

SIXTY-NINTH
ANNUAL REPORT OF THE
REGISTER OF COPYRIGHTS
FOR THE FISCAL YEAR ENDING JUNE 30, 1966



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During consideration of the copyright revision bill Subcommittee No. 3 of the House Judiciary Committee met with Library officials on February 24, 1966, in the Library's Wilson Room.

Sitting, left to right: Abraham L. Kaminstein, Register of Copyrights; Representative Henry P. Smith III; Representative Richard H. Poff; Representative Robert W. Kastenmeier, acting chairman of the subcommittee; Representative Herbert Tenzer; and L. Quincy Mumford, Librarian of Congress.

Standing, left to right: George D. Cary, Deputy Register of Copyrights; A. A. Goldman, Copyright Office General Counsel; Allan D. Cors, Committee Counsel; John G. Lorenz, Deputy Librarian of Congress; Herbert Fuchs, Committee Counsel; and Barbara A. Ringer, Assistant Register of Copyrights.

The Copyright Office

Report to the Librarian of Congress
by the Register of Copyrights

THE CURRENT PROGRAM for general revision of the copyright law made by far the greatest progress of its 11-year history during fiscal 1966. As the year began, hearings on the copyright revision bill of 1965 (H.R. 4347, H.R. 5680, H.R. 6831, and H.R. 6835, 89th Cong., 1st sess.) were under way before Subcommittee No. 3 of the House Committee on the Judiciary. Between May 26, 1965, and September 2, 1965, a total of 22 days of public hearings were held with 163 witnesses representing the widest spectrum of public and private interest in the emerging legislation presenting testimony. The massive record of these hearings ran to 1,930 pages of printed text and included, in addition to the oral transcript, more than 150 written statements.

The years of careful preparation that had gone into the drafting of the bill paid substantial dividends as the hearings progressed. One witness echoed the sentiments of many of his fellows when he stated in his testimony:

There has been no such comparable preparation for legislation in the history of world copyright—and I have in mind major countries long sophisticated in this field I recall no such prior preliminary preparations for the extensive 1932 and 1936 Congressional hearings on general revision in which I took an active part.

Although there were, to be sure, sharp conflicts on some of the major issues presented by the bill, the level of the testimony at the

hearings was remarkably high. Conflicting positions were presented by the witnesses in a reasonable and constructive way, and their statements were intelligent, germane, and unemotional. Nearly all expressed general approval of the revision program and the bill itself and addressed their disagreements to specific provisions. The prevailing atmosphere was reflected in the remarks of Representative Richard H. Poff of Virginia, the ranking minority member on the subcommittee, who said on the closing day of the hearings:

Mr. Chairman, I am in my 13th year in the Congress, and during the course of that time I have been privileged to participate in many congressional investigations and hearings, some of which have lasted for as long as 2 years. But I can say candidly and honestly that this has been the most objective, and instructive, and constructive of any hearing in which I have participated.

I think we are deeply indebted to all of the witnesses who have approached their advocacy without rancor and bitterness I do say that it has been most inspiring and stimulating to me, and I would press the point only that all congressional hearings could be so dispassionate, and learned, and so free of partisan bitterness.

After the public hearings the Copyright Office helped the committee counsel edit the transcript. To make the huge printed record more manageable and useful to the subcommittee and the public, the Office prepared, with assistance from the Library's Data Proc-

essing Office in planning and programing the project on the computer, a complete subject and name index. This was the Copyright Office's first real experience in using computer technology. The staff also prepared summaries of every statement, argument, and proposal that had been made.

Working closely with the committee counsel, the Office then divided the entire corpus of the hearings into 10 general areas: subject matter of copyright, ownership, duration, notice and registration, manufacturing and importation requirements, community antenna systems and other secondary transmissions, jukebox performances, compulsory license for phonorecords, educational copying and fair use, and educational broadcasting and other performing rights. Each subject was then divided into subtopics and under each of these was listed every issue raised by the hearings. Thus, the subcommittee was able to consider them in context, to weight the arguments for and against each one, and to arrive at decisions.

Meeting usually twice a week from February through September 1966, the House Judiciary Subcommittee held 51 executive sessions, many of them lasting 2 hours or more, which were attended by representatives of the Copyright Office. One unprecedented session, on February 24, 1966, was held at the Library of Congress after the subcommittee toured the Copyright Office and was greeted by the Librarian and Deputy Librarian.

Examining each issue and then redrafting the pertinent section of the bill, the committee maintained an informal, bipartisan atmosphere in its executive sessions. The members deserve the gratitude not only of those interested in copyright law revision but also of the public at large for their enthusiasm, intellectual commitment, and hard work on a bill that will have lasting value for generations to come. A special appreciation should be given to the acting chairman of the subcommittee, Representative Robert W. Kastenmeier of Wisconsin, whose conduct of the

hearings and the executive sessions was a model of dedicated public service and statesmanship. An editorial in the August 23, 1965, issue of *Publishers' Weekly* summed up the prevailing sentiment when it said: "It's a committee which can restore one's faith in the process of representative democratic government."

The Senate Judiciary Subcommittee, under the chairmanship of Senator John L. McClellan of Arkansas, opened hearings on the revision bill in August 1965 but delayed resuming them during the fiscal year, partly because of the intense copyright activity in the House subcommittee.

On October 12, after the end of fiscal 1966, the full House Judiciary Committee reported the bill as amended (H. Rept. 2237, 89th Cong., 2d sess.). It is hoped that the amended bill will be reintroduced and acted upon in the 90th Congress, possibly before the end of calendar 1967.

The Year's Copyright Business

Although it would be inconceivable for any member of the operating divisions of the Copyright Office to regard fiscal year 1966 as a relaxing one, statistics show that, for the first time in 14 years, the total number of registrations actually decreased. As compared with 293,617 registrations in all classes of material in fiscal 1965, the 1966 total was 286,866, an overall decrease of 2.3 percent. With the exception of books, lectures, prints, and renewals, each of which increased, registrations declined throughout the whole range of copyrightable material.

Foreign registrations increased by nearly 2 percent, and renewals, which follow a different statistical pattern from other classes of material, gained by over 8 percent despite a 100-percent increase in renewal fees. The number of copyright registrations for artistic designs embodied in or applied to "useful articles" once again declined, from 6,500 in

1965 to 5,900 in 1966, a decrease of approximately 10 percent. The percentage of applications requiring correspondence remained about constant: 11.4 percent of the claims were passed for registration after correspondence and 2.6 percent were rejected.

The passage of the "fee bill," Public Law 89-297, effective November 26, 1965, was the overriding factor in the demands made on the Office's operating personnel during the fiscal year. The act increased statutory registration fees (with the exception of those for commercial prints and labels) from \$4 to \$6, fees for renewal registrations from \$2 to \$4, and reference search fees from \$3 to \$5 an hour. The fees charged for certifications, for recording assignments and related documents, and for recording notices of use were similarly increased. These increases, the first since 1948, were necessary to narrow the substantial gap between receipts and expenses and to make the Office more nearly financially self-sustaining.

Whatever the reasons—possibly the current state of authorship, publishing, and the economy—the predicted 10- or 15-percent decrease in registrations, based on the statistical effects of the 1948 fee increase, proved to be just over 2 percent.

By careful advance planning the changeover was accomplished with little of the upheaval that characterized the last fee increase nearly 20 years earlier. In the month between enactment and the effective date of the increase, the Reference Division sent notifications of the new fee schedule to over 35,000 persons, arranged for a press release and for publicity in various media, and obtained the cooperation of major author and publisher organizations and bar associations in notifying their members of the change. Copyright application forms and informational circulars were revised to accord with the new fees.

As was expected, the number of applications received rose substantially just before the increase, and 3,774 pieces of mail, an all-time record, were received in the Office on Mon-

day, November 22, 1965. There were also the anticipated cases of short-fee deposits immediately after the effective date. On the whole, however, the changeover was relatively smooth, and within a few weeks nearly 90 percent of the applications were being received with the proper fee. The lessons learned will be valuable when the Office is faced with the much larger transitional problems created by general revision of the copyright law.

The workload in every operation of the Service Division increased significantly over 1965. During the fiscal year, 336,525 pieces of incoming and 370,135 pieces of outgoing mail were processed, representing a 10-percent increase in mail handled. In addition, total earned fees were \$1,470,249, an all-time record and 22 percent more than the previous year.

Reference searches were made for 104,000 titles, an increase of 23 percent over 1965. Telephone inquiries rose by 10 percent to 19,000, and mail inquiries by 13 percent to 16,000. The Reference Division also carried on extensive research projects: a cumulative report on the importation of English-language books in cooperation with the Bureau of Customs; a compilation of U.S. copyright decisions before 1909; a collection of treaties, proclamations, and other international materials relating to copyright involving the United States; and substantial additions to the expanding and valuable Biobibliographic File.

Even though total registrations decreased slightly during 1966, the Cataloging Division reproduced and distributed more than 1.8 million cards, representing an increase of 100,000 over 1965. In addition to the 673,000 sent directly to the Copyright Card Catalog, 846,000 cards went into the preparation of copy for the printed *Catalog* and 81,000 cards were sent to other catalogs of the Library of Congress and 217,000 to subscribers to the Cooperative Card Service.

The record set in March 1965 for registrations in a single month stood for only one year. March 1966 was the largest month in

the history of the Copyright Office, with a total of 30,556 registrations, 2 percent more than the previous record.

Official Publications

With the publication in September 1965 of part 5 in the *Copyright Law Revision* series prepared by the Copyright Office and issued by the House Committee on the Judiciary, the prelegislative history of the revision program was completed. Part 5 contains the discussions and comments on H.R. 11947, the 1964 revision bill. The series begins with the Register's *Report* of July 1961 and concludes with his *Supplementary Report*, issued in May 1965 as part 6.

The major publication of the year was the 3-volume record of the *Hearings Before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 89th Congress, 1st Session, on H.R. 4347, H.R. 5680, H.R. 6831, H.R. 6835, Bills for the General Revision of the Copyright Law, Title 17 of the United States Code*. This is the complete transcription of the testimony of all witnesses, together with additional statements and exhibits, that make up the record of the 22 days of hearings held by the subcommittee between May and September 1965.

Staffing and production difficulties continued to delay publication of the official *Catalog of Copyright Entries*. Ten issues were received from the Government Printing Office and nine others were either complete and ready for printing or in various stages of compilation. While catalog production during the year had not increased appreciably, more issues were actually ready or in the process of compilation than at the end of fiscal 1965.

Decisions of the United States Courts Involving Copyright, 1963-1964, compiled and edited by Benjamin W. Rudd of the Copyright Office, was issued as the Office's Bulletin No. 34. The 18th in a series of publications

for official and public use, this is a valuable record of decisions reported in Federal and State courts involving copyright and related cases in the field of intellectual property.

Copyright Contributions to the Library of Congress

While 457,000 articles were deposited for registration in the Copyright Office during the fiscal year, 265,000 articles were transferred to the collections of the Library of Congress or were offered to other libraries through the Exchange and Gift Division. Among the materials that went to enrich the Library's collections were some that had been deposited in earlier years. For example, 387 scripts by Fred Allen and 23 dramas by Maxwell Anderson were transferred to the Manuscript Division, and the original score of *Camelot*, the Lerner and Loewe musical, was transferred to the Music Division. The Copyright Office is making an effort to retain a record copy of as much deposited material as possible.

Administrative Developments

Although the revision of the copyright law and the implementation of the fee increase left little time for planning or development in other major areas, fiscal 1966 may well be a crossroads in the administrative history of the Office. A series of retirements affected several top-level positions and brought about a reorganization in the administrative structure of the Copyright Office that was still in process as the year ended.

Moreover, during 1966 the Office decided to automate many of its operations as soon as possible. Faced with a constantly growing workload and with increasing problems of recruiting and holding qualified personnel, the Copyright Office must obviously use machines for the repetitive tasks they can do better and

faster than can human beings. In spite of the obvious need for automatic data processing, the volume of work is so large that even small changes lead to serious disruptions. Furthermore, the general revision of the copyright law will probably make radical changes in the existing system. The changeover cannot be delayed, however, and the necessary plans for it were being made at the close of the fiscal year.

Problems of Registrability

The growing pains of the computer industry continued to be felt by the Copyright Office during the year. Proceeding under ground rules established in 1964, the Office accepted 36 claims to copyright in computer programs during fiscal 1966. This total, while microscopic in comparison with the number of registrations made for other forms of expression, represents many hours of discussions and is more than double last year's figure. There are indications of a growing awareness within the computer industry of the possibilities afforded by copyright protection for programs in which many millions of dollars have been invested.

Another challenging problem facing the Examining Division is the copyrightability of what is sometimes called "aleatory music" or "music of chance." In broad terms, such works consist of general instructions to performers which, when followed, result in sounds having accidental pitch and rhythm, if any. Regarded by some as a hoax and by others as a major art form, these works raise questions as to whether and when they can be regarded as "music," and in some cases as to whether they constitute the "writing of an author."

Organizational Problems

The merger of the examination of books and periodicals in the Book Section several years ago resulted in a large section which proved administratively unwieldy. To cope

more effectively with the tremendous physical bulk of the material involved and to distribute the workload more equitably the Examining Division transferred responsibility for domestic periodicals from the Book Section to the Arts Section in March 1966. The examination of periodicals has long been a special problem, and experiments in new techniques which show some promise for the future were attempted during the year.

The problems of inadequate work and storage space continue to beset the Office, with no immediate relief in sight. The General Services Administration is providing storage for deposits in a Federal Records Center, alleviating some of the problems. It is obvious, however, that between now and the opening of the Madison Memorial Library in the 1970's the need for space will be a constant and urgent problem in the Copyright Office.

