

SIXTY-EIGHTH
ANNUAL REPORT OF THE
REGISTER OF COPYRIGHTS
FOR THE FISCAL YEAR ENDING JUNE 30, 1965



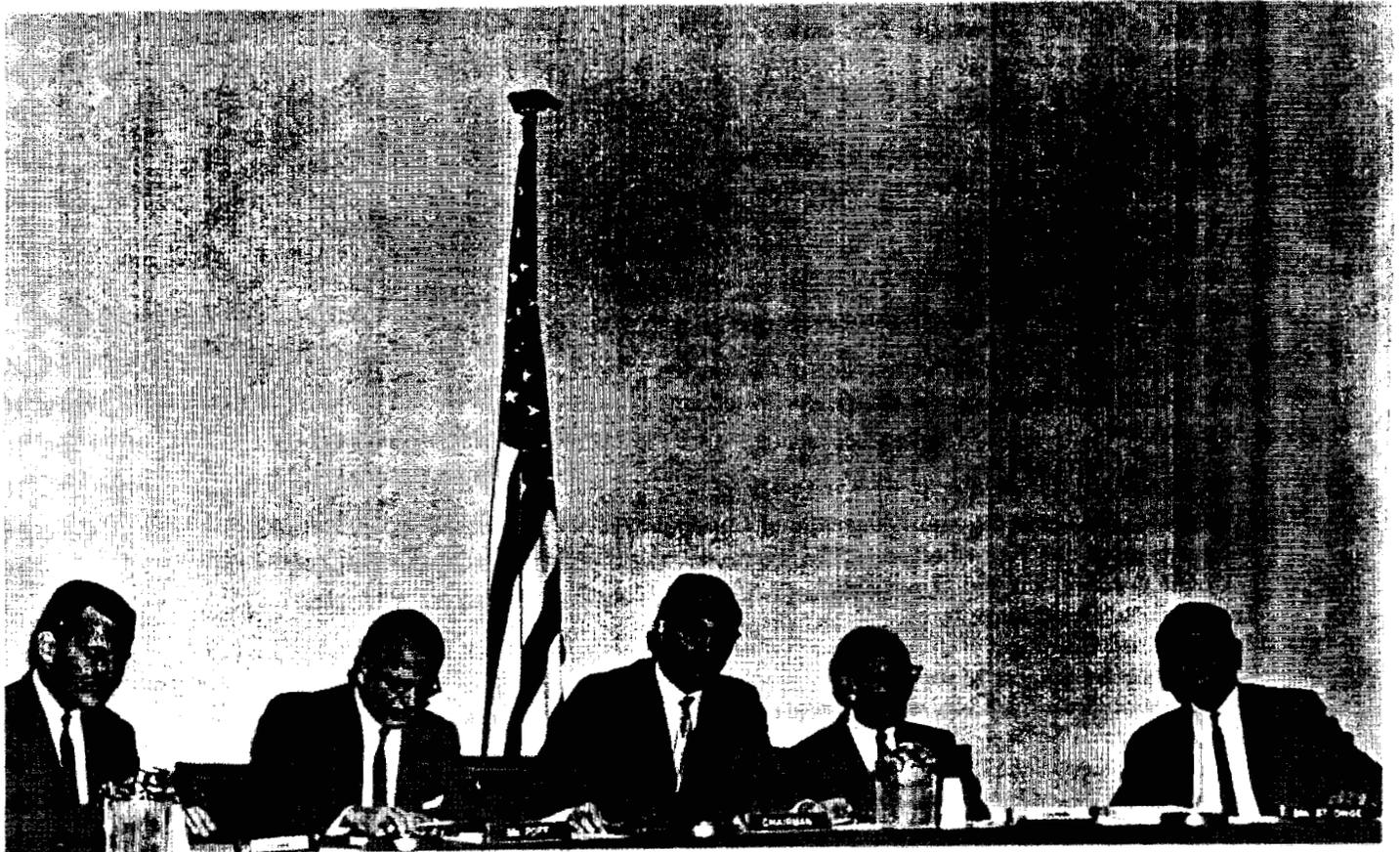
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for the fiscal year ending June 30, 1965

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The chairman, two of the committee members, and counsel of Subcommittee No. 3 of the House Judiciary Committee, as they appeared on September 2, 1965, the 22d and last day of hearings on H.R. 4947, the bill for the general revision of the copyright law. From left to right: Allan D. Cors, Associate Counsel, Representative Richard H. Poff of Virginia, Representative Robert Kastenmeier of Wisconsin, Herbert Fuchs, Counsel, and Representative William L. St. Onge of Connecticut

The Copyright Office

Report to the Librarian of Congress
by the Register of Copyrights

THE PRINCIPAL OBJECT of the Copyright Office's legal efforts and concern for the past decade, the program for general revision of the copyright law, entered its climactic phase in fiscal 1965. Early in the year, following an intensive period of review and rewriting of the preliminary draft sections previously distributed and discussed, the Office submitted a completely revised bill to the Congress for introduction.

The copyright revision bill of 1964 (S. 3008, H.R. 11947, H.R. 12354, 88th Cong., 2d sess.), which was introduced in both houses of Congress on July 20, 1964, incorporated substantial modifications in the language and content of the previous draft. These changes were made in a further effort to seek compromises on the many issues then in dispute and to make the bill as brief, simple, and clear as possible. The 1964 bill was not introduced with any expectation of legislative action during the 88th Congress but to serve as a focal point for further comments and suggestions leading to a final version of the bill on which Congressional action could be taken.

It served this purpose very well. In August 1964 a full week of discussions of its provisions took place in New York. This included a 3-day meeting of the American Bar Association Committee 304 on the Program for General Revision of the Copyright Law and a 2-day meeting of the Register's Panel of Consultants. These sessions clearly showed the substantive issues and questions of drafting which could be regarded as settled and those on which ad-

ditional adjustments needed to be sought. During the ensuing 6 months the Copyright Office reviewed and analyzed the many written and oral comments made on the 1964 bill, and in light of them completely redrafted the bill.

The final, legislative phase of the general revision program began on February 4, 1965, when Senator John L. McClellan and Representative Emanuel Celler introduced the 1965 bill (S. 1006, H.R. 4347, 89th Cong., 1st sess.) with the expectation of active consideration by the 89th Congress. The bill was also introduced by Representatives William L. St. Onge (H.R. 5680), Henry Helstoski (H.R. 6831), and John S. Monagan (H.R. 6835). The Copyright Office devoted the next 3 months to the preparation of a supplement to the 1961 *Report of the Register of Copyrights on the General Revision of the Copyright Law*, which supplement set forth the reasons for changing a number of the recommendations in the 1961 report and clarified the meaning of the provisions of the 1965 bill. Publication of the *Supplementary Report* in May 1965 coincided with the opening of Congressional hearings on the bill.

These hearings, which began in the House of Representatives on May 26, 1965, before Subcommittee No. 3 of the Committee on the Judiciary, were still going on as the fiscal year ended. Under the dedicated and perceptive chairmanship of Representative Robert W. Kastenmeier of Wisconsin, the subcommittee approached its task with a diligence and objec-

tivity that established a high level for nearly all of the testimony that followed. The opening witness for the bill was Librarian of Congress L. Quincy Mumford; as the Register of Copyrights was prevented by illness from attending the first several days of hearings, the Deputy Register, George D. Cary, with the assistance of Abe A. Goldman and Barbara A. Ringer, prepared and presented the Office's testimony before the subcommittee. Hearings in the Senate did not begin in fiscal 1965 but were expected to start before the end of the first session of the 89th Congress.

As the fiscal year closed, general copyright law revision in the United States seemed nearer than it had been for decades, but it was increasingly obvious that a great deal remained to be done in working out adjustments on several important and difficult substantive issues. Foremost among these are: the question of fair use and the reproduction of copyrighted works for educational and research purposes; the jukebox exemption; the liability of community antenna television systems for use of copyrighted materials; the royalty rate to be paid under the compulsory license for recording music; and the manufacturing requirement with respect to English-language books and periodicals. The *Supplementary Report* recognized the need for changes in the provisions dealing with these and other problems brought on by the technological revolutions of the 20th century when it said:

The introduction of bills for hearings in 1965 is, of course, a milestone in the revision program, but it is not the end of the road. It should be obvious by now that neither the bill nor the *Supplementary Report* represents any final statement of the fixed views of the Copyright Office. Our purpose is the enactment and implementation of a good, clear, practical copyright law that will reward authors and thereby encourage the arts and humanities; and we are aware that further changes will undoubtedly need to be considered.

The Year's Copyright Business

Those who lived through fiscal 1965 in the Copyright Office think of the increase in workload as huge bundles of material piled on trucks, shelves, desks, chairs, and often the floor. The increase is impressive on paper too. That the year was another record breaker almost goes without saying. But it is worthy of some reflection that 1965 was the 13th straight year in which total registrations increased, that it marks a cumulative increase in registrations of more than 30 percent over the last 10 years, and that it represents an increase of more than 5 percent over last year's 5-percent increase. This is all the more striking when one realizes that, during this same period, the principal planning and development activities of the Copyright Office have necessarily centered around the revision program rather than the daily work of the Office itself.

