright law was silent as to any "right of access" to a work of art. When an artist is denied access to their work they are effectively denied the ability to exercise their copyright thus negating the change created for their benefit in 1978.

The resulting instances of artists' inability to copy their works for legitimate purposes are numerous. The reasons for denying artists the ability to copy their works by owners of the work ranged from honest concern about the safety of the work to mercenary attempts to extort access fees from artists. At times it was simply vindictiveness based on bad feelings that had arisen over time between the artist and the collector or institution which held the work.

Museums often found themselves on both sides of the situation. While many refused artists the right to have access to their works others were stymied in their preparation of catalogues or retrospectives because they did not have access to works of art held by others.

Artists and their dealers who might have wanted to make posters or limited edition prints based on an original that the artist no longer held who were denied access lost the ability to do so. As a result thousands of dollars in potential profits have been lost.

A number of lawyers in the art field, myself included, have argued that under the law of equity there is, even if not specifically stated in the copyright statute, "an implied right of access", a compulsory easement to the art work by the owner. To hold otherwise frustrates the intent of the law. This legal argument while not found in the copyright law has been recognized by courts in real estate transactions. Under certain circumstances, due to the nature of subdivisions of properties, there have been situations created where properties end up having no egress to them from any road. This blocks all access to the "landlocked" piece of property. Courts have recognized the inherent inequity of this situation and have granted landowners, non-exclusive easements (rights of travel) over their neighbor's land so that they can get to and from their property. This avoids the situation in which a person is denied the right of enjoyment of a property right.

Until now this theory has been just that, a theory advocated by art lawyers in order to protect their artist clients. Finally, judicial support for this argument has been articulated. In a recent holding in the CCNV v. Reid case, yes, that is the same case that went to the Supreme Court three years ago where the Supreme Court held that the creative party and not the commissioning party owns the copyright to a work. It was hailed as a great victory for independent contractors and artists. In their decision the Court, after finding that Mr. Reid was not an employee of CCNV, remanded the case back to the trial level to determine whether or not CCNV's contribution to the work was sufficient enough to make it, CCNV, a joint author. Just before the case went to trial on that issue, the parties reached what at the time they thought was a settlement. Mr. Reid was given the exclusive copyright in all three dimensional reproductions and CCNV and Mr. Reid were given joint ownership of the copyright for two dimensional reproductions. Mr. Reid was the only one allowed to make sculptural copies and CCNV in addition to Mr. Reid could make posters, postcards, calendars and the like for fundraising purposes. The agreement was entered as a Consent Judgment and signed off by the Court on January 7, 1991.

At the time it was presumed to have brought an end to this protracted litigation which had commenced in 1986. However, peace was not to be. When Mr. Reid asked CCNV for access to the sculptures so that he could make a mold of the work thereby exercising his exclusive three dimensional copyright in the work CCNV refused to allow Mr. Reid near the piece. The parties argued back and forth through difficult and intense negotiations but reached an impasse. CCNV refused to let Reid make his casts. The parties went back to Court and fully briefed this new issue. CCNV's position was that if Mr. Reid wanted to exercise his three dimensional reproduction rights he would have to resculpt the work. Mr. Reid argued under two theories: One, that the denial of the access was a form of copyright infringement, as it limited his copyrights, and the second was a technical argument by the way of equitable relief. The Court granted Mr. Reid's petition based not on the copyright law but under the general principles of equity and under a judicial doctrine known as the "All Writs Act". This obscure act gives the Court undefined powers to enforce its earlier orders. The earlier order in this case was the Consent Judgment. The Court found that, "Reid is entitled to a limited possessory right of his own the nature of an implied easement of necessity to cause a master mold to be made of this sculpture whereupon it (the sculpture) shall be returned promptly to

CCNV." The Court specifically gave CCNV 90 days to turn the piece over to Mr. Reid who is required to have insurance on the piece for the benefit of CCNV. Mr. Reid has 30 days to create the mold and thereafter has to give the work back to CCNV. CCNV will have no interest in the mold and all costs of making the mold, of course, would be borne by Reid.

What is very important in this ruling is that for the first time a Court recognized in a judicial proceeding that an artist has a right of access to their work in order to exercise their copyrights.

This ruling, while technically only binding in the District of Columbia, is a federal case and will probably be looked on with great care by the other jurisdictions and hopefully be followed. While this may or may not be the end of legal disputes between James Reid and CCNV the battle has led to two very important legal rulings which have benefitted artists greatly.

NEW VISUAL ARTISTS RIGHTS LAW

After more than ten (10) years of prompting from the arts community, Congress has finally granted artists moral rights. "Droit moral" as these rights are known in Europe became incorporated into law pursuant to the Visual Artists Rights Act of 1990. Technically the law amends the existing copyright law. The new law applies to "works of visual arts" which are defined as paintings, drawings, prints or sculptures existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the artist, or, in the case of a sculpture in multiple cast, carved, or fabricated sculptures of two hundred or fewer that are consecutively numbered by the artist and bear the signature or other identifying mark of the artist. It also includes still photographic images produced for exhibition purposes only, which exists in a single copy that is signed by the photographer or in limited additions of 200 copies or fewer that are also signed and consecutively numbered by the photographer.

The act specifically excludes from the definition of protected works any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audio visual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or other similar publication. It further excludes any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container. It also eliminates from coverage all "works made-for-hire" or any object that would not normally be entitled to copyright protection under the existing provisions of the copyright law.

The rights which are granted to artist fall into two basic categories; the right of attribution and the right of integrity. Attribution entitles an artist the right to claim authorship of a work of art and/or to prevent the use of their names as the artist on a work of visual arts which they did not create. The artist shall also have the right to prevent the use of their name as the artist of a work in the event of a distortion, mutilation, or other modification of the work which would be deemed prejudicial to the artist's honor or reputation.

The right of integrity grants an artist shall have the right to prevent any intentional distortion, mutilation, or other modification of a protected work of art, which would be prejudicial to their honor or reputation. An artist also has the right to prevent the destruction of an art work of recognized stature. There are no definitions nor any guidelines explaining what constitutes "prejudicial to honor or reputation" nor of "recognized stature." Those issues will be defined by judges and juries with the help of legions of art experts and lawyers.

The rights conferred in this law are only available to the artists themselves. This is true whether the artist is the copyright owner of the work or not. When a work is a joint work both artists have the rights granted under this law.

The law, of course, does not cover modification which results from the passage of time. Deterioration due to the inheritant nature of the materials used a work will not be deemed to be a distortion or mutilation. Specifically, the law does not place an affirmative obligation of maintenance on an owner. The scope of the law appears to be limited to preventing an active act of modification on the part of the possessor/owner of the work of art. However, in an attempt to encourage preservation, without rising a law suit, the law specifically excludes from the definition of improper modification the act of art conservation. The law also excludes any public presentation which would include lighting, placement of the work that is not destructive. What this seems to address are "sight specific works." It would appear that moving a "sight specific work" would not violate this law.

The duration of the moral rights vary, depending on when the work of art was created. In regard to protected works of art created after the effective date of the act (June 1991) the duration shall be for the life

of the author. With respect to works created before the effective date of the law, but for which title has not, as of such effective date, passed from the artist, the duration shall also be for the life of the artist. In the case of a joint work, it shall be the life of the last surviving artist. The term runs based on a calendar year, thus an artists rights survive through December 31 of the year of their death. The law does not apply to works created and sold prior to June 1991.

The moral rights granted to an artist may not be transferred to the owner of the work or anyone else, but the artist may waive their rights. It should be noted that the waiver must be in writing. There can not be no oral waivers. A waiver document must identify the work and the exact type of modifications permitted. The waiver shall only apply to the work and the limited exceptions specifically identified. What is not listed is not permitted. In a joint work, either artist can waive rights for both of them without the other's consent. It should be understood that moral rights are separate and distinct from ownership of the copyright in the work or in the work of art itself. A transfer of the copyright in or of the work itself has no bearing whatsoever on the moral rights granted under these new sections of the copyright act. The converse is also true, the waiving of moral rights does not negate the ownership of the underlying copyrights in a work.

The law has a special section dealing with the removal of works of visual arts from buildings. If a protected work of art has been incorporated into or made a part of a building in such a way that removing the work will inherently destroy, distort or mutilate the work, then it may be removed only if a) the work had been installed in the building prior to the effective date of the law; or b) if it was installed after the effective date, there is a written understanding that the work may be destroyed, mutilated or damaged if it is necessary to remove it from the building. If an owner of a building wishes to remove a work of art and does not have written permission to do so, they may still remove the work including it's destruction, mutilation, distortion, if the building owners have made a diligent good faith attempt without success to notify the artist of their intended action. An owner is deemed under the law to presumptively to have made a good faith attempt if they sent a registered letter to the artist at the most recent address that the artist has recorded with the Register of Copyrights. If a building owner provides notice in writing to an artist, and ninety (90) days after being informed of the intention to remove the work, the artists either fail to remove the work themselves or to pay for the removal of the work of art, then the owner may remove it. If the artist does remove the work and there is an expense associated with the reclamation of the work, ownership of the work shall automatically revert to the artist for no additional cost.

The Register of Copyrights has been ordered to establish a special system whereby any artist whose work of visual arts has been incorporated in or made part of a building, may record their name and address with the Copyright Office for the purpose of the statutory notice. The Copyright Office will set up procedures for updating of the records so that the artist may be found.

A number of states currently have moral rights laws on their books. The federal law specifically preempts and nullifies all existing state laws. In some states greater rights were provided while in others fewer rights were granted. The federal law differs in fundamental ways from some of the state laws. The federal law protects the reputation of the artist, specifically the artist must show that the modifications of work will do damage to their reputations. Some of the preempted state laws protected the work of art itself with no burden on the artist to show damage to their respective reputations.

The enforcement rights granted artists are similar to those available for a copyright infringement. One can sue for injunction, damages, and the like. The criminal penalties, which are provided for certain copyright violations, are specifically excluded from the moral rights section. The Fair Use waivers provided for in the copyright law also apply to this section. The Copyright Office has also been ordered by Congress to study the concept and effect of resale royalties. These rights are known as Droit de suite and allows an artist to participate in a percentage of the profits on subsequent sales of their works. Initially, resale royalties had been a part of the current law, but this linkage was one of the key reasons that the law took so long to be passed and were thus dropped.

Another change in the copyright law which was made as part of the Visual Artists Rights Act in protecting architectural works. The law codified the accepted understanding that architectural drawings and plans were protected by the copyright law, but has now also included protecting the buildings themselves. In the past, individuals could close a building, and as long as they did not copy the drawings of the architects were without recourse. It now appears under the law that if one copies the building even without reference to the architectural drawings and clones it, they will be liable for copyright infringement.