Notices of Intention To Use

Under the present law, a producer who wishes to issue records of a copyrighted musical composition under the "compulsory licensing" provisions of section 1(e) is obliged to send a "notice of intention to use" to the copyright owner and a copy of the notice to the Copyright Office. The 1909 statute was silent as to the Office's obligations with respect to these copies, and no fee was provided for recording them. As a result, practices with respect to recordkeeping and indexing of "notices of intention" have varied from time to time over the past 57 years.

The new fee bill, effective November 26, 1965, established a fee for recording a "notice of intention to use." This change not only meant the imposition of new accounting procedures, but it prompted the Reference Division to survey the "notice of intention" records from 1909 to 1965. A total of 9,461 documents, covering 41,443 titles, had been filed during this period. They were numbered in two series, the first from 1909 through June 30, 1941, covering numbers 1 through 7413, and the second from July 1, 1941,

through November 23, 1965, covering numbers 1 through 2921. The condition of these records suggests the desirability of charging a fee for a recordkeeping activity to ensure proper controls and preservation.

"Notices of intention to use" filed after November 26, 1965, will be numbered in a new series and will be maintained as official Copyright Office records. Earlier documents are being prepared for microfilming. When completed, the microfilm record will be retained in the Copyright Office and the original instruments will be stored in a Federal Records Center.

Legislative Developments

In addition to the program for copyright law revision and the fee increase, already discussed, there were several other significant legislative activities during the year. The first was the enactment of Public Law 89-142, signed by the President on August 28, 1965, which extended until December 31, 1967, the duration of subsisting second-term copyrights that would otherwise expire before that date. This measure was in itself an extension of a 1962 enactment (Public Law 87-668), which extended until December 31, 1965, copyright protection in cases where renewal terms would otherwise have expired between September 19, 1962, and December 31, 1965. As a result of these two interim laws all subsisting copyrights of which the 56-year total of the original and renewal terms would have expired between September 19, 1962, and December 31, 1967, are continued until the latter date. It should be noted that the extension applies only to copyrights previously renewed in which the second term would otherwise expire and not to copyrights in their first 28-year term. Also the act does not affect in any way the time limits for renewal registration.

Hearings under the acting chairmanship of Senator Philip A. Hart on the bill for protec-

tion of ornamental designs, S. 1237, were held before the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights on July 28, 1965, and the Deputy Register of Copyrights, George D. Cary, was one of the witnesses strongly favoring the legislation. The bill was substantially similar to design measures considered by the 86th, 87th, and 88th Congresses and passed twice before by the Senate. Shortly after the end of the fiscal year the bill, with an important amendment excluding designs for wearing apparel from its scope, was reported favorably by the Senate Judiciary Committee and was passed by the full Senate.

An additional jukebox bill, H.R. 15004, identical to measures introduced by Representatives Emanuel Celler (H.R. 18) and James C. Corman (H.R. 2793) in the 1st session of the 89th Congress, was introduced by Representative Thomas M. Rees on May 11, 1966. On May 5, 1966, Representative Theodore Kupferman of New York, a leading expert on copyright law, introduced H.R. 14903, a bill to accord capital gains treatment to the taxation of income from transfers of copyrights and literary property. H.R. 13446, a bill with copyright overtones, was introduced by Representative Jonathan B. Bingham on March 9, 1966; it was aimed at establishment of a National Registry of Art "for the purpose of maintaining and administering records relating to the origin, transfer, and ownership of works of art." The principal office of the Director was to be in New York City, but with a repository under the Smithsonian Institution.

In June 1966 at the request of the Secretary of Commerce a bill was introduced in both Houses (H.R. 15638 by Representative George P. Miller and S. 3517 by Senator Warren G. Magnuson) "to provide for the collection, compilation, critical evaluation, publication, and sale of standard reference data." Known as the Standard Reference Data Act, this measure was intended to set up a Government clearinghouse for technical scientific informa-

tion and contained provisions prohibiting any person, without written authorization, from copying any data compilation bearing a specified symbol. Hearings on the bill were held before the House Committee on Science and Astronautics on the last 3 days of the fiscal year. The statement of Acting Librarian of Congress, John G. Lorenz, took the position that the bill seemed to create the equivalent of a copyright and thus raised serious problems under the Constitution and the present copyright statute's prohibition against copyright in Government publications; the statement concluded that, if Congress finds exceptional circumstances justifying the recognition of exclusive rights in this particular instance, it should be accomplished within the framework and limitations of the copyright law. After the end of the fiscal year an amended bill (H.R. 16897) specifically according statutory copyright protection to data compilations was passed by the House of Representatives.

On June 6 and 7, 1966, the House Ways and Means Committee held public hearings on H.R. 8664, H.R. 15271, and H.J. Res. 688, bills to implement the Agreement on the Importation of Educational, Scientific, and Cultural Materials (the Florence Agreement of 1950) and the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (the Beirut Agreement of 1948). The Librarian of Congress testified during the public hearings, and the Committee heard testimony from the Deputy Register of Copyrights during later executive sessions on the measures. The record of the hearings includes a letter from the Register of Copyrights explaining the relationship between the copyright law, particularly its manufacturing requirement, and the Florence Agreement and indicating the adverse effect of delayed implementation on U.S. copyright relations. H.R. 8664, dealing with the Florence Agreement, was enacted on October 14, 1966 (Public Law 89-651), and H.J. Res. 688, concerning the Beirut Agreement, was

enacted on October 8, 1966 (Public Law 89-634).

In March and April 1966 the House Committee on Interstate and Foreign Commerce, under the chairmanship of Representative Harley O. Staggers, held hearings on three bills (H.R. 12914, H.R. 13286, and H.R. 14201, 89th Cong., 2d sess.) dealing with the authority of the Federal Communications Commission to regulate the operation of community antenna television systems. The record of these hearings contains testimony bearing on the relationship between copyright and communications law in this field. On May 5, 1966, Representative Robert W. Kastenmeier, as acting chairman of the House Judiciary Subcommittee then considering the revision of the copyright law, sent a letter to Chairman Staggers outlining certain proposed amendments in the revision bill with respect to community antenna systems which had direct bearing on the problem facing the Commerce Committee. This letter was printed in the *Congressional Record* on May 9, 1966, and also in the record of the CATV hearings. On June 17, 1966, H.R. 13286, a bill specifically authorizing regulation of community antenna systems, was reported favorably by the House Commerce Committee (H. Rept. 1635, 89th Cong., 2d sess.).

The 1966 regular session of the General Assembly of the State of New York enacted four statutes of considerable interest and importance in the development of the copyright law. Chapter 668, effective September 1, 1966, reverses the common law doctrine established in the famous case of *Pushman v. New York Graphic Society, Inc.*, 287 N.Y. 302 (N.Y. Ct. App. 1942), under which an artist is presumed to have transferred his reproduction rights unless he expressly reserves them at the time he sells the painting, statue, or other unique copy in which his work of art is embodied. Under the new act, whenever an artist or his heirs transfer a "work of fine art," the "right of reproduction" is "reserved to the grantor" unless specifically transferred in writ-

ing. Chapters 982 and 988 deal with the unauthorized duplication of sound recordings, making it a misdemeanor, except in the case of ephemeral recordings made for broadcasting, for anyone to transfer sounds from one record to another with the intent to sell records or use them for profit, or to sell records with knowledge that they had been illegally dubbed, "without the consent of the owner"; the "owner" is defined as "the person who owns the master phonograph record . . . or other device used for reproducing recorded sounds." Chapter 983 deals with the labeling of phonograph records and, in addition to prohibiting the misleading use of the term "stereophonic," makes it a misdemeanor to distribute records "without the name and address of the manufacturer on the outside cover or jacket"; the "manufacturer" is defined as the owner or licensee of the right to distribute the master recording "through regular trade channels."

Judicial Developments

There were few developments during the year in either of the current actions in which the Register of Copyrights is a party. *Public Affairs Associates, Inc. v. Rickover*, the long-pending action in which both the Register and the Librarian of Congress are defendants, involves the question of whether certain works by Admiral Rickover are validly copyrighted or are "Government publications" and hence in the public domain. In December 1965 the plaintiff filed requests for admissions and supplemental interrogatories on the Register and several of the other Government defendants, as well as on Admiral Rickover, and these requests were answered.

Hoffenberg v. Kaminstein is an action by the coauthor of the novel *Candy* to compel the Register to accept an application which had previously been refused registration for failure to comply with the manufacturing requirements. In March 1966 the case was called up before a pretrial hearing examiner

who, on determining that the parties were not prepared for summary judgment proceedings, gave them 6 months within which to file a certificate of readiness.

Performing Rights and Community Antenna Systems

One of the most eagerly awaited and important copyright decisions in recent years was handed down near the end of the year, on May 23, 1966: Judge Herlands' landmark decision in *United Artists Television, Inc. v. Fortnightly Corp.*, 255 F. Supp. 177 (S.D.N.Y. 1966), involving the basic question of whether a "community antenna television system," a "CATV system," as it is called, infringes the exclusive right of public performance in a copyrighted motion picture when it picks up a licensed telecast of the work and sends it on to paying subscribers over wires. This sharply disputed question, which had never before been decided by a U.S. court, has assumed great economic importance because of the nationwide proliferation of CATV systems, which have not been paying copyright royalties.

The decision of the court, expressed in one of the most comprehensive, detailed, and carefully reasoned opinions ever issued in the copyright field, was that unauthorized CATV transmissions constitute an infringement of exclusive performing rights in the copyrighted works included in the transmissions. Aside from its great potential impact on the development of community antenna television in the United States, Judge Herlands' decision is important for its construction of the exclusive rights of copyright owners under the statute.

The basic holding in the *United Artists* case is that the activities of community antenna systems constitute a public performance within the meaning of section 1 of the copyright statute. The court concluded that, rather than being mere "passive antennas," CATV systems "consist of sophisticated, complex, extremely sensitive, highly expensive equipment, especially constructed and designed" for active

transmissions and which, in effect, "perform a function substantially identical to that of a network affiliated station, UHF translator, or VHF repeater." Starting with the "classic conception" of a performance as one involving an actor performing a work and an audience in each other's presence, Judge Herlands held that this concept has been altered by the "contemporary revolution in the science and technology of mass communication—a revolution generally recognized as profound as the invention of the printing press." The term "performance" today is held to incorporate three separable components: (1) the actor's rendition, (2) the "method of communicating the rendition to the audience," and (3) the method by which the audience receives it. After exhaustively analyzing the relevant case law, legislative intention, technology, and economic factors, the court concluded that any or all of these activities can be a "performance" within the meaning of the copyright law.

On the question of whether the "for profit" limitation on the public performance right was applicable, the court held that, "with respect to motion picture photoplays, the infringing public performance need not even be for profit." With respect to the other, non-dramatic motion pictures involved in the suit, the court decided that the performances had been "for profit" since the community antenna systems were operated as commercial business enterprises. For this purpose, the court specifically held that it made no difference whether the defendants levied their charges on subscribers on a monthly, yearly, per program, or any other basis and found it irrelevant: (1) that "defendant's systems do not rent, sell, or repair television receiving sets for subscribers"; (2) that "the subscribers . . . make the decisions as to when and whether the . . . sets are turned on or off"; and (3) that "defendant's . . . systems make no separate charge to subscribers related to whether or not a . . . set is turned on, or whether or

not a subscriber views any particular program."

The *United Artists* case is also the first decision in the United States containing an express ruling on the question of whether a copyright owner's license to broadcast a work carries with it an "implied in law license" for others to pick up the broadcast and transmit it further. Judge Herlands held that no such license should be implied and, in the light of today's technology, rejected the argument that the copyright owner could protect himself by refusing to license the initial broadcast. The court also held that nothing in the Communications Act of 1934 or the F.C.C. regulations in any way impairs the copyright owner's right to collect royalties.

Judge Herlands emphasized that it is the function of the courts to prevent "a new means of accomplishing an old and proscribed end from diluting or decreasing the scope of the monopoly Congress has granted to the copyright proprietor." He regarded this function as fundamentally different from "expanding the scope of that monopoly—which only the Congress can legitimately do." The opinion cites and quotes extensively from the discussion on community antenna systems in the *Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law*, and "notes in passing that, despite the fact that exemptions from inclusion within the copyright proprietor's performance monopoly may arguably be desirable in certain instances purely on policy grounds, such desiderata are for Congress and not the courts." Having determined that the "defendant's activities constitute a public performance for profit within the meaning of the Copyright Act," the court held that it "has no discretionary power to except that defendant from the coverage of the Act. Only Congress can legitimately do that."

Five months before the *United Artists* decision was handed down, the same court ruled on the plaintiff's motion for summary judgment in the other major CATV case now

pending, *Columbia Broadcasting System, Inc. v. Teleprompter Corp.*, 251 F. Supp. 302 (S.D.N.Y. 1965). After considering "extensive affidavits and memoranda" as well as the contentions urged during "full oral argument," the court denied the motion on the ground that, by its nature, the action was "not appropriate for disposition by summary judgment" and without a trial. Judge Wyatt noted that the "nationwide growth of CATV" has been "explosive," that the *United Artists* case was pending in the same court, that "a significant part of the factual area is technical," and that "the case at bar is not only one of first impression but is also a test case and one of the battles in a war between the television broadcasting industry on the one hand and the CATV system operators on the other."

The *United Artists* decision is being appealed, but as the first ruling on a question of national importance, its significance cannot be overestimated. It has focused attention on copyright as the dominant legal issue in the CATV controversy and has furthered the efforts at seeking a legislative solution to the problem. *Dispatch, Inc. v. City of Erie*, 249 F. Supp. 267 (W.D. Pa. 1965), was an earlier action by a broadcaster against a CATV system on grounds other than copyright infringement. The court relied on *Cable Vision, Inc. v. KUTV, Inc.*, 335 F. 2d 348 (9th Cir. 1964), *cert. denied*, 379 U.S. 989 (1965), in holding "that television signals in the air are in the public domain, . . . that there is no property right of any person to be protected insofar as television signals are concerned," and that there is "free access to copy whatever the federal patent and copyright laws leave in the public domain."