Registrations hit a total of almost 294,000, an increase over last year of 14,630. The largest gains were in the largest classes, music, books, periodicals, and renewals of all classes. The increases were mostly in the domestic categories, the declines in foreign registrations totaling nearly 4 percent. Map entries increased 67 percent, and the generally declining category of commercial prints and labels showed a surprising 7-percent gain. On the other hand, the so-called "design" registrations, notably in textiles and jewelry, declined by about 11 percent.

Of the 316,000 applications for registration and documents for recordation received during the year, 86 percent were acted upon without correspondence. Rejections amounted to 2.7 percent of the total, and the remaining 11.3 percent required correspondence before final action could be taken. The Service Division processed 318,000 pieces of incoming mail and 323,000 pieces of outgoing mail, conducted 50,000 searches in connection with pending material, prepared and filed more than 350,000 cards related to material in process, and filed over 137,000 correspondence

case files. Fees earned for registrations and related services again broke all records; the total of more than \$1,208,000 represents an increase of close to \$75,000 or 6.6 percent.

The Cataloging Division prepared and distributed roughly 1.7 million catalog cards, 625,000 were added to the Copyright Card Catalog, 225,000 were sent to subscribers to the Cooperative Card Service, 72,500 were furnished to the Library of Congress, and 783,500 were used to produce over 2,650 pages of copy for the semiannual issues of the eight parts of the printed *Catalog of Copyright Entries*.

The workload in reference searching also broke all records in fiscal 1965, the 11,300 completed searches representing an increase of 7 percent. Nearly 84,500 titles were involved, an increase of 24 percent, and the total of applied search fees rose 22 percent.

It is worth recording that March 1965 was the largest month in the history of the Copyright Office. The total number of registrations, 29,901, was 9 percent higher than that for October 1964 (the second largest month in the Copyright Office history) and 3 percent higher than the previous record (May 1948, just before the fees changed).

Official Publications

The most significant new publication of fiscal 1965 was the *Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill*, mentioned above. It contains a 160-page explanation of the content and the language of the 1965 bill, a 10-page summary of the bill itself, a 26-page subject index, and a 145-page comparative table presenting, in 4 columns on facing pages, the corresponding sections of the 1965 revision, the present law, the 1964 revision, and the Copyright Office's preliminary draft.

The *Supplementary Report* was issued by the House Committee on the Judiciary in May

1965 as part 6 under the series title *Copyright Law Revision*. During the fiscal year the committee also issued parts 3 and 4 of this series, *Preliminary Draft for Revised U.S. Copyright Law and Discussions and Comments on the Draft, September 1964* and *Further Discussions and Comments on Preliminary Draft for Revised U.S. Copyright Law, December 1964*. Part 5, *1964 Revision Bill with Discussions and Comments*, was still in preparation when the fiscal year ended, but the transcripts of the August 1964 panel meetings were edited during the year and issued in multilith form in March 1965. Taken together, the 6 volumes in the series, totaling more than 2,300 pages, present a remarkably complete history of the prelegislative phase of the revision program and should be of great value to future generations of lawyers and copyright scholars.

Publication of the issues of the *Catalog of Copyright Entries* was interrupted by delays, some of them serious, in fiscal 1965. Long-continued staff vacancies resulted in backlogs which were aggravated by the substantial increase in workload and the need to give priority to the production of cards for the Copyright Card Catalog. The arrearage in catalog production is one of the most serious problems facing the Copyright Office in the coming year.

Copyright Contributions to the Library of Congress

Of the 471,100 articles deposited for copyright registration during the year, 255,800, or 54 percent, were transferred to the Library of Congress for its collections or for use by the Exchange and Gift Division, an increase of nearly 5 percent over the previous year. Most of the books, periodicals, music, and maps issued by American publishers during fiscal 1965 are represented in the transfers.

Efforts to obtain compliance with the registration and deposit requirements of the copyright law increased registrations 20 percent

over fiscal 1964, resulting in a total of almost 14,500. These produced \$61,100 in fees and material valued at more than \$300,000 for the Library of Congress.

A longstanding project, begun in April 1963, to obtain registration for phonograph record jackets, sleeves, and liner notes published with notice of copyright, came to a successful conclusion. Upon receiving notice that registrations should be made, representatives of the record industry pointed out that, since this was the first compliance action ever taken in this area, hardships would result if registration were demanded for all jackets previously published with notice. There followed a series of consultations, as a result of which the Copyright Office, in September 1964, indicated that it would not demand registration for jackets published with notice before January 1, 1964, from any firm that would donate to the Library of Congress all long-playing releases in its current catalog (jackets and phonograph records) as well as all its future releases. It was made clear, however, that in any case the Office intended to seek registration for all album covers, sleeves, and similar articles published with notice in 1964 or thereafter. This project has established a sound relationship between the record industry and the Office and obtained material benefits for the Library: some 14 record companies are now making gifts to the Library, approximately 4,000 albums have been donated, and numerous registrations have already been made.

Another project involved problems in obtaining compliance with the agreement governing the deposit of motion pictures for copyright registration. In accordance with the recommendations of the ad hoc committee appointed in 1964 by the Librarian to study these problems, 240 letters were sent by the Librarian to copyright owners requesting that they submit prints in accordance with the terms of the agreement. At the end of fiscal 1965, 42 motion picture agreements had been canceled as a result of noncompliance and the Exchange and Gift Division reported com-

pliance had been obtained in about 54 percent of the cases.

Administrative Developments

Problems Arising From Computer Technology

The Copyright Office was confronted with three major problems during the fiscal year as a result of the constantly expanding development and use of computers: registration for computer programs, computer authorship, and automation in the Copyright Office. When the Office announced the registrability of computer programs in April 1964, neither the volume of applications nor the most common type of deposit could be predicted. As in other new areas of copyright protection, experience indicates that it takes some time for an industry to become aware of the possibilities of protection and to adopt routine procedures for taking advantage of it.

Only 16 claims covering computer programs were registered during fiscal 1965, and 12 of them were made in the last 3 months of the year. In 13 of the registrations the deposit copies consisted of print-outs only, indicating that this was the form of first publication. In two cases punched cards (including a print-out at the top) constituted the form of first publication.

In only one instance was magnetic tape deposited. Since the program on magnetic tape could not be perceived visually or read, it was necessary that a print-out be deposited also. The deposit of magnetic tape presented additional difficulties in view of the size of the particular program; the applicant said that a print-out of the entire program would be approximately 12 feet high. To resolve the problem the reels of tape were deposited along with selected portions of the print-out: namely, the beginning of the work including the title and the copyright notice, part of the center, and the end.

As computer technology develops and becomes more sophisticated, difficult questions of authorship are emerging. The Copyright Office had previously received an application for registration of a musical composition created by computer. This year, copyright was claimed for an abstract drawing, and for compilations of various kinds, which were at least partly the "work" of computers. It is certain that both the number of works proximately produced or "written" by computers and the problems of the Copyright Office in this area will increase. The crucial question appears to be whether the "work" is basically one of human authorship, with the computer merely being an assisting instrument, or whether the traditional elements of authorship in the work (literary, artistic, or musical expression or elements of selection, arrangement, etc.) were actually conceived and executed not by man but by a machine.

The third computer problem is largely an operational one: how can the Copyright Office take advantage of computer technology in carrying out its responsibilities under the statute? This challenging question is complicated by two important factors: the anticipated revision of the copyright statute and the place of the Copyright Office in the Library of Congress, which is now engaged in a major effort to automate its bibliographic record. Automation of certain Copyright Office activities is quite feasible and it is clear that actual planning should not be postponed. One solution to the current serious problem of catalog production lies in the use of data processing equipment in combination with automatic printing equipment.

Nature of Copyrighted Material Renewed

A recurring argument in connection with general revision of the copyright law is the retention of a renewal requirement in order to place in the public domain as soon as possible the large proportion of works not renewed.

This argument is based on the premise that the unrenewed works (now about 85 percent of the total) include substantial amounts of material that would benefit the public if free of copyright restrictions. The counter-argument is that the bulk of this material consists of works of no lasting value and that keeping them under copyright protection for more than 50 years is of no consequence.

To throw some light on this question the Copyright Office analyzed works renewed (and not renewed) during a sample period. The results, which are interesting if not conclusive, will be reported in some detail to the House Committee on the Judiciary; the highlights are summarized here.

All registrations made during the month of April 1937 were surveyed. Of 11,000 works registered for copyright during that period, 1,400, or 13 percent, were renewed. This is somewhat lower than the current annual figure of 15 percent, and therefore, as generalizations, the "percentage renewed" figures in some of the individual categories are low.

Books. At the time the registrations surveyed were made, "books" were divided into three classes: Class A (generally hard-cover book material), Class AA (generally paperbacks and unbound material), and Class A-5 (contributions to periodicals, predominantly advertising material). During the sample period there were 598 Class A registrations, 2,342 Class AA registrations, and 775 Class A-5 registrations, amounting to 16 percent, 63 percent, and 21 percent respectively of the total book registrations. The separate renewal figures in the three classes are revealing: 48 percent of the Class A registrations were renewed, only 2 percent of Class AA, and less than 2 percent of Class A-5 registrations.