This law brings the United States into line with Europe where many of the rights granted to artists in this law have been available in Europe for over a century. There will certainly be a period of getting adjusted to the new added rights and responsibilities for both artists and owners of art works. More than ever, appropriately drafted contracts and sales agreements will be needed. Proper registrations with the Copyright Office, while always important, are now going to be imperative.

APPENDIX 15.—SERIES OF LETTERS (1–32) FROM NUMEROUS ORGANIZATIONS AND INDIVIDUALS ENDORSING H.R. 897

Letter 1

OUTDOOR WRITERS ASSOCIATION OF AMERICA, INC.
2017 Cato Ave., Suite 101, State College, PA 16801-2768; 814-234-1011

RECEIVED
MAR 5 1993
Sub on Courts

February 24, 1993

William J. Hughes, Chairman
House Judiciary Committee
Subcommittee on Intellectual
Property & Judicial Administration
241 Cannon House Office Building
Washington, DC 20515-3002

Dear Chairman Hughes:

The Outdoor Writers Association of America, Inc., an educational association of professional outdoor communicators, strongly supports H.R. 897 (the Copyright Reform Act of 1993). Specifically, we support the bill's elimination of the registration-before-infringement requirement as a condition for eligibility for attorneys' fees and statutory damages, and of the registration requirement generally.

As executive director of the organization for the past nine years, cases of copyright infringement cross my desk weekly. Most of the time, our members do not have the financial resources to put a stop to the infringement and attorneys they speak with discourage any action because of the "registration before infringement requirement."

At this moment I am gathering information on a particularly unfortunate case. Four members of a Huron, South Dakota, family are copying articles from old Field & Stream magazines and selling the articles to other magazines with just a few minor changes. Attorneys at Field & Stream will not pursue the case since the magazine buys First North American Rights Only. The authors hold the copyright to their material and they don't have the resources to pursue action. Unfortunately, the Huron "manuscript factory" is still in business.

It's an injustice that outdoor communicators, who are among the lowest paid writers (only religion ranks lower), are unable to defend their rights to their own copyrighted material.

We urge the passage of H.R. 897.

Sincerely,

Sylvia G. Bashline
Executive Director

OFFICERS: PRESIDENT—Tom Huggler, Michigan; PRESIDENT ELECT—Michael Levy, New York; VICE PRESIDENTS—Glenn Sapir, New York; Mark Lallerhers, Minnesota; SECRETARY-TREASURER—Michael Simmons, Pennsylvania; EXECUTIVE DIRECTOR: Sylvia G. Bashline
DIRECTORS: CHAIRMAN—Lennie L. Williamson, Maryland. BOARD MEMBERS—Judd Cooney, Colorado; Tom Graham, Louisiana; Curt Garfield, Massachusetts; David Richey, Michigan; Kay Ellerhoff, Montana; Betty Lou Fegely, Pennsylvania; Tony Mandile, Arizona; Tim Tucker, Florida; Bob Koch, South Carolina; Tom Siracusa, California; Spencer Turner, Missouri; Tom Wharton, Utah.
COUNSELS: LEGAL—Robert C. Smith, Jr., Missouri; MEDICAL—Julius M. Kowalski, M.D., Illinois; INDUSTRIAL LIAISON—Bill Cork, Illinois; TAX—Charles Buckley, Louisiana; HISTORIAN—Ed Hasse, Wisconsin. OUTDOORS UNLIMITED EDITOR: Carol J. Kerstetter

APA

Letter 2

ADVERTISING PHOTOGRAPHERS OF AMERICA

NATIONAL

BOARD

MITCH EINHORN
PRESIDENT

BILL REDDING
VICE PRESIDENT

LARRY HAMRA
SECRETARY

WILL HOGGROVE
TREASURER

DORIS LAUGHLIN
EXECUTIVE DIRECTOR

JAMIE COOK
PRESIDENT
APA ATLANTA

SAMIH HEDDEN
PRESIDENT
APA CHICAGO

BIG NESTLE
PRESIDENT
APA HONOLULU

LARRY HAMRA
PRESIDENT
APA LAS VEGAS

JAY ANSENO
PRESIDENT
APA LOS ANGELES

PENNA MCBRIDE
PRESIDENT
APA SAN FRANCISCO

February 26, 1993

The Honorable William J. Hughes
Chairman, Subcommittee on Intellectual Property and Judicial Administration
House Judiciary Committee
241 Cannon House Office Building
Washington, DC 20515-3002

Dear Chairman Hughes,

The Advertising Photographers of America National, an organization representing 2,000 professional advertising and commercial photographers, supports H.R. 897, The Copyright Reform Act of 1993 and emphatically urges its passage.

H.R. 897 would eliminate the requirement that photographers and other creators register their works prior to an infringement in order to qualify for the remedies of statutory damages and attorney's fees when defending their creations. This change puts U.S. creators on an equal footing with foreign authors in defending their copyrights.

Most photographers do not formally register their images unless they have a strong sense that an image might be infringed. They rely on marking their photographs with a copyright notice in order to deter infringement, but few photographers have the resources to register every image they create. Out of potentially hundreds or thousands of frames of film a photographer might expose on a "shoot", it is impossible to predict which image or images might, sometime in the future, be infringed. Unless a photographer can register an image within 90 days after publication or before infringement occurs, the statutory remedies afforded by the current copyright law are lost.

Additionally, few photographers can afford the cost of litigation. A typical damage award reflecting the fair market value for the use of an infringed photograph is not enough to make litigation economically feasible. The statutory right to an award of attorney's fees under H.R. 897 will put infringers on notice that photographers and all other independent creators are for the first time in a position to afford to enforce their copyrights.

By eliminating the bureaucratic requirement of registering works before an infringement suit is filed, our members will be able to take swift action against infringers. Registration can take months. Only a creator who can register works in person can avoid paying an inflated fee for expedited registration. Currently, no legal action can take place until a work is registered.

Copyrights are of paramount importance in the current information age. They are the primary business assets of most photographers. H.R. 897 makes sensible proposals to streamline the Copyright Office and the process by which all photographers can protect their assets.

Respectfully submitted,

Mitch Einhorn
APA National President

7201 MELROSE AVE. LOS ANGELES, CA 90046 (213) 935-3986 FAX (213) 935-3859



National Purpose and National Goals

To advise and represent advertising and commercial photographers on issues of mutual interest affecting their manner of business and professional standing. To provide representation and a voice in all forums and assemblies which may impact the rights and privileges of our members.

To promote and maintain high professional standards of performance and ethics among the membership and within the profession and to cultivate friendship and mutual understanding among professional photographers in the creative, business and advertising communities.

To sponsor and conduct scheduled meetings, educational workshops, seminars and other forums for the exchange of ideas between advertising and commercial photographers and their clients on issues and problems affecting the industry.

To collect and disseminate information and other data to the membership on activities of the corporation, trends and developments in the business and profession of advertising and commercial photographers.

To establish member legal protection and an educational plan through a tailored package of legal services designed to solve and prevent the legal problems that advertising and commercial photographers commonly encounter, such as photo-rights, property rights and billing and payment procedures.

To provide an information source to assist members with given assignments, locations, suppliers, travel needs, crew personnel, etc. through the establishment of a library, referral lists, supplier directories, and data from various professional surveys.

To establish and maintain an Advertising Photographers of America publication for circulation to membership.

To sponsor APA Traveling Photographic Exhibits, which will circulate to appropriate schools nationally and internationally as a showcase for state of the art photography.

To provide apprenticeship and scholarship programs to qualified recipients.

To provide information and establish criteria for research and development of new products to members. As representatives of the premier echelon of the photography profession, the APA offers a primary testing ground for supplier products.



Letter 3

26 February 1993

Representative William J. Hughes,
Chairman, House SubCom./Intellectual Property
241 Cannon House Office Building
Washington, DC 20515-3002

Dear Representative Hughes:

I am writing to you today in order to voice the support of the Picture Agency Council of America (PACA) for an important piece of legislation (H.R. 897, titled the Copyright Reform Act of 1993), the passage of which is crucial to the preservation of the concept of creators' rights and the very notion of copyright protection.

By way of introduction, I should inform you that PACA is the North American trade association of stock picture agencies. Its membership is diverse in terms of both numbers (current membership includes over 90 of the finest picture agencies doing business in the U.S. and Canada) and geography (our member agencies are located throughout North America, as the enclosed membership directory proves). Our members act as the agents for a cumulative total of well over 10,000 creative individuals working in a variety of professional fields, including photography, illustration and computer graphics.

In its simplest terms, our industry is in the business of leasing reproduction rights to existing photographs and artwork. As such, the very foundation of our industry are the copyright laws which, in the wisdom of previous generations of legislators, were created and periodically updated for the purpose of ensuring the rights of individuals to protect their livelihood by preserving their ownership of their creative works.

PAUL H. HENNING / PRESIDENT
THIRD COAST / P.O. BOX [illegible] / MILWAUKEE, WI 53202 / (414) 765-0446

Unfortunately, as I am sure the members of your Committee are well aware, no law, no matter how lofty its goals, has much practical meaning in the real world if there are not suitable means for enforcing it. In this regard, somewhere along the way the goals of copyright protection have been usurped and replaced by a counterproductive set of bureaucratic regulations which remove the very clout which I believe copyright legislation was historically intended to vest unto individual creators.

Traditionally, creative individuals, whether they be photographers, artists, or authors have, for the most part, been independent small business people. They are not multi-national corporations, they do not have a large staff of employees or lawyers (if any), and the vast majority certainly do not have "deep pockets".

Likewise, most of the picture agencies which represent these photographers and artists are also small businesses. While PACA counts among its membership many of the very largest agencies in the industry, by far the majority of our members are small or medium size agencies. This was borne out by a survey of PACA's membership conducted in early 1991 (the latest survey available) by the independent firm of Fairbank, Bregman & Maullin, Inc. The results of this survey indicated that for 1991 thirteen companies projected sales of $1 million or more, with all the rest anticipating sales of under $1 million (in fact, the median projected gross sales figure for PACA agencies for 1991 was $280,000).

I feel this is an important point to consider because the members of your Committee are, I am sure, very aware of the steep costs of litigation in today's society. The simple fact is that, while the copyright laws make our business possible, the act of actually <u>defending</u> the copyrights of the material created by photographers and artists in federal court has become virtually impossible.

Why is this so? Because the majority of work created by photographers and artists is not routinely registered. As a result, when infringements occur the remedies of statutory damages and attorneys' fees are not available. Very few individual photographers or artists, and very few stock picture agencies, have the resources necessary to mount a successful copyright infringement action when they know full well going into court that they will be unable, if victorious, to be awarded attorneys' fees (which can easily amount to tens of thousands of dollars) and statutory damages. Is it fair that individuals or companies can knowingly steal a creator's work and not be brought to justice simply because the creator or his representative cannot afford to commence an enforcement action? Surely it is not.