The judicial construction of the phrase "public performance for profit" in the copyright statute was considered by the Ninth Circuit Court of Appeals in *United States v. D. I. Operating Co.*, 362 F. 2d 305 (1966), an excise tax case involving the meaning of the phrase "conducted for profit" in the Internal

Revenue Code. The court noted that the phrase in the copyright law "has been broadly interpreted to include indirect profit." The copyright decisions were held not to be compelling because the courts in those cases were concerned with "the protection of a specific statutory right"—"the monopoly rights created under the Copyright Act." Nevertheless, the court upheld a Treasury Regulation giving the phrase a construction consistent with that of the copyright cases.

Rights of Exhibition and Copying

The present copyright law does not grant an explicit right of "exhibition" or "display," and the question of whether projection of an ephemeral image of a copyrighted work constitutes "copying" has been a disputed issue for many years. The plaintiff in *Mura v. Columbia Broadcasting System, Inc.*, 245 F. Supp. 587 (S.D.N.Y. 1965), was owner of copyright in several hand puppets which were exhibited and used as part of the entertainment on two "Captain Kangaroo" programs. The puppets used were apparently authorized reproductions bought on the open market and, even though kinescopes of the programs had been made, the court held that there had been no infringement. Noting that "the electronic image produced in live television broadcasting . . . is not permanent," and that "after 1/15,000 of a second plus the time for the phosphor decay, which is measured in milliseconds, the image disappears and nothing is left," Judge Levet held that "the evanescent reproduction of a hand puppet on a television screen or on the projected kinescope recording of it is so different in nature from the copyrighted hand puppet that . . . it is not a copy."

Interestingly enough, the same point was touched on in the *United Artists* case discussed above, in which the plaintiff claimed that community antenna television transmissions constitute a form of "copying" or reproduction as well as a performance. As phrased by the court, the argument was that "defendant's CATV systems store information (i.e., pro-

gram intelligence) in the coaxial cables during the time the audio and video signals are being propagated through the cables; that 'the physical reality of the electromagnetic field containing the sights and sounds of the program is every bit as real as a piece of paper with print on it or of a photograph;' . . . and that the storage of electromagnetic energy in CATV coaxial cables and on videotape is basically the same." Although Judge Herlands observed that these arguments "are not without force," he held that "the potential ramifications of an adjudication of those additional issues are so far-reaching that the court will not pass on them where such a determination is not necessary to a disposition of the case at bar."

The complicated litigation involving alleged infringement of Jean Genet's *Journal du Voleur* (*Thief's Journal*) will be discussed in more detail below, but it produced an important decision involving the scope of the right to "copy" that should be noted here. A basic question in *Grove Press, Inc. v. The Greenleaf Publishing Co.*, 247 F. Supp. 518 (E.D.N.Y. 1965), was whether an American paperback publisher infringed the copyright in Genet's original French text when he copied word-for-word an English-language translation that had fallen into the public domain. The court held that copyright in a work covers more than the mere "form of communication" in the particular words chosen by the author: "The essence of a novel or any other story for that matter, is the plot, plan, arrangement, characters and dialogue therein contained and not simply its form of articulation." While noting that "the abstract idea of the novel or play alone" cannot be protected, Judge Bartels held that "the particular pattern employed in arranging and expressing that idea is entitled to protection." Since the translation in this case, "like any other derivative work, . . . is separate and apart from the underlying work . . . a dedication to the public of the derivative work did not, without more, emancipate the pattern of the underlying work

from its copyright." In construing the scope of the right to "copy," the court held that, even though "the copying of the original story was accomplished indirectly through copying of a translation of the original," this was "nonetheless copying": "Unauthorized copying may be effected either directly or indirectly; thus copying from a copy is no less an infringement than copying from the original copyrighted work."

Author's "Moral Right"

An exclusive right granted under a number of foreign copyright laws is the so-called "moral right" which, in one of its forms prohibits the distortion or mutilation of an author's work. There is no statutory recognition of any "moral right" in the United States, although some courts have approached a partial acceptance of the doctrine on grounds such as unfair competition.

Two cases during the year demonstrated the limited scope of the "moral right" in the United States. At the same time these cases threw a spotlight on the legal and moral issues involved in the cutting and interruption of motion pictures shown on television. While the plaintiffs (both famous film producer-directors) were largely unsuccessful in their legal actions, the nationwide publicity their arguments received could have some long-range effects.

The first case, *Preminger v. Columbia Pictures Corp.*, 148 U.S.P.Q. 398 (N.Y. Sup. Ct., Trial Term, N.Y. County, 1966), *aff'd per curiam*, 149 U.S.P.Q. 872 (N.Y. Sup. Ct., App. Div. 1966), *aff'd per curiam*, 150 U.S.P.Q. 829 (N.Y. Ct. App. 1966), involved the motion picture version of *Anatomy of a Murder*. Having failed to obtain a preliminary injunction requiring the film to be shown on television without cuts or commercial breaks (154 N.Y. Law Journal 17, Oct. 18, 1965; see also 154 N.Y. Law Journal 5, Nov. 10, 1965), Otto Preminger sought a permanent injunction on grounds of unfair competition. In denying this relief, Justice Klein began his decision "with the proposition that the law

is not so rigid, even in the absence of contract, as to leave a party without protection against publication of the garbled version of his work," and stated that the court "appreciates that the failure of the community . . . to protect its gifted men of letters led to tragedies which comprise scars in the history of civilization."

The court held, however, that protection of this sort must be subject to the terms of the contract governing television rights; it construed the contract in question, in the light of the "custom prevailing in the trade," to permit "the usual breaks for commercials" and "minor deletions to accommodate time segment requirements or to excise those portions which might be deemed, for various reasons, objectionable." With respect to cutting, Justice Klein's opinion implied rather strongly that major deletions beyond "the normal custom and practice in the industry," or cuts that "interfere with the picture's story line," would be actionable as unfair competition despite the contract; specifically, he stated that cuts reducing the 161-minute playing time to 100 minutes or less would "obviously . . . not be minor and indeed could well be described as mutilation."

Justice Klein's decision was affirmed by both the Appellate Division and the New York Court of Appeals. In the former, however, there was a strong dissent by Justice Rabin, who argued that the television contract should be construed as not allowing cuts without Preminger's approval. The dissent stressed that "the exhibition of a garbled version under Preminger's name should by all means be enjoined" as a matter of common law, without regard to any contractual rights, and added that "unlimited interruptions for commercials might tend to permit of a mutilated presentation of the picture to the detriment of the common law rights of the producer."

The second "moral rights" case, *Stevens v. National Broadcasting Co.*, 148 U.S.P.Q. 755 (Cal. Super. Ct., Los Angeles County, 1966),

involved the efforts by George Stevens to prevent the defendants from cutting and inserting commercials into its television showing of *A Place in the Sun* (Stevens' film version of Dreiser's *An American Tragedy*). Stevens was granted a preliminary injunction by Judge Nutter of the California Superior Court on the grounds of what the court termed the "false light concept": ". . . when a photoplay is chopped up with thirty to fifty commercials and the artist's name is put at the beginning of the film, it may be represented to the public that the artist is offering this to the public in this form." Judge Nutter distinguished the *Preminger* decision on the grounds that, unlike the *Stevens* case, the contract contained a specific television clause and was signed at a time when industry practices were well known. The court enjoined NBC from cutting or editing the film for the purpose of inserting commercials "or other material which will so alter, adversely affect or emasculate the artistic or pictorial quality . . . as to destroy or distort materially or substantially the mood, effect, or continuity." Judge Nutter made clear that the injunction did not prohibit the insertion of any commercials and suggested that the insertions be made at a change of scene.

NBC proceeded to show *A Place in the Sun* with nine separate interruptions for multiple commercials and with minor cuts totaling 10½ seconds. Stevens sought to have the defendants found guilty of contempt of court, 150 U.S.P.Q. 572 (Cal. Super. Ct., Los Angeles County, 1966), but Judge Wells ruled against him on the ground that the strict terms of the injunction were broad enough to permit what was done. Noting that "the most serious damage to the film was in the number of interruptions," and that "defendant's good faith would have been more apparent if it had reduced, even slightly, the number of interruptions from its regular format," Judge Wells nevertheless declared that "the main reason why the television ver-

sion did not violate the injunction was the power and strength of the film."

The court's position was that "the effect of commercial interruptions on a movie is in adverse ratio to the strength or quality of the film," and that *A Place in the Sun* was "so dramatic, strong, exciting, romantic, tragic, interesting and artistic that it prevailed over the commercial interruptions." The decision acknowledges that the effect of the commercials was "to lessen, to decrease, to disturb, to interrupt, and to weaken the mood, effect, or continuity, and the audience involvement; and, therefore, some of the artistry of the film." But, because of the film's strength and because "the average television viewer is thick-skinned about commercials and tends to disassociate them from what goes before and after," Judge Wells held that the film had not been "destroyed or distorted" within the meaning of the injunction.

Subject Matter of Copyright

The widespread use of miniature tape recorders and the increasing publication of works purporting to be verbatim transcripts of conversations and interviews raise a significant legal issue: under what circumstances can the verbal expression contained in conversations and personal dialogs be protected as literary property? This issue, which broke surface in two widely publicized cases during the year, was most clearly framed in *Hemingway v. Random House, Inc.*, 148 U.S.P.Q. 618 (N.Y. Sup. Ct., N.Y. County), *aff'd*, 25 App. Div. 2d 719, *on motion for summary judgment*, 156 N.Y. Law Journal 7 (July 22, 1966). The action was brought by Mrs. Ernest Hemingway to enjoin publication of the book *Papa Hemingway* by A. E. Hotchner, a close friend of the Hemingways.

The book, in the words of the court, is a "biographical study" whose "intimacy and immediacy is heightened by the liberal use of a conversational format wherein Hemingway is quoted extensively but always within the confines of conversations to which Hotchner

was also a party." Justice Frank characterized a number of these "conversational passages" as "contemplative in tone" and as including "reminiscences by the great author on a wide variety of topics ranging from the personal to the literary." In addition to claiming unfair competition, breach of trust, and invasion of privacy, the plaintiff asserted "that all of the material incorporated in the book which is based upon the language, expressions, comments and communications of Ernest Hemingway, is subject to a common law copyright, that is, the right of first publication of such material."

The New York Supreme Court, in refusing to grant a preliminary injunction, stated the "novel and provocative question" confronting it as "whether a person's participation in spontaneous oral conversations with friends over a course of years, in distinction to lectures or prepared dialogues, may be considered a literary work subject to a common law copyright." Justice Frank's negative answer to this question was based both on the public policy against possible restrictions on free speech and on the legal nature of conversations. Citing the "enduring fame and inspirational stimulus of the works of recorders such as Plutarch, Boswell and Carlyle," he regarded the "social and historical implications" of an injunction in cases of this sort as "striking at the very fundamentals of our political structure." The court also distinguished conversations from "the sort of individual intellectual production" subject to legal protection on two grounds: (1) that conversations "reflect a duality that defies dissection or divisibility" and therefore "cannot be cataloged as merely the cumulative product of separate and unrelated individual efforts"; and (2) that "random and disconnected oral conversations" are "merely a disoriented conglomeration of unconnected expressions" until they are given a presentation that "organizes them into a coherent format and renders them meaningful." This ruling was upheld on appeal, and motions for

summary judgment in the case were later denied.

This issue arose again in another action against the same defendant, *Rosemont Enterprises, Inc. v. Random House, Inc.*, 256 F. Supp. 55 (S.D.N.Y.), *rev'd*, 366 F. 2d 303 (2d Cir. 1966). This suit for infringement of copyright in certain *Look* magazine articles was a part of efforts to prevent publication of an unauthorized biography of Howard Hughes. Some use of the material in the *Look* articles had been made in defendant's book, including verbatim quotation of "two conversations, one between Hughes and the actor Skelton . . . , and the other between White [the author of the articles] and 'one of Hollywood's best known stars.'" The lower court held that these conversations, even if recounted accurately, "are not mere uncopyrightable historical facts," but are the author's "own version of what occurred, expressed in his own language and part of his effort to picture Hughes and his personality and is thus copyrightable." As an interesting counterpoint to the *Hemingway* opinion, Judge Bryan added: "Even assuming that the dialogue involving White himself was an exact repetition of the conversation, certainly White's part in the conversation would be original and would have contributed to the reply elicited. It likewise is copyrightable material." The District Court's decision enjoining publication of the biography was reversed by the Second Circuit Court of Appeals on grounds of fair use, but this holding on the copyrightability of conversations was left undisturbed.

Several cases involving the familiar problems of copyrightability in the fields of maps, commercial labels, and trade catalogs arose in fiscal 1966. In *County of Ventura v. Blackburn*, 362 F. 2d 515 (1966), the Ninth Circuit Court of Appeals upheld copyright in a map of Ventura County, Calif., which had been prepared at a cost of \$7,500 by "assembling, preparing, collating and compiling" information from government maps, assessors' records, aerial photographs, and other records.

The court held that "the fact that the source of the material for the map is in the public domain does not void the copyright," but added that "copyright protection is limited to the new and original contribution of the map maker," and that "there is a strong inference . . . that some of the material in the map was obtained by . . . observation on the terrain." The label case of the year was *Gray v. Eskimo Pie Corp.*, 244 F. Supp. 785 (D. Del. 1965), which held uncopyrightable the material appearing on the paper container that "simply describes the weight and content of SNONUTS, names plaintiffs as the manufacturer-distributor thereof, states that SNONUTS is plaintiffs' trademark, and describes SNONUTS as 'The Ice Cream with the Hole.'" Noting that "there is nothing unusual about the lettering which is used," the court cited the Copyright Office Regulations to support its conclusion that "matters such as these—slogans, names, listing of ingredients or contents, are not subject to copyright."

