Richard Rogers Bowker

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BEING A SUMMARY OF THE
PRINCIPLES AND PRACTICE OF COPYRIGHT
WITH SPECIAL REFERENCE TO
THE AMERICAN CODE OF 1909 AND
THE BRITISH ACT OF 1911

BY

RICHARD ROGERS BOWKER



BOSTON AND NEW YORK
HOUGHTON MIFFLIN COMPANY
The Riverside Press Cambridge
1912

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Published March 1912

APR 11 1912

FOREWORD

Copyright progress

THE American copyright code of 1909, comprehensively replacing all previous laws, a gratifying advance in legislation despite its serious restrictions and minor defects, places American copyright practice on a new basis. The new British code, brought before Parliament in 1910, and finally adopted in December, 1911, to be effective July 1, 1912, marks a like forward step for the British Empire, enabling the mother country and its colonies to participate in the Berlin convention. Among the self-governing Dominions made free to accept the British code or legislate independently, Australia had already adopted in 1905 a complete new code, and Canada is following its example in the measure proposed in 1911, which will probably be conformed to the new British code for passage in 1912. Portugal has already in 1911 joined the family of nations by adherence to the Berlin convention, Russia has shaped and Holland is shaping domestic legislation to the same end, and even China in 1910 decreed copyright protection throughout its vast empire of ancient and reviving letters. The Berlin convention of 1908 strengthened and broadened the bond of the International Copyright Union, and the Buenos Aires convention of 1910, which the United States has already ratified, made a new basis for copyright protection throughout the Pan American Union, both freeing authors from formalities beyond those required in the country of origin. Thus the American dream of 1838 of "a universal republic of letters whose foundation shall be one just law" is well on the way toward realization.

Field for the present treatise

In this new stage of copyright development, a comprehensive work on copyright seemed desirable, especially with reference to the new American code. Neither Eaton S. Drone nor George Haven Putnam were disposed to enter upon the task, which has therefore fallen to the present writer. He hopes that his participation for the last twenty-five years in copyright development, — during which, as editor of the *Publishers' Weekly* and of the *Library Journal*, he has had occasion to keep watch of copyright progress, and as vice-president of the American (Authors) Copyright League, he has taken part in the copyright conferences and hearings and in the drafting of the new code, — will serve to make the present volume of use to his fellow members of the Authors Club and to like craftsmen, as well as to publishers and others, and aid in clarifying relations and preventing the waste and cost of litigation among the coördinating factors in the making of books and other forms of intellectual property.

Authorities and ackowledgments

The present work includes some of the historical material of the Bowker-Solberg volume of 1886, "Copyright, its law and its literature." This material has been verified, extended and brought up to date, especially in the somewhat detailed sketch of the copyright discussions and legislation resulting in the "international copyright amendment" of 1891 and the code of 1909. The volume is in this respect practically, and in other respects entirely new. It has had the advantage of the cordial co-operation of the copyright authorities at Washington, especially the Librarian of Congress, Herbert Putnam, and the Register of Copyrights, Thorvald Solberg; also of helpful courtesy from the Canadian Minister of Agriculture in the recent Laurier administration, Sidney Fisher, and the Canadian Registrar of Copyrights, P. E. Rit-

chie, and of Prof. Ernest Röthlisberger, editor of the *Droit d'Auteur*, and one of the best authorities on international copyright. This acknowledgment of obligation is not to be taken as assuming for the work official sanction and authority, though so far as practicable, it reflects the opinions of the best authorities. The writer has also consulted freely—but it is hoped always within the limits of "fair use"—the best law-book writers, especially Drone, Copinger, Colles and Hardy, and MacGillivray, to whom acknowledgment is made in the several chapters. Acknowledgment is also made for the courtesies of Sir Frederick Macmillan, G. Herbert Thring, secretary of the British Society of Authors, and others numerous beyond naming. But most of all the writer is indebted to the intelligent and capable helpfulness of Carl L. Jellinghaus, who as private secretary, has been both right hand and eyes to the writer, and besides participating in the work of research, is largely responsible for the index and other "equipment" of the volume.

Method and form

Copyright law is exceptionally confused and confusing, and even the new American and British codes are not without such defects. Specific subjects are so interdependent that it has been difficult to make clear lines of division among the several chapters, and there is necessarily repetition; it has been the endeavor to concentrate the main discussion in one place, designated in the index by black face figures, with subordinate references in other chapters. Ambiguities in the text of this volume often reflect ambiguities in the laws, particularly of foreign countries. Where acts, decisions, etc., are quoted in the text or given in the appendix, spelling, capitalization, punctuation, headings, etc., follow usually the respective forms, thus involving apparent inconsistencies. Side-headings in the appendix follow usually the official

form, unless shortened to prevent displacement. Translations of foreign conventions follow usually the official text of the translation, but have been corrected or conformed in case of evident error or variance. Citation of cases is confined for the most part to ruling or recent cases or those of historic importance or interest. Though it has not been practicable to verify statements from the copyright laws of so many countries in divers languages, a fairly comprehensive and accurate statement of the *status* of copyright throughout the world is here presented. The present work, originally planned for publication in 1910, has been held back and alterations and insertions made to bring the record of legislation to the close of 1911. For those who wish to keep their copyright knowledge up to date, the *Publishers' Weekly* will endeavor to present information as to the English speaking world, and the monthly issues of the *Droit d'Auteur* of Berne, under the editorship of Prof. Röthlisberger, will be found a comprehensive and adequate guide.

Advocates of authors' rights

The preparation of this work brings a recurring sense of the losses which the copyright cause has suffered during the long campaign for copyright reform, beginning in the American Copyright League, under the presidency of James Russell Lowell, and continued under that of Edmund Clarence Stedman, both of whom have passed over to the majority. Bronson Howard, always active in the counsels of the League as a vice-president, and the foremost advocate of dramatic copyright as president of the American Dramatists Club, failed, like Stedman, to see the fulfillment of his labors in the passage of the act of 1909. George Parsons Lathrop, Edward Eggleston, Richard Watson Gilder, "Mark Twain" and other ardent advocates of the rights of the author, gave large

share of enthusiasm and effort to the cause. Happily the two men who for the last twenty years and more have labored at the working oar for the Authors League and for the Publishers League, are still active in the good work, ready to defend the code against attack and eager to forward every betterment that can be made; to Robert Underwood Johnson, the successor of the lamented Gilder as editor of the *Century*, and to George Haven Putnam, the head of the firm which still bears the name of his honored father, authors the world over owe in great measure the progress which has been made in America toward a higher ideal for the protection of authors' rights.

Copyright evolution

It may be noted that while throughout the British Empire English precedent is naturally followed, the more restrictive American copyright system has unfortunately influenced legislation in Canada and Newfoundland, and in Australia. France, open-handed to authors of other countries, has afforded precedent for the widest international protection and for the international term; while Spain, with the longest term and most liberal arrangements otherwise, has been followed largely by Latin American countries. The International Copyright Union has reached in the Berlin convention almost the ideal of copyright legislation, and this has been closely followed in the Buenos Aires convention of the Pan American Union. The world over, there seems to have been a general evolution of copyright protection from the rude and imperfect recognition of intellectual property as cognate to other property, for a term indefinite and in a sense perpetual, almost impossible of enforcement in the lack of statutory protection and penalties. Systems of legislation, at first of very limited term and of restricted scope, have led up to the comprehensive codes giving wide and definite protection for all

classes of intellectual property for a term of years extending beyond life, with the least possible formalities compatible with the necessities of legal procedure. Unfortunately in the United States of America the forward movement which produced the "international copyright amendment" of 1891 and the code of 1909, conspicuously excellent despite defects of detail, was in some measure offset by retrogression, as in the manufacturing restrictions. Until this policy, which still remains a blot on the 'scutcheon, is abandoned, as the friends of copyright hope may ultimately be the case, the United States of America cannot enter on even terms the family of nations and become part of the United States of the world.

R. R. BOWKER.

December, 1911.

POSTSCRIPT. Since this book has been passing through the press, Cuba has been added to the countries in reciprocal relations with the United States with respect to mechanical music by the President's proclamation of November 27, 1911; Russia has made with France its first copyright treaty, in conformity with the new Russian code of 1911; and the new British code, referred to on p. 33, having passed the House of Commons August 17, passed the House of Lords December 6, and after concurrence by the House of Commons in minor amendments, mostly verbal, became law by Crown approval, December 16, 1911, as noted on p. 374. The text of the act in the appendix follows the official text as it now stands on the English statute books; the summary (pp. 374–80) describes the act as it became law—and the earlier references are in accordance therewith, with a few exceptions. These exceptions mostly concern immaterial changes, made in the House of Lords. Within January, 1912, Brazil has adopted a new measure for international copyright, and a treaty has been signed between the United States and Hungary, the twenty-fifth nation in reciprocal relations with this country.

CONSPECTUS OF COPYRIGHT BY COUNTRIES

Under the names of countries are given dates of the basic and latest amendatory laws. International relations are shown by the name in SMALL CAPS of the convention city where a country is a party to the International Copyright Union or the Pan American conventions, and by the names of countries with which there are specific treaties, excepting those within the union or conventions. The general term of duration is entered, without specification of special terms for specific classes. Places of registration and deposit are indicated by R and D when these are not the same. The number of copies required and in some cases period after publication within which deposit is required are given in parentheses. Notice of copyright or of reservation is indicated. Special exceptions or conditions are noted as far as practicable under remarks. An asterisk indicates that specific exceptions exist.

The International Copyright Union includes (A) under the Berlin convention, 1908 (a) without reservation Germany, Belgium, Luxemburg, Switzerland, Spain, Monaco, Liberia, Haiti, Portugal, and (b) with reservation France, Norway, Tunis, Japan; (B) under the Berne convention, 1886, and the Paris additional act and interpretative declaration, 1896, Denmark, Italy; (C) under the Berne convention, 1886, and the Paris additional act, 1896, Great Britain; (D) under the Berne convention, 1886, and the Paris interpretative declaration, 1896, Sweden. The Pan American conventions agreed on at Mexico City, 1902, Rio de Janeiro, 1906, and Buenos Aires, 1910, have not been ratified except that of Mexico by the United States and by Costa Rica, Guatemala, Honduras, Nicaragua, Salvador, and doubtfully by Cuba and Dominican Republic; that of Rio by a few states insufficient to make it anywhere operative; and that of Buenos Aires by the United States. The South American convention of Montevideo, 1889, has been accepted by Argentina, Paraguay and Uruguay, Peru and Bolivia, and has the adherence (in relation with Argentina and Paraguay only) of Belgium, France, Italy and Spain. The five Central American states have a mutual convention through their Washington treaty of peace of 1907.

Countries Dates of laws	International relations	Duration	Registration and Deposit	Notice	Remarks
North America (ENGLISH-SPEAKING)					**North America: English**
United States 1909	MEXICO, B. '78, Gt. Brit., Eng., China, Den., Fr., Ger., It., Jap., Lux., Nor., Sp., Swe., Switz., Aust., Hol., Port., Chile, Costa R., Cuba, Mex.	28 + 28	Library of Congress (2 "promptly")	"Copyright, 19—, by A. B." or statutory equivalent	Manufacture within U. S. for books, etc.
Canada 1875–1908 [1912 ?]	*See* Gt. Brit.* (Aus. Hung. excepted)	28 + 14	Dept. of Agriculture: Copyright Branch (3)	"Copyright, Canada 19—, by A. B." or signature of artist	Printing and publ. within Canada *
Newfoundland 1890–1899	*See* Gt. Brit.	28 + 14	Colonial Sec. (2)	"Entered, Newf. . . . by A. B." etc. or signature of artist	Printing and publ. within Newf.*
Canal Zone (U. S.)	*See* U. S.				
Porto Rico (U. S.)	*See* U. S.				
Jamaica (Br.) 1887	*See* Gt. Brit.	Life + 7 or 42 *	(3 or 1 * within mo.)	None	
Trinidad (Br.) 1888	*See* Gt. Brit.	Life + 7 or 42 *	Registrar of copyright (3 within mo.)	None	

	Countries Dates of laws	International relations	Duration	Registration and Deposit	Notice	Remarks
Europe: English	Europo					
	Great Britain & Ireland D 1842–1906 I 1844–1886	BERNE-PARIS A U. S., Aus.-Hung.*	Life + 7 or 42 * [Life + 50*]	R Stationers Hall (before suit) * D British Museum (1) + 4 library copies (on demand) *	None* [None]	First or simultaneous publication
	[1911] *				[No registration]	[In effect 1912]
	Isle of Man 1907	*See* Gt. Brit.				
	Channel Isles	*See* Gt. Brit.				
French	France 1793–1910	BERLIN* MONTV.* U. S., Aus.-Hung., Hol., Port., Mont., Roum., Lat. Amer.	Life + 50*	D Ministry of Interior or prefecture (2 before suit) *	None	
	Belgium 1886	BERLIN, MONTV.* U. S., Aus., Hol., Port., Roum., Mex.	Life + 50	None *	None *	
	Luxemburg 1898	BERLIN U. S.	Life + 50 *	None *	None * (res. playr.)	
	Holland 1881 [1912?]	U. S., Belg., Fr.	50 or life *	Dept. of Justice (2 within mo.)	None * (res. trans., playr.)	Printing within Holland
German	Germany 1901–1910	BERLIN U. S., Aus.-Hung.	Life + 30 *	None *	None *	
	Austria 1895, 1907	Hung., U. S., Gt. Brit.,* Belg., Den., Fr., Ger., It., Roum., Swed.	Life + 30 *	None *	None * (res. trans. photos, mus.)	
	Hungary 1884	Aust., Gt. Brit.,* Fr., Ger., It.	Life + 50 *	None *	None * (res. trans. photos)	
Scandinavian	Switzerland 1874, 1883	BERLIN U. S.	Life + 30*	R Office of Intel. Prop. optional *	None * (res. playr.)	
	Denmark 1865–1911	BERNE-PARIS U. S., Aus.	Life + 50 *	None *	None * (photos, res. music)	
	Iceland (Den.) 1905	*See* Denmark				As in Denmark
	Norway 1877–1910	BERLIN * U. S.	Life + 50 *	None *	None * (photos, res. music)	
	Sweden 1897–1908	BERNE-PARIS D U. S., Aus.	Life + 50 *	None	None * (photos, res. playr.	
Russian	Russia 1911	France	Life + 50*		None * (photos, res. trans mus.)	
	Finland 1880	None	Life + 50 *	None *	None *	
Southern	Spain 1879–1896	BERLIN, MONTV.* U. S., Port., Lat. Amer.	Life + 80 *	Register of Intel. Prop. (3 within one year *)	None *	Special provisions
	Portugal 1867, 1886	BERLIN U. S., It., Sp., Bra.	Life + 50 *	Pub. Lib.* (2 before pub.)	None	
	Italy 1882, 1889, 1910	BERNE-PARIS MONTV.* U. S., Aus.-Hung., Mont., Port., Roum., San. Mar., Lat. Amer.	Life or 40 * + 40 *	Prefecture (3 within 3 months) *	None * (res. trans.)	Added 40 yrs. on royalty of 5 p. c.