The logical conclusion to such a situation is an atmosphere in which the individual copyright owners' rights are greatly diminished if not destroyed. This certainly appears to be antithetical to the purposes of the copyright laws which have been established in this country. Furthermore, the erosion of the ability of creators to defend their copyrights creates a climate in which many individuals find it impossible to continue in their profession with the knowledge that their work may be knowingly infringed upon without them having the ability to respond.

PACA wholeheartedly endorses H.R. 897 and urges its speedy adoption. This bill makes much-needed corrections to the existing system of copyright protection, including provision for awarding statutory damages and attorneys' fees regardless of whether a creative work has been previously registered. With the availability of these remedies, photographers and artists may once again pursue their crafts in the knowledge that they will not be priced out of the justice system.

Furthermore, H.R. 897's provision for eliminating the bureaucratic requirement of registering a work for copyright protection prior to the filing of an infringement suit simply

makes good sense. The burdensome requirements of filling out forms, paying registration fees, and submitting deposits of work seem designed to inhibit people from enjoying the benefits of copyright protection. Again, this is out-of-step with the true aims of copyright law, and our organization applauds H.R. 897 for simplifying this situation.

The United States has a great history of protecting the works of creative individuals. In this area, as in so many others, we have been a world leader, and our copyright laws have been the envy of creative people around the globe who labor in atmospheres which are much less conducive to the protection of their work than our own.

H.R. 897 is a tremendous opportunity to make our justice system more equitable and our copyright protections have real meaning. In an era in which information and images are not only all-pervasive but also extremely powerful, the Copyright Reform Act of 1993 will return some of that power to where it rightfully belongs: to the individual citizens who create the photographs we communicate with, the art which brings us enjoyment, and the books that we read. Your support for and passage of H.R. 897 will be rightfully remembered by thousands of picture agents, photographers, artists and authors as a reasoned and moral response to what has become an unfair and unworkable system.

Respectfully yours,

Paul H. Henning, President

cc: Rep. Barney Frank
Rep. Jack Reed
Rep. Xavier Becerra
Rep. Carlos J. Moorhead
Rep. Don Edwards
Rep. John Conyers, Jr.
Rep. Mike Synar
Rep. Romano L. Mazzoli
Rep. Howard L. Berman



360 PARK AVENUE SOUTH
NEW YORK, NY 10010-1710
212-684-7878
800-800-0000
FAX: 800-882-0000

MAR 02 1993

Letter 4

1 March 1993

Rep. William J. Hughes, Chairman
House Subcommittee on Intellectual Property and Judicial Administration
241 Cannon House Office Building
Washington, DC 20515-3002

Dear Representative Hughes,

I am writing to voice support for an important piece of legislation currently in your committee (H.R. 897, titled the Copyright Reform Act of 1993). It is vital to pass this bill in order to maintain the basics of copyright protection and enforcement.

The Stock Market is a stock photography library representing over 350 photographers and their copyrighted material. It is our business to lease limited reproduction rights to these "existing" photographs to users of photography. Because of the nature of our business, strong copyright protection is essential to protect the rights and livelihoods of our photographers and maintain strong, ethical business practices.

We have seen in recent years an increase in infringement cases and it troubles us that power has shifted from the creator to the abuser. The current law is specific that a work is copyrighted upon expression. However, any real financial reward in an infringement case is based ultimately on registration of the work. Photographers are not set up to administrate the registration of the millions of photographs taken in any given year.

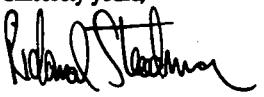
Unfortunately, significant resources are necessary to mount successful litigation in an infringement action. Many creatives are not disposed to undertake the financial expense of legal action if, even in the event of a judgement, they will not be entitled to attorney's fees or damages because the work was not registered. An individual's copyright is severely diminished by this inability to defend it because of unworkable administrative detail.

We support H.R. 897 specifically for its elimination of the registration before infringement requirement as a condition for eligibility for attorney's fees and statutory

damages. This provision is in keeping with the spirit of the copyright act of protecting a creative individual's work, while ridding us of the bureaucratic burden of registration. It is important that as we enter this new "information age" of digital transmission of visuals that the very basics of our rights, an individual's expression of an idea is his own, remain true.

We urge you to support the Copyright Reform Act of 1993 and look forward to its passage.

Sincerely yours,



Richard Steedman
President

cc. Rep. Barney Frank
Rep. Jack Reed
Rep. Xavier Becerra
Rep. Carlos J. Moorhead
Rep. Don Edwards
Rep. John Conyers, Jr.
Rep. Mike Synar
Rep. Romano L. Mazzoli
Rep. Howard L. Berman

NATIONAL WRITERS UNION
UAW Local 1981/AFL-CIO
873 Broadway
New York, New York 10003
(212)254-0279

Letter 5

1 March 1993

Jonathan Tasini
President
Charles Thiesen
Organizing VP
Barbara Beckwith
Internal Organizing VP
Bruce Hartford
Secretary-Treasurer
Rachel Burd
Eastern VP
Virginia McCullough
Central VP
Janet Jacobs
Western VP
Julia Gilden
Judith Levine
Roger Kenson
At-Large

Advisory Board
Ben Bagdikian
Anne Bernays
Faith Berry
Sallie Bingham
Kay Boyle
Dennis Brutus
William Burroughs
Philip Caputo
Ariel Dorfman
Barbara Ehrenreich
Marilyn French
David Garrow
Doris Grumbach
Maxine Kumin
Dave Marsh
E. Ethelbert Miller
Gloria Naylor
William Nowak
Tillie Olsen
Grace Paley
Marge Piercy
Katha Pollitt
Barbara Raskin
Scott Spencer
Piri Thomas
Milton Viorst

Staff
Margaret Bald
Maggie Estep
Robert Hambrecht
Sybil Wong
Anne Wyville

William J. Hughes, Chairman
House Judiciary Committee
Subcommittee on Intellectual Property and Judicial Administration
241 Cannon House Office Building
Washington, DC

Dear Chairman Hughes:

The National Writers Union [UAW Local 1981](NWU), a labor union representing thirty-five hundred (3,500) free-lance writers of all kinds across the United States, strongly supports H.R. 897, the Copyright Reform Act of 1993. Passage of this bill will lift an onerous burden from our membership, most of whom rely for their livelihood on their right to ownership of the work they create--their copyright.

The majority of our members are free-lance newspaper and magazine journalists. Although even our poet and novelist members will benefit from passage of this bill, it is our journalist members whose incomes will be most directly affected, so I will speak primarily of their work lives here.

Average fees for journalists have decreased over the last twenty years. Many journalists today are forced to rely on their ability to resell their work to make the difference between success or failure of their writing businesses. A journalist will typically sell first rights to an article to a national magazine or large circulation newspaper, then sell the right to reprint that article to a number of secondary outlets, or recast the article for use in another medium. When the original purchaser resells the work to a syndicate, a wire service, an electronic database, or another publication, without permission of or payment to the writer, that writer has lost a significant portion of her livelihood. That writer's business is brought closer to failure.

Unfortunately, such infringement is not uncommon. As the NWU's External Organizing Vice President I am the officer in charge of our grievance system. I see the complaints of writers whose work has been reused without permission (that is, stolen). I see the results of the current copyright registration requirement in the inability of my members to enforce their ownership of their work.

Journalists do not register copyright except in the most unusual circumstances. The current registration fee of $20 does not seem exorbitant. For a book publisher it is not. But for a journalist who may sell from fifty to a hundred articles a year the accumulation of registration fees becomes an expense not supported by the income of a writing business. Add to the expense the administrative overhead--forms, postage, mailing, accounting--and it is clear that a journalism business cannot bear such expense.

The NWU has intervened in thousands of writers' complaints. We have recovered for writers nearly three-quarters of a million dollars from publishers in unpaid fees and other contract violations. But we have had to recommend that writers do not seek legal redress in cases of copyright infringement. We estimate that a copyright suit will cost an average of $90,000. Such a suit cannot make sense when there is no hope of recovering statutory damages or attorneys' fees. But journalists, who cannot justify routine registration of their copyright have no hope for such awards under the current law.

What does it mean that one of the main advocates for writers' rights must reluctantly recommend against pursuing legal remedies for violation of those writers' rights to the property that is their livelihood? It means that the law written to protect these rights has failed, that the protection is being worn away as infringers realize they can violate a writer's copyright with impunity.

Without this protection a corporation can use an article containing a favorable mention of its product in its publicity without even contacting the writer or publisher, much less seeking permission or offering payment.

Without this protection newspapers can routinely include work written by free-lance writers along with staff-written work when they offer to sell their contents to wire services, on-line databases, other publications. They need not even examine this practice when there are no legal consequences.

H.R. 897 will return to these workers the protection they need to carry on their business without fear of such theft.

In addition H.R. 897 will relieve a burden from writers who go to court seeking only to prevent an infringer from continuing an infringement, knowing that such is the only redress available. As the law stands today, such a writer must still register copyright before filing suit.

Take the case of a journalist who has written a weekly column for a newspaper and finds that the newspaper, although it is only paying for First North American Serial Rights, routinely includes the writer's column with its sales to another medium. In order to pursue the case successfully the writer would be advised to call attention to all the incidents of infringement. But to do that today the writer would have to register 52 copyrights for every year of infringement.

Although it is true that current law allows for group registration of such work with the payment of one fee, such registration requires filing of the entire section of the publication in which the work appeared. Journalists cannot store such volumes of paper. Working journalists today maintain files of "clips" of their works, that is, a clipping or copy of the work printed work itself, not the surrounding section.

So such a journalist would need to pay one thousand, forty dollars ($1040.00) for each year of infringement.

When a book was a precious item, the product of great labor, copyright was important. It is even more important today when words flow easily as bits of electronic information and intellectual property is the coin of the information age. Please pass H.R. 897 and return to writers the protection they need in order to continue in the business of disseminating ideas.

Sincerely,



Charles Thiesen
External Organizing Vice President

SPATARO & ASSOCIATES
Attorneys at Law
6100 Wilshire Boulevard, Suite 800
Los Angeles, California 90048-5107

Letter 6
TELEPHONE
(213) 939-4862

TELECOPIER
(213) 939-4667

March 2, 1993

BY TELECOPY AND
FIRST CLASS MAIL

The Honorable William J. Hughes
House Judiciary Committee
Subcommittee on Intellectual Property and
Judicial Administration
241 Cannon House Office Building
Washington, D.C. 20515-3002

Re: H.R. 897

Dear Congressman Hughes:

I have practiced copyright law for the past fifteen years and primarily represent independent photographers, graphic artists, illustrators and other visual artists. From first-hand experience I can say that copyright infringement upon visual art, particularly photographs, is widespread and more often than not, the infringers pay nothing. Infringement has become so blatant that many infringers will not even stop after receiving a cease and desist letter, let alone pay compensation to the artist whose rights were consciously disregarded. Such infringement not only occurs in the lower levels of society but includes major publishers, media companies, television producers, television stations, magazine and book publishers of all kinds, and multimedia producers. Many times when the infringers are confronted with their infringement and clear-cut liability, their response is "So what,? Its only a photo." Actual damages are often under $25,000.00 and infringers understand very well that in most cases litigation fees and costs would exceed the damages. The result is that continuing infringement is rewarded and creative people become more frustrated at their helplessness. Moreover, the gradual but always continuous "chipping away" of rights eventually so impairs copyrights (i.e. exclusive licensing arrangements may not be possible), that many talented artists abandon their creative efforts.