Blumcraft of Pittsburgh v. Newman Bros., Inc., 246 F. Supp. 987 (S.D. Ohio 1965), involved a claim of infringement of copyright in some of the art work in a catalog for ornamental iron railings. Plaintiff's catalog contained what was called a "new and dramatic means of presentation" of its products, consisting of a fence in sharp perspective and against a black background. Defendant's illustrations showed a very similar perspective view on a black background, but pictured defendant's own iron products rather than those of the plaintiff. The court held for the defendant on the ground that the perspective and background were mere ideas which went into the public domain on publication, and that defendant had not copied the copyrightable elements in plaintiff's work: "a copyright infringement action cannot be found in mere resemblances occasioned by a generally similar perspective presentation."

In *Lin-Brook Builders Hardware v. Gertler*, 352 F. 2d 298 (1965), the lower court had held that drawings of hardware products in

plaintiff's catalog were uncopyrightable, partly because they were advertisements of utilitarian articles and partly because the drawings lacked "originality." The Ninth Circuit Court of Appeals reversed this decision, holding on the basis of "overwhelming authority" that advertising is copyrightable, and rejecting the trial court's conception of "originality." Judge Beeks indicated that the lower court "seems to have been led astray by the dual meaning of the word" since, taking a drawing of a Texaco oil can as an example, the court had said that it lacked originality because "any meticulous artist, looking at the can before him, would have drawn it in the same manner, achieving the same result." The appeals court held that a drawing of an oil can is no less copyrightable than a photograph of it, and that "'originality' in copyright law is not a question of creativity or novelty, but one of authorship or source of origin." Under the decision, "appellees were free to copy the original oil can, but they were not free to copy Baxter's copy of the can."

In another case involving trade publications, *Flick-Reedy Corp. v. Hydro-Line Manufacturing Co.*, 351 F. 2d 546 (1965), the Seventh Circuit Court of Appeals reversed a lower court decision and upheld copyright in two pages of a sales booklet containing "mathematical data and formulae with explanations for their use." The appeals court was careful not to base its decision on the copyrightability of the computations appearing in the mathematical charts, which the defendant could well have been found to have calculated independently. Instead, it held that the "arrangement, expression and manner of presentation . . . of the computations, formulae and explanations" were copyrightable and infringed. In a case involving copyright in various publications prepared in connection with "a plan for a service to provide an accounting of tax deductible drug purchases by individual taxpayers from drugstores," *Drugtax, Inc. v. Systems Programming Corp.*, 147 U.S.P.Q. 313 (M.D. Pa. 1965), the court denied a motion for a

preliminary injunction partly on the grounds that the plaintiff's "idea, plan and method" were not copyrightable and that the design of a telephone dial published as part of the material is in the public domain.

The idea or plan for a word-puzzle entitled *Scramble* or *Jumble* was held not to be subject to protection as literary property in *Dell v. Chicago-Tribune-New York News Syndicate Inc.*, 24 App. Div. 2d 859 (N.Y. 1965). On the other hand, where the plaintiff in *Silver v. Television City, Inc.*, 148 U.S.P.Q. 167 (Pa. Super. Ct. 1965), had reduced his idea for a television program entitled *Air Your Gripe* to concrete form "by tape recording, typewritten format, and dummy script," his common law rights were held to have been infringed by a program entitled *Pulse of the People*. Starting from the premise that "radio and television programs may be such literary productions as are protected by the common law" if they "evidence the exercise of skill, description and creative effort," Judge Montgomery held that it makes no difference that the author "takes existing material from sources common to all writers" as long as he "creates a new form and gives them an application unknown before in a different manner and for a different purpose resulting in a real improvement over existing modes."

The familiar principle that "no copyright protection will be given to the title of a literary production" was upheld in *Cinepix, Inc. v. Triple F Productions*, 150 U.S.P.Q. 134 (N.Y. Sup. Ct., N.Y. County, 1966), a case involving two television series both entitled *I Spy*. In *Northern Music Corp. v. Pacemaker Music Co.*, 147 U.S.P.Q. 357 (S.D.N.Y. 1964), *on motions for summary judgment*, 147 U.S.P.Q. 358 (S.D.N.Y. 1965), the issue was infringement of copyright in a composition entitled *Don't Let the Sun Catch You Cryin'* by another song entitled *Don't Let the Sun Catch You Crying*. Despite plaintiff's argument that "both compositions have the same central idea and literary text under the same title, and that the musical phrase underlying

the principal lyrical theme 'Don't Let the Sun Catch You Cryin' is substantially the same," Judge Cooper denied a preliminary injunction on the ground that "mere similarity of the title line is not in itself enough," and Judge Palmieri denied motions for summary judgment on the ground that the showing of similarity was insufficient.

Publication

The difficult problem of what constitutes a general publication in the field of architectural designs was dealt with in *Read v. Turner*, 148 U.S.P.Q. 453 (Cal. Dist. Ct. App. 1966). The plaintiffs, a married couple, drew up plans for their own home and let the defendant contractor use them under restricted conditions for purposes of preparing a bid. The contractor had 10 copies made of the plans and started building homes based on them. Meanwhile, after the plaintiff's home was completed, it was listed for sale with a large group of agents and given a number of open house showings. The purchaser was given a copy of the floor plan to obtain rug measurements.

The California District Court of Appeal noted that the California Code provisions "adopt, in general, the common law copyright rule; confer a copyright upon the designer of a house plan, protecting his property in the plan designed; and terminate the copyright upon publication when control by the owner over the subject thereof ceases." Justice Coughlin then reviewed the distinction between a "general publication" that terminates common law rights and a "limited publication" that does not, stating the factors to be considered as: "the intention of the owner, viz., whether his acts of publication are indicative of an intent that the subject of the copyright may be used by the general public; the character of the communication or exhibition effecting the publication; the nature of the subject of the copyright as related to the method of communication or exhibition in

question; and the nature of the right protected." The court indicated that both the making of additional copies of the plans and the building of homes from them could constitute infringement of copyright but held that a general publication of the plans took place (1) when the "plaintiffs, through their multiple listing and open house exhibitions, invited the general public to review the floor plan," and (2) "when they sold the residence and furnished the purchaser with a copy of the plans . . . without restriction upon the use." The court held specifically that the open exhibition of the house itself constituted a general publication of the floor plan since the plan "readily was observable by those to whom the exhibition was made." On the other hand, the original delivery of the plans to the defendant for bidding purposes was held to be a limited publication, and the court indicated that there could be recovery for any acts of infringement that took place before the house was opened for public inspection.

The concept of publication was also explored in cases involving infringement of Federal copyright in the designs of "troll dolls," *Scandia House Enterprises, Inc. v. Dam Things Establishment*, 243 F. Supp. 450 (D.D.C. 1965), and of textile fabrics, *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 244 F. Supp. 287 (S.D. Fla. 1965). In the "troll doll" case large quantities of the popular figurines had been sold in the United States without notice, and the court held that "defendant cannot properly contend that manufacture of Dolls . . . without notice was an unauthorized act, a mistake, or a breach of a condition of a license agreement, particularly where defendant was aware of the manufacture of Dolls without notice and he did not take remedial action until 60 days before trial. Rejecting any argument based on section 21 of the copyright statute, Judge Jackson also held that "sale of Dolls by defendant without notice places the Dolls in the public domain from which they cannot be withdrawn by a contention that the omission

of the notice was accident or mistake, particularly where the notice was omitted from almost all of the Dolls ever manufactured." The court added that "a publisher is one who reproduces material for sale, . . . not one who purchases material for resale," and that sale to an intermediate distributor "without restriction as to the purpose of the sale and without limitation on [the] . . . right of distribution or resale" was a general rather than a limited publication.

In the *Key West* case the defendant argued, among other things, that copyright protection had been lost by two acts of general publication: (1) by showing a drawing of what became the fabric design to a prospective customer, and (2) by allowing publication of a reproduction of the design in a fashion article appearing in *Life* magazine. The court rejected the first argument on the grounds that exhibition of "renderings" of the design did not constitute publication, especially since "they were not even the complete design" and since the limited showing was merely to get an "opinion or reaction." The second argument was dismissed because "all of plaintiff's material was printed with the copyright notice beginning with that which first left the factory," and "plaintiff's 'cooperation' did not require it to insist that the statutory mark be displayed in the photographs used by *Life*."

B. Wilmsen, Inc. v. Consolidated Novelty Co., 251 F. Supp. 874 (S.D.N.Y. 1965), involved a dispute over importation of artificial Christmas trees. The defendant had registered claims to copyright in the design of trees imported from Hong Kong, and on the strength of its certificate was successful in having the Collector of Customs detain "piratical copies" of the tree imported by the plaintiff. The plaintiff in turn sued for a declaratory judgment as to the invalidity of the copyright and sought a preliminary injunction forcing Customs to release the goods. The court granted the injunction on the basis of evidence showing a "substantial likelihood of proving there was a publication without notice." In

Kontes Glass Co. v. Lab Glass, Inc., 250 F. Supp. 193 (D. N.J. 1966), a case involving glassware catalogs, the plaintiff was denied a preliminary injunction on general grounds of publication without notice or abandonment. The court concluded, without going into a detailed analysis of the items claimed to have been copied, that the entire catalog was probably in the public domain because parts of it had been reproduced from earlier uncopyrighted catalogs and pamphlets, because even after copyright registration plaintiff had published excerpts from its catalogs without notice, and because plaintiff waited 9 years to make registration and this "may have resulted in certain of its published items having become preempted in and by the public domain." Similarly, the court in *Gray v. Eskimo Pie Corp.*, 244 F. Supp. 785 (D. Del. 1965), found that the only copyrightable portion of plaintiff's label had been used earlier on bags and cartons; "although only a small quantity of SNONUTS was involved, it was for public sale," and "this constituted publication . . . without the statutory notice," which placed the material in the public domain.

Notice of Copyright

The familiar problem of the validity of a notice imprinted on the selvage of textile fabrics was raised again in *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 244 F. Supp. 287 (S.D. Fla. 1965). The notice in this case appeared with each repeat of the design, at intervals of about 30 inches, and the defendant argued that the notice could have been embodied in the design itself without impairing its market value or aesthetic appeal. The court, in holding otherwise, remarked that although it may sometimes be possible for a well-known designer to work his name into a design, "it is not feasible for the printer or converter of the cloth to do so." The court also held that, even though the plaintiff's name had been changed from "Key West Fabric Company" to "Key West Hand

Print Fabrics, Inc." and some material may have appeared with the new name before it was officially recorded, the validity of the copyright was unaffected; "it is not necessary that the owner's true name be used at all so long as a name with which it is identified is used and no innocent persons are misled," and here the defendant was a "knowing infringer and aware of the existence of the copyright."

The notice appearing on the side rather than the front of a wall plaque was held sufficient in *Miller Studio, Inc. v. Pacific Import Co.*, 39 F.R.D. 62 (S.D.N.Y. 1965). On the other hand, in the "troll doll" case, *Scandia House Enterprises, Inc. v. Dam Things Establishment*, 243 F. Supp. 450 (D.D.C. 1965), the court refused to accept the claim that the word "Denmark" appearing in conjunction with the notice was an "accepted alternative designation" of the copyright owner, Dam Things Establishment of Vaduz, Liechtenstein. Judge Jackson ruled that the notice was "inadequate because the word 'Denmark' . . . is not the name of defendant, but identifies the country of origin usually placed on imported merchandise to conform to the requirements of the Tariff Act."

A test case to determine the rights of newspaper publishers to protect the advertisements prepared and published by them for local advertisers was decided against the plaintiff in *Brattleboro Publishing Co. v. Winmill Publishing Corp.*, 250 F. Supp. 215 (D. Vt. 1966). The four advertisements in suit, which were for a restaurant, a sports shop, a jewelry store, and a real estate dealer, had been published as part of plaintiff's copyrighted newspaper but without separate copyright notices of their own. Plaintiff claimed no copyright in national advertising or in political ads prepared by the candidates, but it asserted the right to sue another newspaper for reproducing its local advertising without permission. The court concluded that ownership in the advertisements remained with the advertisers who engaged the newspaper to prepare and publish them, and that therefore the general no-

tice in the newspapers was not adequate to protect the advertisements.

In *Lin-Brook Builders Hardware v. Gertler*, 352 F. 2d 298 (9th Cir. 1965), the trial court had held that, since many of the plaintiff's catalog illustrations had been copyrighted earlier, the new matter in the catalog was not protected since the copyright notice did not identify what material was copyrighted when. The Court of Appeals reversed this ruling as "contrary to the express language of the statute . . . and to the holdings of the decided cases."

The mare's nest of litigation involving Genet's *Thief's Journal* produced two decisions dealing with copyright notice during the year: *Grove Press, Inc. v. Greenleaf Publishing Co.*, 247 F. Supp. 127 (E.D.N.Y. 1965), on motion for preliminary injunction, and 247 F. Supp. 518 (E.D.N.Y. 1965), on motion for summary judgment. A rough chronology of the case begins in 1949, when Genet's novel *Journal du Voleur* was published in France with a valid U.S. copyright notice. An authorized English translation was made by Bernard Frechtman, an American citizen, and five pages of it were published in the United States in 1952 in the anthology *New World Writing* with a separate notice in Frechtman's name. The excerpt was registered separately in the Copyright Office. In 1954 the Frechtman translation, including the five-page excerpt in revised form, was published in France by the well-known Olympia Press, with a notice reading "Copyright 1954 by B. Frechtman and the Olympia Press, Paris." In 1964, acting under a license from Genet, Grove Press published an American edition of the *Thief's Journal* consisting of a substantially revised version of the Olympia Press edition; the copies bore a 1964 copyright notice in the name of the publisher and also contained a 1949 copyright notice referring to the original French edition. In 1965 the Greenleaf Publishing Company published an unauthorized edition which was an exact photo-offset fac-

simile of the 1954 Olympia Press edition. The 1949 edition was finally registered in the Copyright Office in July 1965, but no registration was ever made for the edition published by Olympia in France in 1954.