Countries Dates of laws	International relations	Duration	Registration and Deposit	Notice	Remarks	
San Marino	*See* Italy				As in Italy	**Europe: Minor States**
Monaco 1889, 1896	BERLIN	Life + 50 *	None	None *		
Greece 1833–1910	None	15 + *	D (4 within 10 days *)			
Malta, Cyprus, etc. (Br.)	*See* Gt. Br't.	Life + 7 or 42 *	D (3 within mo.)			
Montenegro	Fr., It.				Uncertain protection	**Balkan States**
Bulgaria 1896?					Uncertain protection	
Servia					No protection	
Roumania 1862–1904	Aus., Belg., Fr., It.	Life + 10	R. Min. of Instruc.			
Turkey 1910	None	Life + 30 *	Min. of Pub. Instruc. (3) *	None.		
Asia						**Asia**
Japan 1899, 1910	BERLIN * U. S., * China	Life + 30 *	R Ministry of Int. (before suit)	None *		
Korea 1908	*See* Japan				As in Japan	
China 1910	U. S., * Japan	Life + 30 *	Ministry of Int. (2)			
Hong-Kong (Br.)	*See* Gt. Brit.	Life + 7 or 42 *	D (3 within mo.)			
Philippines (U. S.)	*See* U. S.					
India, British 1847, 1867	*See* Gt. Brit.	Life + 7 or 42 *	D (3 within mo.)	Printer's and publisher's name on work		
Ceylon, etc. (Br.)	*See* Gt. Brit.	Life + 7 or 42 *	D (3 within mo.) (4 within yr.)			
Siam 1901	None	Life + 7 or 42 *				
Persia	None				No protection	
Africa						**Africa**
Egypt	None	Indefinite			Court protection	
Tunis 1889	BERLIN *	Life + 50 *			As in France	
Algeria (Fr.)	*See* France					
Sierra Leone, etc. (Br.) 1887	*See* Gt. Brit.	Life + 7 or 42 *	D (3) *			
Liberia	BERLIN	Indefinite			Without specific law	
Congo Free State	Belg., Fr. (extradition)				Punishes fraud only	
So. Africa (Br.)	*See* Gt. Brit.* Aus.-Hung., excepted					
Cape Colony 1873–1895		Life + 5 or 30 *	Registrar of Deeds D (4 within mo.) *			
Natal 1895–1898		Life + 7 or 42 *	Colonial Sec., D (2 within 3 mos.) *			
Transvaal, etc. 1887		50 or life *	Registrator D (3 within 2 mos.) *	Reserv. of playr. and trans.	Printing within colony * (?	

	Countries Dates of laws	International relations	Duration	Registration and Deposit	Notice	Remarks
America, Latin: Mexico Central America	**Latin America**					
	Mexico 1871, 1884	U. S., Dom. Rep., Ecu., Belg., Fr., It., Sp.	Perpetuity *	R. Min. Pub. Instruc. D (2) *	None * (res. trans.)	
	Costa Rica 1880–1896	MEXICO U. S., Sp., Fr. Guat., Sal., Hon.	Life + 50 *	Office of Pub. Libs. (3)* witbin yr.) *	None	
	Guatemala 1879	MEXICO Sp., Fr., Costa R.	Perpetuity	Min. of Pub. Educ. (4) *	(res. trans.)	
	Honduras 1894, 1898	MEXICO Costa R.	Indefinite			No specific law
	Nicaragua 1904	MEXICO It.	Perpetuity *	Min. of Agric. (6 *)	(res. trans.)	
	Salvador 1886, 1900	MEXICO Sp., Fr., Costa R.	Life + 25 *	D Min. of Agric. (1 before pub.)	None	Publication within country
	Panama 1904	None	Life+80			As in Colombia
West Indies	Cuba 1879–1909	MEXICO? U. S., It.	Life + 80 *	Dept. of State (3)	None	
	Haiti 1885	BERLIN	Life+ *	D Dept of Int., (5 within yr.)	None	
	Dominican Rep. 1896	MEXICO? Mex.	Uncertain			
South America	Brazil 1891–1901	Portugal	50 * from the 1st Jan. of yr.of pub.	Nat. Lib. (1 within 2 yrs.)	None * (res. playr.)	
	Argentina 1910	MONTEVIDEO Belg., Sp., Fr., It.	Life + 10 *	Nat. Lib. (2 within 15 or 30 days)	None *	
	Uruguay 1868	MONTEVIDEO	Indefinite			No specific law
	Paraguay 1870, 1881, 1910	MONTEVIDEO Belg., Sp., Fr., It.		Public registries		Under penal code
	Chile 1833–1874	U. S.	Life + 5 *	D Nat. Pub. Lib. (3)*	None	
	Peru 1849, 1860	MONTEVIDEO	Life + 20 *	D Pub. Lib. (1) + Dept. Pref. (1)	None	
	Bolivia 1834, 1909	MONTEVIDEO Fr.	Life + 30 *	R Min. of Pub. Instruc. D Pub. Lib. (1 within yr.)		
	Ecuador 1884, 1887	Sp., Fr., Mex.	Life+ 50 *	Min. of Pub. Educ. (3 within 6 mos.)*	None * (res. playr.)	
	Colombia 1886, 1890	Sp., It.	Life + 80 *	Min. of Pub. Educ. (3 within yr.)*	None	
	Venezuela 1894, 1897	None.	Perpetuity	Registry (6)	Notice of patent	
Australasia	**Australasia**					
	Australia (Br.) 1905	*See* Gt. Brit.* Aus.-Hung. excepted	Life + 7 or 42 *	Commonwealth Copyr. Office D (2)	Reserv. performing right	
	New Zealand (Br.) 1842–1903	*See* Gt. Brit.	28 or life *	R Registrar of Coprs.* D libr. of Gen. Assem. (for plays only)		
	Hawaii (U. S.)	*See* U. S.				

CONTENTS

PART I

NATURE AND DEVELOPMENT OF COPYRIGHT

I. THE NATURE AND ORIGIN OF COPYRIGHT 1–7

Copyright meaning, 1 — Its two senses, 1 — Blackstone, 2 — Property by creation, 3 — Property in unpublished works, 4 — The question of publication, 5 — Inherent right, 5 — Statutory penalties, 6 — Statute of Anne, 6 — Supersedure of common law right, 7.

II. THE EARLY HISTORY OF COPYRIGHT 8–23

In classic times, 8 — Roman law, 8 — Monastic copyists, 8 — St. Columba and Finnian, 9 — University protection, 9 — Invention of printing, 10 — In Germany, 10 — In Italy: Venice, 13 —Florence, 17 — Control of Church, 17 — In France, 17 — In England, 19 — The Stationers' Company, 21 — Statutory provisions, 22.

III. THE DEVELOPMENT OF STATUTORY COPYRIGHT IN ENGLAND . . 24–34

The Statute of Anne as foundation, 24 — Its relations to common law, 24 — The crucial case, 25 — The Judges' opinions, 25 — The Lords' decision, 26 — Protests, 26 — Supplementary legislation, 26 — Georgian period, 27 — Legislation under William IV, 28 — Victorian act of 1842, 28 — Protection of designs, 29 — Subsequent acts, 29 — Royal Commission report of 1878, 30 — Later legislation, 31 — International copyright, 31 — Musical copyright, 31 — Conference reports, 1909, 32 — Act of 1911, 32 — Design patents, 33 — Common law rights, 34.

IV. THE HISTORY OF COPYRIGHT IN THE UNITED STATES 35–41

Constitutional provision, 35 — Early state legislation, 35 — Act of 1790, 35 — 1802–1867, 36 — Revised act of 1870, 37 — 1874–1882, 37 — International copyright legislation, 1891, 37 — Private copyright acts, 38 — American possessions, 38 — American code of 1909, 39 — State protection of playright, 39 — Trade-Mark act, 40 — Common law relations, 40.

PART II

LITERARY AND GENERAL COPYRIGHT

V. SCOPE OF COPYRIGHT: RIGHTS AND EXTENT 42–62

General scope, 42 — American provisions, 42 — Oral addresses, 42 — Dramas, 42 — Music, 43 — Previous American law, 43 — Unpublished works, 43 —

Common law scope, 44 — Common law in U. S. practice, 44 — Statutory limitations, 44 — General rights, 45 — Inferential rights, 46 — Differentiated rights, 46— Court protection, 46 — Division of rights, 46 — Analysis of property rights, 47 — Broad interpretation, 48 — Limits of protection, 48 — Differentiated contracts, 48 — Enforcement in limited grants, 49 — Copyright as monopoly, 50 — Altered theory of copyright, 52 — Publishing, 52 —What constitutes publishing, 53 — "Privately printed" works, 53 — Copying, 53 — Vending, 54 — Control of sale, 54 — Macy cases, 55 — Bobbs-Merrill case, 56 — Scribner case, 56 — English underselling case, 57 — Suits under state law, 57 — Translating, 58 — "Other version," 58 — Translating term, 58 — Oral delivery, 59 — "Publicly and for profit," 59 — Material and immaterial property, 60 — Schemes not copyrightable, 61 — New British code, 61 — Foreign statutes, 62 — International provisions, 62.

VI. SUBJECT-MATTER OF COPYRIGHT: WHAT MAY BE COPYRIGHTED . . 63–94

Subject-matter in general, 63 — Classification, 63 — Prints and labels excluded, 64 — All the writings of an author, 64 — Component parts, 64 — Compilations, new editions, etc., 64 — Non-copyrightable works, 65 — Government use, 65 — "Author" and "writing" definitions, 66 — Interpretation by Congress and courts, 66 — Supreme Court decisions, 67 — Originality and merit, 68 — "Book" definitions, 68 — Blank books, 72 — Combinations and arrangements, 73 — Advertisements, 73 — New editions, 75 — Copyright comprehensive, 76 — Non-copyrightable parts excepted, 76 — Book illustrations, 77 — Translations 77 — Translator's rights, 78 — English practice, 79 — Translations in international relations, 79 — Foreign translators, 79 — Abridgments, 80 — Compilations, 81 — Collections, 81 — Titles, 82 — Changed titles, 82 — Titles as trademarks, 83 — "Chatterbox" cases, 84 — Projected titles, 85 — Projected works not copyrightable, 86 — Immoral works, 86 — Periodicals, 87 — Definition of periodicals, 87 — Periodicals under manufacturing clause, 88 — Periodicals copyrightable by numbers, 88 — News, 89 — British periodicals, 90 — Oral works, 90 — Newspaper reports, 91 — Lectures in England, 91 — Letters, 91 — Designs patentable, 93 — Foreign practice, 94 — International definition, 94.

VII. OWNERSHIP OF COPYRIGHT: WHO MAY SECURE COPYRIGHT . . 95–113

Persons named, 95 — The author primarily, 95 — Claimant's right to register, 96 — Employer as author, 97 — Implied ownership, 98 — Protection outside of copyright, 98 — Work in cyclopædias, 99 — Association of author's name, 100 — Added material and alteration, 100 — Separate registration of contributions, 100 — Anonymous works, 101 — Joint authorship, 101 — Corporate bodies, 102 — Posthumous works, 102 — Peary cases, 102 — Renewal rights, 104 — Assignments, 104 — Assignment record, 105 — Substitution of name, 105 — Witnesses, 106 — "Outrights" and renewal, 106 — Proof of proprietorship, 107 — Foreign citizens, 107 — Earlier provisions, 108 — Residence, 108 — Intending citizens, 109 — Time of first publication, 109 — Non-qualified authors, 110 — Foreign ownership, 111 — "Proclaimed" countries, 111 — Buenos Aires convention, 113 — New British code, 113 — Foreign practice, 113.

VIII. DURATION OF COPYRIGHT: TERM AND RENEWAL 114–124
Historic precedent, 114 — Previous American practice, 114 — Term in code of 1909, 115 — Renewal, 115 — Extension of subsisting copyrights, 116 — Assignee of unpublished manuscripts, 116 — Extension of subsisting renewals, 117 — Publishers' equities, 117 — Estoppel of renewal, 118 — Life term and beyond, 118 — Unpublished works, 119 — Publication as date of copyright, 119 — Serial publication, 120 — Joint authorship, 120 — Forfeiture, 121 — Abandonment, 121 — In England, 121 — New British code, 122 — Perpetual copyright, 123 — Other countries, 124 — International standard term, 124 — Special categories, 124.