PERIODICALS. Total registrations amounted to about 3,100, of which only 8 percent were renewed. However, 41 percent of the total registrations covered trade publications (of which 3 percent were renewed) and another 27 percent covered daily newspapers (of which 6 percent were renewed). Renewals

for magazines of general circulation amounted to 22 percent.

MUSIC. The data assembled for music renewals are short enough to give in full:

	Original registrations submitted by individuals			Original registrations submitted by firms			Totals		
	Original registrations	Renewals		Original registrations	Renewals		Original registrations	Renewals	
		No.	Percent		No.	Percent		No.	Percent
Published music	114	13	11	386	252	65	500	265	53
Unpublished music	1,444	40	3	274	229	84	1,718	269	16
Total music	1,558	53	3	660	481	77	2,218	534	24

OTHER CLASSES. There were no renewals whatever during the sample period in Class C (unpublished lectures and other oral works), Class G (unpublished works of art), and Class I (scientific drawings, etc.). Of the 638 dramatic works registered, 12 percent were renewed; however, nearly half of the registrations covered radio scripts and the renewal percentage in that category was only 4 percent. Renewals for motion picture photoplays totaled 73 percent, for other motion pictures 49 percent, and for all motion pictures 61 percent.

Mexican Search Project

The Mexican Copyright Law of 1963 required the registration in that country, not later than December 12, 1964, of certain works that predate the entry of Mexico into the Universal Copyright Convention on May 12, 1957; failure to register would result in the permanent loss of copyright protection in Mexico. In July 1964 information about this provision began to gain the attention of copyright experts in this country. Counsel for some of the music publishers first thought that the best procedure would be to use certified search reports from the U.S. Copyright Office as the basis for these registrations. In consequence, lists of hundreds of compositions came to the Office for search. As time went on,

performing rights societies, authors and publishers associations, and individual writers got in touch with the Office. Attorneys for each had their own views as to whether search reports were a proper basis for registration in Mexico, and among those who believed such searches were necessary, opinions differed as to what information should be requested.

Finally in late October Mr. Cary, the Deputy Register of Copyrights, went to Mexico City and conferred with Dr. Ernesto Rojas y Benevides, Director General of Copyrights. Mr. Cary learned that the works in question could be registered by filing an application together with certain other documentation and that, if this were done, search reports from the U.S. Copyright Office would not have to be filed. After receiving this information, some of those who had asked for certified reports withdrew their requests, but others continued to ask for the reports and to file them in Mexico. As a result of special efforts by the entire Reference Search Section, all of these searches, which reported approximately 3,500 titles, were completed well in advance of the December deadline.

Visitors and Exhibits

On November 3, 1964, S. C. Shukla, Deputy Registrar of Copyrights of India, arrived for a stay of approximately 2½ months. Au-

gustine Jallah, Director of the Bureau of Archives, Patents, Trademarks and Copyrights of the Department of State of Liberia, came to the Office on January 26, 1965, and remained through March 1; and Onuara Nzekwu, Editor of *Nigeria Magazine*, who also arrived on January 26, stayed until February 19. Mr. Shukla's trip was sponsored by the United International Bureau for the Protection of Intellectual Property (BIRPI), while the visitors from Liberia and Nigeria were here under the auspices of UNESCO. Through these visits the officers of the Copyright Office gained an insight into copyright issues confronting other countries and the visitors had an opportunity to observe an agency that has been dealing with copyright matters for almost a century.

The Reference Division set up two special exhibits during the fiscal year, one to memorialize the 100th anniversary of copyright protection for photographs and the other the 10th anniversary of the effective date of the Universal Copyright Convention. The first contained not only material relating to the signing by President Lincoln of the first bill for copyright in photographs but also a number of artifacts associated with the early litigation initiated by Mathew Brady and Napoleon Sarony under the act. The second exhibit featured the actual proclamation concerning the Universal Copyright Convention signed by President Eisenhower, which was lent by the National Archives.

Storage of Deposit Copies

Lack of space continued to plague the entire Copyright Office. The records storage problem has been compounded in recent years by pressure to increase the retention period for deposit copies. To meet this problem some 3,000 cubic feet of deposit copies were transferred to the Federal Records Center during the year, releasing space for current storage.

Legislative Developments

As in recent years, the program for general revision of the copyright law tended to eclipse all other legislative activity in fiscal 1965. Nevertheless, two copyright measures introduced in Congress during the year were later enacted into law. Both of them bear a close relation to the pending revision bill.

Anticipating the longer term of protection provided for subsisting copyrights under the revision bill, Senator McClellan and Representative Edwin E. Willis introduced companion joint resolutions (S.J. Res. 82, H.J. Res. 431, 89th Cong., 1st sess.) to extend, until December 31, 1967, second-term (renewal) copyrights that would otherwise expire before that date. Under the resolution, which was enacted on August 28, 1965 (Public Law 89-142), all copyrights of which the 56-year total of the original and renewal terms would have expired between September 1962 and December 31, 1967, were automatically continued until December 31, 1967. It is important to note, however, that the extension applies only to copyrights previously renewed in which the second term would otherwise expire. Copyrights in their first 28-year term are not affected in any way, nor does the bill have any effect on the time limits for renewal registration.

On January 14, 1965, Representative Tom Steed introduced a bill (H.R. 2853, 89th Cong., 1st sess.) to increase the fees charged by the Copyright Office. This bill, which was later enacted as Public Law 89-297 with an effective date of November 26, 1965, provides relatively modest increases for most of the registrations and other services of the Office; the fee for original registration under the bill is raised to \$6, and the renewal fee is increased to \$4.

At the beginning of the Congressional session, Representatives Celler and James C. Corman reintroduced the jukebox bill which had been reported favorably by the House Judiciary Committee in 1963 (H.R. 18, H.R. 2793,

89th Cong., 1st sess.). Its language is incorporated in the pending general revision bill, and the revision hearings had included extensive discussions of the problem. The design bill, which had passed the Senate in December 1963, was reintroduced in the 89th Congress by Senators Herman E. Talmadge and Philip A. Hart (S. 1237), Representative Gerald R. Ford (H.R. 450), and Representative John James Flynt, Jr. (H.R. 3366); as the fiscal year ended hearings were scheduled for late July.

A private bill (H.R. 4332) was introduced by Representative J. J. Pickle on February 3, 1965, "for the relief of the Students' Association of the University of Texas." The first term of copyright in *The Eyes of Texas* having expired without renewal, the bill proposes to give the association "the exclusive right in interstate commerce to use, copy, and sell and to control the use, copying, and sale" of the song.

On January 4, 1965, Representative John V. Lindsay reintroduced as H.R. 94 his bill to "bar any action for copyright infringement with respect to sound recordings made for use by blind or quadriplegic residents of the United States." Mr. Lindsay also introduced a new bill (H.R. 5514, February 25, 1965) similar to his earlier measures aimed at creating a Federal law of unfair competition.

Several bills were introduced in the 89th Congress that, although not directly related to copyright, were calculated to have a direct impact on the rights of authors. Bills to amend the Internal Revenue Code to place authors, composers, and artists under the coverage of the Self-Employed Individuals Tax Retirement Act of 1962 were introduced by Senator Eugene J. McCarthy (S. 1242, February 23, 1965) and Representative Eugene J. Keogh (H.R. 5723, March 3, 1965). The enactment of the National Arts and Cultural Development Act on September 3, 1964 (Public Law 88-579), establishing a National Council on the Arts to assist in the growth and development of the arts in the United

States, could have a profound effect on authorship in this country.

On June 1, 1965, coincident with the 17th Congress of the International Publishers Association held in Washington during the week of May 30, Representative Wilbur D. Mills introduced H.R. 8664, a bill to implement the Agreement on the Importation of Educational, Scientific, and Cultural Materials (the Florence Agreement of 1950). The United States signed the Florence Agreement in 1959 but has never enacted the necessary implementing legislation. This failure and the problems arising from the manufacturing clause in the United States copyright law were major points in the discussions at the IPA Congress.

A piece of State legislation that provoked serious concern and active opposition in the music field was a Montana bill aimed at controlling the operations of performing rights societies within the State. It proposed to establish a copyright commission empowered to fix licensing fees and to require the registration of copyrighted works with the commission. The bill was passed by the Montana Legislature but was vetoed by the Governor.

Judicial Developments

Actions Pending Against the Register of Copyrights

There were no further developments during fiscal 1965 in *Public Affairs Associates, Inc. v. Rickover*, in which the Register of Copyrights and the Librarian of Congress are both defendants. The action in *Armstrong Cork Co. v. Kaminstein*, which was brought to compel registration for the design of Armstrong's "Montina" flooring, was dismissed with prejudice on May 25, 1965.