Greenleaf's basic defense was that the text of the Olympia Press edition is in the public domain because it represents a book in English by an American citizen and therefore violates the manufacturing requirements. Since no ad interim copyright was secured in the work, it was argued, the text of that edition, which is all that Greenleaf copied, went into the public domain 6 months after first publication. In moving for a preliminary injunction, plaintiff based its claim entirely on the five-page excerpt published in compliance with the manufacturing requirements and registered in 1952; since this excerpt was incorporated in the 1954 edition, defendant had copied it along with the rest of the text. The court upheld the validity of copyright in the excerpt, representing 2 percent of the entire text, and ruled that its protection was not lost by its incorporation in a foreign edition that failed to satisfy the manufacturing requirements. However, it refused to grant a preliminary injunction on the authority of a 1915 decision, *Bentley v. Tibbals*, 223 Fed. 247 (2d Cir.), which had concluded in a somewhat similar case that a person "who so embodies copyrighted with uncopyrighted matter that one reading his work cannot distinguish between the two has no right to complain if the book is republished by third parties."

This ruling with respect to the notice requirements, which seems to be against the weight of present authority in cases not involving the manufacturing requirements, was left undisturbed by the later decision of Judge Bartels on plaintiff's motion for summary judgment. The basis for that motion, however, was not limited to infringement of the five-page excerpt, but included a claim of copyright infringement with respect to the French text originally published in 1949. In ruling for the plaintiffs on this point, the court

held that the failure to copyright the English translation published by Olympia Press in 1954 was not "fatal to the copyright on the pattern of the underlying work unless the author has consented to such dedication." Since no consent by Genet had been shown, the defendants were held to have infringed the copyright in his French-language work by copying the uncopyrighted English translation.

Copyright Registration

At least four cases during the year added authoritative support to the established principle that a certificate of registration is prima facie evidence of the validity of the copyright: *Flick-Reedy Corp. v. Hydro-Line Manufacturing Co.*, 351 F. 2d 546 (7th Cir. 1965); *Manes Fabrics Co. v. Miss Celebrity, Inc.*, 246 F. Supp. 975 (S.D.N.Y. 1965); *Manpower, Inc. v. Temporary Help of Harrisburg, Inc.*, 246 F. Supp. 788 (E.D. Pa. 1965); and *Miller Studio, Inc. v. Pacific Import Co.*, 39 F.R.D. 62 (S.D.N.Y. 1965.) The opinion in the *Manpower* case stated that a certificate constitutes "a prima facie showing of authorship, originality, ownership, copyrightability and publication by plaintiff," and the court in the *Flick-Reedy* case ruled that the presumption of validity is not overcome by a showing that some of the material in the work is in the public domain. In the *Miller* case Judge Levet held that, since a "Certificate of Registration is prima facie evidence of the facts stated therein, . . . and in the absence of contradictory evidence is sufficient proof to establish a valid copyright, . . . there is no merit in defendant's assertion that a defense exists because plaintiff has not shown what was actually filed in the Copyright Office." On the other hand, it was held in *Gray v. Eskimo Pie Corp.*, 244 F. Supp. 785 (D. Del. 1965), that a certificate "is not evidence that plaintiff's commercial label always bore a statutory notice of copyright."

In *Gladys Music, Inc. v. Arch Music Co.*, 150 U.S.P.Q. 26 (S.D.N.Y. 1966), the court

held that the first assignee of the authors' common law rights "became the proprietor of the Song within the meaning of Title 17, U.S.C. Section 9, and, as such, was the sole person entitled to apply for statutory copyright." Thus, a registration for the unpublished composition, made in the name of a later assignee, was held to be void, and the court directed the defendant "to execute all necessary and proper documents which may be required to expunge from the records of the Register of Copyrights and throughout the world the void registrations." The decision indicates that no statutory copyright came into being until several months after the void registration, when the true proprietor registered a claim in its name. The main issue in *Richmond v. Weiner*, 353 F. 2d 41 (9th Cir. 1965), was whether the plaintiff was sole owner of a copyright or whether she owned it jointly with the defendant. The court held that the work was one of joint authorship; even though the plaintiff had made copyright registration in her name alone, the court upheld the registration and, on the theory that "equity regards as done that which ought to be done," ruled that the plaintiff held the copyright in trust for herself and the other owner.

One of the defendant's arguments in *Lin-Brook Builders Hardware v. Gertler*, 352 F. 2d 298 (9th Cir. 1965), was that the statement of "new matter" given in the certificate of registration covering plaintiff's catalog "was so indefinite and uncertain as to be a failure of notice to the public." The statement, which read "New matter consists of new artistic drawings of merchandise, new textual and pictorial material not previously published and new layouts and revisions," was held to "give all notice the statute requires." Even more liberal was the decision in *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 244 F. Supp. 287 (S.D. Fla. 1965), where the applications and certificates of registration were shown to have stated a date of publication at least one month later than the date when the works were actually published. The court re-

fused to rule the certificates invalid, holding that since "there was no showing . . . that this was other than an innocent misstatement, unaccompanied by fraud or intent to extend the statutory period of copyright protection," the error "does not, therefore, invalidate the copyright."

Another defense in the *Key West* case was that plaintiff had delayed several months in making registrations and was thus guilty of laches. The court, in rejecting this argument, explained the delay as the result of "production problems" arising from the fact that the plaintiff's designs "became the rage of the dress-buying public in late 1962 and early 1963, and the demands on the manufacturing of fabric in Key West was great." It added that, "in any event, registration in the Copyright Office is only a prerequisite to suit and does not affect the efficacy of the copyright itself." A somewhat different conclusion is indicated in *Kontes Glass Co. v. Lab Glass, Inc.*, 250 F. Supp. 193 (D.N.J. 1966), where one of the grounds for denying plaintiff's motion for a preliminary injunction was that a delay of 9 years in making registration constituted laches which "may have resulted in certain of its published items having become preempted in and by the public domain."

The important rule of *Vacheron & Constantin—Le Coultre Watches, Inc. v. Benrus Watch Co.*, 260 F. 2d 637 (2d Cir. 1958), that no action for infringement of copyright in a work can be maintained unless and until a certificate of registration has been issued for the work, received support in two decisions during fiscal 1966. In the *Thief's Journal* case discussed above, *Grove Press, Inc., v. Greenleaf Publishing Co.*, 247 F. Supp. 518 (E.D.N.Y. 1965), Judge Bartels cited the *Vacheron* case as authority for his conclusion that "no affirmative relief could be grounded on the Olympia translation, at least in this Court, since no certificate of registration on this work has been issued by the Register of Copyrights."

The point was even more directly involved in the latest decision in the *Candy* case (*G. P. Putnam's Sons v. Lancer Books, Inc.*, 251 F. Supp. 210 (S.D.N.Y. 1966)), concerning a motion by defendant to dismiss the complaint on the ground that no registration had been made for the material claimed to have been infringed. The court, in granting the motion, noted that the *Vacheron* case, which is "clearly in point and is not distinguishable," holds "directly that under § 13 an action for infringement may not be maintained when the work has not been registered with the Copyright Office." Judge Bryan commented that "Law Review criticisms of *Vacheron* on which plaintiffs place much reliance . . . , whether well taken or not, are, of course, quite beside the point," and held that "where there has been refusal to register a party's sole remedy lies in a proceeding in the nature of mandamus against the Register to compel registration." The court rejected as out of place the plaintiff's attack on the Copyright Office Regulation which was the basis for the refusal to register, stating that "under *Vacheron* that question can only be litigated in an appropriate action against the Register of Copyrights such as plaintiffs now have pending in the District of Columbia."

Ownership, Assignment, and Renewal of Copyright

Two decisions during fiscal 1966 dealt with the ownership of copyright in material prepared on order by an independent contractor. In *Lin-Brook Builders Hardware v. Gertler*, 352 F. 2d 298 (9th Cir. 1965), a case involving the art work in a hardware catalog, the court ruled explicitly that "when one person engages another, whether as employee or as an independent contractor, to produce a work of an artistic nature . . . in the absence of an express contractual reservation of the copyright in the artist, the presumption arises that the mutual intent of the parties is that the title to the copyright shall be in the person at whose instance and expense the work

is done." The artist's later assignment of any interest he had in his drawings to the plaintiff was held insufficient to rebut this presumption. The court in *Brattleboro Publishing Co. v. Winmill Publishing Corp.*, 250 F. Supp. 215 (D. Vt. 1966), cited the *Lin-Brook* decision as authority for its conclusion that "when an advertiser engages a newspaper to produce and publish an advertisement and there is no agreement made between the advertiser and the newspaper as to the ownership of the ad, then the ownership of the advertisement and the right to copy the advertisement is in the advertiser and not in the one who publishes it."

Ferrer v. Columbia Pictures Corp., 149 U.S.P.Q. 236 (N.Y. Sup. Ct., Westchester Co., 1966), represented an effort by José Ferrer to enjoin distribution of the motion picture *The Long Ships* on the ground that he was co-author of the screenplay and that his permission was necessary in order to exploit the film. The court dismissed the claim, holding that "joint authors' of a literary work stand in the position of tenants in common . . . , and that either of the collaborators, without the consent of the other, may grant a license to use and deal with the work." The other author had transferred his rights to the defendant and, in the words of Justice Fanelli: "A grantee or licensee from a joint author may not be considered an infringer and may not otherwise be prevented by any other alleged joint author from dealing with the work pursuant to the terms of the license."

Although the central issue in *Gladys Music, Inc. v. Arch Music Co.*, 150 U.S.P.Q. 26 (S.D.N.Y. 1966), was the ownership of copyright in a song entitled *Good Luck Charm*, the Federal District Court held that it had jurisdiction since, if the defendant was not the copyright owner, it had infringed the plaintiff's copyright. The plaintiff's claim was based on a blanket agreement executed before the song had been written; the court concluded that "title to a composition prior to its existence is assignable," and that common law

copyright vested in the plaintiff as soon as the condition specified in the agreement—recording of the song by Elvis Presley—had been met. The currently popular Herman's Hermits were involved in the infringement action decided in *Hermusic, Ltd. v. Reverse Producers Corp.*, 254 F. Supp. 502 (S.D.N.Y. 1966); the court held that, even though some of the individual Hermits and their managers were stockholders and directors in the plaintiff corporation, they had no authority to grant an oral license to record compositions owned by the corporation.

In *Hiawatha Card Co. v. Colourpicture Publishers, Inc.*, 255 F. Supp. 1015 (E.D. Mich. 1966), a contract granting reproduction rights in photographs intended for use on post cards was held to be a license rather than a transfer of legal title of the exclusive right of reproduction, partly on the theory that copyrights are indivisible and can be transferred only as a totality. *County of Ventura v. Blackburn*, 362 F. 2d 515 (9th Cir. 1966), involved construction of a contract granting "the right to obtain duplicate tracings on linen from the photographic negatives" of plaintiff's copyrighted map. The defendant had omitted the copyright notice from its reproductions, and the court held that, since this did not amount to a "duplicate tracing," the contract was breached and the defendant was an infringer. An effort to foreclose a mortgage on the copyright in a motion picture was upheld in *Empire Trust Co. v. Yankee Productions, Inc.*, 155 N.Y. Law Journal 10 (N.Y. Sup. Ct. 1966), even though the mortgage had not been recorded in the Copyright Office; the court held that the plaintiff had acquired the copyright and all rights in the work under the mortgage, and that the defendants could not benefit from the failure to record "for three reasons: first, they are not assignees without notice; they are not assignees who have made due registration; and, finally, they are not assignees."

Two cases in fiscal 1966 were actions for declaratory judgment dealing with ownership

of rights in renewal copyrights. The first and simpler of the two was *Donaldson Publishing Co. v. Bregman, Vocco and Conn, Inc.*, 253 F. Supp. 841 (S.D.N.Y. 1965), in which the principal issue was whether Walter Donaldson, the songwriter, had been an employee for hire or an independent contractor when he wrote 87 compositions for a corporation he had formed with two associates. The court found that, although "the money arrangement was heavily weighted in Donaldson's favor" and although he was employed to write songs for others during the period, "he deliberately chose to be an employee for hire." The court's ruling on this issue enabled it to avoid deciding whether, as alternatively argued by the defendant, the works had been "copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author)"; that obscure provision of the copyright law must still await an authoritative construction. On another point, however, Judge Connella indicated that a divorced wife is not a widow within the meaning of the renewal provision.

In *Gordon v. Vincent Youmans, Inc.*, 358 F. 2d 261 (1965), the Second Circuit Court of Appeals, in a split decision, reversed a District Court judgment declaring the son of Mack Gordon, a co-author of the lyrics of *Time on My Hands*, to be a part owner of renewal copyright in the composition. The basic question was whether a group of several documents executed in 1930 and 1931, when read together, could be regarded as conveying Gordon's renewal interest in the copyright. Judge Hays, speaking for the majority, held that there were enough doubts on the question to require a trial; he also observed that 32 years had "elapsed before the appellants' rights were challenged," that "the rights under the original and renewal copyrights stem from the same source, and claims under one are inextricably tied to the other," and that "the fact that appellee has sued only on the renewal copyright does not preclude a finding of laches." Judge Timbers, in a long and force-

ful dissent, argued that the various documents clearly show that Gordon had not transferred away his renewal rights, especially in view of principle that, in construing renewal assignments, "the circumstances justifying the transfer of the right of renewal must be stronger than those justifying the transfer of the copyright, since the right of renewal is separate from the original copyright." Although the point was not directly at issue in the case, the *Gordon* decision is authority for the proposition that, where two authors wrote the words and a third wrote the music of a song, the renewal rights are to be divided into three equal shares.