H.R. 897 is certainly a move in the right direction to promote and stimulate creative efforts in this country. I have prosecuted many copyright infringement cases and believe the availability of statutory damages and attorneys' fees in copyright infringement litigation is absolutely essential to the ability of individual artists to adequately protect and enforce their rights. It is often impractical for most artists to routinely register their material within ninety days after first

publication or before infringement occurs. Consequently, the remedies of statutory damages and attorneys' fees are usually unavailable. Thus, it becomes economically unfeasible to pursue such claims.

My experience has shown that registration of photography by mail takes anywhere from four to six months. In one case, it took years to obtain certificates of registration from the Copyright Office. Expedited registration, which involves approximately $200.00 in filing fees per registration, takes about two weeks. That is a long time when an injunction is needed to stop the dumping of infringing materials on the public and the destruction of markets that belong to copyright owners.

Over the years it has been difficult to turn down clear liability copyright infringement cases involving willful infringement because it is not economically feasible to pursue them. It is sad to hear artists respond to that advice by saying "So what good are my copyrights anyway?" I usually go on to explain that the artist would be unhappy with me as well if we pursued a case where the attorneys' fees and court costs exceed the damages recovered and that pursuing such claims often generate bad will between the attorney and client, even when an injunction is granted.

The passage of H.R. 897 will at least give my clients greater ability to protect and enforce their copyrights. This is very important in the current multimedia age. Many multimedia producers believe that taking a photograph or a substantial part of a photograph is some kind of "fair use" since they alter the photograph and use the altered photograph with other visual and audio material. Many multimedia producers also believe that they can get away with it and if caught successfully play poker with artists who often have difficulty financing litigation. Faced with the prospect of losing on liability, and having to pay legal damages and fees, most infringers will consider contacting artists to obtain permission to use their material, or at least be more inclined to more fairly settle lawsuits. Our country's copyright laws are approximately ten years behind the current technology. As the use of digital media increases, the demand for large quantities of visual artwork will also increase. Copyrights to these materials are of increasing importance.

The responsibility for the Copyright Office should be vested in a person appointed by the President to undertake that responsibility. I also support the bill's proposal to make the Registrar of Copyrights a Presidential appointee.

Copyrights are the primary business assets of most of my clients and H.R. 897 will help insure those assets can be

adequately protected like other assets. H.R. 897 will help promote creativity and allow more talented artists to economically survive. The current system of copyright registration and remedies helps encourage artist frustration and the decline of quality visual art.

Respectfully submitted,

SPATARO & ASSOCIATES



STEPHEN A. SPATARO

SAS/rb



Society of American Travel Writers

1155 CONNECTICUT AVE., N.W. SUITE 500, WASHINGTON, D.C. 20036
(202) 429-0630

Letter 7

March 3, 1993

Honorable William J. Hughes
Chairman
House Judiciary Committee,
Subcommittee on Intellectual Property
And Judicial Administration
207 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Hughes:

The Society of American Travel Writers (SATW) commends and applauds the convening of hearings on the important subject of copyright reform and, more specifically, on H.R. 897, The Copyright Reform Act of 1993, which you introduced in the U.S. House of Representatives on February 16, 1993.

We most heartily endorse this legislation, which will reform and restructure the process by which copyrights are registered with the government. And more important, H.R. 897 makes some long overdue changes that will ease the burden of filing for copyright protection of the intellectual property and work product of those who create works for a variety of media and expressions.

SATW has more than 800 members, more than half of whom are active print or broadcast journalists, photographers, or photojournalists. The hundreds of thousands of individual work products generated each year by our membership comprise words, articles and images that are seen, heard, cited, or enjoyed by untold millions of individuals who have an interest in some aspect of the travel experience. No doubt, some of our work is probably contained in the magazines, periodicals or newspapers that are in the offices of members of this committee as you receive testimony today on H.R. 897.

The content and integrity of the work cited deserves the protections and rights afforded by copyright law. If infringement of these rights occur, an individual ought to be able to seek legal relief and secure statutory damages and attorneys fees. And he or she should be able to do so without going through the burden of registering for copyright protection prior to infringement.

OFFICERS—President, Ted Gibson, Travel Writer/Photographer, Minneapolis, FL; President-Elect, Barbara Gilbert, Travel Editor, Glamour Magazine, New York, NY; Vice President, Ann Purcell, Travel Writer/Photographer, Alexandria, VA; Secretary/Treasurer, Joyce Mann, Vice President, Hill & Knowlton, New York, NY.
DIRECTORS—Holly Andersen, Travel Writer, Mamaroneck, NY; Robert Bone, Travel Writer/Photographer, Dallas, TX; Jay Clarke, Travel Editor, Miami Herald, Miami, FL; Mary Kay Cline, Director of Tourism, Albuquerque, NM; Vivian Dimond, Public Relations, Ritz Carlton Hotel Co., Washington, DC; Amy Gunsmus, Travel Writer/Photographer, Sacramento, CA; Lucy Ham, Travel Writer, Toronto, Ontario; Florence Lowenstein, Travel Writer, St. Petersburg, FL; Christopher Ludwig, Travel Writer/Editor, New York, NY; Diane Shaia, Executive Director, Department of Tourism, Hampton, VA; Judy Wiedmann, Travel Editor Houston Chronicle, Houston, TX.
ADMINISTRATIVE COORDINATOR—KEN FISCHER

As you are well aware, current copyright law requires registration of a copyrighted work as a condition to bringing an infringement action and --this is a matter that cuts to the heart of the matter--requires that a work be registered before the infringement commenced as a condition for being awarded attorneys fees and statutory damages. With these requirements in place, the creator of an individual work is mandated, in effect, to register all of his or her works automatically, if he or she is to initiate an infringement action that is meaningful.

The reality, though, is that most individual creators do not register their works routinely. It is just too much of a burden. As you, Mr. Chairman, pointed out in the statement accompanying the introduction of H.R. 897, the number of copyrightable works created in a year is not known, but no doubt numbers in the millions. Yet, the Copyright Office reported only 634,797 registration applications in all of 1991.

In the case of the travel journalist, the burden in filing a copyright application is all the more acute: most of us travel extensively. As such, even if we wanted to register a work, we really can't. Time and resources have to be committed to what we really do: travel in order to carry out research, conduct interviews, or take photographs that may or may not be transmitted, eventually, to readers, listeners and viewers. When we don't travel, we have to produce and/or inventory our products. Most of us have to maintain substantial photo, slide or disc libraries of our material in a fashion that makes it readily retrievable for first use or re-use. For instance, an article submitted to a newspaper or magazine may or may not be used. Footage of a travel destination may or may not be broadcast. Even work that is requested or actually assigned by a potential user of our product may or may not be used. At the same time, one of our members may be called upon to produce a photograph or copy on short notice, in order for the user of the product to meet a last-minute deadline need.

Under such circumstances, it simply makes no sense to register all of a travel journalist's inventoried work in the event that it might be used, just to make sure that --should there be an infringement-- we can take legal action against that infringement, especially if we have any hope of recovering attorney's fees and damages.

In remarks accompanying introduction of companion legislation (S. 373) in the U.S. Senate, Senator Dennis DeConcini that elimination of the registration requirements would "significantly benefit small businesses and individuals."

We agree, Mr. Chairman, as many, if not most, of our members are entrepreneurs who can ill afford the time and resources that are mandated, in effect, by leaving the copyright registration requirement in place.

Finally, your legislation would bring the United States in line with the rest of the world: ours is the only country with the copyright registration requirement as a condition to litigation. Because our work is sometimes published or broadcast abroad, we receive greater --or

easier-- protection, per se, elsewhere than we do in our own country.

The Society of American Travel Writers agrees with the content and objective of your legislation and, urge its speedy passage and implementation.

Respectfully submitted,

s/Tom Grimm
President
Society of American Travel Writers

APA NY

Advertising Photographers of America, New York.

27 West 20th Street
New York, NY 10011
(212) 807-0399
Fax (212) 727-8120

Barbara Burdnick, President
Scott Dorrance, Vice-President
Jim Salzano, Vice-President
Michael Mazzeo, Secretary
Nora Scarlett, Treasurer
Marilyn Wallen, Executive Director

Board of Governors:
Howard Berman
Sandra Eisner
Carl Fischer
Dick Frank
Beth Galton
Gary Gladstone
Nick Kourkis
Steve Kromyard
Grant Peterson
Chris Sanders
Michel Tcherevkoff
Mark Umans
Stephen Wilkes

MAR 1 8 1993
RECEIVED
MAR 1 8 1993
Sub on Courts

Letter 8
March 4, 1993

Mr. William J. Hughs (D. N.J.), Chairman
241 Cannon House Office Building
Washington, D.C. 20515-3002

Dear Congressman Hughs:

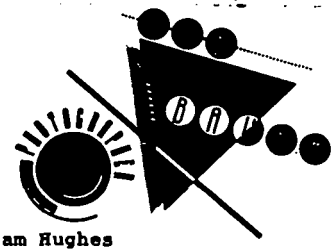
As the Executive Director of APNY, a non profit trade association devoted to helping Advertising photographers, I am writing in support of House of Representatives Bill 897, The Copyright Reform Act of 1993, that which seeks to change the current legislation regarding copyright law.

In the ten years of APNY's existence, I have found that the greatest concern for photographers is the copyrighting of their work and the illegal use of such work. Our photographers are involved mostly in advertising shoots, and as a result, many works are produced. With their busy schedules, many hardly have time to register for a copyright. Under current law if a photographers work is infringed upon, and their work is unregistered, then while they can take their case to court, win or lose, they cannot gain statutory damages or attorney's fees. Without such compensation, litigation proves very costly to the photographer and would financially be a mistake. The amount in question is usually small in comparison to the cost of litigation. Since those that infringe are usually aware of this, they know that they can get away with it, and current law encourages them to do so. In many cases, what the photographer really wants is to obtain an injunction against continued infringement, with the recovery of damages being secondary. Unfortunately, many photographers simply cannot afford to take action, and will not do so knowing that they will not be compensatad. Photographers are powerless as their work gets exploited and this not only hurts the photographic community, but all artistic and creative industries as well. These people rely on the fact that what they produce is their own and nobody else's. Without protection of copyright, photographers lose their most important asset, the demonstration of their skills and abilities.