A new action, *Hoffenberg v. Kaminstein*, grew out of the decision in *G. P. Putnam's Sons v. Lancer Books, Inc.*, 239 F. Supp. 782 (S.D.N.Y. 1965), involving the rights to the

novel *Candy* by Terry Southern and Mason Hoffenberg. The original English-language edition of this novel was manufactured and published in 1958 in Paris, bearing a copyright notice in the name of Olympia Press. No application for ad interim copyright was filed within 6 months of first publication, as specified in section 22 of the statute, nor was a U.S. edition published within 5 years in accordance with section 23. On May 12, 1964, G. P. Putnam's Sons published a revised hard-cover version in the United States and registered a claim to copyright on Form A with a "new matter" statement reading "Editorial revisions throughout." In the District Court in New York, Putnam sought to enjoin Lancer from publishing a reprint edition of the original Paris version. Judge McLean denied the injunction, pointing out that the plaintiff was not entitled to an injunction against copying the original 1958 Paris edition because no copyright claim in that edition had ever been registered. The 1964 registration was held to apply only to the revisions, not to the text of the Paris edition.

Faced with this decision, Messrs. Southern and Hoffenberg submitted an application on Form A-B Ad Interim for the original 1958 version and an application on Form A (without a "new matter" statement) to cover the entire text of the work as published in the United States. Upon denial of these registrations an action was filed against the Register of Copyrights in the District Court for the District of Columbia on May 3, 1965. The answer for the Register, filed by the Department of Justice, raised the primary issue of the failure to comply with the time limits prescribed in sections 22 and 23 of title 17, U.S. Code.

Subject Matter and Scope of Copyright Protection

Several cases during the year involved the nature of "new versions" of previous works and their status as independently copyright-

able creations. One of the most interesting, *Davis v. E. I. du Pont de Nemours & Co.*, 240 F. Supp. 612 (S.D.N.Y. 1965), stemmed from a 1960 telecast of a dramatization of Edith Wharton's novel *Ethan Frome*. Involving an extremely complicated situation, the case is important on several legal issues, notably infringement and notice of copyright; on the question of copyrightability the court ruled that the plaintiff's dramatization was clearly original "in view of the very minimal standards of originality established by the courts." It held that "there may be several different dramatizations of the same work, each capable of being copyrighted," and that the "significant new matter protected by the Davis play is the original Davis manner of expressing the story of Ethan Frome in the form of a dramatization." Similarly, in a different field, the Second Circuit Court of Appeals in *Nom Music, Inc. v. Kaslin*, 343 F. 2d 198 (2d Cir. 1965), held that copyright in a piano arrangement is separate and distinct from copyright in the lyrics and melody line of a composition entitled *A Thousand Miles Away* and upheld the District Court's ruling that the arrangement was sufficiently original to constitute a new work.

In the *Candy* case mentioned earlier—*G. P. Putnam's Sons v. Lancer Books, Inc.*, 239 F. Supp. 782 (S.D.N.Y. 1965)—the court characterized the "revisions" on which registration for the American edition had been based as "changes in the wording of certain passages . . . which in no way altered the sense." Noting that "when revisions or additions are made to a work which lies within the public domain, the copyright protection . . . extends at most only to the revisions and additions, i.e., to the work which was original with the author who seeks the copyright," Judge McLean questioned whether plaintiffs have protection even in the revised edition. Since, "in order to copyright revisions or changes made in a work in the public domain, the revisions must not be 'trivial,'" he felt it "at least arguable that the revisions made in

'Candy' were so slight as not to meet even this lenient standard." This question did not demand an answer, however, because defendant had not copied any of the revisions.

The perennial problems of copyright in trade catalogs arose again in two cases, *International Biotical Corp. v. Associated Mills, Inc.*, 239 F. Supp. 511 (N.D. Ill. 1964), and *Flick-Reedy Corp. v. Hydro-Line Manufacturing Co.*, 241 F. Supp. 127 (N.D. Ill. 1964), *rev'd*, 146 U.S.P.Q. 694 (7th Cir. 1965). The *International Biotical* case involved a catalog of massage equipment, and one of the questions was whether it constituted infringement to copy "three photographic poses showing the application of a unit to the head, leg, and back of the body," a list of "various ailments for which the device is allegedly helpful," and "a photograph of the switch on the back of the unit with the descriptive designations 'Hi' and 'Lo' thereon." The court ruled for the defendant on several grounds: one was that only isolated portions had been copied from the catalog, "which must be considered as a whole," and another was that a list of ailments or the use of the words "Hi" and "Lo" cannot support a copyright. Most important, the court ruled that, since the defendant's photographs were made independently and were not reproductions of the actual photographs in the catalog, they were not infringements even though they adopted the same poses: "Plaintiff's copyrights cannot monopolize the various poses used in these photographs since its copyrights can protect only plaintiff's particular expression of these poses and not the underlying ideas therefor." A similar holding in the *Flick-Reedy* case, to the effect that a copyright "cannot be construed as dominating the ideas or mathematical relations expressed" in the work, was reversed on appeal.

An intriguing issue underlying the decision in *Life Music, Inc. v. Wonderland Music Co.*, 241 F. Supp. 653 (S.D.N.Y. 1965), was whether a single word, if wholly original and sufficiently long, is capable of sustaining a copyright. Plaintiff alleged that his copyright in a

song entitled *Supercalafajalistickeapealodojus* had been infringed by a song from the movie *Mary Poppins* entitled *Supercalifragilisticapialidocious*. The court held that the only similarity between the songs was in the use of "the word"; the decision suggests that "even if defendants copied only 'the word,' they conceivably might still be liable for infringement." Although plaintiff claimed to have coined the word and introduced it to the public in his song, the court held, however, that in view of evidence that the word had been known earlier, plaintiff had failed to establish that defendants were guilty of copying from his work.

The uncopyrightability of phonograph records, even when published together with a copyrighted instruction manual, was confirmed in *Neal v. Thomas Organ Co.*, 241 F. Supp. 1020 (S.D. Cal. 1965).

In one of the few design cases of the year, *Uneeda Doll Co. v. P & M Doll Co.*, 241 F. Supp. 675 (S.D.N.Y. 1965), the court held that the "idea of a doll on a pole in a display box" is not subject to copyright protection and that, even though buyers were likely to confuse the two products in question, defendant's copying was not an infringement because it was "limited to the abstract idea of a doll in a display box and did not extend to Uneeda's tangible expression of that idea."

The legal problems confronting idea-men were further dramatized in *Sterner v. Hearst Corp.*, 144 U.S.P.Q. 237 (N.Y. Sup. Ct., Spec. Term, 1964), and *Cranford v. United States*, 338 F. 2d 379 (Ct. Cl. 1964). The plaintiff in the *Sterner* case had apparently "endeavored for years to interest producers and packagers of foods and other organizations in his program," which consisted of "an idea or combination of ideas centering around party foods and nonfoods and presented as a 'Party Program Package.'" The court held that "there is nothing copyrightable in the words, phrases, and ideas disclosed," because they "all are of the commonest vintage, out of the public domain," and are "freely copyable" since "they have not been put into any con-

crete form by plaintiff." On the other hand, in the *Cranford* case where the plaintiff had sold his idea for the format of the program that eventually became *The \$64,000 Question*, the Court of Claims held the proceeds taxable as ordinary income rather than as a capital asset because the format fell within the exception covering "a copyright, a literary, musical, or artistic composition, or *similar property* . . ."

While there were no decisions on the controversial prohibition against copyright in Government publications, a decision of the Patent Office Trademark Trial and Appeal Board (*in re U.S. Department of Interior*, 142 U.S.P.Q. 506, 1964) and a reported opinion of the Attorney General of the State of New York (142 U.S.P.Q. 288, July 21, 1964) were of interest in connection with the problem. The Patent Office decision involved an application by the U.S. Department of the Interior for registration of the insignia of the National Park Service as a trademark; the Board held the Department a proper applicant and the insignia registrable. Attorney General Lefkowitz's opinion involved two interesting and important questions: the copyright status of published State court opinions and their reproduction and use for research and reference purposes in a computer program. The Attorney General expressed the opinion that, although "there is no doubt that the texts of the opinions of the courts of this State are in the public domain, . . . it is equally clear that . . . the statements of fact, headnotes and all other matter prepared by the Law Reporting Bureau and appearing in the official reports may not be used as part of any publication of such texts in the absence of express legislative authorization." Thus, although he acknowledged the value to the public of computer searching, he did not feel that the unauthorized reproduction of copyrighted material by this method would be permissible under the law.

The Beatles increased their chances for immortality, in American jurisprudence at least,

by establishing their rights in another case, *Lennon v. Pulsebeat News, Inc.*, 143 U.S.P.Q. 309 (N.Y. Sup. Ct., Spec. Term, 1964). This time an enterprising defendant had taped and issued records of interviews with the group without their permission. The court held that "while it is true that there is no bar to the reporting of news events, there can be no justification for utilizing for profit, without plaintiff's permission, their distinctive manner of speech and expression which for reasons not material herein have become valuable property." In a somewhat similar case—*Baez v. Fantasy Records, Inc.*, 144 U.S.P.Q. 537 (Cal. Super. Ct. 1964)—the folksinger Joan Baez obtained an injunction against the distribution of copies of an earlier demonstration tape, partly on the ground of her "common law property right in and to her musical interpretations, renditions and performances inscribed upon the said tape recording."