Infringement and Remedies

At least a dozen cases during the year involved an interpretation and application of the tests for determining copyright infringement. More than half of these cases dealt with designs and works of graphic art: dolls in *Ideal Toy Corp. v. Fab-Lu Ltd.*, 360 F. 2d 1021 (2d Cir. 1966), and *Unecda Doll Co. v. P & M Doll Co.*, 353 F. 2d 788 (2d Cir. 1965); textile fabric designs in *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 244 F. Supp. 287 (S.D. Fla. 1965), and *Manes Fabrics Co. v. Miss Celebrity, Inc.*, 246 F. Supp. 975 (S.D. N.Y. 1965); artificial flowers in *Fristot v. First American Natural Ferns Co.*, 251 F. Supp. 886 (S.D.N.Y. 1966); wall plaques in *Miller Studio, Inc. v. Pacific Import Co.*, 39 F.R.D. 62 (S.D.N.Y. 1965); and commercial labels in *Gray v. Eskimo Pie Corp.*, 244 F. Supp. 785 (D. Del. 1965). The plaintiffs in both the doll cases lost because of insufficient similarity between their products and those of the defendants. In the *Ideal* case the court held that "to sustain a claim of copyright infringement the claimant is required to demonstrate a substantial similarity between the copyrighted work and the alleged copy," and that "the appropriate test for determining whether substantial similarity is present is whether an average lay observer would recognize the al-

leged copy as having been appropriated from the copyrighted work."

The "ordinary observer" test resulted in a judgment for the plaintiff in the *Key West* case, in which the court refused to allow expert testimony on the question of similarity since "here the differences in design are purely incidental and anyone who did not set out to detect the disparities might well overlook them and regard the aesthetic appearances as the same." However, in the *Manes* case, the other decision involving a fabric design, Judge Cannella found the dissimilarities between the designs more pronounced than the similarities, and therefore denied plaintiff's motion for a preliminary injunction on the ground that "the total impressions created by the two designs are not substantially similar, and consequently no confusion on the part of the buying public can be anticipated."

In the *Fristot* case Judge Frankel noted that, in coming to his decision, he had "studied the polyethylene flora in evidence [artificial rhododendrons made in France and in Hong Kong], together with the parties' aesthetic, metric, and horticultural contentions about them." He concluded that, although the two flowers are "by no means identical in overall appearance . . . the distinguishing characteristics are wholly insufficient to conceal the substantial copying that adds up to infringement." The defendant in the *Miller* case alleged that its wall plaques "were copied from Japanese originals and not from the plaintiff's plaques." The court ruled that, although the burden of proving infringement is on the plaintiff, the latter "is not compelled to negative a claim which has not one iota of substantiation"; since the defendant had failed to introduce copies of the Japanese plaques it claimed to have copied, and since the plaques in suit were strikingly similar, the plaintiff was awarded summary judgment despite the lack of any direct evidence that defendant had had access to the plaintiff's work.

The tests of infringement applicable to informational or factual works were employed

in three cases during fiscal 1966: *Flick-Reedy Corp. v. Hydro-Line Manufacturing Co.*, 351 F. 2d 546 (7th Cir. 1965); *Lapsley v. The American Institute of Certified Public Accountants*, 246 F. Supp. 389 (D.D.C. 1965); and *Smith v. Little, Brown & Co.*, 149 U.S.P.Q. 799 (2d Cir. 1966). The *Flick-Reedy* case involved 2 pages of a 32-page booklet containing data, formulas, and explanations concerning piston rods. In holding that the defendant had infringed the copyright in these 2 pages, the court emphasized that the defendant had the same purpose as the plaintiff in publishing its work, that it went beyond merely using the plaintiff's work as "a starting point for further development of the ideas expressed," and that, since the 2 pages copied were an important part of the bulletin, their use detracted from the value of plaintiff's copyright. The *Lapsley* case, which involved a claim of infringement in a manuscript entitled *Budget Theory and Practice*, resulted in a holding that none of the three required elements of infringement—access, substantial similarity, and copying—had been proved. Although the defendant's publications contained words and phrases similar to those of the plaintiff, the court held that this was "only natural" because "all of these works deal with the same topic," and especially because "of the technical and complicated nature of the subject matter."

The plaintiff in *Scott v. WKJG, Inc.*, 149 U.S.P.Q. 413 (N.D. Ind. 1966), claimed that a 1962 episode on the *Loretta Young Show* infringed a play she had copyrighted in 1944. The court held that, since there was no direct proof of access, "the plays must have a 'striking similarity which passes the bounds of mere accident'" in order to establish infringement. The court considered that the similarities between the two plays were not noteworthy and, while agreeing that similar errors in two works, accused author's past copying, and an unusual speed in writing are all evidence of infringement, found this evidence insufficient in the present case.

Infringements of musical copyrights were alleged in *Nordstrom v. Radio Corporation of America*, 251 F. Supp. 41 (D. Colo. 1965), and *United States v. Rose*, 149 U.S.P.Q. 820 (S.D.N.Y. 1966). In the *Nordstrom* case the plaintiff claimed that one of the songs from the Broadway musical *Milk and Honey* infringed a copyrighted composition which he had submitted to RCA for possible recording. The court denied defendant's motion for summary judgment, noting that in certain circumstances access can be "proved by showing close similarities between the compositions involved" and that, despite defendant's denial of any possibility of access, the composer of the accused song had been in the United States for 3 days while plaintiff's song was in the RCA office. The *Rose* case represents one of the relatively few actions for criminal infringement of copyright: a successful prosecution for the publication and distribution of so-called "fake books" consisting of the words and melody line of hundreds of compositions.

The defense of fair use was considered in two cases already discussed in other connections: *Mura v. Columbia Broadcasting System, Inc.*, 245 F. Supp. 587 (S.D.N.Y. 1965), and *Rosemont Enterprises, Inc. v. Random House, Inc.*, 256 F. Supp. 55 (S.D.N.Y.), *rev'd*, 366 F. 2d 303 (2d Cir. 1966). The *Mura* case held that the incidental use of lawfully purchased hand puppets on a television show represented a reasonable and fair use which, "if anything, . . . would stimulate sales . . . rather than prejudice them." The ruling of the lower court in the *Rosemont* litigation was that the defendant's copying of certain material from articles on Howard Hughes in *Look* magazine was an infringement rather than a "fair use." The court stated that "in general 'fair use' is limited to cases where copyrighted material is used for purposes of criticism or comment or in scholarly works of scientific or educational value"; it added that outside these categories "permissible fair use is severely restricted . . . particularly so where the borrowing and bor-

rowed works are of the same general nature, deal with the same subject matter, are published primarily for commercial purposes, and are likely to compete with one another." This doctrine was specifically rejected by the Second Circuit Court of Appeals in its reversal of the decision.

Questions of the proper joinder of parties in an infringement suit were raised in *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 244 F. Supp. 287 (S.D. Fla. 1965), and *Harm's, Inc., v. Theodosiades*, 246 F. Supp. 799 (E.D. Pa. 1965). The court in the *Key West* case ruled that, where a copyright has been registered in the names of two claimants, both of them are indispensable parties in an infringement action. On the other hand, the court in the *Harms* case permitted four proprietors of copyright in different songs to be joined as plaintiffs in an action against the owner of the café where the compositions were performed and held the owner liable for infringement regardless of whether or not she paid the performers.

On February 28, 1966, the Chief Justice of the United States transmitted to the Congress a report on amendments to the Rules of Civil Procedure for the U.S. District Courts, including special rules to be followed in copyright cases. The report (H. Doc. 391, 89th Cong., 2d sess.) notes that Rule 2 of the Copyright Rules, which had required that copies of allegedly infringing and infringed works accompany a complaint, is "unsupported by any unique justification," and is therefore rescinded as of July 1, 1966 (383 U.S. 1031). In a note on page 77 of the report, the Advisory Committee also expresses "serious doubts as to the desirability of retaining Copyright Rules 3-13," which set out a detailed procedure for seizing and impounding; since Congress is considering a general revision of the law, however, "the Advisory Committee has refrained from making any recommendation regarding Copyright Rules 3-13, but will keep the problem under study."

Two cases involving monetary liability for infringement of common law copyrights appeared to reach opposite conclusions. In *Lapsley v. American Institute of Certified Public Accountants*, 246 F. Supp. 389 (D.D.C. 1965), the court came to the conclusion that, to recover for common law copyright infringement, the "plaintiff must establish that he suffered actual pecuniary loss as the result of the alleged infringement, and may not rely solely upon the profits, if any, which the defendants may have earned in connection with the publication." In contrast, the Pennsylvania Superior Court in *Silver v. Television City, Inc.*, 148 U.S.P.Q. 167 (1965), ruled that "compensation cannot be refused because proof of the exact amount of the loss or injury is not produced." The rule of damages applicable to copyright infringement under the California Civil Code was construed in *Read v. Turner*, 148 U.S.P.Q. 453 (Cal. Dist. Ct. App. 1966).

The 1965 litigation involving *Ethan Frome* produced another important and exhaustive decision in 1966—*Davis v. E. I. du Pont de Nemours & Co.* 249 F. Supp. 329 (S.D.N.Y. 1966)—this time construing the statutory damage provisions of section 101 of the copyright law. Judge Feinberg held, among other things, that a simultaneous network telecast of a play over 162 stations constituted a single act of infringement for which minimum statutory damages would be \$250 rather than \$40,500, and this result was followed with respect to simultaneous AM and FM broadcasts in *Baccaro v. Pisa*, 252 F. Supp. 900 (S.D.N.Y. 1966). The damages and attorney's fees recoverable in a case of an unauthorized recording of a musical composition were considered in *Norbay Music, Inc. v. King Records, Inc.*, 249 F. Supp. 285 (S.D.N.Y. 1966); Judge Bryan relied on Copyright Office Circular No. 5 in support of his assumption that the obligation to file a notice of intention to use a composition on recordings arises only after a "notice of use" covering that composition has been recorded.

Other Judicial Developments

Little happened in fiscal 1966 to clear up the confusion as to the scope of the Supreme Court's 1964 decisions in *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234. It now appears settled that, in a case like *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 244 F. Supp. 287 (S.D. Fla. 1965), where the work in question was published and came within the subject matter of copyright and where there was no fraud or "palming off," the courts will dismiss an unfair competition claim under State law. Beyond this, however, everything remains problematical.

Bogene, Inc. v. Whit-Mor Manufacturing Co., 253 F. Supp. 126 (S.D.N.Y. 1966), involved a Federal action for unfair competition under the Lanham Act involving "brochure sheets" which serve as labels for garment bags. The court rejected the defense that, under the *Sears* and *Compco* decisions, "the unfair competition law of a state 'cannot prevent the copying of works unprotected by design patents and copyright which nevertheless are subject to such federal protection'" on the ground that "plaintiff's claim is predicated not on state unfair competition law but upon a Congressionally-created right of action for a particular kind of unfair competition." Significantly, the defendant also argued that "the Lanham Act would be unconstitutional if it is interpreted to prevent a competitor from copying a copyrightable but uncopyrighted label." The court sidestepped this fundamental issue by holding that "whatever the merits of that contention may be," both the complaint and the particular section of the Lanham Act are in substance seeking to prevent something else: "the use of any words or symbols which constitute a false designation of the origin of goods, not the mere act of copying another's label." In support of this assertion the court cited the *Sears* and *Compco* decisions and the Register's *Supplementary Report*.

Some of the greatest uncertainty concerning the *Sears* and *Compco* decisions lies in whether they have overruled the Supreme Court's 1917 decision in *International News Service v. Associated Press*, 248 U.S. 215, upholding the right to prevent the "misappropriation" of news reports. At least two cases during the year—*Pottstown Daily News Publishing Co. v. Pottstown Broadcasting Co.*, 247 F. Supp. 578 (E.D. Pa. 1965), and *Bond Buyer v. Dealers Digest Publishing Co.*, 154 N.Y. Law Journal 16 (N.Y. Sup. Ct., Nov. 16, 1965), *rev'd*, 149 U.S.P.Q. 465 (App. Div. 1966)—indicate that the *INS* doctrine still has considerable vitality. In the *Bond Buyer* case, plaintiff was suing in the New York State courts for "piracy" of information disseminated by means of its private teletype network service called "Muni-facts." Systematic copying of the information was shown by the fact that defendant reproduced in its newsletter errors deliberately inserted by plaintiff in what it disseminated. The lower court, while expressing the opinion that plaintiffs' work product may be protected under the *INS* doctrine of "misappropriation" and that nothing in the *Sears* and *Compco* decision is "to the contrary," denied a temporary injunction because the invasion of rights was insufficiently clear. This decision was reversed by the Appellate Division, squarely on the authority of the *INS* case and without mentioning *Sears* and *Compco*.

The Federal Court in the Eastern District of Pennsylvania went even further in the *Pottstown* case, an action by a Pottstown newspaper against a broadcasting station for appropriation of its local news stories. The question there was whether the *Sears* and *Compco* cases had deprived the States of jurisdiction to grant relief in cases of this sort, and the court held specifically that they had not. Judge Body regarded it as "entirely possible, even in the light of *Sears*, *Roebuck*, that congressional failure to protect purely factual news accounts by the Copyright Act could be deemed an expression of a limitation of federal power rather than a congressional policy

which allows the copyright of such items," and he found "appealing" the suggestion that there is a distinction between "copying" and "appropriation" for this purpose. Failure to offer the plaintiff protection in this situation, in the court's opinion, "would leave a glaring loophole in the law" which "men of conscience would hardly condone." Judge Body specifically rejected defendant's theory that "if state unfair competition laws do not apply to items which could not be copyrighted, then a fortiori, state unfair competition laws cannot affect items which have been copyrighted." In his view, "it cannot be stated categorically that for a state to afford additional protection, through its unfair competition laws, to one's rights in an article which is capable of being either patented or copyrighted, under federal law, would run counter to the congressional policy expressed in the *Sears, Roebuck* case."