Sincerely,

Marilyn Wallen

Marilyn Wallen
Executive Director



MAR 22 1993
RECEIVED
MAR 22 1993
Sub on Courts

Letter 9

The Honorable William Hughes
U.S. House of Representatives
Washington D.C. 20515

March 8, 1993

Dear Mr. Hughes:

I would like to thank you for introducing and supporting the Copyright Reform Act of 1993 (H.R.897).

I am a professional photographer with my own studio, residing in Salt Lake City, Utah. Most of my work is advertising photographs for corporate and industrial clients. I am currently the chapter president of the Utah/Mountainwest chapter of the ASMP (American Society of Media Photographers).

When the last copyright bill went into effect in the late seventies, photographers and artists were given full right of ownership of copyright of the works that they created, but were denied the possibility of suing for statutory damages and lawyers fees without registering each photo with the copyright office prior to publication. This bill would rectify this situation.

Here is an all to common scenario of what happens under the current law: You are looking through a magazine and you see one of your photographs. You know you didn't sell it to them, so you call them up. They say go ahead and sue us, knowing full well that the actual damages amount to only $300 - $1000, and that no attorney in the world will take your case.

A professional freelance photographer will shoot anywhere from 100 to several thousand images on a given job. He will do this on an average of 2 to 3 times a week. If we want to have true legal protection for our work, the numbers of images and filings we would have to register with the copyright office would be truly astronomical.

As you can see, this would be an inefficient and bureaucratic nightmare for both the photographer and the copyright office. What actually happens is that very very few photographers register their images, because it just isn't practical. So we take the risk and occasionally lose, and the unethical businesses that know of this loophole profit from it.

Again, I would like to thank you for your support in correcting the injustice of this situation.

Sincerely,

Bob Bauer

BOB BAUER 880 WEST 2ND SOUTH SALT LAKE CITY, UTAH 84104 801-596-0662

DAVID MACTAVISH
PHOTOGRAPHY

MAR 2 2 1993

RECEIVED
MAR 22 1993
Sub on Courts

MacTAVISH

8N341 THOMAS RD.
MAPLE PARK IL 60151

708.365.2613

Letter 10

March 10, 1993

The Honorable William Hughes
US House of Representatives
Washington DC 20515

Dear Mr Hughes,

I am a professional photographer and member of The American Society of Media Photographers (ASMP), and a voter. I'm writing to thank you for your support of photographers and all individual creators nationwide. Your introduction and support of H.R. 897 addresses a major flaw in the current copyright law and provides for a more cost effective implamentation of the laws protecting authors' rights.

As you know, the intent of Congress, throughout the history of the United States, has been to provide protection to creators through the Copyright Act. In practice, however, the law has too often worked against us and needs remedying.

Most photographers must produce thousands of photographs yearly, yet most of us can't afford any staff to help with the burden of filing, shipping, etc. Photographers are truly the smallest of the small businesses. The complexity of the Copyright Act, its registration requirements and the cost of registration further prohibit most of us from being able to take advantage of the protections provided by the Act. Registration of our work is required prior to infringement if we are to qualify for statutory damages and legal fees. Therefore, the remedies afforded under the current law are, for all practical purposes, a mirage.

Without the ability to collect statutory damages and legal fees, few creators, few photographers, are financially able to press for their legal rights. Infringers are fully cognizant of this, thus the current regulations become tantamount to a license to steal.

Because of the financial and bureaucratic burden on creators, coupled with the probable lack of financial reward from a successful legal campaign, so few creators have ever pressed their case that we won't know for sure how many have been infringed. I have, numerous times, and have always had to make the decision to forego a copyright legal battle.

Your enthusiastic support of this bill is crucial to creators nationwide.

Sincerely,

David MacTavish

MAR 2 3 1993

MYRON BECK PHOTOGRAPHY

March 12, 1993

Letter 11

RECEIVED

The Honorable William J. Hughes (D. N.J.), Chairman
241 Cannon House Office Building
Washington, D.C. 20515-3002

MAR 23 1993

Sub on Courts

Dear Senator Hughes:

I am a member of the Advertising Photographers of America National. As a professioanl photographer, I am directly affected by the proposed COPYRIGHT REFORM ACT OF 1993. I am writing in support of this legislation.

The most important aspect of H.R.897 [S.373] to us is the elimination of the registration requirement and the expanded ability to qualify for statutory damages and attorney's fees without prior registration.

As a photographer, I have found it difficult to comply with the registration requirement. On a photographic shoot, I typically expose hundreds or thousands of frames of film. It is difficult to determine which images will be valuable or which images risk being stolen in the future. Additionally, if I am shooting color transparencies (as I most often do), the "original" is one of a kind. In order to register, I must go to the expense of making a print or some other color copy to register the work. This quickly becomes prohibitively expensive. Consequently, I rarely register my work. I would not be entitled to statutory damages or attorneys' fees if this work was infringed. I probably would not be able to afford or interest an attorney in a case if one of my photographs was infringed because I would only be entitled to my actual damages for the use of the work. Photographers whom I know who have pursued such cases have found it very difficult to prove additional damages based on profits made by the infringers.

An infringing party frequently takes the position of "so sue me" knowing that few people in my position can afford to do that for one or two photographs, especially when an infringer is located in another part of the country. Cumulatively, this can adversely affect my business. H.R.897 [S.373] would alter the balance in favor of creators whose work is stolen.

I urge you to support Chairman Hughes' [Senator DiConcini's] efforts on H.R. [S.373] by attending hearings and voting in favor of this legislation. Thank you.

Sincerely,

Kirk Thornby

1265 SOUTH COCHRAN AVENUE, LOS ANGELES, CALIFORNIA 90019 213.933.9883 FAX 213.933.1535
KIRK THORNBY/REPRESENTATIVE

MAR 2 2 1993

RECEIVED

MAR 2 2 1993

Sub on Courts

brt

Photographic Illustrations
911 State Street
Lancaster, PA 17603
Brian R. Tolbert
(717) 393-0918

March 12, 1993

Letter 12

The Honorable William Hughes
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Hughes,

I am a professional photographer and member of The American Society of Media Photographers (ASMP). I'm writing to urge you to support The Copyright Reform Act of 1993 H.R. 897. This bill will provide the means for better enforcement against copyright infringement and will streamline the Copyright Office bureaucracy, thereby saving tax dollars.

Like many photographers, I produce thousands of individual images each year. Time constraints, limited staff and complicated forms make registration of each photograph a virtual impossibility. Because registration is required prior to infringement in order to qualify for statutory damages and legal fees, the remedies afforded under the current law are mostly an illusion.

Without the ability to collect statuary damages and legal fees, the financial burden of legal representation becomes overwhelming -- far outweighing potential damage awards. Infringers are aware of this. Thus the current regulations become tantamount to a license to steal.

Your enthusiastic support of this bill is crucial. Thank You.

Sincerely.

Brian R. Tolbert

Brian R. Tolbert
BRT/mld

Member ASMP
Qualified Photographic Studio/PPA

ROBERT STEWART
PHOTOGRAPHY
LTD

508 Chambers
PO Box 848
Royal Oak
Michigan
48068

Letter 13

RECEIVED

Sub on Courts

The Honorable Rep. William Hughes
241 Cannon House Office Bldg.
Washington, D.C.
20515-3002

3/12/93

In reference to: H.R. 897
The proposed copyright reform act of 1993

Dear Rep. William Hughes

I am a professional photographer, and a member of the Advertising Photographers of America and the American Society of Media Photographers, Inc. I am directly affected by the proposed copyright reform act of 1993. I am writing in support of this legislation.

One of the most import aspects of this bill to me is the elimination of the registration requirement and the expanded ability to qualify for statutory damages and attorney's fees without prior registration.

Unlike other creative fields where projects may take weeks or months to complete, a photograph is accomplished in a fraction of a second. This allows many images to be taken in a session. (I'm sure you are well aware of how many images we like to take from your position in the limelight).

Why do we take so many? To make sure we captured the moment. Out of a thousand frames of film, perhaps 5-10 will be excellent, another 25 will be good, and about 100 will be set aside for historic reasons. The rest are out-takes.

It is difficult to determine at the time of the shooting which of the images will be valuable or risk being stolen in the future. Of course the top thirty are valuable but even the out-takes can be costly. The rock star "Madonna" does not allow her out-takes to be used without her permission, nor do I. For good reason; - failed experiments, (which are an essential part of an artist's growth) may look amateurish. This could tarnish my long cultivated reputation. (don't tell anybody,

(313)
547 - 9218
399 - 0781

but not all of what I shoot is great). For this reason, even my mistakes need to be protected from enfringment or theft.

I shoot about 40,000 images a year. 70% my images are shot with transparency film (slides) The original is one of a kind. In order to register, I must go the the expense of making a print ($10-$15 apiece) of each frame to register the work. As you can see the quickly becomes prohibitively expensive. Consequently, I rarely register my work.

Under the current copyright law as I understand it, I would not be entitled to statutory damages or attorneys' fees if this work is stolen. Further, I probably would not be able to afford an attorney in a case if one of my images was stolen because I would only be entitled to my actual damages for the use of the work.

I have been ripped off twice in my 10 years as a pro. In both cases, the recoverable amount was less that the cost of the recovery. I knew this, and so did the people who infringed my work. Meanwhile, these unscrupulous people are free to prey upon other photographers while making thousands of dollars off my work. They know the law probably better then I do. Fortunately I have not lost a great deal, but that is not to say my next rip off might put my out of business.

I can't believe that the copyright law was enacted to protect only those artists wealthy enough to enforce it themselves with a team of lawyers. For this reason, I urge you to support H.R. 897 by attending hearings and voting in favor or this legislation. This will give the small artist like myself a chance against those who would prey upon us.

Thank You,

Robert Stewart

Robert Stewart
Photographer

MICHEAL SIMPSON
PHOTOGRAPHY

Letter 14

Mon, Mar 15. 1993

RECEIVED
MAR 22 1993
Sub on Courts

The Honorable William Hughes
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Hughes

I am a professional photographer and a member of The American Society of Media Photographers (ASMP). I'm writing you today to thank you for your support of photographers by introducing The Copyright Reform Act of 1993 {HR 897}. This bill does provide better means of enforcement against infringement of a photographer's copyright.

As with most photographers, I produce thousands of images, and complicated forms make registration of each photograph a virtual impossibility. The current requirement that registration take place prior to infringement in order to qualify for statutory damages and legal fees, makes it not even practical to prosecute an infringement. Infringers are a aware of this, therefore the regulations themself become a license to steal.