The extent of the exclusive rights under a copyright was explored in *Burke & Van Heusen, Inc. v. Arrow Drug, Inc.*, 233 F. Supp. 881 (E.D. Pa. 1964), in which the plaintiff had licensed recording rights in its musical compositions on condition that the records "were to be used only as a premium in connection with the sale of a certain shampoo." Defendant had acquired the records and shampoo together, and resold the records separately. The court held that this did not constitute infringement under the so-called "first sale" doctrine: "The Copyright Act grants to the copyright proprietor the exclusive right to print, reprint, publish, copy, and vend the copyrighted work . . . but it gives him no further right of control over the use or disposition of the individual copies of the work once he has sold or otherwise disposed of them." Noting that the "first sale" doctrine "applies to the sale of a copy which is combined with a noncopyrighted work," the court held for the defendant on the ground that there had been "such a disposition of the copyrighted article that it may fairly be said that the copyright proprietor has received his reward for

its use." Even though defendant "knew of the restrictions which were part of the license agreement," they could not bind him or widen the "scope of control granted by the Copyright Act."

A Supreme Court patent decision during the year also has important implications with respect to the scope of copyright protection. In *Brulotte v. Thys Co.*, 379 U.S. 29 (1964), the court held in a majority opinion by Justice Douglas that "the use by a patentee of royalty agreements that project beyond the expiration date of the patent is unlawful *per se*." The decision seems equally applicable in the copyright field, a conclusion underlined in Justice Harlan's dissent. He argued, by way of example, that although "a phonograph record manufacturer could sell a recording of a song in the public domain to a jukebox owner for an undetermined consideration based on the number of times the record was played," this case is different from the use of the incorporeal or intangible work: thus, while "a song writer could charge a royalty every time his song—his idea—was sung for profit during the period of copyright . . . once the song falls into the public domain each and every member of the public should be free to sing it."

Publication

The unusually large number of decisions during the year that involved the concept of publication reflect not only its crucial importance in individual cases but also the doubts and confusion that continue to surround it. In *Flick-Reedy Corp. v. Hydro-Line Manufacturing Co.*, 241 F. Supp. 127 (N.D. Ill. 1964), *rev'd on other grounds*, 146 U.S.P.Q. 694 (7th Cir. 1965), the court held that the distribution of an "information sheet" to salesmen for use with customers, apparently without instructions to withhold the sheet from the public generally, constituted a "general publication without restriction as to persons or purpose," especially when coupled with evidence of distribution of copies to "members of the public at a trade show." In a case in-

volving *Mad Magazine's* use of the familiar "cartoon of a grinning boy" named Alfred E. Neuman, *Stuff v. E. C. Publications, Inc.*, 342 F. 2d 143 (2d Cir. 1965), the Second Circuit Court of Appeals held that copyright in the work had been abandoned and the caricature "dedicated to the public" because the copyright owner "had been most derelict in preventing others from infringing his copyright" and had "authorized or acquiesced in the wide circulation of the copies without notice."

The *Joan Baez* case, *Baez v. Fantasy Records, Inc.*, 144 U.S.P.Q. 537 (Cal. Super. Ct. 1964), holds that since the plaintiff's acts in making a tape recording for audition purposes "did not constitute a publication of her musical interpretations, renditions and performances thereon," the unauthorized release of records made from the tape did not destroy her common law copyright. Similarly, in the *Beatles* case, *Lennon v. Pulsebeat News, Inc.*, 143 U.S.P.Q. 309 (N.Y. Sup. Ct., Spec. Term, 1964), the court held that "oral delivery, even before vast audiences, is not of itself a dedication to the public," and that therefore the granting by celebrities of taped interviews which were released on records without authorization did not constitute publication.

The tortured field of protection for architectural plans and designs produced two decisions—*Shanahan v. Macco Construction Co.*, 36 Cal. Rptr. 584 (Dist. Ct. App., 1964) and *New York World's Fair 1964-1965 Corp. v. Colourpicture Publishers, Inc.*, 251 N.Y.S. 2d 885, 21 App. Div. 2d 896 (N.Y. Sup. Ct., App. Div. 1964)—which offer an interesting contrast. In the *Shanahan* case the plaintiffs, who had built some 1,400 "tract homes" in accordance with plans they had developed, alleged that defendants had obtained their plans and built homes that were identical with those in plaintiffs' subdivisions. The court held that a general publication of architects' plans has taken place "where such plans have found expression or exemplification in the construction of 'model homes' and hundreds

of tract houses which the public have been invited to inspect and purchase, to which invitation they have responded by the thousands. . . ." In the *World's Fair* case the Appellate Division of the New York Supreme Court upheld an injunction against the unauthorized publication of postcards of buildings at the New York World's Fair. The majority of the court ruled that "a photograph of a unique building, structure, or object situated within the World's Fair grounds, to which an admission fee is charged, is a photograph of a show in which plaintiff has a property right"; two justices dissented on the ground that "a photograph of a building cannot be deemed the equivalent of a reproduction of a 'performance' or 'show' in which a party may have a legally recognized property right."

One of the questions in the *Candy* case, *G. P. Putnam's Sons v. Lancer Books, Inc.*, 239 F. Supp. 782 (S.D.N.Y. 1965), was whether publication of a work entirely outside the United States has any effect upon copyright protection in this country. The court rejected the plaintiff's arguments that "a book in the English language by American authors which was published only in a foreign country is not in the public domain, within the meaning of the United States copyright laws," and that "at any time that the authors apply for registration of a United States copyright on that book as revised, they secure United States copyright protection for the entire book, not merely for the revisions." The effect of foreign publication on U.S. copyright protection was also an issue in *Ross Products, Inc. v. New York Merchandise Co.*, 146 U.S.P.Q. 107 (S.D.N.Y. 1965). The court, in denying motions for summary judgment, ruled that "while there may be some room for argument that the Japanese exhibition and sale did not constitute sufficient publication to divest copyright, there can be no doubt that it was sufficient to invest copyright;" thus, since the application for registration had failed

to mention any earlier publication, a factual issue of good faith was presented.

Notice of Copyright

Only two cases decided in fiscal 1965 dealt with the specific requirements with respect to notice of copyright, and both of them reflect the liberal or "substantial compliance" trend in judicial thinking on the subject. In *Nom Music, Inc. v. Kaslin*, 343 F. 2d 198 (2d Cir. 1965), the lower court had upheld a copyright notice in the name of an assignee on the ground that the requirements of section 32 (invalidating notice in the name of an assignee on a work published before the assignment is recorded) do not apply where registration for the work in unpublished form had been made in the assignor's name but where there had been no previous publication. The Court of Appeals affirmed the decision but on a different ground: since a piano arrangement had been added to the published version, it constituted a "new work," which permitted the notice to contain only the name of the owner of the "new work." Chief Judge Lumbard observed that "since the published version of 'A Thousand Miles Away' is in part protected by two different copyrights, . . . it might appear that the copyright notice should give the date and proprietor of each." He noted, however, that this interpretation has not been adopted by the courts, which have "held that the notice need give only the date and owner of the copyright in the derivative work, leaving the reader to his own devices in ferreting out this information as to the original."

The *Ethan Frome* case, *Davis v. E. I. du Pont de Nemours & Co.*, 240 F. Supp. 612 (S.D.N.Y. 1965), involved two separate notice questions. The first was the validity of a 1935 notice on the published version of a work registered for copyright in unpublished form on December 5, 1934. Since the published version contained new matter, the court might have followed the *Nom* decision just discussed. Instead, Judge Feinberg held, "consistent with the liberal philosophy in re-

cent cases," that "in the absence of any suggestion of prejudicial reliance, the variance of twenty-seven days . . . does not invalidate plaintiff's copyright." In doing so he relied on the Copyright Office Regulations and on the Office's study No. 7, "Notice of Copyright" (1960).

In the same case the name in the notice (Charles Scribner's Sons) was also challenged by the defendant on the ground that Scribner was either a mere licensee or that, even if it were an assignee, the work had been published before the assignment was recorded, as required by section 32. The court held Scribner a proper proprietor under a contract authorizing it to secure copyright in the published work but ruled that section 32 did not invalidate the copyright, partly on the ground that the assignors' names also appeared in conjunction with the notice and also, apparently, for the reasons adopted by the lower court in the *Nom* case.

Registration

The familiar principle that "when plaintiff proved her ownership of the validly issued copyright and defendants' copying of the works, she established a prima facie case of infringement under the statute" was reaffirmed in *Stuff v. E. C. Publications, Inc.*, 342 F. 2d 143 (2d Cir. 1965). Much more unusual, however, was the fact that allegations of misrepresentations to the Copyright Office in applications for registration were made in no less than four cases: *G. P. Putnam's Sons v. Lancer Books, Inc.*, 239 F. Supp. 782 (S.D.N.Y. 1965); *Ross Products, Inc. v. New York Merchandise Co.*, 146 U.S.P.Q. 107 (S.D.N.Y. 1965); *Flick-Reedy Corp. v. Hydro-Line Manufacturing Co.*, 241 F. Supp. 127 (N.D. Ill. 1964), *rev'd.*, 146 U.S.P.Q. 694 (7th Cir. 1965); and *International Biotical Corp. v. Associated Mills, Inc.*, 239 F. Supp. 511 (N.D. Ill. 1964).