The confusion over what the Supreme Court meant in the *Sears* and *Compco* decisions is nowhere better illustrated than by the protracted litigation involving Fellini's *Nights of Cabiria*, which produced another decision during the year: *Flamingo Telefilm Sales, Inc. v. United Artists Corp.*, 24 App. Div. 2d 953 (First Dept. 1965). Here the New York court granted relief against unauthorized use of the film on television on the novel ground of conversion of a particular 16mm print. There was, however a strong dissent by Justice Stener, who argued that the case is basically one of Federal copyright law.

The first decision involving the current and widespread practice of dubbing phonograph records onto tape in cartridges for use in automobiles was handed down just before the end of the fiscal year: *Columbia Broadcasting System, Inc. v. Cartridge City, Ltd.*, 155 N.Y. Law Journal 10 (N.Y. Sup. Ct., June 29, 1966). The court granted a temporary injunction against "the unauthorized duplication or dubbing of [plaintiff's] recordings on tape cartridges and selling them," something the defendants had already agreed to stop.

However, the court refused to enjoin the defendants "from renting their recording machines to others for the making of tapes of records owned by the customer and for their own use," holding that "it does not appear that 'custom duplicating' here involves a palming off." Another interesting case with overtones in the fields of both copyrights and "neighboring rights" was *Republic Productions, Inc. v. American Federation of Musicians of the United States and Canada*, 245 F. Supp. 475 (S.D.N.Y. 1965); the court in that case held that insistence by a performers' union on a clause in its contract with a motion picture company prohibiting the showing of motion pictures on television without the union's consent was not an antitrust violation, and that the same was true of the union's later requirement for periodic payments into a musicians' trust fund as the price for modifying the prohibition.

One of the most important patent cases in recent years, *Graham v. John Deere Co.*, 383 U.S. 39, was decided by the Supreme Court on February 21, 1966, and promises to have far-reaching effects on the entire field of intellectual and industrial property in the United States. Perhaps of most immediate interest to the copyright bar is the Court's apparent acceptance of the theory, originally propounded by former Acting Register of Copyrights Richard C. De Wolf, that the patent-copyright clause of the Constitution is a "balanced sentence," in effect giving Congress two separate powers: to promote the progress of science (i.e., learning, knowledge) by securing for limited times to authors the exclusive right to their writings, and to promote the progress of useful arts by securing for limited times to inventors the exclusive right to their discoveries. The Supreme Court, in quoting the "specific constitutional provision" from which "the federal patent power stems," omitted all reference to "science," "authors," and "writings," and in a footnote citing De Wolf's book stated: "The provision appears in the Constitution spliced

together with the copyright provision, which we omit as not relevant here."

International Developments

The adherences to the Universal Copyright Convention of two countries, Malawi and Yugoslavia, became effective during the fiscal year, and two more, Kenya and Venezuela, deposited their instruments of ratification, bringing the membership of the convention to a total of 54 countries. The adherence of Venezuela, which became effective on September 30, 1966, marks the first copyright relations ever established between the United States and that country. The United Kingdom declared that the Universal Copyright Convention applies to Bechuanaland, Montserrat, St. Lucia, Grenada, and the Cayman Islands. A table appended to this report shows the status of copyright relations between other countries of the world and the United States.

In recent years the program for general revision of the U.S. copyright law and the preparations for revision of the International Convention for the Protection of Literary and Artistic Works (the Berne Convention, last revised at Brussels in 1948) have been moving at about the same speed along their individual roads. These roads now show indications of converging in the near future. The already intense interest of foreign copyright experts in our revision effort, and the growing discussions of the pros and cons of U.S. adherence to the Berne Convention, suggest the possibility that changes in both domestic law and international relationships may be at hand. It is too soon to predict the form these changes will take, not only with respect to revisions in the Berne Convention itself but also with respect to U.S. policy on adherence to a revised convention. However, it is evident that the United States should prepare thoroughly for the diplomatic conference to be held at Stockholm in June 1967 to revise the

Berne Convention and should participate in the conference as more than an interested observer.

The Register of Copyrights headed a United States observer delegation at a meeting in Geneva from July 5 through July 14, 1965, of the Committee of Governmental Experts To Prepare for the Diplomatic Conference of Stockholm in 1967. In addition to the Register and Harvey J. Winter, Assistant Chief of the Business Practices Division of the State Department, who acted as alternate chairman of the delegation, those present from the United States included Herbert Fuchs, counsel to the House Judiciary Committee, Herman Finkelstein, general counsel of ASCAP, Sidney Schreiber, general counsel of the Motion Picture Association, and Mrs. Kelsey M. Mott, legal adviser of the Copyright Office.

At an earlier preparatory meeting of a committee of experts in 1963, the main attention was focused on proposed revisions in the Berne Convention dealing with presumptions as to the authorship and ownership of motion pictures. Although this issue remained important, controversy at the Geneva meeting centered on the special needs of developing countries with respect to copyrighted works originating abroad, the confrontation between the needs of these countries and their desire to join the Berne Union. A strong movement developed in favor of including special provisions in the convention to accommodate these countries with respect to the length of the copyright term, translation rights, broadcasting rights, and the use of copyrighted works for educational purposes. The committee approved some of these special provisions in principle, but its action was taken in the face of a good deal of opposition and the basic issue seems likely to emerge as the most important problem at the Stockholm Conference.

The 8th session of the Intergovernmental Copyright Committee of the Universal Copyright Convention met in Paris from Novem-

ber 15 through November 18, 1965, in conjunction with the 12th session of the Permanent Committee of the International (Berne) Union. The Register attended as the U.S. Representative to the Intergovernmental Copyright Committee, with Harold H. Levin, Chief of the Business Practices Division of the State Department, as his alternate; both the Register and Mr. Levin attended the Permanent Committee meeting as observers.

Meeting jointly since the third session of the Intergovernmental Copyright Committee in 1958, the two committees have been able to discuss common problems and plan joint action. Insistence on publishing the reports of each committee separately after the 1965 meeting, however, appears to be symptomatic of recent strained relations between the secretariats of UNESCO (responsible for the Universal Copyright Convention) and BIRPI (responsible for the Berne Convention), resulting in part from the pressures generated by the basic problem of accommodating the conventions to meet the needs of newly independent and developing nations. It is important for the United States and all the other countries who are parties to either of the conventions to work toward resolving any differences between the two organizations.

Within the next fiscal year the world will have passed another turning point in the his-

tory of international copyright relations, and the United States will have an important role in determining the future course of that history.

Taking "United States Copyright Protection and the Berne Convention" as his subject, Professor George H. C. Bodenhausen, the Director of BIRPI, gave the Fourth Annual Jean Geiringer Memorial Lecture in New York City on March 16, 1966. Although he saw some technical differences between the two systems of protection, Professor Bodenhausen felt that these obstacles could be overcome and concluded:

If H.R. 4347 and the Stockholm revision of the Berne Convention are both enacted the two systems will have approached each other so closely that, assuming the U.S. is sufficiently interested in acceding to the Berne Convention, it would be unthinkable that means could not be found to bring about this accession. . . .

This is a challenge that the United States cannot afford to ignore, and during the coming year efforts will be made to take advantage of opportunities that may not soon come again.

Respectfully submitted.

ABRAHAM L. KAMINSTEIN
Register of Copyrights

November 16, 1966

International Copyright Relations of the United States as of December 31, 1966

This table shows the status of United States copyright relations with the 130 other independent countries of the world.

The following code is used:

UCC	Party to the Universal Copyright Convention, as is the United States.
BAC	Party to the Buenos Aires Convention of 1910, as is the United States.
Bilateral	Bilateral copyright relations with the United States by virtue of a proclamation or treaty.
Unclear	Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.
None	No copyright relations with the United States.

Country	Status of copyright relations	Country	Status of copyright relations
Afghanistan	None.	Greece	UCC, Bilateral.
Albania	None.	Guatemala	UCC, BAC.
Algeria	Unclear.	Guinea	Unclear.
Andorra	UCC.	Guyana	Unclear.
Argentina	UCC, BAC, Bilateral.	Haiti	UCC, BAC.
Australia	Bilateral.	Holy See (Vatican City).	UCC.
Austria	UCC, Bilateral.	Honduras	BAC.
Barbados	Unclear.	Hungary	Bilateral.
Belgium	UCC, Bilateral.	Iceland	UCC.
Bhutan	None.	India	UCC, Bilateral.
Bolivia	BAC.	Indonesia	Unclear.
Botswana	Unclear.	Iran	None.
Brazil	UCC, BAC, Bilateral.	Iraq	None.
Bulgaria	None.	Ireland	UCC, Bilateral.
Burma	Unclear.	Israel	UCC, Bilateral.
Burundi	Unclear.	Italy	UCC, Bilateral.
Cambodia	UCC.	Ivory Coast	Unclear.
Cameroon	Unclear.	Jamaica	Unclear.
Canada	UCC, Bilateral.	Japan	UCC.
Central African Republic	Unclear.	Jordan	Unclear.
Ceylon	Unclear.	Kenya	UCC.
Chad	Unclear.	Korea	Unclear.
Chile	UCC, BAC, Bilateral.	Kuwait	Unclear.
China	Bilateral.	Laos	UCC.
Colombia	BAC.	Lebanon	UCC.
Congo (Brazzaville)	Unclear.	Lesotho	Unclear.
Congo (Kinshasa)	Unclear.	Liberia	UCC.
Costa Rica	UCC, BAC, Bilateral.	Libya	Unclear.
Cuba	UCC, Bilateral.	Liechtenstein	UCC.
Cyprus	Unclear.	Luxembourg	UCC, Bilateral.
Czechoslovakia	UCC, Bilateral.	Madagascar	Unclear.
Dahomey	Unclear.	Malawi	UCC.
Denmark	UCC, Bilateral.	Malaysia	Unclear.
Dominican Republic	BAC.	Maldiv Islands	Unclear.
Ecuador	UCC, BAC.	Mali	Unclear.
El Salvador	Bilateral by virtue of Mexico City Convention, 1902.	Malta	Unclear.
Ethiopia	None.	Mauritania	Unclear.
Finland	UCC, Bilateral.	Mexico	UCC, BAC, Bilateral.
France	UCC, Bilateral.	Monaco	UCC, Bilateral.
Gabon	Unclear.	Morocco	Unclear.
Gambia	Unclear.	Muscat and Oman	None.
Germany	Bilateral; UCC with German Federal Republic.	Nepal	None.
Ghana	UCC.	Netherlands	Bilateral.
		New Zealand	UCC, Bilateral.
		Nicaragua	UCC, BAC.
		Niger	Unclear.
		Nigeria	UCC.
		Norway	UCC, Bilateral.

Country	Status of copyright relations	Country	Status of copyright relations
Pakistan	UCC.	Switzerland	UCC, Bilateral.
Panama	UCC, BAC.	Syria	Unclear.
Paraguay	UCC, BAC.	Tanzania	Unclear.
Peru	UCC, BAC.	Thailand	Bilateral.
Philippines	Bilateral; UCC status undetermined.	Togo	Unclear.
Poland	Bilateral.	Trinidad and Tobago	Unclear.
Portugal	UCC, Bilateral.	Tunisia	Unclear.
Rumania	Bilateral.	Turkey	None.
Rwanda	Unclear.	Uganda	Unclear.
San Marino	None.	United Arab Republic (Egypt)	None.
Saudi Arabia	None.	United Kingdom	UCC, Bilateral.
Senegal	Unclear.	Upper Volta	Unclear.
Sierra Leone	Unclear.	Uruguay	BAC.
Singapore	Unclear.	Venezuela	UCC.
Somalia	Unclear.	Vietnam	Unclear.
South Africa	Bilateral.	Western Samoa	Unclear.
Soviet Union	None.	Yemen	None.
Spain	UCC, Bilateral.	Yugoslavia	UCC.
Sudan	Unclear.	Zambia	UCC.
Sweden	UCC, Bilateral.		

Registrations by Subject Matter Classes for the Fiscal Years 1962-66

Class	Subject matter of copyright	1962	1963	1964	1965	1966
A	Books (including pamphlets, leaflets, etc.)	66,571	68,445	*71,618	*76,098	77,300
B	Periodicals (issues)	67,523	69,682	*74,611	*78,307	77,963
	(BB) Contributions to newspapers and periodicals	2,993	2,535	2,529	2,095	1,717
C	Lectures, sermons, addresses	875	806	1,112	848	911
D	Dramatic or dramatico-musical compositions	2,813	2,730	3,039	3,343	3,215
E	Musical compositions	67,612	72,583	75,256	80,881	76,805
F	Maps	2,073	2,002	1,955	3,262	1,933
G	Works of art, models, or designs	6,043	6,262	5,915	5,735	5,164
H	Reproductions of works of art	3,726	4,003	4,045	3,241	2,595
I	Drawings or plastic works of a scientific or technical character	1,014	780	893	1,239	867
J	Photographs	562	725	995	860	677
K	Prints and pictorial illustrations	2,889	2,594	3,325	2,927	3,081
	(KK) Commercial prints and labels	7,167	7,318	7,013	7,509	6,285
L	Motion picture photoplays	2,686	3,207	3,018	2,536	1,983
M	Motion pictures not photoplays	955	1,009	1,089	1,216	906
R	Renewals of all classes	19,274	20,164	22,574	23,520	25,464
	Total	254,776	264,845	278,987	293,617	286,866

*Adjusted figure.