IX. FORMALITIES OF COPYRIGHT: PUBLICATION, NOTICE, REGISTRATION AND DEPOSIT 125–152
General principles, 125 — Previous American requirements, 125 — Present American basis, 126 — Provisions of 1909, 126 — Publication, 126 — Copyright notice, 127 — Previous statutory form, 128 — Exact phraseology required, 128 — Name, 129 — Date, 129 — Accidental omission, 130 — Place of notice, 131 — One notice sufficient, 131 — Separate volumes, 132 — Different dates, 133 — Extraterritorial notice, 133 — Successive editions, 134 — False copyright notice, 134 — *Ad interim* protection, 135 — Substitution of name, 135 — Registration, 136 — Rules and regulations, 136 — Application, 136 — Certificate, 136 — Application requirements, 137 — Illustrations, 138 — Periodicals, 138 — Application cards, 139 — Certificate cards, 140 — Fees, 141 — Deposit, 142 — Fragment not depositable, 143 — Type-writing publication and deposit, 143 — Legal provisions, 143 — Failure to deposit, 144 — Forfeiture by false affidavit, 144 — Works not reproduced, 144 — Second registration, 145 — Free transportation in mail, 145 — Loss in mail, 145 — Foreign works, 146 — *Ad interim* deposit, 146 — Completion of *ad interim* copyright, 147 — Omission of copyright notice, 148 — Books only *ad interim*, 148 — Exact conformity required, 149 — Expunging from registry, 150 — British formalities, 150 — New British code, 151 — Other countries, 151 — International provisions, 152.

X. THE AMERICAN MANUFACTURING PROVISIONS 153–161
Manufacturing provision of 1891, 153 — Text in 1909 code, 153 — Scope and exceptions, 154 — Changes, 1891–1909, 154 — German-American instances, 155 — Dramas excepted, 155 — Exception of foreign original texts, 156 — Exception of foreign illustrative subjects, 156 — Affidavit requirement, 156 — Avoidance of errors, 157 — Forfeiture by false affidavit, 158 — Exact compliance necessary, 158 — Importation questions, 159 — Foreign manufacturing provisions, 160 — English patent proviso, 161.

PART III

DRAMATIC, MUSICAL AND ARTISTIC COPYRIGHT

XI. DRAMATIC AND MUSICAL COPYRIGHT, INCLUDING PLAYRIGHT . 162–201
Dramatists' and composers' rights, 162 — American provisions, 162 — Rights assured, 163 — Dramatic rights, 163 — Musical rights, 164 — Excepted perform-

ance, 164 — Performance "for profit," 165 — Works not reproduced, 166 — Copyright notice, 166—Dramatico-musical works protected from mechanical reproduction, 166 — Dramatic and musical works excepted from manufacturing provisions, 167 — British colonial practice, 168 — Entry under proper class, 168 — Application and certificates, 168 — Right of dramatization, 169 — Dramatization term, 169 — Musical arrangements, 169 — Transposition, 170 — Works in the public domain, 170 — Dramatization right protected, 170 — English law and practice, 171 — Infringement cases, 172 — Substantial quotations, 173 — Specific scenes or situations, 174 — What is a dramatic composition, 174 — Judge Blatchford's opinion, 175 — Judicial definitions, 175 — Moving pictures, 176 — Literary merit not requisite, 177 — What is a dramatico-musical composition, 177 — Protection of playright, 178 — Protection of unpublished work, 179 — Indeterminate protection, 180 — Printing and performance, 180 — Specific English provisions, 182 — Publication prior to performance, 183 — British international protection, 184 — What is public performance, 185 — Manuscript rights, 186 — Unpublished orchestral score, 187 — Dramatic work by employee, 188 — Copyright term, 188 — Registration, 189 — Assignment, 189 — Parody, 190 — Infringement by single situation, 191 — Protection of title 191 — Names of characters, 192 — Persons liable for infringement, 193 — Protection against "fly by night" companies, 194 — State legislation, 194 — Remedies under present law, 195 — Musical protection in England, 195 — Acts of 1902–1906, 196 — Playright in other countries, 197 — International provisions, 197 — Foreign protection of arrangements, 197 — International definitions, 198 — National formalities, 199 — Specific reservations and conditions, 200 — Pan American Union, 201.

XII. MECHANICAL MUSIC PROVISIONS 202–221

"Canned music" contest, 202 — Mechanical music provisos, 202 — Compulsory license, 203 — Damages, 203 — Public performance, 204 — The compromise result, 204 — Judicial construction, 205 — Punishment of infringement, 206 — Notice of intention to use, 206 — Constitutional question, 207 — English law, 208 — Berne situation, 1886, 209 — Paris, 1896, 209 — Berlin provision, 1908, 209 — German precedents, 210 — Law of 1910, 211 — Germany and the United States, 212 — French precedents, 212 — Belgian precedents, 213 — Italian precedents, 213 — Other countries, 214 — Argument for inclusion, 214 — Inscribed writings, 215 — Direct sound-writings, 216 — Music transmissal, 216 — Music notation, 217 — The law prior to 1909, 218 — Manuscript and copies, 218 — Protection of the inventor, 219 — The counter argument, 220 — Complete protection, 221.

XIII. ARTISTIC COPYRIGHT 222–250

Threefold value in art works, 222 — American provisions, 223 — Copyright Office classification definitions, 223 — The question of exhibition, 224 — Protection of unpublished work, 225 — Copyright notice, 225 — Deposit, 226 — Summary of requirements, 227 — Material and immaterial properties distinct, 228 — Manufacturing clause, 228 — German post-cards, 229 — Artistic merit, unimportant, 229 — Application forms, 229 — Certificates, 230 — Term in unpublished work, 230 — Date not required, 230 — Re-copyright objectionable, 231 — Exhibition right transfer, 231 — Early English decision, 232 — The Werck-

meister leading case, 233 — Unrestricted exhibition hazardous, 234 — Reservation on sale, 234 — Publication construed, 234 — Danger of forfeiture, 235 — Limited use and license, 236 — Character, not method of use, 237 — Illustration, 237 — Description of artistic work, 238 — Portraits, 238 — Right of employer, 239 — Photographs, 240 — *Tableaux vivants* and moving pictures, 241 — Architectural works, 242 — Copy of a copy, 243 — Alterations, 243, 244 — Remedies, 245 — Artistic copyright term, 245 — British practice, 246 — Sculpture provisions, 247 — Engraving provisions, 247 — New British code, 247 — Foreign countries, 248 — Berne convention, 1886, 48 — Paris declaration, 1896, 249 — Berlin convention, 1908, 250 — Exhibition not publication, 250 — Pan American Union, 250.

PART IV

COPYRIGHT PROTECTION AND PROCEDURE

XIV. INFRINGEMENT OF COPYRIGHT: PIRACY, "FAIR USE" AND "UNFAIR COMPETITION" 251–264

Piracy, 251 — Test of piracy, 251 — Infringement in specific meaning, 252 — Questions of fact and intent, 253 — "Fair use," 253 — Principle of infringement, 254 — Infringement by indirect copying, 254 — Exceptions from infringement, 255 — Infringement by abridgment and compilation, 255 — Abridged compilations, 256 — Separation of infringing parts, 256 — Law digests, 257 — Proof from common errors, 257 — Infringement in part, 258 — No infringement of piracies or frauds, 258 — Quotation, 259 — Private use, 259 — "Unfair competition," 260 — Deceptive intent, 260 — "Chatterbox" cases, 261 — Encyclopædia Britannica cases, 261 — Webster Dictionary cases, 261 — "Old Sleuth" cases, 262 — Other title decisions, 262 — Rebound copies, 263 — Kipling case, 263 — Burlesqued title, 264 — Drummond case, 264 — New British code, 264.

XV. REMEDIES AND PROCEDURE 265–277

Protection and procedure, 265 — Injunction, 265 — Damages, 265 — One suit sufficing, 266 — Deposit of infringing articles, 266 — Remedies specified, 267 — Impounding, 268 — Supreme court rules, 268 — Court jurisdiction, 268 — Limitation, 269 — Text of procedure provisions, 270 — Proceedings united in one action, 270 — Jurisdiction, 270 — Injunction provisions, 270 — Appeal, 271 — No criminal proceedings, after three years, 271 — Strict compliance requisite, 271 — Damage not penalty, 272 — Other procedure decisions, 273 — Preventive action, 274 — Party in suit, 274 — Willful case, 275 — Penal provisions, 275 — False notice of copyright, 276 — Allowance of costs, 276 — New British code, 277.

XVI. IMPORTATION OF COPYRIGHTED WORKS 278–296

Copyright and importation, 278 — Fundamental right of exclusion, 278 — General prohibitions, 279 — Exceptions permitted, 279 — Text provisions, 280 — Prohibition of piratical copies, 280 — Permitted importations, 280 — Library importations, 281 — Seizure, 282 — Return of importations, 282 — Rules against unlawful importation, 282 — Supersedure of previous provisions, 283 — Manu-

facturing clause affects earlier copyrights, 283 — Importation of foreign texts, 284 — Printing within country, 285 — Innocent importation, 286 — Books not claiming copyright, 286 — Periodicals, 286 — Composite books, 286 — Rebinding abroad, 287 — Importation of non-copyright translation, 288 — Books dutiable, 288 — Books on free list, 289 — Library free importation, 290 — Copyrights and the free list, 291 — The duty on books, 291 — British prohibition of importation, 292 — Foreign reprints, 293 — Divided market, 293 — New British code, 293 — Canadian practice, 294 — Australian provision, 295 — Foreign practice, 295 — International practice, 296.

XVII. COPYRIGHT OFFICE: METHODS AND PRACTICE 297–310

History of Copyright Office, 297 — Routine of registration, 297 — Treatment of deposits, 298 — Destruction of useless material, 299 — Register of Copyrights, 299 — Catalogues and indexes, 300 — Entry cards, 301 — Text provisions, 302 — Copyright records, 302 — Register and assistant register, 302 — Deposit and report of fees, 302 — Bond, 303 — Annual report, 303 — Seal, 303 — Rules, 303 — Record books, 303 — Certificate, 303 — Receipt for deposits, 304 — Catalogue and index provision, 304 — Distribution and subscriptions, 305 — Records open to inspection, 305 — Preservation of deposits, 305 — Disposal of deposits, 306 — Fees, 307 — Only one registration required, 307 — Present organization, 308 — Efficiency of methods, 308 — Registration, 1909–1910, 309 — Certificates for court use, 309 — Searches, 309 — Patent Office registry for labels, 309 — Foreign practice, 310.

PART V

INTERNATIONAL AND FOREIGN COPYRIGHT

XVIII. INTERNATIONAL COPYRIGHT CONVENTIONS AND ARRANGEMENTS 311–340

International protection of property, 311 — Early copyright protection, 311 — English protection, 311 — Effect of Berne convention, 313 — International literary congresses, 314 — Fundamental proposition, 314 — Preliminary official conference, 1883, 314 — Propositions of 1883, 315 — First official conference, 1884, 316 — Second official conference, 1885, 317 — Third official conference, 1886, 318 — Berne convention, 1886, 318 — Authors and terms, 318 — "Literary and artistic works" defined, 318 — Performing rights, 319 — Other provisions, 319 — Final protocol, 320 — Ratification in 1887, 320 — Paris conference, 1896, 321 — Paris Additional Act, 321 — Paris Interpretative Declaration, 322 — Ratification in 1897, 322 — Berlin conference, 1908, 323 — United States' position, 324 — Welcome of non-unionist countries, 325 — Death of Sir Henry Bergne, 325 — Berlin convention, 1908, 326 — "Literary and artistic works" defined, 326 — Authors' rights, 326 — "Country of origin," 327 — Broadened international protection, 327 — Term, 328 — Performing rights, 328 — Other provisions, 329 — National powers reserved, 329 — Organization provisions, 329 — Ratification in 1910, 330 — Official organ, 330 — Montevideo congress, 1889, 331 — Pan American conferences, 331 — Mexico City conference, 1902, 332 — Mexico convention, 1902, 332 — Indispensable condition, 333 — Special

provisions, 333 — Ratification, 334 — Rio de Janeiro conference, 1906, 334 — Rio provisions, 335 — Ratification, 336 — Buenos Aires conference and convention, 1910, 336 — Attorney General's opinion on ratification, 337 — Relation with importation provisions, 338 — United States international relations, 339 — "Proclaimed" countries, 339 — Mechanical music reciprocity, 340.

XIX. THE INTERNATIONAL COPYRIGHT MOVEMENT IN AMERICA . 341–372

Initial endeavor in America, 1837, 341 — The British address, 341 — Henry Clay report, 1837, 344 — Prophecy of world union, 344 — Clay bills, 1837–42, 346 — Palmerston invitation, 1838, 346 — Efforts, 1840–48, 346 — Everett treaty, 1853, 347 — Morris bills, 1858–60, 348 — International Copyright Association, 1868, 348 — Baldwin bill and report, 1868, 348 — Clarendon treaty, 1870, 349 — Cox bill and resolution, 1871, 349 — The Appleton proposal, 1872, 350 — Philadelphia protest, 1872, 351 — The Bristed proposal, 1872, 351 — Kelley resolution, 1872, 352 — Congressional hearings, 352 — Beck-Sherman bill, 1872, 352— Morrill report, 1873, 353 — Banning Bill, 1874, 353 — The Harper proposal and draft, 1878, 353 — Granville negotiations, 1880, 355 — Robinson and Collins bills, 1882–83, 356 — American Copyright League, 356 — Dorsheimer bill, 1884, 356 — American publishers' sentiment, 357 — Hawley bill, 1885, 358 — Chace bill, 1886, 358 — Congressional hearings, 1886, 359 — Mr. Lowell's epigram, 359 — President Cleveland's second message, 1886, 360 — Campaign of 1887, 360 — Senate passage of Chace bill, 1888, 361, — Bryce bill, 1888, 361 — President Harrison's message, 1889, 361 — Simonds bill and report, 1890, 362 — Senate debate, 1891, 363 — Act of March 4, 1891, 363 — Review of the publishing situation, 364 — Lack of unified policy, 365 — Compromise of 1891, 365 — Need of general revision, 366 — *Ad interim* copyright act, 1905, 366 — Copyright conferences, 1905–06, 367 — President Roosevelt's message, 1905, 368 — Congressional hearings, 1906–08, 369 — Kittredge-Currier reports, 1907, 369 — Smoot-Currier Kittredge-Barchfeld bills, 1907–08, 370 — Washburn, Sulzer, McCall, Currier bills, 1908, 370 — Fourth Congressional hearing, 1909, 371 — Act of March 4, 1909, 371 — Hopes of future progress, 372.