Thank you for your positive attention to this matter.

Sincerely,

Michael Simpson

1222 Manufacturing St. Dallas, Texas 75207 214-761-0000



Linde Waidhofer
Western Eye Photography

Letter 15

MAR 23 1993

RECEIVED

MAR 23 1993

Sub on Courts

3/16/93

The Honorable William Hughes
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Hughes,

I am a professional photographer and a member of The American Society of Media Photographers (ASMP). I'm writing to thank you for your support of photographers and all individual creator. By introducing The Copyright Reform Act of 1993, H.R. 897, you have dealt with a major problem with the current copyright law and provided for a more cost effective implementation of the laws protecting authors' rights.

Working photographers typically produce thousands of individual photographs each year. Under the current law because of the time and money required, the registration of each image is a practical impossibility. The present requirement that registration take place prior to infringement in order to quality for statutory damages and legal fees does, practically speaking, deny me the very remedies that the law would appear to grant.

Without the ability to collect statuary damages and legal fees, the financial burden of legal representation becomes overwhelming—far outweighing potential damage awards. There are unscrupulous people out there who are only too aware of this and use it as a license to steal. I have had the misfortune of dealing with one such infamous individual who has used not only my images but those of several other very well known photographers in his various publications. When the photographers seek payment for these usages, he simply laughs at us because he knows that even though he owes each of us thousands of dollars, the court costs and lawyers fees involved in taking him to court would ultimately cost us more than we could recover. Consequently he has built a very successful business around stealing images from photographers and *never* paying for anything.

I wholeheartedly support your efforts to correct this injustice. Thank you.

Sincerely,

Linde Waidhofer

Box 917 . 609 East Columbia . Telluride . Colorado . 81435 phone: 303 . 728 . 5178 fax: 303 . 728 . 6838

Gary Walpole
193 PINE STREET
PHOTOGRAPHER
MEMPHIS, TN 38104
726-1155

Letter 16

RECEIVED
MAR 23 1993
Sub on Courts

March 17, 1993

The Honorable William J. Hughes
The House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515-3002

Dear Congressman Hughes:

I am a member of the Advertising Photographers of America National Association, and the Professional Photographers of America International Association. As a professional photographer, I am directly affected by the proposed Copyright Reform Act of 1993. I am writing in support of this legislation.

As a photographer, I have found it difficult to comply with the registration requirements. On a photographic shoot, I typically expose hundreds or thousands of frames of film. It is difficult to determine which images will be valuable or which images risk being stolen in the future. Additionally, if I am shooting color transparencies (as I most often do), the "original" is one of a kind. In order to register, I must go to the expense of making a print or some other color copy to register the work. This quickly becomes prohibitively expensive. Consequently, I rarely register my work. I would not be entitled to statutory damages or attorneys' fees if this work was infringed. I probably would not be able to afford or interest an attorney in a case if one of my photographs was infringed because I would only be entitled to my actual damages for the use of the work. Photographers whom I know who have pursued such cases have found it very difficult to prove additional damages based on profits made by the infringers.

An infringing party frequently takes the position of "so sue me" knowing that few people in my position can afford to do that for one or two photographs, especially when an infringer is located in another part of the country. Cumulatively, this can adversely affect my business. H.R.897 would alter the balance in favor of creators whose work is stolen.

I urge you to support Chairman Hughes' efforts on H.R.897 by attending hearings and voting in favor of this legislation. Thank you very much.

Sincerely,

G. Walpole

636

MAR 2 3 1993

RECEIVED

MAR 2 3 1993

Sub on Courts

Letter 17

The Honorable Mr. William Hughes
U.S. House of Representatives
Washington, DC 20515

17 March, 1993

Dear Mr. William Hughes,

I am a professional phototgrapher and a member of the American Society of Media Photographers (ASMP). I am writing to enlist your suport for The Copyright Reform Act for 1993 ((H.R. 897)). This bill will help provide the means for better enforcement against copyright infringement and will help save tax dollars by streamlining the Copyright Office bureaucracy.

In the course of a year, I produce tens of thousands of individual images and because of limited amounts of time, not enough staff and complicated forms, registration of each photograph would be a cumbersome and expensive additional load on my small business. Since registration is required prior to infringement in order to qualify for statutory damages and legal fees, the solutions available under the present law are mostly an illusion.

Lacking the abilitty to collect statuary damage and legal fees, the cost of hiring a legal representative becomes both overwhelming and prohibitive. Infringers seem to know this. There are some very serious teeth missing from this legislation intended to protect the very vulnerable creative process. The way the current regulations stand they are a virtual license to steal. If I should need to pursue an infringer or someone who is unwilling to pay, but not unwilling to use the images, it will almost, without exception cost more to collect than to take the loss. If infringers know this and are of that ilk, then what will stop them?

Your enthusiastic support of this bill is crucial. Thank you very much.

Sincerely,

Carlos Alejandro

Carlos Alejandro
Photography
[illegible] 37th St.
Wilmington, DE
[illegible] 2321
[illegible]

Bill Ellzey PHOTOGRAPHS
79 meadow estates dr. ridgway co 81432 u.s.a. tel (303) 626-5[illegible]

Letter 18

RECEIVED
MAR 24 1993
Sub on Courts

RECEIVED
MAR [illegible]
Sub on Courts

18 March 1993
Ridgway

The Honorable William Hughes.
U.S. House of Representatives
Washington. DC 20515

Dear Mr. Hughes:

Thank you for your support of photographers and other artists and writers by introducing The Copyright Reform Act of 1993. H.R. 897. You are undertaking to rectify major problems with the current copyright law which. as it stands. is impossible to fulfill and still make photographs.

I. like many freelance photographers. work alone and consequently don't have the time. money or staff to register the thousands of photographs I make each year. Already I spend more time at paperwork than shooting. Your bill provides a more time/cost effective implementation of the laws protecting authors' rights.

The current requirement that copyright registration take place prior to infringement in order to qualify for statutory damages and legal fees does. as a practical matter. deny me the very remedies that the law would seem to grant.

Heretofore I have been able to do nothing more than send a threatening letter to companies who've used my photographs without permission. Your bill will give us "creators of works" the clout to pursue statutory damages and legal fees from infringers without breaking the bank.

Thanks once again for your sensitivity to the needs of the creative professions.

With kind regards.

Bill Ellzey

Bill Ellzey
Member: American Society of Media Photographers: Professional Photographers of America

MAR 2 3 1993

CLARK
LADNER
FORTESCALUE & YOUNG

ATTORNEYS AT LAW

ONE COMMERCE SQUARE • 2005 MARKET STREET • PHILADELPHIA, PA 19103 • (215) 241-1800 • Cable: CLARKLAD • Telex: 83-1462 • Fax: (215) 241-1857

NEW JERSEY OFFICE
Woodland Falls Corporate Park
200 Lake Drive East
Suite 300
Cherry Hill, NJ 08002
(609) 779-0300

MONTGOMERY COUNTY OFFICE
Plymouth Corporate Center
625 West Ridge Pike
Suite 300
Conshohocken, PA 19428
(215) 825-9000

COUNSEL
Milton A. Feldstein, P.C.
Gary A. Lundberg

OF COUNSEL
Joseph J. Duffy

RECEIVED
MAR 23 1993
Sub on Courts

Letter 19

March 18, 1993

The Honorable William Hughes, Chairman
U. S. House of Representatives
Washington, DC 20515

Re: H.R. 897

Dear Mr. Hughes:

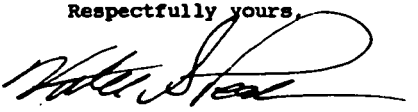
I am an attorney representing a number of professional photographers in the Southeastern Pennsylvania/Southern New Jersey area. I am also a member of the American Society of Media Photographers (ASMP) and am on the Board of Directors of the Media Photographers Copyright Agency (MPCA). I am writing to you to urge your support of the Copyright Reform Act of 1993 (H.R. 897). If passed, this Bill will drastically improve enforcement of the rights granted by the Copyright Act of 1976 against infringement, will streamline the structure and operation of the Copyright Office, and will thereby save tax dollars.

Every year, each of the photographers whom I represent produce literally thousands of photographic images. As I am sure you can imagine, the sheer number of images created makes registration of each image a physical and financial impossibility for the photographers. Unfortunately, under the current Act, registration is required before federal court litigation can be instituted. A more serious problem, however, is that the current requirements generally demand registration before infringement for an author or creator to qualify for statutory damages and awards of counsel fees. As a practical matter, this makes the remedies that appear to exist under the Copyright Act purely illusory in most cases.

I am sure that you are aware of the astronomical cost of federal court litigation. Despite the glorified image of professional photographers in the movies, most of them are people of relatively modest income and means. Thus, without the ability to obtain statutory damages and court awarded counsel fees, the costs of legally protecting their rights is simply far too great for most of them to be able to bear. Equally unfortunately, the infringers are quite well aware of this fact. The current system, therefore, is a toothless tiger.

It is critical that you endorse and support this Bill vigorously. I urge you to do so and greatly appreciate any efforts that you might be able to exert toward its passage. Thank you for your time and kind consideration.

Respectfully yours,



VICTOR S. PERLMAN

VSP/k

cc: ASMP



MAR 25 1993

RECEIVED

MAR 25 1993

Sub on Courts

Letter 20

North American Ski Journalists Association

March 19, 1993

Chairman William J. Hughes
House Copyright Subcommittee
241 Cannon House Office Building
Washington, DC 20515-3002

Dear Chairman Hughes:

On behalf of the Council of Writers' Organizations (CWO) and the NORTH AMERICAN SKI JOURNALISTS ASSOCIATION, we write to support the provisions of H.R. 897 and S.372 that would repeal the statutory requirements of copyright registration.

CWO is a consortium of both regional and specified national organizations representing approximately 50,000 writers, editors, indexers, photographers, computer programmers, and communicators in all media throughout the United States. The 400 plus member North American Ski Journalist Association (NASJA) is comprised of print and broadcast writers, editors, reporters, photographers, and film makers who cover ski related news, information and features throughout the United States and Canada. NASJA membership also includes representatives from over 125 ski related companies.

We applaud your efforts to bring full protection of intellectual property rights to all creators. Without the ability to recover statutory damages and attorneys' fees, the courts in this country are virtually closed to individual writers. The typical infringement action involves only modest damages or situations where the author seeks only an injunction to stop an infringement. In both cases, the cost of litigation would far exceed any potential recovery. As a result writers, who have not previously registered their works, cannot sue and are effectively cut off from enforcing their rights. Infringers, for the most part, understand this reality as well. Often in the negotiations for settlement of a dispute, an infringer will refuse to make a reasonable offer once it comes out that a work is not registered.