Schedule of Copyright Fees Before and After Copyright Law Was Amended, Effective November 26, 1965

	Former fees	New fees
Registrations:		
General fee	\$4. 00	\$6. 00
Commercial prints and labels	6. 00	6. 00
Renewals	2. 00	4. 00
Certifications:		
Additional certificate	1. 00	2. 00
Other certifications	2. 00	3. 00
Recordation of documents:		
Basic fee	3. 00	5. 00
Each additional page over six and each title over one 50	. 50
Recordation of notice of use:		
Basic fee	2. 00	3. 00
Each additional title over five in a single notice 50	. 50
Recordation of notice of intention to use:		
Basic fee	None	3. 00
Each additional title over five in a single notice	None	. 50
Searches: Hourly fee	3. 00	5. 00

Number of Articles Deposited During the Fiscal Years 1962-66

Class	Subject matter of copyright	1962	1963	1964	1965	1966
A	Books (including pamphlets, leaflets, etc.)	131, 522	135, 324	141, 412	*150, 453	152, 632
B	Periodicals	134, 928	*139, 235	149, 073	156, 092	155, 382
	(BB) Contributions to newspapers and periodicals	2, 993	2, 535	2, 529	2, 095	1, 717
C	Lectures, sermons, addresses	875	806	1, 112	848	911
D	Dramatic or dramatico-musical compositions	3, 276	3, 127	3, 413	3, 816	3, 590
E	Musical compositions	85, 325	92, 223	95, 287	*102, 548	97, 622
F	Maps	*4, 142	4, 004	3, 910	6, 523	3, 863
G	Works of art, models, or designs	10, 534	10, 993	10, 367	10, 196	9, 123
H	Reproductions of works of art	7, 423	7, 986	8, 084	6, 482	5, 120
I	Drawings or plastic works of a scientific or tech- nical character	1, 438	1, 148	1, 347	1, 925	1, 369
J	Photographs	957	1, 221	1, 594	1, 460	1, 109
K	Prints and pictorial illustrations	5, 778	5, 184	6, 647	*5, 854	6, 162
	(KK) Commercial prints and labels	14, 334	14, 636	14, 022	*15, 017	12, 570
L	Motion picture photoplays	5, 352	6, 338	5, 984	5, 034	3, 886
M	Motion pictures not photoplays	1, 788	1, 880	2, 049	*2, 258	1, 742
	Total	*410, 665	*426, 640	446, 830	*470, 601	456, 798

*Adjusted figure.

*Number of Articles Transferred to Other Departments of the Library of Congress**

Class	Subject matter of articles transferred	1962	1963	1964	1965	1966
A	Books (including pamphlets, leaflets, etc.)	57,676	55,742	56,493	68,218	68,470
B	Periodicals	139,644	145,519	151,476	162,194	164,522
	(BB) Contributions to newspapers and periodicals	2,993	2,535	2,529	2,095	1,717
C	Lectures, sermons, addresses	0	0	0	0	0
D	Dramatic or dramatico-musical compositions	125	316	351	356	816
E	Musical compositions	21,729	20,936	25,132	25,081	23,847
F	Maps	4,142	4,004	3,915	6,523	3,994
G	Works of art, models, or designs	31	63	204	204	177
H	Reproductions of works of art	2	434	729	296	545
I	Drawings or plastic works of a scientific or technical character	8	0	0	0	142
J	Photographs	6	0	2	2	8
K	Prints and pictorial illustrations	61	109	150	81	257
	(KK) Commercial prints and labels	249	22	248	9	8
L	Motion picture photoplays	312	313	795	559	230
M	Motion pictures not photoplays	350	333	430	217	414
	Total	227,328	230,326	242,454	265,835	265,147

* Extra copies received with deposits and gift copies are included in these figures. This is the reason that in some categories the number of articles transferred exceeds the number of articles deposited, as shown in the preceding chart.

Statement of Gross Cash Receipts, Yearly Fees, Number of Registrations, etc., for the Fiscal Years 1962-66

Fiscal year	Gross receipts	Yearly fees earned	Number of registrations	Increase or decrease in registrations
1962	\$1,111,705.76	\$1,043,587.75	254,776	+7,762
1963	1,123,598.21	1,077,747.79	264,845	+10,069
1964	1,206,453.60	1,133,546.57	278,987	+14,142
1965	1,274,813.94	1,208,014.66	293,617	+14,630
1966	1,624,081.45	1,470,249.12	286,866	-6,751
Total	6,340,652.96	5,933,145.80	1,379,091	

REPORT OF THE REGISTER OF COPYRIGHTS, 1966

Summary of Copyright Business, Fiscal Year 1966

Balance on hand July 1, 1965.....		\$318, 343. 42
Gross receipts July 1, 1965, to June 30, 1966.....		1, 624, 081. 45
Total to be accounted for.....		1, 942, 424. 87
Refunded.....	\$55, 568. 46	
Checks returned unpaid.....	4, 069. 14	
Deposited as earned fees.....	1, 446, 467. 52	
Balance carried over July 1, 1966:		
Fees earned in June 1966 but not deposited until July 1966.....	\$123, 991. 06	
Unfinished business balance.....	107, 971. 80	
Deposit accounts balance.....	202, 031. 98	
Card service.....	2, 324. 91	
	<u>436, 319. 75</u>	
		1, 942, 424. 87

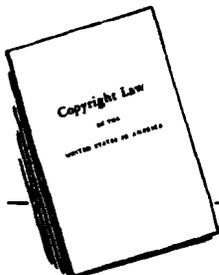
	Number of registrations	Fees earned
Commercial prints and labels at \$6 each.....	6, 285	\$37, 710. 00
Published domestic works at \$4 each.....	82, 545	330, 180. 00
Published domestic works at \$6 each.....	97, 971	587, 826. 00
Published foreign works at \$4 each.....	1, 515	6, 060. 00
Published foreign works at \$6 each.....	2, 144	12, 864. 00
Unpublished works at \$4 each.....	29, 254	117, 016. 00
Unpublished works at \$6 each.....	31, 376	188, 256. 00
Renewals at \$2 each.....	11, 417	22, 834. 00
Renewals at \$4 each.....	14, 047	56, 188. 00
Total registrations for which fee paid.....	276, 554	1, 358, 934. 00
Registrations made under provisions of law permitting registration without payment of fee for certain works of foreign origin.....	10, 312
Total registrations.....	286, 866	1, 358, 934. 00
Fees for recording assignments.....		40, 559. 00
Fees for indexing transfers of proprietorship.....		18, 382. 50
Fees for recording notices of intention to use.....		87. 00
Fees for recording notices of use.....		16, 957. 00
Fees for certified documents.....		2, 793. 15
Fees for searches made.....		22, 772. 00
Card Service.....		9, 764. 47
Total fees exclusive of registrations.....		111, 315. 12
Total fees earned.....		1, 470, 249. 12



Publications of the Copyright Office

Priced Copyright Office publications which may be obtained from Government Printing Office

Orders for all the publications listed below should be addressed and remittances made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.



COPYRIGHT LAW OF THE UNITED STATES OF AMERICA (Title 17, United States Code), Bulletin No. 14. This is a pamphlet edition of the copyright law, including the REGULATIONS OF THE COPYRIGHT OFFICE (Code of Federal Regulations, Title 37, ch. II). 87 pages, 1967, paper, 35 cents.

COPYRIGHT ENACTMENTS—Laws Passed in the United States Since 1783 Relating to Copyright. Bulletin No. 3 (Revised). Looseleaf in binder. 150 pages, 1963, \$2.00.

REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW. Copyright Law Revision, House Committee Print. 160 pages, July 1961, 45 cents.

COPYRIGHT LAW REVISION, PART 2—Discussion and Comments on Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law. House Committee Print. 419 pages, February 1963, \$1.25.

COPYRIGHT LAW REVISION, PART 3—Preliminary Draft for Revised U.S. Copyright Law and Discussions and Comments on the Draft. House Committee Print. 457 pages, September 1964, \$1.25.

COPYRIGHT LAW REVISION, PART 4—Further Discussions and Comments on Preliminary Draft for Revised U.S. Copyright Law. House Committee Print. 477 pages, December 1964, \$1.25.

COPYRIGHT LAW REVISION, PART 5—1964 Revision Bill with Discussions and Comments. House Committee Print. 350 pages. September 1965, \$1.

COPYRIGHT LAW REVISION, PART 6—Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill. House Committee Print. 338 pages. May 1965. \$1.

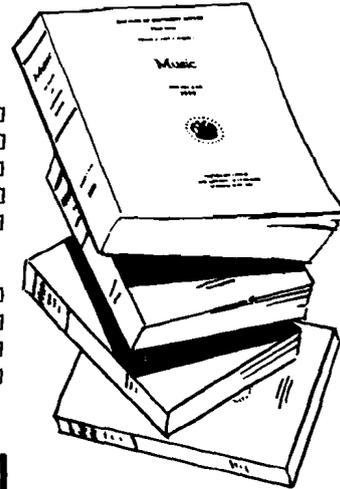
HEARINGS ON 1965 REVISION BILL. SUBCOMMITTEE NO. 3 OF THE HOUSE COMMITTEE ON THE JUDICIARY. May–September 1965. In 3 parts, including an appendix of letters and other statements, as well as a combined subject and name index. 2,056 pages. 1966. Part 1, \$2; Part 2, \$2.25; Part 3, \$2.

COPYRIGHT LAW REVISION. REPORT OF THE HOUSE COMMITTEE ON THE JUDICIARY. 89th Cong., 2d Sess., H.R. No. 2237. 279 pages. 1966. \$0.65.

CATALOG OF COPYRIGHT ENTRIES. Paper. Each part of the catalog is published in semiannual numbers containing the claims of copyright registered during the periods January-June and July-December. The prices given below are for the year. Semiannual numbers are available at one-half the annual price.

Beginning with volume 20, number 1, 1966, *Third Series* of the Catalog, the annual subscription price for all parts of the complete yearly catalog will be \$50. For the preceding 19 volumes of the *Third Series*, the annual subscription price for all parts will remain \$20. The prices given in brackets are for the issues preceding volume 20.

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Part 5—Music.....	15	[7]
Part 6—Maps and Atlases.....	5	[1]
Parts 7-11A—Works of Art, Reproductions of Works of Art, Scientific and Technical Drawings, Photographic Works, Prints and Pictorial Illustrations.....	5	[2]
Part 11B—Commercial Prints and Labels.....	5	[2]
Parts 12-13—Motion Pictures and Filmstrips.....	5	[1]
Annual Subscription Price, all parts.....	50	[20]



These catalogs are usually available 6 months after the close of a registration period. Although orders should be addressed to the Superintendent of Documents, the Copyright Office will furnish information on catalogs prior to 1962 upon request.

Catalog of Copyright Entries, Cumulative Series



MOTION PICTURES 1894-1912. Identified from the records of the United States Copyright Office by Howard Lamarr Walls. 92 pages. 1953. Buckram, \$2.

MOTION PICTURES 1912-1939. Works registered in the Copyright Office in Classes L and M. 1,256 pages. 1951. Buckram, \$18.

MOTION PICTURES 1940-1949. Another decade of works registered in Classes L and M. 599 pages. 1953. Buckram, \$10.

MOTION PICTURES 1950-1959. Films of the Fifties registered in Classes L and M. 494 pages. Buckram, \$10.

These four volumes list a total of nearly one hundred thousand motion pictures produced since the beginning of the motion picture industry.

Copyright Law Revision Studies

COPYRIGHT LAW REVISION. Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate. Committee prints published by the Senate Committee, the preparation of which was supervised by the Copyright Office.

First committee print; Studies 1-4:

1. The History of U.S.A. Copyright Law Revision from 1901 to 1954
2. Size of the Copyright Industries
3. The Meaning of "Writings" in the Copyright Clause of the Constitution
4. The Moral Right of the Author.

142 pages, 1960, 40 cents.

Second committee print; Studies 5 and 6:

5. The Compulsory License Provisions of the U.S. Copyright Law
6. The Economic Aspects of the Compulsory License.

125 pages, 1960, 35 cents.

Third committee print; Studies 7-10:

7. Notice of Copyright
8. Commercial Use of the Copyright Notice
9. Use of the Copyright Notice by Libraries
10. False Use of Copyright Notice.

125 pages, 1960, 35 cents.

Fourth committee print; Studies 11-13:

11. Divisibility of Copyrights
12. Joint Ownership of Copyrights
13. Works Made for Hire and on Commission.

155 pages, 1960, 45 cents.

Fifth committee print; Studies 14-16:

14. Fair Use of Copyrighted Works
15. Photoduplication of Copyrighted Material by Libraries
16. Limitations on Performing Rights.

135 pages, 1960, 35 cents.

Sixth committee print; Studies 17-19:

17. The Registration of Copyright
18. Authority of the Register of Copyrights to Reject Applications for Registration
19. The Recordation of Copyright Assignments and Licenses.

135 pages, 1960, 40 cents.

Seventh committee print; Studies 20 and 21:

20. Deposit of Copyrighted Works
21. The Catalog of Copyright Entries.

81 pages, 1960, 25 cents.

Eighth committee print; Studies 22-25:

22. The Damage Provisions of the Copyright Law

23. The Operation of the Damage Provisions of the Copyright Law: An Exploratory Study

24. Remedies Other Than Damages for Copyright Infringement

25. Liability of Innocent Infringers of Copyright. 169 pages, 1960, 45 cents.

Ninth committee print; Studies 26-28:

26. The Unauthorized Duplication of Sound Recordings

27. Copyright in Architectural Works

28. Copyright in Choreographic Works.

116 pages, 1961, 35 cents.

Tenth committee print; Studies 29-31:

29. Protection of Unpublished Works

30. Duration of Copyright

31. Renewal of Copyright.

237 pages, 1961, 60 cents.

Eleventh committee print; Studies 32-34:

32. Protection of Works of Foreign Origin.

33. Copyright in Government Publications

34. Copyright in Territories and Possessions of the United States.

57 pages, 1961, 25 cents.

Subject Index to Studies 1-34.

38 pages, 1961, 15 cents.

Bulletins

DECISIONS OF THE UNITED STATES COURTS INVOLVING COPYRIGHT. The series contains substantially all copyright cases, as well as many involving related subjects which have been decided by the Federal and State courts. Cloth.

1909-14 (Bull. No. 17) \$1.75	1949-50 (Bull. No. 27) 2.75
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1947-48 (Bull. No. 26) \$1.75	

Cumulative Index, 1909-1954 (Bulletins 17-29) \$1.75.

Complete set, including Index \$46.

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