XX. COPYRIGHT THROUGHOUT THE BRITISH EMPIRE 373–397

English and American systems, 373 — First publication and residence, 373 — Variations in copyright terms, 374 — New British code, 374 — Scope and extent, 375 — Publication, 376 — Definition of copyright, 376 — Infringement, 376 — Term, 377 — Ownership, 377 — Deposit copies, 378 — Importation, 378 — Remedies, 378 — General relations, 379 — Acts repealed, 379 — Changes from original bill, 379 — Isle of Man, 380 — Channel Islands, 381 — International relations, 381 — Colonial relations, 381 — Local legislation, 382 — Canadian copyright history, 383 — Dominion of Canada: early acts, 383 — Acts of 1875, 384 — License acts disallowed, 385 — Fisher Act, 1900, 385 — Minor acts, 386 — Short form of notice, 386 — Proposed Canadian copyright code, 1911, 386 — Imperial and Canadian copyright, 388 — Requisites for domestic copyright, 388 — Imperial and local protection, 388 — Additional local protection, 389 — Application for copyright, 389 — Newfoundland, 390 — British West Indies, etc., 391 — Australian code of 1905, 391 — General provisions, 392 — Dramatic and musical works, 393 — Performing right, 393 — Registration and license, 394 —

New Zealand, 394 — Australasia otherwise, 395 — British India, 395 — South Africa, 396 — West coast colonies, 397 — Mediterranean islands, 397.

XXI. COPYRIGHT IN OTHER COUNTRIES 398–429

France, 398 — Belgium, 400 — Luxemburg, 400 — Holland, 401 — Germany, 402 — Austria-Hungary, 405 — Switzerland, 406 — Scandinavian countries, 407 — Russia, 409 — Finland, 409 — Spain, 410 — Portugal, 411 — Italy, 412 — San Marino, 413 — Monaco, 413 — Greece, 414 — Montenegro, 414 — Balkan states, 414 — Turkey, 415 — Japan, 415 — Korea, 416 — China, 417 — Siam, 417 — Asia otherwise, 418 — Tunis, etc., 418 — Egypt, 418 — Liberia, 419 — Africa otherwise, 419 — Latin America, 419 — Mexico, 420 — Central American states, 421 — Interstate and international relations, 422 — Panama, 423 — Cuba, 423 — Haiti, 424 — Dominican Republic, 424 — West Indian colonies, 425 — Brazil, 425 — Argentina, 425 — Paraguay and Uruguay, 426 — Chile, 427 — Peru, 427 — Bolivia, 427 — Ecuador, 428 — Colombia, 429 — Venezuela, 429.

PART VI

BUSINESS RELATIONS AND LITERATURE

XXII. BUSINESS RELATIONS OF COPYRIGHT: AUTHOR AND PUBLISHER 430–452

Copyrights in business relations, 430 — German publishing law of 1901, 430 — The publisher as merchant, 434 — "Outright" transfer, 434 — "Joint adventure," 435 — Risk and profit, 435 — Long price and "net" price, 436 — Equities, 436 — The literary agent, 436 — Usual American contract, 437 — Publishers' obligations, 437 — Reversion of contract, 438 — Scope of contract, 438 — Other works of author, 439 — Standard contract, 439 — Serial rights, 439 — Republication of periodical articles, 440 — Foreign markets, 440 — Contract to do work, 440 — Contract not to write, 441 — Implied obligations, 442 — Contract personal and mutual, 442 — Author's transfer to other publishers, 445 — Proprietary name, 445 — Copies remaining unsold, 446 — Renewal term, 447 — License not assignment, 447 — Author's and publisher's profits, 447 — The publisher's share, 448 — "Author's editions," 449 — Printer's lien, 449 — Compulsory license system, 449 — License payments, 450 — Saving through single publisher, 451 — Copyrights in bankruptcy, 451 — Copyrights in taxation, 452.

XXIII. THE LITERATURE OF COPYRIGHT 453–462

Bibliographical materials, 453 — Early history, 453 — Early American contributions, 454 — Later American pamphleteers, 454 — American treatises, 455 — Copyright Office publications, 455 — Labor report, 456 — English contributions about 1840, 456 — Later English contributions, 457 — English legal treatises, 457 — Birrell's lectures, 458 — MacGillivray's works, 458 — English special treatises, 459 — Parliamentary and Commission reports, 459 — Cyclopædias and digests, 460 — French works, 460 — German works, 460 — Italian works, 461 — Spanish compendium, 461 — International compilations, 462.

APPENDIX

I. UNITED STATES OF AMERICA: COPYRIGHT PROVISIONS . . . 465–516
1. United States Copyright Code of 1909, 465.
2. President's Proclamations, 489.
3. United States Supreme Court Rules, 491.
4. United States Copyright Office Regulations, 495.
Application for copyright, with affidavit form, 511.
5. U. S. Treasury and Post Office Regulations, 513.

II. BRITISH EMPIRE: COPYRIGHT PROVISIONS 517–602
6. British Copyright Act, 1911, 517.
6a. Fine Arts Copyright Act, 1862, 548.
6b. Musical (Summary Proceedings) Copyright Act, 1902, 550.
6c. Musical Copyright Act, 1906, 552.
7. Canadian Copyright Measure, 1911, 555.
8. Australian Copyright Act, 1905, 580.

III. INTERNATIONAL COPYRIGHT UNION: CONVENTIONS 603–632
9. Berne-Paris Conventions, 1886, 1896, 603.
10. Berlin Convention, 1908, 603.

IV. PAN AMERICAN UNION: CONVENTIONS 633–652
11. Montevideo Convention, 1889, 633.
12. Mexico City Convention, 1902, 637.
13. Rio de Janeiro Convention, 1906, 642.
14. Buenos Aires Convention, 1910, 649.

CHRONOLOGICAL TABLE OF LAWS AND CASES, ENGLISH AND AMERICAN 653–675

INDEX 677–709

CONSPECTUS OF COPYRIGHT BY COUNTRIES . . . *precedes* CONTENTS

COPYRIGHT

ITS HISTORY AND ITS LAW

I

THE NATURE AND ORIGIN OF COPYRIGHT

COPYRIGHT (from the Latin *copia*, plenty) means, in general, the right to copy, to make plenty. In its specific application it means the right to multiply copies of those products of th human brain known as literature and art. **Copyright, meaning**

There is another legal sense of the word "copyright" much emphasized by several English justices. Through the low Latin use of the word *copia*, our word "copy" has a secondary and reversed meaning, as the pattern to be copied or made plenty, in which sense the schoolboy copies from the "copy" set in his copy-book, and the modern printer calls for the author's "copy."

Copyright, accordingly, may also mean the right in copy made (whether the original work or a duplication of it), as well as the right to make copies, which by no means goes with the work or any duplicate of it. Said Lord St. Leonards in the case of Jefferys *v.* Boosey in 1854: "When we are talking of the right of an author we must distinguish between the mere right to his manuscript, and to any copy which he may choose to make of it, as his property, just like any other personal chattel, and the right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two **Its two senses**

things. The common law does give a man who has composed a work a right to that composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of forever copying his own composition after he has published it to the world, is a totally different thing." Baron Parke, in the same case, pointed out expressly these two different legal senses of the word copyright, the right *in* copy, a right of possession, always fully protected by the common law, and the right *to* copy, a right of multiplication, which alone has been the subject of special statutory protection.

Blackstone

Blackstone in his Commentaries of 1767, in which the word copyright seems to have been first used, lays down the fundamental principles of copyright as follows: "When a man, by the exertion of his rational powers, has produced an original work, he seems to have clearly a right to dispose of that identical work as he pleases, and any attempt to vary the disposition he has made of it appears to be an invasion of that right. Now the identity of a literary composition consists entirely in the sentiment and the language; the same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited; and no other man (it hath been thought) can have a right to exhibit it, especially for profit, without the author's consent. This consent may, perhaps, be tacitly given to all mankind, when an author suffers his work to be published by another hand, without any claim or reserve

of right, and without stamping on it any marks of ownership; it being then a present to the public, like building a church or bridge, or laying out a new highway."

Property by creation

There is nothing which may more rightfully be called property than the creation of the individual brain. For property (from the Latin *proprius*, own) means a man's very *own*, and there is nothing more his own than the thought, created, made out of no material thing (unless the nerve-food which the brain consumes in the act of thinking be so counted), which uses material things only for its record or manifestation. The best proof of *own*-ership is that if this individual man or woman had not thought this individual thought, realized in writing or in music or in marble, it would not exist. Or if the individual thinking it had put it aside without such record, it would not, in any practical sense, exist. We cannot know what "might have beens" of untold value have been lost to the world where thinkers, such as inventors, have had no inducement or opportunity thus to materialize their thoughts.

Are thoughts created?

It is sometimes said, as a bar to this idea of property, that no thought is new — that every thinker is dependent upon the gifts of nature and the thoughts of other thinkers before him, as every tiller of the soil is dependent upon the land as given by nature and improved by the men who have toiled and tilled before him, — a view of which Henry C. Carey has been the chief exponent in this country. But there is no real analogy — aside from the question whether the denial of individual property in land would not be setting back the hands of progress. If Farmer Jones does not raise potatoes from a piece of land, Farmer Smith can; but Shakespeare cannot write "Paradise lost" nor Milton "Much ado," though before both

Dante dreamed and Boccaccio told his tales. It was because of Milton and Shakespeare writing, not because of Dante and Boccaccio who had written, that these immortal works are treasures of the English tongue. It was the very self of each, *in propria persona*, that gave these form and worth, though they used words that had come down from generations as the common heritage of English-speaking men. Property in a stream of water, as has been pointed out, is not in the atoms of the water but in the flow of the stream.

Property in unpublished works

Property right in unpublished works has never been effectively questioned — a fact which in itself confirms the view that intellectual property is a natural inherent right. The author has "supreme control" over an unpublished work, and his manuscript cannot be utilized by creditors as assets without his consent. "If he lends a copy to another," says Baron Parke, "his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it or publish it, he has a right to enforce that undertaking." The receiver of a letter, to whom the paper containing the writing has undoubtedly been given, has no right to publish or otherwise use the letter without the writer's consent. The theory that by permitting copies to be made, an author dedicates his writing to the public, as an owner of land dedicates a road to the public by permitting public use of it for twenty-one years, overlooks the fact that in so doing the author only conveys to each holder of his book the right to individual use, and not the right to multiply copies, as though the landowner should not give but sell permission to individuals to pass over his road, without any permission to them to sell tickets for the same privilege to other people. The owner of a right does not forfeit a right by selling a privilege.

The question of publication

It is at the moment of publication that the undisputed possessory right passes over into the much disputed right to multiply copies, and that the vexed question of the true theory of copyright property arises. The broad view of literary property holds that the one kind of copyright is involved in the other. The right to have is the right to use. An author cannot use — that is, get beneficial results from — his work, without offering copies for sale. He would be otherwise like the owner of a loaf of bread who was told that the bread was his until he wanted to eat it. That sale would seem to contain "an implied undertaking" that the buyer has liberty to use his copy, but not to multiply it. Peculiarly in this kind of property the right of ownership consists in the right to prevent use of one's property by others without the owner's consent. The right of exclusion seems to be indeed a part of ownership. In the case of land the owner is entitled to prevent trespass, to the extent of a shot-gun, and in the same way the law recognizes the right to use violence, even to the extreme, in preventing others from possession of one's own property of any kind. The owner of a literary property has, however, no physical means of defence or redress; the very act of publication by which he gets a market for his productions opens him to the danger of wider multiplication and publication without his consent. There is, therefore, no kind of property which is so dependent on the help of the law for the protection of the real owner.

Inherent right

The inherent right of authors is a right at what is called common law — that is, natural or customary law. The common law, says Kent, "includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority upon

any express and positive declaration of the will of the legislature." "The common law or *lex non scripta*," says Blackstone, "depends upon its having been used time out of mind; or, in the solemnity of our legal phrase, time whereof the memory of man runneth not to the contrary." So far as concerns the undisputed rights before publication, the copyright laws are auxiliary merely to common law. Rights exist before remedies; remedies are merely invented to enforce rights. "The seeking for the law of the right of property in the law of procedure relating to the remedies," says Copinger in his standard English work on "The law of copyright," "is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein."

Statutory penalties

After the invention of printing it became evident that new methods of procedure must be devised to enforce common law rights. Copyright became, therefore, the subject of statute law, by the passage of laws imposing penalties for a theft which, without such laws, could not be punished.

Statute of Anne

These laws, covering naturally only the country of the author, and specifying a time during which the penalties could be enforced, and providing means of registration by which authors could register their property rights, as the title to a house is registered when it is sold, had an unexpected result. The statute of Anne, which is the foundation of present English copyright law, intended to protect authors' rights by providing penalties against their violation, had the effect of limiting those rights. It was doubtless the intention of those who framed the statute of Anne to establish, for the benefit of authors, specific means of redress. Overlooking apparently the fact that law and equity, as their principles were then

established, enabled authors to use the same means of redress, so far as they held good, which persons suffering wrongs as to other property had, the law was so drawn that in 1774 the English House of Lords (against, however, the weight of one half of English judicial opinion) decided that, instead of giving additional sanction to a formerly existing right, the statute of Anne had substituted a new and lesser right to the exclusion of what the majority of English judges held to have been an old and greater right. Literary and like property to this extent lost the character of copy-*right*, and became the subject of copy-*privilege*, depending on legal enactment for the security of the private owner. American courts, wont to follow English precedent, have rather taken for granted this view of the law of literary property, and our Constitution, in authorizing Congress to secure "for limited times to authors and inventors the exclusive right to their respective writings and discoveries," was evidently drawn from the same point of view, though it does not in itself deny or withdraw the natural rights of the author at common law.