Officers:

Robert Wall
President
Meadow Hill Road
Cazenovia, NY 13035
315-655-9558

John Hamilton
First Vice President
P.O. Box 881
Orinda, CA 94563
510-254-5440

Bob Meldrum
Second Vice President
112 Kent Street
Ottawa, Ontario
Canada K1P 5P2
613-238-9877

Barry ZeVan
Third Vice President
Box 27261
Minneapolis, MN 55427
612-544-9262

Administrative Office:

Cynthia Enig
Executive Secretary
P.O. Box 5334
Takoma Park, MD 20913
301-864-8428
301-927-0028 FAX

While the current registration is not unduly complicated, few if any, of the writers we represent routinely register all of their work with the Copyright Office. Even though important rights are lost, this is a common practice through this country today due to the application process, associated costs, and deposit requirements.

The provisions of your bill which will delete Sections 411 and 412 of the current statute will simplify the registration process and dramatically advance the underlying purposes of the copyright law. Removing these technical barriers will provide renewed incentives for authors to protect the integrity and value of their works. We endorse your proposal and urge you to enact it as quickly as possible.

Sincerely,

Robert Wall
President, NASJA

MAR 2 5 1993

RECEIVED
MAR 2 5 1993
Sub on Courts

KEITH BARDIN PHOTOGRAPHY
PO Box 191241 Dallas, TX 75219
214-744-2222

Letter 21

March 19, 1993

The Honorable William Hughes
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Hughes,

I am a professional photographer and a member of the American Society of Media Photographers (ASMP). I'm writing to urge you to support the Copyright Reform Act of 1993 (H.R. 897). This bill will provide the means for better enforcement against copyright infringement and will streamline the Copyright Office bureaucracy, thereby saving tax dollars.

Like many photoraphers, I produce thousands of individual images each year. Time constraints, limited staff and complicated forms make registration of each photograph a virtual impossibility. Because registration is required prior to infringement in order to qualify for statutory damages and legal fees, the remedies afforded under the current law are mostly an illusion.

Without the ability to collect statuary damages and legal fees, the financial burden of legal representation becomes overwhelming -- far outweighing potential damage awards. Infringers are aware of this. Thus the current regulations become tantamount to a lincense to steal.

Your enthusiastic support of this bill is crucial. Thank you.

Sincerely,

Keith Bardin
Keith Bardin Photography
1027 Dragon Street
Dallas, TX 75207

GET LUCE!

RECEIVED
MAR 2 ..
Sub on Courts

Letter 22

March 19, 1993

RECEIVED
MAR 24 1993
Sub on Courts

The Honorable William Hughes
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Hughes,

I am a professional photographer and a member of The American Society of Media Photographers (ASMP). I am writing to urge your support for The Copyright Reform Act of 1993 (H.R. 897). This bill will provide the means for better enforcement against copyright infringement and will streamline the Copyright Office bureaucracy, thereby improving an archaic and expensive registration procedure that is preventing my business from making money.

Limited staff, time constraints, and complicated forms make it impossible to register each of the thousands of assignment photographs I create each year. But that is only part of the problem. When we started our photography studio in 1985, my partner and I acquired the business assets of our deceased former employer. Among those assets is an archive of thousands of extraordinary advertising photographs, potentially worth an enormous amount of money to us, yet largely useless because of the copyright law.

Most of the photos in the archive have been published previously, making it necessary to register each picture individually with the Copyright Office. We must supply the date of first publication (usually unknown), two copies of the work as first published (usually impossible), and send twenty dollars per picture as a registration fee.

The amount of staff research and preparation time involved in such an undertaking is beyond our capacity to begin with. Add to that the fact that we must request and be granted a procedural variance for almost every image because we do not possess two printed examples of each published picture. Finally, at twenty dollars per photograph, the expense of registering even a minor percentage of the archive would bankrupt our small company.

Because registration is required prior to infringement in order to qualify for statutory damages and legal fees, it is not worth considering the pursuit of an infringement case without it. The frequency of casual infringement out there is so bad that my partner and I are not willing to risk sending unregistered submissions to publishers for fear that they will be stolen and reproduced illegally. Infringers know that they can ignore the law since it is economically unfeasible to pursue infringements without registration, and that few photographs are

LUCE PHOTOGRAPHY, INC.
1547 ST. CLAIR AVENUE CLEVELAND, OHIO 44114 (216) 781-1547

registered.

And so our pictures remain in the files. It is time to change the rules of the copyright law and provide people like us the protection we need without the constraints of a useless registration rule. Your enthusiastic support of this bill is crucial. Thank you.

Sincerely,



Donald M. Luce

PISCONERI
STUDIO

405 Cherokee Place SE · Atlanta, Georgia 30312 · 404 525-4829 · FAX 404 659-2004

Letter 23

William J. Hughes, Chairman
House Judiciary Committee
Subcommittee on Intellectual Property
and Judicial Administration
241 Cannon House Office Building
Washington, D.C. 20515-3002

RECEIVED
MAR 2 2 1993
Sub on Courts

The Honorable William J. Hughes,

I am a member of the Advertising Photographers of America National. As a professional photographer, I am directly affected by the proposed Copyright Reform Act of 1993. I am writing in support of this legislation.

The most important aspect of H.R. 897 to me is the elimination of the registration requirement and the expanded ability to qualify for statutory damages and attorney's fees without prior registration.

As a photographer, complying with the registration requirements is difficult and can be quite expensive. On a typical photographic shoot, I may expose hundreds or thousands of frames of film. Deciding which images will be valuable or which images risk being stolen is not always easy. Also, much of my film is color transparencies, "one of a kind-originals". In order to register these images costly duplicates or prints must be made. This is both time consuming and expensive. Therefore I rarely register my images at all. Should someone use my photography without permission or compensation, I would not be entitled to statutory damages or attorneys' fees. In that case I would most likely not be able to afford or interest an attorney in the case.

Those people who are aware of the circumstances take advantage of artists knowing that no action will be take against them if they steal artwork of any kind for any use. An infringing party frequently takes the position of "so sue me". I believe this proposed legislation will help photographer by deterring possible infringers. Also, H.R. 897 would alter the balance in the favor of creators whose work is stolen.

I urge your to support H.R. 897 and vote in favor of this legislation. Thank you.

Sincerely,

Judith Heberling-Pishnery
APA

RECEIVED
MAR 23 1993
Sub on Courts

TOM GRAVES
Photography

296 RANDALL ST

SAN FRANCISCO CA

94131-2751

TEL 415-550-7241

FAX 415-550-7248

Letter 24

The Honorable William J. Hughes
241 Cannon House Office Bldg.
Washington, DC 20515-3002

19 March 1993

Dear Representative Hughes:

As a professional photographer and former 30 year New Jersey resident, I am writing in support of the Copyright Reform Act of 1993 (H.R.897).

This bill directly affects my ability to protect my livelihood as a professional photographer by simplifying copyright requirements and by increasing statuatory damages against those who steal others' work.

Photographers have traditionally protected the use of their images by restricting possession of the prints and negatives— the original artwork. Digital technology now makes it possible for copies to be as good as the original. Most people are honest and willing to pay a photographer for the use of his images. However, a dishonest person can now scan a photograph, and in a minute, have a perfect quality "original" and use that image without the photographer's permission.

This not only means loss of income for the photographer, but loss of artistic and journalistic integrity since photos can now be easily manipulated on the computer.

If I made a portrait of you that ran in a magazine, someone could scan that page, manipulate your likeness and output it into another magazine or any other medium, without my permission, knowledge or control. Or yours.

H.R.897 makes copyright protection easier for the artist and puts some teeth into the law for those people who now know the system is ungainly and full of loopholes.

Please support and vote in favor of H.R.897. Thank you.

Sincerely,

Tom Graves

APR 06 1993

WOODY
PACKARD
Photography

RECEIVED
APR 7 1993
Sub on Courts

Letter 25
March 29, 1993

The Honorable William Hughes
U. S. House of Representatives
Washington DC 20515

Dear Mr. Hughes,

I'm writing to thank you for supporting photographers, graphic artists, writers, computer programmers, and all other individual creators by sponsoring the Copyright Reform Act of 1993, (H.R. 897). I am a professional photographer and a member of ASMP, the American Society of Media Photographers. Your bill will streamline the Copyright Office bureaucracy and provide the practical means for enforcing copyright infringements in all fields where creative efforts can and are being copied illegally.

As a commercial photographer, I produce hundreds of individual images each year. Although the quality of my work is high, I work with a small staff, a limited budget, and most of the time, a tight deadline. Currently registration of each image that I deliver to my clients is a practical impossibility. The process is expensive, time consuming, and too complicated to perform under a tight deadline.

Because registration is now required prior to infringement to qualify for statutory damages and legal fees, recovering damages under the current law is only theoretically possible. Without the ability to collect statutory damages and legal fees, the financial burden of legal representation outweighs potential awards. Infringers know this, and the current law is routinely broken with full knowledge that we don't have the financial means or legal incentive to pursue violators.

If any significant part of our economy is staking its future on the on the coming of an "Age of Information," it is extremely important that those of us who provide that information retain the ability to profit from doing so. Your bill is crucial to us and our profession, and we appreciate your efforts.

Sincerely,



Woody Packard

APR 08 1993

ANDY PEARLMAN STUDIO

Ref: HR 897 (S 373)

March 29, 1993

Letter 26

Representative William J. Hughes
241 Cannon House Office Bldg
Washington, DC 20515-3002

Dear Representative Hughes:

I am writing to you as a member of ADVERTISING PHOTOGRAPHERS OF AMERICA, in order to express my support for the COPYRIGHT REFORM ACT of 1993, in eliminating the registration requirements and awarding higher damages.

As you know, in today's world it is increasing difficult to protect what is rightfully yours, and when victimized, even more difficult to seek relief in our overcrowded court system. This is especially true if unreasonable requirements place an undo burdon on the plaintiff, and the prospects for significant damages are so low that the time, trouble, and expense are not worth the effort of filing a claim.

Currently, I don't register any of my photographs, and I just keep my fingers crossed. Since I shoot mostly stock (where I shoot first and try to license the images later) I have a major investment in thousands of unpublished photographs, with no way of knowing beforehand which frame(s) will sell until the client selects it. (I also have know way of knowing the potential value of an image - it's market life is completely unpredictable.) As it now stands, if I don't go to great additional expense to copy and register EACH frame prior to a violation, I cannot collect statutory damages or attorney's fees. All I can get is what the infringer would have had to pay me for using the work legitimately. There is no incentive for him to honor my rights as a creator or businessperson.

Since there is no way an infringer can prove HE took the photograph (besides my name being on all the slides, I have all the outtakes), I believe the registration requirement should be abolished for photography (especially since the 1978 Copyright Law already gives me copyright at the moment of conception anyway). I also support changing the way damages are awarded, in order to deter rip-offs from occuring at all. In other words, please support the rights of photographers to own and control that which they create.