While not basing its decision on the point, the court in the *Putnam* case observed: "The answer to question No. 6 of the application

that 'the present work as revised throughout, has never been published abroad,' while literally true, may be thought to be something less than candid. It is hard to reconcile this statement with the announcement on the jacket of the Putnam edition that the book contains 'the complete text' of the novel-published in Paris." On the other hand, the *Ross Products* decision turned on the court's conclusion that a factual issue had been presented as to whether plaintiff acted in good faith when it failed to indicate on the application that a previous publication had taken place in Japan. Judge Feinberg noted that "while there are recent indications that the courts are quite lenient in overlooking factual misstatements in copyright applications, nevertheless, the opinions emphasize that the errors involved were honest, innocent, and not intended to be misleading."

The lower court in the *Flick-Reedy* case ruled a copyright registration "invalid and unenforceable in so far as it purports to cover" certain material, on the ground that "plaintiff did not inform the Copyright Office and has not informed the public that pages 20 and 22 of its bulletin incorporate prior publications identically and are, in fact, revised versions of the prior publications." On appeal this holding was reversed without discussion of the misrepresentation point. In *International Biotical* the same lower court held the copyrights in question "unenforceable due to plaintiff's unclean hands and inequitable conduct in connection therewith." It found that plaintiff had made misrepresentations to the Copyright Office because, by leaving the "new matter" line of its applications blank, it "did not inform the Copyright Office of its earlier publications" of a "substantial portion" of the material.

Renewals, Assignments, and Ownership of Copyright

Gordon v. Vincent Youmans, Inc., 245 F. Supp. 607 (S.D.N.Y. 1965) involved renewal rights in the old standard song *Time on My*

Hands. Both the facts and the decision in the case are confusing, but the opinion suggests that a renewal registration made on behalf of an author by a publisher who had acquired none of that author's rights may be invalid even if the author is the proper renewal claimant. If the publisher had validly acquired the rights of another coauthor and also registered a renewal claim in his name, however, an effective renewal for the entire work is secured and the publisher holds "the renewal copyright as constructive trustee on behalf of the other co-owners." Although the point is not discussed, the decision also suggests 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.

The facts in the *Ethan Frome* case, *Davis v. E. I. du Pont de Nemours & Co.*, 240 F. Supp 612 (S.D.N.Y. 1965), were even more confusing. The court considered it "settled that an author's renewal right to his copyrighted work is a mere expectancy and that an assignee of the copyright and the renewal rights retains no interest beyond the initial period of copyright if the author is not alive at the beginning of the renewal period." Thus, although Edith Wharton's death before the renewal year of *Ethan Frome* cut off any rights the plaintiff-dramatist may have had in the novel, the court held that the dramatization was a "new work," covering "all new matter therein contained, independently of the ownership of the original or renewal copyrights on the novel upon which it is based." Even though plaintiff presumably might have been an infringer of copyright in the novel had he used his own dramatization without a renewal license, this did not prevent him from defending his rights in the new matter in his play against an infringer. Significantly, Judge Feinberg observed that "defendants do not contend that Mrs. Wharton has an interest in the Davis play as a 'joint author' under the standard set forth in *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.* . . ."

Infringement and Remedies

A common law copyright infringement case that attracted wide attention was *FitzGerald v. Hopkins*, 144 U.S.P.Q. 771 (Wash. Super. Ct. 1965). This action was brought by an established sculptor against a graduate student for infringement of an abstract piece of sculpture. The court, noting the need to "be careful not to disturb or impinge or to influence or to inhibit in any way in a free society the right of an artist to express himself as the spirit moves him," ruled that the plaintiff had failed to show that the defendant had copied his work. Moreover, in response to a counterclaim for slander, the court awarded the defendant damages of \$15,000 on the ground that he had been unjustly condemned as a plagiarist.

In another common law copyright action, *Smith v. Little, Brown & Co.*, 245 F. Supp. 451 (S.D.N.Y. 1965), the author of a partly completed novel based on the historical exploits of Grania O'Malley, a pirate famous in Irish legend, sued a publishing house to which she had sent an outline and five chapters and which, after rejecting her manuscript, brought out a children's book on the same subject. The court, after ruling that the same tests of infringement apply in common law and statutory copyright cases, held that access had been established by circumstantial evidence, that there were sufficient similarities to establish copying, and that the publisher was liable for infringement whether it participated in the copying or was entirely innocent. *Williams v. Kaag Manufacturers, Inc.*, 338 F. 2d 949 (9th Cir. 1964), raised the question of the proper tests for infringement, this time involving a statutory copyright in a trophy figurine; the Court of Appeals upheld the trial court's conclusion that, despite similarities, the two works in question were not "the same."

The Second Circuit Court of Appeals handed down an important jurisdictional decision in *T. B. Harms Co. v. Eliscu*, 339 F. 2d 823 (2d Cir. 1964), *cert. denied*, 381 U.S. 915 (1965), holding that an action to deter-

mine ownership of a copyright is not one "arising under" the copyright statute. The Federal court was thus held not to have jurisdiction, despite the plaintiff's allegations that defendant had infringed his copyrights by recording a conflicting assignment in the Copyright Office and by warning his licensees not to disregard the asserted rights. The rule of the case was stated in Judge Friendly's opinion as follows: "an action 'arises under' the Copyright Act if and only if the complaint is for a remedy expressly granted by the Act, . . . or asserts a claim requiring construction of the Act, . . . or, at the very least and perhaps more doubtfully, presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim." This rule was also followed in a *per curiam* decision in *Muse v. Mellin*, 339 F. 2d 888 (2d Cir. 1964).

Jurisdictional questions in copyright cases were also decided in *Scott v. WKJG, Inc.*, 145 U.S.P.Q. 32 (N.D. Ind. 1965), and *Manning v. Time, Inc.*, 233 F. Supp. 985 (E.D. La. 1964), in both of which the corporate citizen of another State was found to be doing business within the State on which jurisdiction was based. The case of *Edwin H. Morris & Co. v. Munn*, 233 F. Supp. 71 (E.D.S.C. 1964), involved the question of joinder of parties, the court ruling that the "two plaintiffs and their respective separate claims are properly joined in this cause of action in that the separate claims for copyright infringement arose out of the same series of occurrences, and the questions of fact and law establishing copyright infringement are common to both claims." Questions of pretrial discovery, inspection, and interrogatories in copyright cases were involved in *Breffort v. I Had a Ball Co.*, 240 F. Supp. 1018 (S.D.N.Y. 1965), and *Acum v. Folkways Records and Service Corp.*, 146 U.S.P.Q. 659 (S.D.N.Y. 1965).

The applicability of the defense of unclean hands or misuse of copyrights in infringement actions was dealt with in two cases—*Tempo Music, Inc. v. International Good Music, Inc.*,

143 U.S.P.Q. 67 (W.D. Wash. 1964), and *International Biotical Corp. v. Associated Mills, Inc.*, 239 F. Supp. 511 (N.D. Ill. 1964)—with contrasting results. The court in the *Tempo* case held that plaintiffs had not "unlawfully extended their copyright monopolies through a combination among themselves or with ASCAP," nor had they violated any Federal antitrust law; but, even if they had, "their violations are so minimal and the violations of the defendants so unconscionable that plaintiffs should not be deprived of the right to maintain these actions for the deprivation of their property." On the other hand, the court in the *International Biotical* case held the copyrights "unenforceable due to plaintiffs' unclean hands and inequitable conduct" in failing to state in its application to the Copyright Office that the works contained previously published material and in misrepresenting facts to the court, and because the brochure in question was inaccurate and misleading.

A major question in the *Ethan Frome* case—*Davis v. E. I. du Pont de Nemours & Co.*, 240 F. Supp. 612 (S.D.N.Y. 1965)—was the liability of the television sponsor of the infringing performance and of the sponsor's advertising agency; vicarious liability was found on the ground that "these defendants had some power to supervise the activities of the actual copyright infringers, and that their failure to exercise this power . . . resulted in a financial benefit to them." The liability of a corporate officer of an infringing corporation was established in *H. M. Kolbe Co. v. Shaff*, 240 F. Supp. 588 (S.D.N.Y. 1965), on the basis of his personal involvement "in arranging and directing the production of the infringing design," even though he was acting within the normal scope of his authority and received no personal gain from the infringement. And in *Bourne v. Fouche*, 238 F. Supp. 745 (E.D.S.C. 1965), the court held the owners of a nightclub liable for unauthorized performances of music even though the performances were without their knowledge and

contrary to their instructions and were rendered by musicians who were independent contractors.

A decision that was greeted with consternation by some composers and music publishers was *Shapiro, Bernstein & Co. v. Bleeker*, 243 F. Supp. 999 (S.D. Cal. 1965), an infringement action by a copyright owner against a music store for selling an unauthorized copy of a "fake book" reproducing 1,000 songs, including 55 owned by plaintiff. The court, which was unsympathetic to the claim for statutory damages of \$3,000 and to plaintiff's refusal to settle for \$50, ruled that statutory damages need not be awarded where damages or profits are ascertainable. The court found that since the profits were only 21 cents, the recovery would be *de minimis* and awarded the defendant \$1,500 in attorney's fees as the prevailing party. Other cases involving remedies for infringement were *Neal v. Thomas Organ Co.*, 241 F. Supp. 1020 (S.D. Cal. 1965), involving problems of deductions and apportionment in establishing an award of profits, and *S. C. Johnson & Son, Inc. v. Drop Dead Co.*, 144 U.S.P.Q. 257 (S.D. Cal. 1965), involving the number of infringements on which an award of statutory damages must be based.