Supersedure of common law right

II

THE EARLY HISTORY OF COPYRIGHT

In classic times

OUR traditions of the blind Homer, singing his Iliad in the multitudinous places of his protean nativity, do not vouchsafe us any information as to the *status* of authors in his day. There seems indeed to be no indication of author's rights or literary property in Greek or earlier literatures. But there is mention in Roman literature of the sale of playright by the dramatic authors, as Terence; and Rome had booksellers who sold copies of poems written out by slaves, and who seem to have been protected by some kind of "courtesy of the trade," since Martial names certain booksellers who had specific poems of his for sale. Horace complains that the Sosius brothers, his publishers, got gold while he got only fame — but this may have been a classic "author's grumble." Cicero in his letters indicates that there was some notion of literary property, and it is probable that some kind of payment was made to authors.

Roman law

The Roman jurist Gaius, probably of the second century, held that where an artist had painted upon a *tabula*, his was the superior right. And this opinion was adopted by Tribonian, chief editor of the code of Justinian, in the sixth century, and was applied in a modern question in respect to John Leech's drawings upon wood.

Monastic copyists

In the early Christian centuries, the monasteries became the seats of learning, and the *scriptorium* or writing room, in connection with the *librarium* or *armarium*, — the armory in which the weapons of the

faith were kept, — was the work-shop of the monkish copyists, sometimes working as a publishing staff under the direction of the *librarius* or *armarius* as chief scribe. The first record of a copyright case is that of Finnian *v.* Columba in 567, chronicled by Adamnan fifty years later and cited by Montalembert in "The monks of the West." St. Columba, in his pre-saintly days, surreptitiously made a copy of a psalter in possession of his teacher Finnian, and the copy was reclaimed, so the tradition relates, under the decision of King Dermott, in the Halls of Tara: "To every cow her calf." The authenticity of the tradition is questioned by other writers, but the phrase gives the pith of the common law doctrine of literary property and indicates that in those early centuries there was a sense of copyright. Monks from other monasteries came to a noted *scriptorium* where a specially authentic or valuable manuscript could be copied, and the privilege of copying sometimes became the basis of an exchange of copies or of a commercial charge. Finally different texts of the same work were compared to obtain a certain or standard text, and the multiplication of such copies became the basis of a publishing and bookselling trade, in secular as well as sacerdotal hands, the development of which is traced in detail by George Haven Putnam in "Books and their makers in the Middle Ages."

St. Columba and Finnian

This development is illustrated in the statutes of 1223 of the University of Paris, providing that the "booksellers of the University" should produce duplicate copies of the texts authorized for the use of the University, and there is indication that payment was made by the University to scholars for the annotation and proof-reading of such texts. In fact, there existed in France in those days a kind of guild of

University protection

libraires jurés or legalized booksellers, under regulation of the University, as a body of publishers and writers having jurisdiction over the copying and censorship of manuscripts. "Letters of patent" of Charles V, 1368, specified fourteen *libraires* and eleven *écrivains* as registered in Paris, and four chief *libraires* had jurisdiction over the calling of the *librarius* and the *stationarius*. The certificate of the correctness of a copy, and perhaps of the right to copy or sell it, may be considered the primitive form of copyright certificate.

Invention of printing

The invention of printing, prior to 1450, made protection of literary property a question of rapidly increasing importance. The new art raised, of course, many new questions wherever the guardians of the law were set to their chronic task of applying old ideas of right to new conditions. The earliest copyright certificate, if it may be so called, in a printed book was that in the re-issue of the tractate of Peter Nigrus printed in 1475, at Esslingen, in which the Bishop of Ratisbon certified the correctness of the copy and his approval. At first "privileges" were granted chiefly to printers, for the reproduction of classic or patristic works, but possibly in some cases as the representatives of living writers; and there are early instances of direct grants to authors, the earliest known being in 1486 in Venice to Sabellico.

In Germany

In Germany, the cradle of the art of printing, whence come the earliest *incunabula* or cradle-books, printing privileges were developed some decades later than in Italy. Koberger, the early Nuremberg printer, whose imprint dates back to 1473, relied rather on the "courtesy of the trade," and indeed made an agreement in 1495 with Kessler of Basel to respect each other's rights. Yet a suit brought in 1480 by Schöffer, who with Fust had established the first

publishing and bookselling business, brought in connection with Fust's heirs against Inkus of Frankfort for the infringement of property rights in certain books, and the issue of a preliminary injunction by a court at Basel, indicated some definite legal *status*. Germany

The first recorded privilege in Germany was issued by the imperial Aulic Council in 1501, to the Rhenish Celtic Sodalitas for the printing of dramas of the nun-poet, Hroswitha, who had been dead for 600 years, as prepared by Celtes of Nuremberg. The imperial privilege covered only the imperial domain, and Celtes in the same year obtained a similar privilege from the magistracy of Frankfort, then the seat of the book-fair, organized there about 1500, afterwards superseded by that at Leipzig. Later, imperial privileges were issued by the Imperial Chancellor in the name of the Emperor, as one in 1510 to the printer Johann Schott of the "*Lectura aurea*." In 1512 Maximilian I granted to the historiographer Johann Stab in Lintz a privilege covering "all works" which he "might cause to be printed," under which he issued licenses on particular books for ten years or less. This grant, however, some authorities consider not a privilege or copyright, but an authorization to license, possibly similar to that which had been granted in 1455 by Frederick III and confirmed later by Maximilian I to Dr. Jacob Össler at Strasburg, perhaps the earliest centre of printing and bookselling, as imperial supervisor of literature and superintendent of printing. In 1512 also, copies or imitations or engravings by Albert Dürer, with forged signature, were ordered confiscated by the magistrates of Nuremberg, though perhaps on grounds of fraud rather than of copyright. But in 1528 Dürer's widow obtained from the Nuremberg authorities exclusive privilege for his works, and in

Germany

that year the magistrates went so far in protecting Dürer's "Proportion" as to restrain another work of the same title and subject, presumably though mistakenly inferred to be an adaptation or imitation, until after the completion and sale of the original work. In 1532 reëngravings of some of Dürer's works were restrained, and when a Latin edition of his "Perspective," printed in Paris, found its way to Nuremberg, the magistrates called the booksellers together, warned them against keeping or selling the unauthorized edition, and sent letters to the magistracy of Strasburg, Frankfort, Leipzig and Antwerp, requesting similar action. Luther in his reforming zeal was the first protestant against authors' wrongs, and in a letter of 1528 complained that "there are many now busying themselves with the spoiling of books through misprinting them," and pleaded for legislation to protect literary producers. In 1531 the city council of Basel enjoined all booksellers from reprinting the books of each other for three years from publication under penalty of one hundred gulden, which illustrates the nature of local legislation, privileging printers as well as other guilds within a city. The protection was usually for short terms and sometimes covered the subject as well as the book, as indicated in the Dürer case.

The coördinate jurisdiction of imperial and local authority continued into the seventeenth century, and besides a special protection of official publications, including church texts and school books, there developed a differentiation between privileged books and protected authors. The imperial city of Frankfort in 1660 passed an ordinance for the protection of "*bücher*" and "*autores*," and an imperial patent of 1685 made the curious distinction between "privileged" and "unprivileged" works, which Pütter,

reputed the German apostle of the modern theory of property in literary productions, writing in 1764, explains as meaning respectively "non-individual" and "individual" (*eigenthümlich*) works, the former those issued under printers' privileges, the latter the works of contemporary authors, copyrightable in our modern sense. At the close of the seventeenth century, the book-fair at Leipzig began to assume dominating importance, and the privileges from the Commission of the Elector of Saxony became more authoritative, perhaps, than the imperial privileges issued from Frankfort. **Germany**

Venice, among whose chief glories were to be the master printers Aldus, was the first and foremost of the Italian states to encourage the new art. The first privilege granted by her Senate, in 1469, indeed antedated the first in Germany by thirty-two years, the first in France by thirty-four years, and the first in England by forty-nine years. This was to John of Speyer, a German printer, for a monopoly for printing in Venice for five years, with prohibition of importation of works printed elsewhere, which he did not live to enjoy. The first known author's copyright was granted September 1, 1486, to Antonio Sabellico, historian to the Republic, of the sole right to publish or authorize the publication of his "Decade of Venetian affairs," not limited in time, with a penalty of five hundred ducats for infringement. In 1491 the Senate gave to the publicist Peter of Ravenna and the publisher of his choice the sole right, without mention of term, to print and sell his "Phœnix," usually cited as the first instance of copyright. In 1493 one Barbaro was granted a privilege for ten years in the work of his deceased brother, and in the same year an editor's copyright was granted to Joannes Nigro for his edition of "Haliabas," his ap- **In Italy: Venice**

Italy

plication being accompanied by a certificate from learned doctors of Padua of its value for the community, and a publisher's copyright to Benaliis on Giustiniani's "Origin of the city of Venice," both apparently without term. In 1494 a privilege to Codeca contained the condition of fair price, and another privilege required publication within a year or at the rate of a folio a day. In 1496 Aldus himself was given the privilege for twenty years of printing any Greek texts, and in 1501, another for ten years of printing in cursive or italic characters, an invention of his own modeled on the handwriting of Boccaccio, a *quasi* patent right; and rights for other languages were granted to other printers.

From 1505 renewals were granted for good cause, as in 1508 to Crasso for his edition of the works of Polifilo, because the wars had prevented due return. The privilege dated sometimes from application, sometimes from publication, and varied in term from one year up, averaging perhaps ten years at the beginning and twenty years toward the close of the sixteenth century. Many of the privileges were conditioned on printing within Venice. Copyright to authors became frequent, as in 1515 on his "Orlando" for his lifetime, to Ariosto, on whose poems an extra term for ten years was granted, in 1535, to his heirs. In 1521 Castellazzo obtained a copyright for his engravings illustrating the Pentateuch and for others which he had in plan; and many musical works were also copyrighted.

It will be seen that before or early in the sixteenth century most of the copyright conditions of later legislation, even in the American code of 1909, had been prophesied in Venice. But the privileges had become so complicated and perplexing that in 1517 the Venetian Senate abolished all printing privi-

leges previously granted and decreed that privileges should thereafter be granted only by two-thirds vote and for a new work (*opus novum*) "never published before," or works hitherto unprivileged. This attempt at reform proved inadequate and indefinite, and in 1533 the first real copyright code was decreed, under which printing was required within Venice, and publication within a year — later modified for larger works to a folio a day. No publisher could apply twice for the same copyright, and a maximum price was fixed from an advance copy by the Bureau of Arts and Industries. Under the restriction of competition, Venetian printers, once the best in the world, fell into "the ruinous and disgraceful practice," according to a decree of 1537, "for the sake of gain" of using "vile paper that would not hold the ink" or permit marginal notes; and the use of good paper that could be written upon without blotting was required, except for works priced under 10 soldi, on penalty of forfeiture of copyright and a fine of 100 ducats. Under the earlier privileges publishers had printed books without consent of the authors or against their will, but in 1545 it was decreed that no copyright should issue unless documentary evidence of the consent of the author or his representatives had been submitted to the Rifformatori, the commission from the University of Padua, appointed the year before as censors upon non-theological works, not covered by the ecclesiastical censors. Italy

A decree in 1548 established a guild of printers and publishers, antedating the charter granted by Queen Mary to the Stationers' Company in London, though later than the organization of the book-fair of Frankfort and of the *libraires jurés* in France; and its regulations, aiding the censorship, incidentally defined literary property and protected copyrights.

Italy

About 1566 there was a provision that works should be registered before publication without charge, and a complete registry of published works was kept in Venice. In 1569 as many as 117 copyright entries were made in Venice, and so few, after the plague years, as seven in 1599. Only two applications are recorded as refused by the Senate. The one recorded instance of punishment for piracy was that on the work of Pappa Alesio of Corfu, wherein the infringer was fined 200 ducats, besides ten ducats for each unauthorized copy printed, and was forbidden to print for ten years.

About 1600 the exodus of printers from Venice was checked by legislation, and in 1603 an elaborate decree provided copyright for twenty years on books first published in Venice, for ten years on books first published in Italy but registered in Venice, or on books not printed in Venice within the previous twenty years, and for five years on books not printed within ten years previous, and also a fine of twenty-five ducats for the false use of "Venetia" in the imprint. Later, as is evidenced by complaints in 1671, deposit copies were required for the libraries of St. Mark and of Padua. By the close of the seventeenth century the provisions for copyright in Venice had become so complicated, according to Putnam, following Brown's historical study of "The Venetian printing press," as to require the following processes, most of them involving a fee: "*testamur* from the ducal secretary; certificate from the Rifformatori of the University of Padua; *imprimatur* from the Chiefs of the Ten; revision by the Superintendent of the Press; revision by the public proof-reader; collation of the original text with the text as printed, by the secretary to the Rifformatori; certificate from the librarian of St. Mark that a copy had been deposited in the

library; examination by experts appointed by the Proveditori to establish the market price of the book."

Florence

Florence was second only to Venice in the production of books and the protection of authors, and the records of Florentine printing show that in the sixteenth century international privileges were sought and obtained. Thus the printer of a Florentine edition of the Pandects, in 1553, obtained privileges also in Spain, France and the two Sicilies, possibly through a Papal grant.

Control by the Church

By 1515, under Leo X, patron of art and letters, the Holy See had asserted its jurisdiction over copyrights and privileges, not only in its own territory, but throughout Italy and Germany, and elsewhere, under pain of spiritual punishments. Fra Felice of Prato, a converted Jew, had obtained from the Pope a privilege for certain Hebrew works valid throughout all Europe, the denial or infringement of which was punishable by excommunication; but he took the precaution to obtain a privilege also from the Venetian authorities. There is other evidence of a compromise policy involving approval from the Church before a secular privilege was granted, especially of theological works. Throughout Catholic countries the *index expurgatorius* banned for the most part the printing of forbidden books; and this made Holland later the chief centre of printing, since the placing of a work in the *index* invited prompt reprint by Dutch publishers. It was perhaps a survival of a requirement for deposit of such books that Holland so long remained the only nation in Europe conditioning copyright on deposit of a copy printed within the country.