Sincerely yours,

Andy Pearlman

[illegible] BLANCO AVENUE • MARINA DEL REY • CALIFORNIA [illegible] • [illegible]

FOTO-LOOK INTL's
PIXOTNA Productions
JOHN COPELAND PHOTOGRAPHY
1255 So. La Brea Ave.
Los Angeles, CA 90019
TEL: 213-938-8414
FAX: 213-938-8414

RECEIVED
APR 7 1993
Subcom

Letter 27

March 31, 1993

To The Honorable:
William J. Hughes, Chairman
241 Cannon House Office Building
Washington D.C. 20515-3002

Dear Representative Hughes,

I am writing you this letter to express my support for the proposed "Copyright Reform Act of 1993".

As a freelance photographer who photographs almost exclusively female models I am very much in favor of this new legislation. My images are widely distributed and are open game for misuse and illegal duplication and reproduction.

It is especially important that a simpler, less expensive type of copyright registration is enacted. I typically expose hundreds of transparencies on a given assignment. These original images are then offered directly or through agencies to publications around the world. With so many images, often going through so many hands, the risk of my work being misused is great.

I have been a professional photographer for sixteen years. I have never registered any of my images. Early in my career when I first looked into it, I became very frustrated by the complexity of the copyright registration procedures. I understood the real possibility of collecting on any infringement, anyhow, was very slim, and that assessable damages were minimal. I have not heard of too many photographers being adequately reimbursed for any kind of copyright infringements.

Our images and concepts require every bit the talents and dedication of any of the creative fields, and we desperately need a simpler copyright method, and the possibility of stiff penalties to those who make unauthorized use of our images.

We thank you for supporting H.R. 897 [s.373] attending the hearings and voting in it's favor.
We appreciate it! Thank you.

Sincerely,

John Copeland

JOHN Nordell
PHOTOGRAPHY

RECEIVED
APR [illegible] 1993
Sub on Courts

April 1, 1993

Letter 28

Mr. William Hughes
U.S. House of Representatives
Washington, D.C. 20515

Dear William:

I run a photography business and I am a member of The American Society of Media Photographers. I want to thank you for filing legislation that looks out for the interests of photographers and other creative individuals.

Your introduction of The Copyright Reform Act of 1993, H.R. 897, addresses a vital flaw in the existing copyright law.

Running a small business takes a great deal of energy. Under current copyright law, I am burdened with an additional expense of time and money to register images for full copyright protection.

Under the law you have proposed, those who infringe on copyrights will know that creators will be able to collect statutory damages and legal fees without the need to register their images prior to infringement. This sounds like a great deterrent to me.

I thank you for your support of photographers on this issue!

Best to you.

Sincerely,

John Nordell

12 GROVE STREE
BOSTON MA 02[illegible]
TEL (617)723-548
FAX (617)723-694

Letter 29

BRIAN LENG
PHOTOGRAPHY
1021½ NORTH LA BREA LOS ANGELES, CALIFORNIA 90038 (213) 850-0095

RECEIVED
APR 2 1993
Subcommittee on Courts

The Honorable William J. Hughes
241 Cannon House Office Building
Washington, D.C. 20515-3002

April 6, 1993

Dear William J. Hughes,

I am a member of the Advertising Photographers of America National. As a professional photographer, I am directly affected by the proposed Copyright Reform Act of 1993. I am writing in support of this legislation.

The most important aspect of H.R. 897 to me is the elimination of the registration requirement and the expanded ability to qualify for statutory damages and attorney's fees without prior registration.

As a photographer, I have found it difficult to comply with the registration requirement. On a photographic shoot, I typically expose hundreds or thousands of frames of film. It is difficult to determine which images will be valuable or which images risk being stolen in the future. Additionally, if I am shooting color transparencies (as I most often do), the "original" is one of a kind. In order to register, I must go to the expense of making a print or some other color copy to register the work. This quickly becomes prohibitively expenses. Consequently, I rarely register my work. I would not be entitled to statutory damages or attorneys' fees if this work was infringed. I probably would not be able to afford or interest an attorney in a case if one of my photographs was infringed because I would only be entitled to my actual damages for the use of the work. Photographers whom I know who have pursued such cases have found it very difficult to prove additional damages based on profits made by the infringers.

An infringing party frequently takes the position of "so sue me" knowing that few people in my position can afford to do that for one or two photographs, especially when an infringer is located in another part of the country. Cumulatively, this can adversely affect my business. H.R. 897
would alter the balance in favor of creators whose work is stolen.

I urge you to support Chairman Hughes' efforts on H.R. 897 by attending hearings and voting in favor of this legislation. Thank you.

Sincerely,



RECEIVED
APR 2 1 1993
Sub on Courts

Letter 30

4/14/93

PATRICIA
TRYFOROS
PHOTOGRAPHY

The Honorable William Hughes
241 Cannon House Office Building
Washington, DC 20515-3002

Dear Senator William Hughes,

I am a professional photographer and member of the Advertising Photographers of America National (APA) and The American Society of Media Photographers (ASMP). I am writing to thank you for your support of photographers and all artists. The Copyright Reform Act of 1993, Bill #897 needs to pass to protect my rights and the rights of others like me.

As a professional photographer I have not been able to comply with the current Copyright registration for a number of reasons. First of all, it is difficult to determine which images from a particular shoot would be most valuable and risk being stolen. It is also very costly, extremely time-consuming, and overly complicated to register images. I typically expose hundreds of frames of film on a photo shoot and my clients' are choosing the image(s) best fitting their needs. I do not find out which image(s) has been chosen until production is under way. I would have to register everything to be covered for the one or handful of images that are selected for the end use. This becomes costly because I would have to pay for contacts or prints in the case of black and white, and duplicate transparencies or prints in the case of color. These processes take days and since all clients are on deadlines, to do so becomes virtually impossible. Consequently, none of my images are registered. I have to rely on my contract and my clients' honesty that they will only use my images for the usage licensed. Unfortunately, there have been a couple of instances where clients have stolen extra use. When I have sought legal council I was informed that I would only be entitled to actual damages not statutory damages and legal fees, thus attorneys'

2460
Tamara Way
Los Angeles
CA
90065
213 [illegible]243
Fax 213 [illegible]5141

fees would be astronomical, far outweighing the potential damage awards and I would be even worse off. These "infringers" take on a "so sue me" attitude knowing that few of us can afford to do so for one or two photographs.

Please keep helping us photographers and other artists who find themselves in similar situations. The passing of bill #897 would correct this injustice to artists whose work is stolen. I wholeheartedly support your efforts. Thank you.

Sincerely,

Patricia Tryforos

ROYCE
A•U N I Q U E•N A M E•I N
PHOTOGRAPHY

MAY 11 1993

Letter 31

The Honorable William Hughes, Chairman
U.S. House of Representatives
Washington, D.C. 20515

May 4, 1993

Dear Mr. Hughes:

I am a professional photographer with a business in Munster, IN. I am writing to thank you for your support of the Copyright Reform Act of 1993, H.R. 897. This bill is critical to fix the copyright laws so that they provide full, effective protection to photographers. It will also save tax dollars by cutting out the bureaucratic requirement of copyright registration that benefits no one but causes enormous burdens on small businesses like mine.

Like most photographers, copyright protection is essential to my business. Yet, the protection Congress wanted to give to photographers is, simply put, largely meaningless. As technology has advanced, it has become easier and easier for others to copy my photographs without permission.

I produce thousands of photographs each month. It is impossible for me to register each of these images. Yet the law penalizes me for not registering each image immediately. If an image is infringed, the law prohibits me from recovering statutory damages or my legal fees unless I registered the image before the infringement.

In the absence of these remedies, copyright provides no real protection even against intentional infringers. The cost of copyright litigation is enormous, usually far exceeding any possible recovery for infringement of a particular image. Infringers know this, and often scoff at copyright.

The Copyright Reform Act will solve these problems, and provide photographers with the protection they need. Thank you for your support and sponsorship.

Sincerely,

Royce S. Chenore
Royce Photography

Letter 32

May 17, 1993

RECEIVED
MAY 24 1993
Sub on Courts

William J. Hughes, Chairman
241 Cannon House Office Building
Washington, D.C. 20515-3002

Dear Chairman Hughes,

I am writing to voice my support for an important piece of legislation currently being considered by your Subcommittee: H. R. 807/S 372, title Copyright Reform Act of 1993. It is vital to pass this bill in order to restore fairness to our system of copyright enforcement and to maintain the basics of copyright protection.

I am Karen Hughes, President of Stock Options, which is a stock picture agency (that is, a commercial library of photographs which are available for use by clients on a license-for use basis). Stock Options represents 63 photographers who depend on the fees we charge for authorized us of these "existing" photographs as a critical part of their income.

Because of the nature of our business, strong copyright protection is essential to protect the rights and livelihoods of our photographers and maintain strong, ethical business practices. When unlicensed and unauthorized use of our photographers' work is discovered we encounter many obstacles in our efforts to hold the infringers responsible for their acts.

In recent years, there has been an increase in infringement cases and I am troubled by the fact that power has shifted from the individual creator to the abuser. The current law specifies that a work is copyrighted upon expression. However, any real financial redress of an infringement is ultimately based upon registration of the work. Photographers simply are not set up to administrate the registration of the millions of photographs created each year, and thus lack the ability to recover the cost of litigation even when they are clearly in the right. This loophole has not escaped unnoticed and intentional violations of copyright are a serious problem for stock agencies such as mine and for the photographers whose interests we represent and attempt to protect.

Our library contains approximately 75,000 photographs. Our photographers do not routinely register their images with the Copyright Office. We have encouraged them to do this, but it is very difficult for creative individuals to have the time, money and organizational skills to perform this procedure.

It is unfortunate that vast financial resources are necessary in today's legal system in order to mount a successful case in an infringement action. Many creative individuals are prevented from undertaking justified legal action to protect their copyrighted work since they know that, even if they are successful in court, they will not be entitled to attorneys' fees or damages simply because their work was not registered at the time the infringement occurred. It seems to me that an individual's copyright is severely diminished by this inability to defend it because of unworkable administrative detail.

Stock Options supports H. R. 897/S 372 specifically because it will eliminate the registration-before-infringement requirement as a condition for eligibility for attorney's fees and statutory damages. This provision is in keeping with the spirit of the copyright act, will reform the process of protecting a creative individual's work, and will rid us of the bureaucratic burden of registration.

I urge you to support the Copyright Reform Act of 1993. Quick passage of this much needed legislation will earn you not only my thanks, but the thanks of creative Americans everywhere.

Sincerely,

Karen Hughes
President

KH:gk

70-857 O - 93 (664)