Unfair Competition and Copyright

Tremors continued to be felt from the precedent-shattering decisions of the Supreme Court in *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964), and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964), discussed at some length in last year's report. Although they are of considerable significance to the copyright law, the various unfair competition, trademark, patent, and trade secret cases that have attempted to construe these decisions and apply them in particular situations are far too numerous and complicated to be analyzed here. As a general observation, it appears that although a certain amount of stability has been restored in the intellectual property field, a great many of the ques-

tions raised by *Sears* and *Compco* remain unanswered.

One of the most significant and searching decisions construing the rule of the *Sears* and *Compco* cases—*Cable Vision, Inc. v. KUTV, Inc.*, 335 F. 2d 348 (9th Cir. 1964), *cert. denied*, 379 U.S. 989 (1965)—lies directly in the copyright field. This involved an action for unfair competition and interference with contract relations brought by an Idaho broadcaster against a community antenna operator who picked up the broadcaster's signals without authority and sent them into the homes of paying subscribers. The lower court had ruled in favor of the plaintiff-broadcaster, but the Ninth Circuit Court of Appeals reversed the decision on the basis of *Sears* and *Compco*. The court construed those cases as holding that: (1) there is "free access to copy whatever the federal patent and copyright laws leave in the public domain"; (2) "the principles announced in *Sears* and *Compco* are equally applicable to patent and copyright law"; (3) "that which is either not copyrighted, not copyrightable or on which the copyright has expired is in the public domain"; (4) State courts still have a "limited ambit of operation" with respect to cases of "passing off"; and (5) a State action based upon common law copyright in unpublished works may still survive. The court regarded the interests involved in the cases as "in essence copyright interest" and held that "save for the limited protection accorded the creator of literary and intellectual works under the Copyright Act or its exceptions . . . anyone may freely and with impunity avail himself of such works to any extent he may desire and for any purpose whatever subject only to the qualification that he does not steal good will, or, perhaps more accurately stated, deceive others in thinking the creations represent his own work." The court added that, although the broadcaster has no other rights in this case, he may still "be able to maintain an action for infringement of those programs protected by statutory copyright and to prosecute a

claim for common law copyright violation as to any others which they contend have not yet been 'published' within the contemplation of the law of common law copyright."

The *Cable Vision* case was followed and endorsed by a State court in *Herald Publishing Co. v. Florida Antennavision, Inc.*, 173 So. 2d 469 (Fla. Dist. Ct. App. 1965), and in the *Candy* case—*G. P. Putnam's Sons v. Lancer Books, Inc.*, 239 F. Supp. 782 (S.D.N.Y. 1965)—the court held that there was no evidence of passing off and that, "copyright aside, it is not unfair competition for Lancer to reproduce on its copy of the French work the name of the man whom the French edition listed as its author." Judge McLean observed that, in his opinion, "the present case is weaker . . . on the issue of unfair competition than the cases of the plaintiffs in either *Sears* or *Compco*," and that "mere confusion in the minds of purchasers as to which article is which and as to who is the maker cannot afford a basis for prohibition by a state of the acts of copying and selling."

As noted in last year's report, a theory appeared to have emerged in the New York State courts which, if followed by other courts, might constitute an exception to the *Sears* and *Compco* rule. In *Flamingo Telefilm Sales, Inc. v. United Artists Corp.*, 141 U.S.P.Q. 461 (1964), which involved the use on television of parts of an uncopyrighted motion picture, the New York Supreme Court, Special Term, indicated that the rule of *Sears* and *Compco* is limited to cases of "copying," as distinguished from cases where there has been an "appropriation of the very item licensed . . . , the use of the identical product for the profit of another." This decision was reversed by the Appellate Division, 254 N.Y.S. 2d 36 (App. Div. 1964), but without clearly rejecting the theory. It held that if the particular motion picture "was in the public domain . . . the defendants would be entitled to duplicate and use all or portions of the picture film for telecast or other legitimate purposes," as long as "their acts were not such as to deceive the

public or defraud the plaintiff" (emphasis supplied). However, the court was careful not to overrule the "appropriation-copying" theory, implying that it might have some relation to the right of privacy; it held that any cause of action would be "vested in the artist or the creator or in his licensee or assignee," and plaintiff in this case thus did not qualify. The reference in this decision to fraud on the plaintiff was seized upon by the Special Term in *Greater Recording Co. v. Stambler*, 144 U.S.P.Q. 547 (N.Y. Sup. Ct. 1965), to uphold State jurisdiction in a case of "record piracy," and the decision in *Edgar Rice Burroughs, Inc. v. Charlton Publications, Inc.*, 243 F. Supp. 731 (S.D.N.Y. 1965), indicates that a State may restrain the unauthorized use of the name and personality of a well-known fictional character (Tarzan) if the public were fraudulently "misled or confused as to the source" of the character or stories.

International Developments

It was fitting that the 50th country to ratify the Universal Copyright Convention should do so during the convention's 10th anniversary year. That country was the newly independent nation of Zambia, which ratified the convention on March 1, 1965, effective June 1. Earlier in the year the adherences of New Zealand and Guatemala had become effective, and the Universal Copyright Convention was also made applicable to the island of Mauritius. Membership in the Neighboring Rights Convention (the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, signed at Rome in 1961) grew to nine countries with the adherences of Denmark and Brazil. An event of potential significance in the field of international protection of intellectual property was the adherence by the USSR to the International Convention for the Protection of Industrial Property (the Paris Convention), regulating the interna-

tional protection of patents, trademarks, and industrial designs.

At the very end of the fiscal year the Register flew to Geneva to attend a meeting of a Committee of Governmental Experts To Prepare for the Diplomatic Conference of Stockholm in 1967. It is now apparent that the major issue confronting the Stockholm Conference will be the reconciliation of the Berne Convention with the special needs of developing countries. This problem is closely tied to the future of the Universal Copyright Convention and to the legislative course of copy-

right law revision in the United States. Several more countries achieved independence during fiscal 1965, pointing up the problems arising from the lack of copyright relations between the United States and these countries. The table appended shows the countries of the world and the basis of their copyright relations, if any, with the United States.

Respectfully submitted.

ABRAHAM L. KAMINSTEIN
Register of Copyrights

November 29, 1965

International Copyright Relations of the United States as of December 1, 1965

This table shows the status of United States copyright relations with the 126 other sovereign 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.	Chile	UCC, BAC, Bilateral.
Albania	None.	China	Bilateral.
Algeria	Unclear.	Colombia	BAC.
Andorra	UCC.	Congo (Brazzaville)	Unclear.
Argentina	UCC, BAC, Bilateral.	Congo (Leopoldville)	Unclear.
Australia	Bilateral.	Costa Rica	UCC, BAC, Bilateral.
Austria	UCC, Bilateral.	Cuba	UCC, Bilateral.
Belgium	UCC, Bilateral.	Cyprus	Unclear.
Bhutan	None.	Czechoslovakia	UCC, Bilateral.
Bolivia	BAC.	Dahomey	Unclear.
Brazil	UCC, BAC, Bilateral.	Denmark	UCC, Bilateral.
Bulgaria	None.	Dominican Republic	BAC.
Burma	Unclear.	Ecuador	UCC, BAC.
Burundi	Unclear.	El Salvador	Bilateral by virtue of Mexico City Convention, 1902.
Cambodia	UCC.		
Cameroon	Unclear.	Ethiopia	None.
Canada	UCC, Bilateral.	Finland	UCC, Bilateral.
Central African Republic	Unclear.	France	UCC, Bilateral.
Ceylon	Unclear.	Gabon	Unclear.
Chad	Unclear.	Gambia	Unclear.