In France

In France, after the invention of printing, the functions of the *libraires jurés*, under the authority given by the King through the University of Paris, naturally

France

came to include books, and this relation was continued until the Revolution of 1789. Copyrights throughout this period seem to have been in perpetuity. At the beginning of the fifteenth century, in the times of Louis XII, "letters of the King" forbade booksellers, printers and other persons to "introduce foreign impressions" of the books to which such letters were appended. They were usually issued to printers. In 1537, under Francis I, a work had first to secure "the King's approval given through the royal librarian," a copy must be deposited in the library of the royal château of Blois, and the selling of foreign works was permitted only after approval as worthy of a place in the royal library, — but for these last the library was to pay the usual price. In 1556 a general ordinance of Henry II defined literary property, and publication of condemned books was declared treason. In 1566 the "Ordinance de Moulins" of Charles IX made further definition; and letters patent of Henry III, in 1576, referred back to these earlier ordinances. Infringement of such privileges was punished with especial severity in France, for, as quoted by Lowndes, such conduct was thought "worse than to enter a neighbor's house and steal his goods: for negligence might be imputed to him for permitting the thief to enter: but in the case of piracy of copyright, it was stealing a thing confided to the public honor." Louis XIV in 1682 visited it with corporal punishment, and for a second offence decreed in 1686 also that the offender should be forever disabled from exercising his trade of bookseller or printer.

Copyrights continued in perpetuity until all royal privileges were abolished in 1789 by the National Assembly, after which in July, 1793, a general copyright law was passed, granting copyright to an author for his life and to his heirs for ten years thereafter.

In England, a Royal Printer was appointed in 1504, and to his successor, Richard Pynson, in 1518, the first printing "privilege" was issued, in the form of a prohibition for two years of the printing by any other person of a certain speech to which this first English copyright notice was appended. *Bishop Fell, in his* memoirs on the state of printing in the University of Oxford, states that this University had been granted certain exclusive privileges of transcribing and multiplying books by means of writing; and Lowndes in his early "Historical sketch of the law of copyright," published in 1840 and 1842, cites many early privileges, most commonly for seven years, granted after the invention of printing. In England

An early enactment of Richard III, in 1483, had encouraged the circulation of books by exempting from certain restraints on aliens "any artificer, or merchant stranger, of what nation or country he be, for bringing into this realm, or selling by retail or otherwise, any books written or printed, or for inhabiting within this said realm for the same intent, or any scrivener, alluminor, reader, or printer of such books." But fifty years later, under Henry VIII, this exemption was repealed by an act, "for printers and binders of books," which provided that no persons "resident or inhabitant within this realm shall buy to sell again, any printed books brought from any parts out of the King's obeysance, ready bound in boards, leather, or parchment," or buy "of any stranger born out of the King's obedience, other than of denizens, any manner of printed books brought from any parties beyond the sea, except only by engross, and not by retail"—the buyer to be punished by a fine, of which a moiety was to go to the informer. The act also contained provisions to "reform and redress," through the Chancery judges with

"twelve honest and discreet persons," "too high and unreasonable prices."

Book restriction

The quaint preamble of this act of 1533 sets forth as its "whereas," in reference to the act of Richard III, that "there hath come to this realm sithen the making of the same, a marvelous number of printed books, and daily doth; and the cause of the making of the same provision seemeth to be, for that there were but few books, and few printers within this realm at that time, which could well exercise and occupy the said science and craft of printing; nevertheless, sithen the making of the said provision, many of this realm, being the King's natural subjects, have given them so diligently to learn and exercise the said craft of printing, that at this day there be within this realm a great number cunning and expert in the said science or craft of printing, as able to exercise the said craft in all points, as any stranger in any other realm or country; and furthermore, where there be a great number of the King's subjects within this realm, which live by the craft and mystery of binding of books, and that there be a great multitude well expert in the same, yet all this notwithstanding, there are divers persons that bring from beyond the sea great plenty of printed books, not only in the Latin tongue, but also in our maternal English tongue, some bound in boards, some in leather, and some in parchment, and them sell by retail, whereby many of the King's subjects, being binders of books, and having no other faculty wherewith to get their living, be destitute of work and like to be undone, except some reformation herein be had." This is interesting in connection with the American manufacturing clause.

Henry VIII granted many printing privileges, and in 1530 the first English copyright to an author was

issued to John Palsgrave, who, having prepared a French grammar at his own expense, received a privilege for seven years. In 1533 appeared the first complaint of piracy, that of Wynken de Worde, who obtained the King's privilege for his second edition of Witinton's Grammar, because Peter Trevers had reprinted it from the edition of 1523. Up to the middle of the sixteenth century copyrights were in form printers' licenses, and even in the case cited Palsgrave seems to have been recognized rather because he published his own book than because he wrote it.

Early English protection

The Stationers' Company, created by Henry VIII and chartered under Queen Mary in 1556, though the development of an earlier guild dating from 1403, was in part a device to prevent seditious printing, by prohibiting any printing in England except by those registered in its membership. In 1558, under a second charter, its by-laws provided that every one who printed a book should register it and pay a fee, and those who failed to do this, or who printed another member's book, were to be fined. In 1562 licenses were declared void "if any other has a right," and in 1573 sales of "copy" are entered. The practice had grown up of granting patents or monopolies to persons for a whole class of books; the Stationers' Company itself held that for almanacs up to a very late period, and the Crown has retained that on the Bible and the Book of Common Prayer to the present day. These monopolies were defied, and the Star Chamber decree of 1566, disabling offending printers from exercising their trade and prescribing imprisonment, did not avail. In 1640 the Star Chamber and all the regulations of the press were abolished by the Long Parliament, but the abuse of unlicensed printing led to a new licensing act in 1643, which prohibited printing or importing

The Stationers' Company

without consent of the *owner*, on pain of forfeiture of copies to the owner, and which renewed the order that all books should be entered in the register of the Stationers' Company. The early registers still exist in Stationers' Hall, near Paternoster Row, London, in quaint and almost undecipherable chirography, and some of them have been reissued in *facsimile*. It was against the licensing act of this date that Milton, in 1644, printed his "Areopagitica," but he particularly excepts from his criticism of the act the part providing for "the just retaining of each man his several copy, which God forbid should be gainsaid."

Statutory provisions

In 1649 Parliament provided a penalty of 6*s*. 8*d*. and forfeiture for the reprinting of registered books, and prohibited presses except at London, Finsbury, York, and the universities, and in 1662 it added the requirement of deposit of a copy at the King's library and at each of the universities. To prevent fraudulent changes in a book after licensing, it was further required that a copy be deposited with the licenser at the time of application — apparently the origin of our record-deposit. With the expiration of these acts in 1679, legislative penalties lapsed and piracy became common. Charles II in 1684 renewed the charter of the Stationers' Company, approved its register, and confirmed to proprietors of books "the sole right, power, and privilege and authority of printing, as has been usual heretofore." The licensing act of 1649–62 was revived in 1685, and renewed up to 1694, although the booksellers now petitioned against it, and eleven peers protested against subjecting learning to a mercenary and perhaps ignorant licenser, and destroying the property of authors in their copies. The law lapsed because of the indignation of the Commons against the arbitrary power of the license, but the result was the abolition of statutory penal-

ties, which left the punishment of piracy a matter of damages at common law, requiring a separate action for each copy sold, usually against irresponsible people. Piracy again flourished. The right at common law seems, however, to have been unquestioned, and the Court of Common Pleas held that a plaintiff who had purchased from the executors of an author was owner of the property at common law. Owners of literary property petitioned Parliament, 1703 to 1709, for security and redress, declaring that the property of English authors had always been held as sacred among the traders, that conveyance gave just and legal title, that the property was the same with houses and other estates, and that existing "copies" had cost at least £50,000, and had been used in marriage settlements and were the subsistence of many widows and orphans. This led to the famous statute of Anne, introduced in 1709, and passed March, 1710, "for the encouragement of learning," said to have been drawn in its original form by Swift, which remains the practical foundation of copyright in England and America to-day.

England

III

THE DEVELOPMENT OF STATUTORY COPYRIGHT IN ENGLAND

The statute of Anne as foundation

THE statute of Anne, the foundation of the present copyright system of England and America, which took effect April 10, 1710, gave the author of works then existing, or his assigns, the sole right of printing for twenty-one years from that date and no longer; of works not then printed, for fourteen years and no longer, except in case he were alive at the expiration of that term, when he could have the privilege prolonged for another fourteen years. Penalties were provided, which could not be exacted unless the books were registered with the Stationers' Company, and which must be sued for within three months after the offence. If too high prices were charged, the Queen's officers might order them lowered. A book could not be imported without written consent of the owner of the printing right. The number of deposit copies was increased to nine. The act was not to prejudice any previous rights of the universities and others.

Its relations to common law

This act did not touch the question of rights at common law, and soon after its statutory term of protection on previously printed books expired, in 1731, lawsuits began. The first was that of Eyre *v.* Walker, in which Sir Joseph Jekyll granted, in 1735, an injunction as to "The whole duty of man," which had been first published in 1657, or seventy-eight years before. In this and several other cases the Court of Chancery issued injunctions on the theory that the legal right was unquestioned. But in 1769 the famous

The crucial cases

case of Millar *v.* Taylor, as to the copyright of Thomson's "Seasons," brought directly before the Court of King's Bench the question whether rights at common law still existed, aside from the statute and its period of protection. In this case Lord Mansfield and two other judges held that an author had, at common law, a perpetual copyright, independent of statute, one dissenting justice holding that there was no such property at common law. The copyright was sold by Millar's executors to Becket, who prosecuted Donaldson for piracy and obtained from Lord Chancellor Bathurst a perpetual injunction. In 1774, in the famous case of Donaldson *v.* Becket, this decision was appealed from, and the issue was carried to the highest tribunal, the House of Lords.

The Judges' opinions

The House of Lords propounded five questions to the judges. These, with the replies,[1] were as follows:

I. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed, published and sold the same without his consent? Yes, 10 to 1 that he had the sole right, etc.,— and 8 to 3 that he might bring the action.

II. If the author had such right originally, did the law take it away, upon his printing and publishing such book or literary composition; and might any person afterward reprint and sell, for his own benefit, such book or literary composition against the will of the author? No, 7 to 4.

III. If such action would have lain at common law, is it taken away by the statute of 8th Anne? And is

[1] The votes on these decisions are given differently in the several copyright authorities. These figures are corrected from 4 Burrow's Reports, 2408, the leading English parliamentary reports, and are probably right.

an author, by the said statute, precluded from every remedy, except on the foundation of the said statute and on the terms and conditions prescribed thereby? Yes, 6 to 5.

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

V. Whether this right is any way impeached, restrained, or taken away by the statute of 8th Anne? Yes, 6 to 5.

The Lords' decision

These opinions, that there was perpetual copyright at common law, which was not lost by publication, but that the statute of Anne took away that right and confined remedies to the statutory provisions, were directly contrary to the previous decrees of the courts, and on a motion seconded by the Lord Chancellor, the House of Lords, 22 to 11, reversed the decree in the case at issue. This construction by the Lords, in the case of Donaldson *v.* Becket, of the statute of Anne, has practically "laid down the law" for England and America ever since.

Protests

Two protests against this action deserve note. The first, that of the universities, was met by an act of 1775, which granted to the English and Scotch universities (to which Dublin was added in 1801), and to the colleges of Eton, Westminster and Winchester, perpetual copyright in works bequeathed to and printed by them. The other, that of the booksellers, presented to the Commons February 28, 1774, set forth that the petitioners had invested large sums in the belief of perpetuity of copyright, but a bill for their relief was rejected.

Supplementary legislation

In 1801 an act was passed authorizing suits for damages [at common law, as well as penalties under statute] during the period of protection of the statute,

the need for such a law having been shown in the case of Beckford *v.* Hood in 1798, wherein the court had to "stretch a point" to protect the plaintiff's rights in an anonymous book, which he had not entered in the Stationers' register.

The Georgian period

Meantime, during the Georgian period, there had been much incidental copyright legislation. The provision in the statute of Anne for the limitation of prices was repealed by the act of 1739, which also continued the prohibition of the importation of foreign reprints, further continued in later acts or customs regulations from time to time, until these were disposed of by the statute law revision act of 1867. Copyright had been extended to engravings and prints by successive acts of 1734–5 (8 George II, c. 13), 1766–7 (7 George III, c. 38) and 1777 (17 George III, c. 57); to designs for linen and cotton printing by acts of 1787, 1789 and 1794; to sculpture by acts of 1798 and 1814 (54 George III, c. 56). A private copyright act of 1734 granted to Samuel Buckley, a citizen and stationer of London, sole liberty of printing an improved edition of the histories of Thuanus, and the engravings act of 1767 contained a similar special provision for the widow of Hogarth. In 1814 also, copyright in books was extended to twenty-eight years and the remainder of life, and the author was relieved from delivering the eleven library copies then required, except on demand. The university copyright act of 1775 (15 George III, c. 53), above mentioned, and the other acts given with specific citation above, still constitute, in certain unrepealed provisions, a part of the English law, although others of their provisions and other laws were repealed by later copyright acts or by the statute law revision act of 1861 or that of 1867.

In the reign of William IV the dramatic copyright act of 1833 (3 William IV, c. 15) became, and in part

Legislation under William IV

remains, the basis of copyright in drama. The lectures copyright act of 1835 (5 & 6 William IV, c. 65) for the first time covered that field. In 1836 the prints and engravings copyright (Ireland) act (6 & 7 William IV, c. 59) extended protection to those classes in that country, and another copyright act (6 & 7 William IV, c. 110) reduced the number of library copies required to five. These laws also remain in force, in unrepealed provisions, as a part of British copyright law.

The Victorian act of 1842

In 1841, under the leadership of Serjeant Talfourd, author of "Ion" and other dramatic works, a new copyright bill was presented to the House of Commons, in the preparation of which George Palmer Putnam, the American publisher, then resident in London, had been consulted. It provided for compulsory registration and extended the term to life and thirty years. The bill attracted little attention and met with no opposition until the second reading, when Lord Macaulay, a bachelor, interested in fame rather than profit to an author or his descendants, attacked the bill and "the great debate" ensued. Macaulay offered a bill limiting copyright to the life of the author, but finally assented to a compromise, by which the term was made forty-two years or the life of the author and seven years, whichever the longer. The resulting copyright act of 1842 (5 & 6 Victoria, c. 45) presented a new code of copyright, covering the ground of previous laws, but not in terms repealing them. As a result, provisions not specifically repealed or superseded remained in force, and the act of 1842, though serving since as the basic act, has had to be construed with the previous acts in view. The bill practically preserved, however, the restrictions of the statute of Anne. The term of forty-two years or life and seven years is applied to articles in periodicals, but

the right in these reverts to the author after twenty-eight years. The Judicial Committee of the Privy Council may authorize the publication of a work which after the author's death the proprietor of the copyright refuses to republish.

In the same year, 1842, there was passed also a copyright in designs act, covering designs for articles of manufacture, consolidating previous laws on this specific subject from 1787 to 1839 (two bills in this last year having extended protection to printing designs for woolen and other fabrics and to articles of manufacture generally), and providing for a registrar for such designs, — in which act the careless use of the word "ornamenting" seemed so to limit the scope that an amendatory act was passed in 1843. **Protection of designs**

An international copyright act, introduced in the first year of the Victorian reign, had been passed in 1838, to protect foreign books reprinted in England, but it proved inadequate and was repealed by the subsequent act of 1844 (7 & 8 Victoria, c. 12), providing more comprehensively for international copyright, on the basis of registration and deposit in London. The colonial copyright act of 1847 (10 & 11 Victoria, c. 95) authorized copyright legislation by any colony, subject to the approval of the Crown, and the suspension for such colony of the prohibition of foreign reprints, which act is therefore often cited as the foreign reprints act. An act of 1850 further covered designs and provided for their provisional registration, and one in 1851 protected exhibits at the international exhibition of that year in London. A third international copyright act was passed in 1852 (15 & 16 Victoria, c. 12) covering translations and including an authorization of a special treaty with France. The fine arts copyright act of 1862 (25 & 26 Victoria, c. 68) extended copyright to paintings, drawings, and **Subsequent acts**

photographs, hitherto unprotected, for life and seven years. A fourth international copyright act of 1875 (38 & 39 Victoria, c. 12) protected foreign dramatic works from imitation or adaptation on the English stage, which had been specifically permitted by the previous law, and in the same year "The Canada copyright act" (38 & 39 Victoria, c. 53) gave effect to a Canadian parliament act respecting copyright reprints.

The Royal Commission report of 1878

"The law of England, as to copyright," says the report of the Royal Copyright Commission, in a blue-book of 1878, "consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports." The digest, by Sir James Stephen, appended to this report, is presented by the Commission as "a correct statement of the law as it stands." This digest is one of the most valuable contributions to the literature of copyright, but the frequency with which such phrases occur as "it is probable, but not certain," "it is uncertain," "probably," "it seems," shows the state of the law, "wholly destitute of any sort of arrangement, incomplete, often obscure," as says the report itself. The digest is accompanied, in parallel columns, with alterations suggested by the Commission, and it is much to be regretted that their work failed to reach the expected result of an act of Parliament. The evidence taken by the Commission forms a second blue-book, also of great value.

This report and digest covered legislation through 1875, inclusive of the Canada act. They seem also to have regarded, though the act is not specified in the schedule, the consolidated customs act of 1876 (39 & 40 Victoria, c. 36), which incidentally contained the

provisions for the prohibition of the importation of copyright books.

Later legislation

Despite the recommendations of the Commission and several later endeavors to pass a comprehensive copyright act, — of which the most important was Lord Monkswell's bill introduced into Parliament on behalf of the British Society of Authors, November 16, 1890, and given in full with an analysis by Walter Besant in George Haven Putnam's "Question of copyright" — later legislation in England has been confined practically to two topics, international copyright and the vexed question of musical compositions.

International copyright

The international copyright act of 1886 (49 & 50 Victoria, c. 43), amending and extending, and in part repealing the earlier international copyright acts and provisions, was intended to enable Great Britain, through Orders in Council, to become a party to international agreements, particularly the Berne copyright convention of 1886, ratified in 1887; this was made effective with respect to the eight other countries which were parties to the original Berne convention by the Order in Council of November 28, 1887, taking effect December 6, 1887. The convention was to extend to the British possessions, though with exceptions in some respects. The revenue act of 1889 (52 & 53 Victoria, c. 42) extended the prohibition of importation to foreign works copyrighted under the act of 1886, "printed or reprinted in any country or state" other than that "in which they were first published," if registered as required by the customs authorities.

Musical copyright

The protection of musical compositions was in such confused and unsatisfactory condition that special legislation was necessary. The recent laws on this subject, described in detail in the chapter on dramatic and musical copyright, include the copyright (mu-

sical compositions) act of 1882 (45 & 46 Victoria, c. 40); the copyright (musical compositions) act of 1888 (51 & 52 Victoria, c. 17); the musical (summary proceedings) copyright act of 1902 (2 Edward VII, c. 15); and the musical copyright act of 1906 (6 Edward VII, c. 36), — following the report of the Musical Copyright Committee of 1904, — which successively met imperfections developed in applying the previous law.

Committee report of 1909

After the adoption of the revised international copyright convention signed at Berlin November 13, 1908, modifying the Berne-Paris conventions, a Committee on the law of copyright consisting of seventeen publicists, authors, artists, publishers and others was appointed by minute of March 9, 1909, by the President of the Board of Trade, to consider and report upon the modification of domestic legislation in conformity with the Berlin agreement of 1908. The Committee made a report in December, 1909, strongly advising that domestic legislation be brought into line with international practice and that the copyright term in Great Britain be for life and fifty years. With the report was printed a blue-book of minutes of evidence, containing valuable appendixes which included a *projêt de loi type* (model bill) on copyright, drafted by the International Literary and Artistic Association, aiid an artistic copyright bill drafted by the Artistic Copyright Society.

Imperial copyright conference of 1909

In the early part of 1909 an Imperial copyright conference was also held in London, attended by Crown officials and representatives from all of the self-governing dominions, at which certain resolutions for copyright betterment were adopted. Its minutes and resolutions were also presented to Parliament.

The pending bill

As a result of the deliberations and reports of these two bodies, "a bill to amend and consolidate the law relating to copyright" (1 George V) was introduced

into the House of Commons July 26, 1910, in the names of Mr. Buxton, Mr. Solicitor-General, Colonel Seely and Mr. Tennant, the adoption of which would provide a copyright code similar in extent to the American code of 1909, and applicable throughout the British dominions, with the proviso that the self-governing dominions may accept or modify the code or legislate separately, and providing also for international copyright. The bill adopted most of the features of the Berlin convention including the term of life and fifty years, covered literary, dramatic, musical and artistic works, including architectural works of art, and while distinguishing between first publication and performance, included under copyright acoustic or visual performance or exhibition and control for mechanical reproduction. The bill, somewhat modified, was re-introduced into the subsequent Parliament March 30, 1911, emerged from committee with important alterations July 13, 1911, and was passed with slight additional changes by the House of Commons August 17, and first read in the House of Lords August 18, 1911. On passage of the House of Lords, it becomes effective July 1, 1912, unless earlier date is provided by Order in Council. The bill repeals by specific schedule all existing laws except specified sections in the fine arts copyright act of 1862, the musical copyright acts of 1902 and 1906, and the copyright provisions in the customs consolidation act of 1876 and the revenue act of 1889. The provisions of the new measure are specifically treated and summarized comprehensively in later chapters and the full text is given in the appendix.

Design patents

The bill does not, however, repeal the previous law as to copyright in designs, which had continued to receive consideration during the Victorian reign in laws, later than those cited, of 1858–1861, and thus

finally became merged in the protection of patents. Thus "designs capable of being registered under the patents and designs act, 1907," are specifically excepted under clause 22 of the proposed copyright code.

Common law rights

It seems possible that, under the precedent of the acts of 1775 and 1801, the common law rights practically taken away by the statute of Anne and specifically abrogated by the proposed bill, could have been restored by legislation. These restrictions have not only ruled the practice of England ever since, but they were embodied in the Constitution of the United States, and have influenced alike our legislators and our courts.

IV

THE HISTORY OF COPYRIGHT IN THE UNITED STATES

Constitutional provision

THE Constitution of the United States authorized Congress "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." Previous to its adoption, in 1787, the nation had no power to act, but on Madison's motion, Congress, in May, 1783, recommended the States to pass acts securing copyright for fourteen years.

Early state legislation

Connecticut in January, 1783, Massachusetts in March, 1783, and Maryland in April, 1783, had already provided for copyright, twenty-one years being the usual period. New Jersey on May 27, 1783, and New Hampshire and Rhode Island in December of the same year, followed Madison's suggestion. Pennsylvania and South Carolina in March, 1784, Virginia and North Carolina in 1785, Georgia and New York in 1786, also passed copyright acts, so that all the thirteen States except Vermont had separately provided for copyright, — thanks to the vigorous copyright crusade of Noah Webster, who traveled from capital to capital, — when the United States statute of 1790 made them unnecessary.

The act of 1790

This act followed the precedent of the English act of 1710, and gave to authors who were citizens or residents, their heirs and assigns, copyright in books, maps and charts for fourteen years, with renewal for fourteen years more, if the author were living at expiration of the first term. A printed title must be deposited before publication in the clerk's office of

the local United States District Court; notice must be printed four times in a newspaper within two months after ~~publication~~; a copy must be deposited with the United States Secretary of State within six months after publication; the penalties were forfeiture and a fine of fifty cents for each sheet found, half to go to the United States; a remedy was provided against unauthorized publication of manuscripts.

1802-1867 This original and fundamental act was followed by others — in 1802, requiring copyright record to be printed on or next the title-page, and including designs, engravings and etchings; in 1819, giving United States Circuit Courts original jurisdiction in copyright cases; in 1831 (a consolidation of previous acts), including musical compositions, extending the term to twenty-eight years, with renewal for fourteen years to author, widow, or children, doing away with the newspaper notice except for renewals, and providing for the deposit of a copy with the district clerk (for transmission to the Secretary of State) within three months after publication; in 1834, requiring record of assignment in the court of original entry; in 1846 (the act establishing the Smithsonian Institution), requiring one copy to be delivered to that, and one to the Library of Congress; in 1855, a postal provision for free mailing of deposits; in 1856, securing to dramatists the right of performance; in 1859, repealing the provision of 1846 for the deposit of copies, and making the Interior Department instead of the State Department the copyright custodian; in 1861, providing for appeal in all copyright cases to the Supreme Court; in 1865, including photographs and negatives, and again requiring deposit with the Library of Congress, within one month from publication; in 1867, providing $25 penalty for failure to deposit. This makes twelve acts bearing on copyright up to 1870,

when a general act took the place of all, including "paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine arts." This did away with the local District Court system of registry, and made the Librarian of Congress the copyright officer, with whom printed title must be filed before, and two copies deposited within ten days after, publication. In 1873–4 the copyright act was included in the Revised Statutes as sections 4948 to 4971 (also see secs. 629 and 699), and in 1874 an amendatory act made legal a short form of record, "Copyright, 18—, by A. B.," and relegated labels to the Patent Office. In 1879 the Post Office appropriation bill contained a proviso against the transmission of any publication which violates copyright; in 1882 an amendment dealt with the position of the copyright notice on moulded, decorative articles, etc.

The revised act of 1870

1874-1882

In 1891 there was passed, after a long campaign, the so-called international copyright act, extending copyright to the citizens of other nations in case of reciprocal grants by such nations, and providing that the copyright on books and certain other articles should be conditioned on manufacture in the United States. In 1893 an amendatory act gave the same effect to copies deposited "on or before publication." In 1895 the public documents bill provided that no government publication should be copyrighted, and another bill imposed penalties in the case of infringement of photographs and of original works of art. In 1897 an act provided that unauthorized representation, wilful and for profit, of any dramatic or musical composition is a misdemeanor punishable by imprisonment; another act provided for the appointment of a Register of Copyrights under the direction and supervision of the Librarian of Congress; and a

International copyright legislation, 1891

third act provided penalty for printing false claim of copyright and prohibited the importation of articles bearing a false claim of copyright. In 1904 provision was made for protection to exhibitors of foreign literary, artistic or musical works at the Louisiana Purchase Exposition. A bill of 1905 permitted *ad interim* copyright for one year of books published abroad if registered here within thirty days after publication and bearing notice of reservation.

Private copyright acts

A curious incident in American copyright legislation has been the passage of private copyright acts, nine in all, of which the earliest in 1828, as amended in 1830 and 1843, continued the copyright of John Rowlett "in a useful book, called Rowlett's Tables of discount and interest" from its original publication in 1802 till 1858, — curiously the present period of fifty-six years. In 1849 the copyright of Levi H. Corson in a perpetual calendar or almanac was renewed by special act. In 1854 an appropriation of $10,000 was made to Thomas H. Sumner for his new method of ascertaining a ship's position and the copyright was extinguished. In 1859 a special act gave to "Mistress Henry R. Schoolcraft" and her heirs for fourteen years the right to republish her husband's work on the Indian tribes originally published by order of Congress and to make any abridgement thereof, and a similar special copyright was voted in 1866 for Herndon's "Exploration of the Amazon" for his widow. An act of 1874 authorized the validation of William Tod Helmuth's work on surgery which had been imperfectly entered for copyright two years before, and a ninth private act in 1898 validated for like reason the copyright of Judson Jones in a work on orthoepy.

American possessions

In 1900 the act for the government of the territory of Hawaii repealed the Hawaiian copyright act of 1888 and extended United States copyright to Hawaii.