International Copyright Relations of the United States as of December 1, 1965—Continued

Country	Status of Copyright Relations	Country	Status of Copyright Relations
Germany.....	Bilateral; UCC with German Federal Republic.	New Zealand.....	UCC, Bilateral.
Ghana.....	UCC.	Nicaragua.....	UCC, BAC.
Greece.....	UCC, Bilateral.	Niger.....	Unclear.
Guatemala.....	UCC, BAC.	Nigeria.....	UCC.
Guinea.....	Unclear.	Norway.....	UCC, Bilateral.
Haiti.....	UCC, BAC.	Pakistan.....	UCC.
Holy See (Vatican City).	UCC.	Panama.....	UCC, BAC.
Honduras.....	BAC.	Paraguay.....	UCC, BAC.
Hungary.....	Bilateral.	Peru.....	UCC, BAC.
Iceland.....	UCC.	Philippines.....	Bilateral; UCC status undetermined.
India.....	UCC, Bilateral.	Poland.....	Bilateral.
Indonesia.....	Unclear.	Portugal.....	UCC, Bilateral.
Iran.....	None.	Rumania.....	Bilateral.
Iraq.....	None.	Rwanda.....	Unclear.
Ireland.....	UCC, Bilateral.	San Marino.....	None.
Israel.....	UCC, Bilateral.	Saudi Arabia.....	None.
Italy.....	UCC, Bilateral.	Senegal.....	Unclear.
Ivory Coast.....	Unclear.	Sierra Leone.....	Unclear.
Jamaica.....	Unclear.	Singapore.....	Unclear.
Japan.....	UCC.	Somalia.....	Unclear.
Jordan.....	Unclear.	South Africa.....	Bilateral.
Kenya.....	Unclear.	Soviet Union.....	None.
Korea.....	Unclear.	Spain.....	UCC, Bilateral.
Kuwait.....	Unclear.	Sudan.....	Unclear.
Laos.....	UCC.	Sweden.....	UCC, Bilateral.
Lebanon.....	UCC.	Switzerland.....	UCC, Bilateral.
Liberia.....	UCC.	Syria.....	Unclear.
Libya.....	Unclear.	Tanzania.....	Unclear.
Liechtenstein.....	UCC.	Thailand.....	Bilateral.
Luxembourg.....	UCC, Bilateral.	Togo.....	Unclear.
Madagascar.....	Unclear.	Trinidad and Tobago..	Unclear.
Malawi.....	UCC.	Tunisia.....	Unclear.
Malaysia.....	Unclear.	Turkey.....	None.
Maldives Islands.....	Unclear.	Uganda.....	Unclear.
Mali.....	Unclear.	United Arab Republic (Egypt).	None.
Malta.....	Unclear.	United Kingdom.....	UCC, Bilateral.
Mauritania.....	Unclear.	Upper Volta.....	Unclear.
Mexico.....	UCC, BAC, Bilateral.	Uruguay.....	BAC.
Monaco.....	UCC, Bilateral.	Venezuela.....	None.
Morocco.....	Unclear.	Vietnam.....	Unclear.
Muscat and Oman.....	None.	Western Samoa.....	Unclear.
Nepal.....	None.	Yemen.....	None.
Netherlands.....	Bilateral.	Yugoslavia.....	None.
		Zambia.....	UCC.

Registration by Subject Matter Classes for the Fiscal Years 1961-65

Class	Subject matter of copyright	1961	1962	1963	1964	1965
A	Books (including pamphlets, leaflets, etc.):					
	Manufactured in the United States.....	57,794	61,787	63,936	66,789	71,396
	Manufactured abroad (except those registered for ad interim copyright).....	3,819	4,007	3,764	4,079	4,120
	Registered for ad interim copyright.....	802	777	745	889	1,070
	Subtotal.....	62,415	66,571	68,445	71,757	76,586
B	Periodicals (issues).....	66,251	67,523	69,682	74,472	77,819
	(BB) Contributions to newspapers and period- icals.....	3,398	2,993	2,535	2,529	2,095
C	Lectures, sermons, addresses.....	1,029	875	806	1,112	848
D	Dramatic or dramatico-musical compositions.....	2,762	2,813	2,730	3,039	3,343
E	Musical compositions.....	65,500	67,612	72,583	75,256	80,881
F	Maps.....	2,010	2,073	2,002	1,955	3,262
G	Works of art, models, or designs.....	5,557	6,043	6,262	5,915	5,735
H	Reproductions of works of art.....	3,255	3,726	4,003	4,045	3,241
I	Drawings or plastic works of a scientific or technical character.....	705	1,014	780	893	1,239
	Photographs.....	765	562	725	995	860
K	Prints and pictorial illustrations.....	2,955	2,889	2,594	3,325	2,927
	(KK) Commercial prints and labels.....	7,564	7,167	7,318	7,013	7,509
L	Motion picture photoplays.....	3,089	2,686	3,207	3,018	2,536
M	Motion pictures not photoplays.....	1,565	955	1,009	1,089	1,216
R	Renewals of all classes.....	18,194	19,274	20,164	22,574	23,520
	Total.....	247,014	254,776	264,845	278,987	293,617

Statement of Gross Cash Receipts, Yearly Fees, Number of Registrations, etc., for the Fiscal Years 1961-65

Fiscal year	Gross receipts	Yearly fees applied	Number of registrations	Increase in registrations
1961.....	\$1,078,991.90	\$1,009,679.04	247,014	3,088
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
Total.....	5,795,565.41	5,472,575.81	1,339,239

Number of Articles Deposited During the Fiscal Years 1961-65

Class	Subject matter of copyright	1961	1962	1963	1964	1965
A	Books (including pamphlets, leaflets, etc.):					
	Manufactured in the United States.....	115,588	123,574	127,872	133,578	142,792
	Manufactured abroad (except those registered for ad interim copyright).....	6,698	6,985	6,533	6,965	6,983
	Registered for ad interim copyright.....	979	963	919	869	1,187
	Subtotal.....	123,265	131,522	135,324	141,412	150,962
B	Periodicals (issues).....	132,410	134,928	138,827	149,073	156,092
	(BB) Contributions to newspapers and period- icals.....	3,398	2,993	2,535*	2,529*	2,095
C	Lectures, sermons, addresses.....	1,029	875	806	1,112	848
D	Dramatic or dramatico-musical compositions.....	3,203	3,276	3,127	3,413	3,816
E	Musical compositions.....	83,723	85,325	92,223	95,287	102,547
F	Maps.....	4,020	4,146	4,004	3,910	6,523
G	Works of art, models, or designs.....	9,599	10,534	10,993	10,367	10,196
H	Reproductions of works of art.....	6,502	7,423	7,986	8,084	6,482
I	Drawings or plastic works of a scientific or tech- nical character.....	1,062	1,438	1,148	1,347	1,925
J	Photographs.....	1,156	957	1,221	1,594	1,460
K&KK	Prints, labels, and pictorial illustrations.....	21,038	20,112	19,820	20,669	20,871
L	Motion picture photoplays.....	6,162	5,352	6,338	5,984	5,034
M	Motion pictures not photoplays.....	2,959	1,788	1,880	2,049	2,256
	Total.....	399,526	410,669	426,232*	446,830*	471,107

*Adjusted figure.

Summary of Copyright Business, Fiscal Year 1965

Balance on hand July, 1964.....		\$295,019.32
Gross receipts July 1, 1964, to June 30, 1965.....		1,274,813.94
		<hr/>
Total to be accounted for.....		1,569,833.26
Refunded.....	\$47,181.77	
Checks returned unpaid.....	1,980.17	
Deposited as earned fees.....	1,202,327.90	
Balance carried over July 1, 1965:		
Fees earned in June 1965 but not deposited until July 1965.....	\$100,209.46	
Unfinished business balance.....	48,372.24	
Deposit accounts balance.....	166,885.88	
Card service.....	2,875.84	
	<hr/>	
	318,343.42	
	<hr/>	
		1,569,833.26
		<hr/>
7,509 registrations for prints and labels at \$6.00 each.....		45,054.00
184,730 registrations for published domestic works at \$4.00 each.....		738,920.00
3,382 registrations for published foreign works at \$4.00 each.....		13,528.00
64,117 registrations for unpublished works at \$4.00 each.....		256,468.00
23,520 registrations for renewals at \$2.00 each.....		47,040.00
		<hr/>
283,258 total number of registrations*		
Fees for registrations.....		1,101,010.00
Fees for recording assignments.....	\$26,558.50	
Fees for indexing transfers of proprietorship.....	25,766.50	
Fees for notices of use recorded.....	13,758.00	
Fees for certified documents.....	4,437.50	
Fees for searches made.....	27,639.00	
Card service.....	8,845.16	
	<hr/>	
		107,004.66
		<hr/>
Total fees earned.....		1,208,014.66

*Excludes 10,359 made under provisions of law permitting registration without payment of fee for certain work of foreign origin.



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). 62 pages, 1963, paper, 25 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

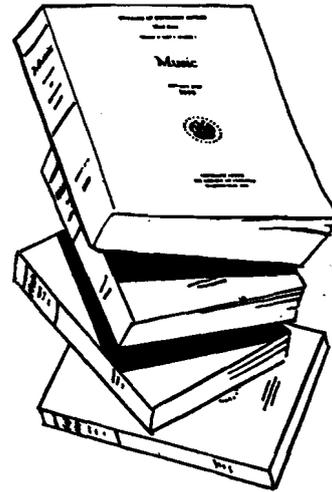
COPYRIGHT LAW REVISION, PART 4—Further Discussions and Comments on Preliminary Draft for Revised U.S. Copyright Law. House Committee Print. 477 pages, December 1964, \$1.25.

COPYRIGHT LAW REVISION, PART 5—1964 Revision Bill with Discussions and Comments. House Committee Print. 350 pages. September 1965. \$1.00.

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. \$1.00.

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.

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Annual Subscription Price, all parts.....	20.00



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, \$2.00.

MOTION PICTURES 1912-1939. Works registered in the Copyright Office in Classes L and M. 1,256 pages. 1951. Buckram, \$18.00.

MOTION PICTURES 1940-1949. Another decade of works registered in Classes L and M. 599 pages. 1953. Buckram, \$10.00.

MOTION PICTURES 1950-1959. Films of the Fifties registered in Classes L and M. 494 pages. Buckram, \$10.00.

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.

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29. Protection of Unpublished Works

30. Duration of Copyright

31. Renewal of Copyright.

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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.

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Subject Index to Studies 1-34.

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Bulletins

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