In the same year the act providing temporary government for Porto Rico extended the copyright laws to that island. In 1904 the Attorney General rendered an opinion that Philippine authors were entitled to United States copyright but that the book must be manufactured within the United States. Hawaii, Porto Rico and the Philippine Islands, as well as Alaska, were later included by name in the jurisdiction of the code of 1909. American copyright was extended to the Canal Zone by War Department order in 1907.

The American code of 1909

Finally, in 1909, there was passed the new copyright code repealing all previous legislation and providing comprehensively for the whole subject of copyright, literary, artistic, dramatic, musical, or other. Under this code copyright is effected by publication with the statutory notice of copyright and completed by registration of two deposit copies sent to the Copyright Office promptly after publication. The manufacturing clause is continued and extended to require printing and binding as well as typesetting within the United States. The musical author is given control over mechanical reproductions though under provision for compulsory license in case he permits any such reproduction. The copyright term is for twenty-eight years with a like renewal term, making fifty-six years. Rights of performance are included under copyright, and unpublished works are specifically protected by special registration. These are the salient features of the code which is stated and discussed in detail in succeeding chapters.

State protection of playright

In line with the dramatic act of 1897, the dramatic authors between 1895 and 1905 procured state legislation in the States of New Hampshire, New York, Louisiana, Oregon, Pennsylvania, Ohio, New Jersey, Massachusetts, Minnesota, California, Wisconsin,

Connecticut and Michigan, differing somewhat in form, to give effect to the federal copyright laws in respect to dramatic performance or to apply the principles of common law through the punishment of dramatic companies disregarding performing rights.

Citations

Citations of all these laws will be found in Appendix A of the report of copyright legislation from the Register of Copyrights, included in the report of the Librarian of Congress for 1904; and the full text of the United States acts, except the later ones, are given in "Copyright Enactments 1783–1904" issued from the Copyright Office in 1905 as Bulletin No. 3, and in a second revised and enlarged edition, extending to 1906, reissued in 1906. The Trade-Mark act of February 20, 1905, supplemented by an act of May 4, 1906, covers the protection of labels, etc., excluded from copyright by the copyright act, and is given, with a list of trade-mark laws of foreign nations, and trade-mark treaties with them, rules, indexes, etc., in a Government publication, entitled "United States Statutes concerning the registry of trade-marks with the rules of the Patent Office relating thereto."

Trade-Mark act

Common law relations

The act of 1790 received an interpretation, in 183[illegible] in the case of Wheaton *v.* Peters (rival law repo[illegible] at the bar of the U. S. Supreme Court, which placed copyright in the United States exactly in the *status* it held in England after the decision of the House of Lords in 1774. The court referred directly to that decision as the ruling precedent, and declared that by the statute of 1790 Congress did not affirm an existing right, but created a right. It stated also that there was no common law of the United States and that (English) common law as to copyright had not been adopted in Pennsylvania, where the case arose. So late as 1880, in Putnam *v.* Pollard, claim was made that this ruling decision did not apply in New York,

which, in its statute of 1786, expressly "provided, that nothing in this act shall extend to, affect, prejudice, or confirm the rights which any person may have to the printing or publishing of any books or pamphlets at common law, in cases not mentioned in this act." But the N. Y. Supreme Court decided that the precedent of Wheaton *v.* Peters nevertheless held. During the discussion of the present copyright code, Edward Everett Hale consulted with other veteran authors whose early works were passing out of copyright, with the intention of bringing a test case for the extension of copyright under common law after the expiration of the statutory period. But on proposing such a case to legal counsel he became assured that such a suit could not be maintained.

Divided opinions

As in the English case of Donaldson *v.* Becket, the decision in the American ruling case of Wheaton *v.* Peters came from a divided court. The opinion was handed down by Justice McLean, three other judges agreeing, Justices Thompson and Baldwin dissenting, a seventh judge being absent. The opinions of the dissenting judges, given in Eaton S. Drone's "A treatise on the law of property in intellectual productions," constitute one of the strongest statements ever made of natural rights in literary property, in opposition to the ruling that the right is solely the creature of the statute. "An author's right," says Justice Thompson, "ought to be esteemed an inviolable right established in sound reason and abstract morality." There seems, indeed, to be a sense of natural copyright among the American Indians; an Ojibwa brave will not sing the song belonging to another tribe or singer, and a Chippewa youth may learn his father's songs, on a customary gift of tobacco, but does not inherit the right to sing them.

V

SCOPE OF COPYRIGHT: RIGHTS AND EXTENT

General scope

THE scope of copyright, or the nature and extent of the right or privilege, may be said to cover at common law identical rights with those in any other property, to use the phrase which, in Siam, transfers these rights to statutory law, but in statutory law must be taken to depend upon the terms of the statute.

American provisions

The new American copyright code, passed March 4, 1909, and in force July 1, 1909, in its fundamental provision broadly sets forth and specifically defines the scope of copyright, by providing (sec. 1): "That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

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

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

Oral addresses

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

Dramas

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

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

Music

"(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced" — which last clause is, however, limited by an elaborate proviso requiring the licensing of mechanical musical reproductions in case the copyright proprietor permits any reproduction by that means, which proviso is given in full in the chapter on mechanical music.

Previous American law

The American law previously defined the scope of copyright (Rev. Stat. sec. 4952), as "the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works." The new code is both broader and more definite.

Unpublished works

The new American code is specific in preserving to an author previous to the publication of his work all common law rights in the comprehensive language (sec. 2): "That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such

unpublished work without his consent, and to obtain damages therefor."

Common law scope

In the Washburn form of the copyright bill it was proposed to include a clause to the effect "that subject to the limitations and conditions of this Act copyright secured hereunder shall be entitled to all the rights and remedies which would be accorded to any other species of property at common law." But this provision was not accepted by the Congressional Committees and does not form part of the copyright code as enacted.

Common law in U. S. practice

The common law of England became the common law of its colonies and finally of the sovereign States of the United States, and common law is therefore administered by the state rather than by the federal courts. In the case of Wheaton *v.* Peters, the U. S. Supreme Court went so far as to say "there is no common law of the United States," but federal courts accept and apply in each State the common law as accepted in that State, and in later years the U. S. Supreme Court has held, as in 1901, in Western Union Tel. Co. *v.* Call Pub. Co., that where there is a conflict between the common law as accepted by different States or where the rule adopted is not in accord with federal courts, the United States courts will recognize and enforce the common law of England. This use by the federal courts, as here pointed out by Justice Brewer, is peculiarly applicable to interstate transactions. The effect of section 2 of the copyright code is to give the federal courts the special authority of Congress to accept and enforce the principles of common law and of equity in the case of unpublished works.

Statutory limitations

But in the case of a published work, the courts have denied to copyright works some of the rights and remedies applicable previous to publication, because

not specifically granted by statute, in accordance with the established rule that no rights or remedies will be allowed by the courts unless specifically granted. But the common law right of the author is recognized by the courts notwithstanding the publication of his work, if that is done without the author's consent. In 1896, in the case of Press Pub. Co. *v.* Monroe, the doctrine was specifically held by the U. S. Circuit Court of Appeals through Judge Lacombe, that the unauthorized publisher may be restrained and damages obtained by civil action, and recovery in such an action will not divest the author of any of his rights or invest any of his rights in the infringer or the public.

General rights

Thus the owner of a copyrightable work may (before publication), as with other personal property, preserve his work exclusively for his own use, or he may (1) print, (2) reprint, (3) publish, (4) copy, or (5) vend it; or

If it be a literary work he may (6) translate it, or (7) make any other version thereof, or (8) dramatize it; or

If a work for oral delivery he may (9) deliver or authorize delivery in public for profit; or

If it be a dramatic work he may (10) convert it into a novel or other non-dramatic form or (11) perform or represent it, or (as in 5) vend any manuscript or record thereof, or (12) make or cause to be made any transcription or record thereof; or (13) exhibit, perform, produce, or reproduce it in any manner or by any method; or

If it be a musical work he may (14) arrange or (15) adapt it, or (as in 11) perform it publicly for profit, or (16) make any arrangement or (17) setting of the melody in any notation or by any form of record (the last subject to the license provision of the statute); or

If a design for a work of art, he may (18) complete, execute, and finish it,

—all these being specifically reserved and granted to the author, although in somewhat complex and overlapping phraseology, by the new American code.

Inferential rights

Or, in utilizing his rights at common law or as above granted by statute, he may (19) give, (20) lend, (21) grant, (22) sell, (23) manufacture, (24) lease or license, (25) mortgage, or (26) devise his work or the use of it, or (27) it may pass by inheritance,—as pointed out by Arthur Steuart, chairman of the Copyright Committee of the American Bar Association, in his argument before the Congressional Committees.

Differentiated rights

Or, as also pointed out by Mr. Steuart, he may "impose upon any of the said estates any condition or limit," as by limiting the use (28) for special purposes, (29) at a special price, or (30) for a special time, or (31) in a special locality, or (32) to a special person.

Court protection

The rights scheduled, adds Mr. Steuart, the courts will protect (a) "in equity by injunction and the recovery of profits"; or (b) "at law by a civil action for trespass or conversion, with a recovery of special damages for actual injury or punitive damages for injury to reputation, or by replevin for the recovery of possession of the work, as well as by any other form of action known to the common law or statute law and proper to the protection of this class of property."

Division of rights

The owner of the copyright of a book may thus publish a limited edition of his book and sell it to whom he may please, or for a specified market. Such specified or divided rights are recognized in Germany as "*getheiltes Verlagsrecht*," in France as "*édition partagée*," and there is specific reference to them in the German copyright law. Some of the specified rights are cognate to the rights of a proprietor of land to sell a piece of land subject to certain restric-

tions, agreed upon with the purchaser or imposed upon the title in the deed of transfer. As in the frequent practice of restricting use for the purposes of a stable or a shop, or requiring that only one house shall be built on a specified number of lots.

Analysis of property rights

In an elaborate discussion of fundamental principles in his opinion in Harper *v.* Donohue, in 1905, affirmed by the Circuit Court of Appeals in 1906, Judge Sanborn analyzed the property rights of an author before publication, after unrestricted publication and after publication under the copyright acts. Among the rights before publication he mentions "the right to sell and assign the author's interest, either absolutely or conditionally, with or without qualification, limitation or restriction, territorial or otherwise, by oral or written transfer. Such literary property is not subject either to execution or taxation, because this might include a forced sale, the very thing the owner has the right to prevent." "Unrestricted publication," he says, "without copyright, is a transfer to the public to do most of the things the author might do, in common with the author, except all right of transfer and sale, which remains to the author; but without advantage, since the work has become, by the publication, common property." "The copyright acts," he concludes, "substantially give the following additional rights: To copyright, and thus secure the sole privilege of unlimited multiplication and sale of copies; to sell or transfer the unlimited right of reproduction, sale and publication, the limited right of serial publication, the right of publication in book form, the right of translation, the right of dramatization or one or more of these rights in specific territory, and the right to secure a copyright either generally, or in one or more countries whose laws permit it, either in the name of the author

or assignee. Also the right to the author to license the sale or other restricted enjoyment of some lesser right, without the power to copyright."

The courts have indeed held to very broad principles as to such rights. In the case of Press Pub. Co. *v.* Monroe, the court said:

Broad interpretation

"The right of property includes the right to transfer the subject of it or any interest in it by gift, grant, or device. And if the fruits of mental effort are regarded as property, like all other possessions, they descend to the legatees, the executors, and administrators of their creditors; they pass by sale or gift to their transferees; the use of them, limited or unlimited, goes to their licensees, and, logically, the power of the State is bound to protect forever the successive owners in the exclusive use and enjoyment thereof."

Limits of protection

Where these latter rights are not specifically granted by statute, the rule has been established by the courts that they will be upheld so far as necessarily inferable from the rights granted and not further. It is under this rule that the greater number of the mooted questions in the application of copyright law have arisen in respect to the scope of copyright. Most of these specific rights are in fact necessary inferences from the statute, in the protection of the property rights therein conferred, but the courts will not go beyond fair construction of the letter of the statute.

Differentiated contracts

In respect to the rights to give, lend, grant, manufacture, lease or license, mortgage or devise copyright property, it may be said that these are subsidiary rights conditioned on and essential to the general right of property in copyrightable or copyrighted material. An author may exercise any of these rights in respect to his unpublished work so far as they are applicable to it, or to his copyrighted work after publication; and either the copyrightable manuscript or

the copyrighted work may pass by inheritance. Thus an author may manufacture, or cause to be manufactured, his unpublished work, and he may retain exclusive control over the manufactured copies so long as he pleases before publishing the work; and after publication (which involves placing on public sale, or publicly distributing) he may exercise these rights negatively by withdrawing his work from further sale. The English law, however, contains a provision that in certain cases the Crown may require continuance of publication.

Enforcement in limited grants

In respect to the right to limit the use of his work under his sale, gift, loan, grant, lease, etc., for a special purpose or at a special price, or for a special time, or in a special locality or to a special person, these powers of limitation, though implied in the grant of copyright, are dependent for their enforcement rather upon the law of contracts than upon copyright law.

There can be no such thing as a copyright for a special purpose or for a special locality, or under other special conditions, for there can be only one copyright, and that a general copyright, in any one work. But specific contracts can be made, enforceable under the law of contracts, as for the sale of a copyrighted book within a certain territory, provided such contracts or limitations are not contrary to other laws. Although record of assignment in the Copyright Office is provided for by the law only for the copyright in general, the separate estates as a right to publish in a periodical and the right to publish as a book may be sold and assigned separately, and the special assignment recorded in the Copyright Office, though this does not convey a right to substitute in the copyright notice a name other than that of the recorded proprietor of the general copyright, which can only be changed as

specifically provided in the law under recorded assignment of the entire copyright.

Copyright as monopoly

Copyright is a monopoly to which the government assures protection in granting the copyright. It is a monopoly not in the offensive sense, but in the sense of private and personal ownership; the public is not the loser but is the gainer by the protection and encouragement given to the author. The whole aim of copyright protection is to permit the author to sell as he pleases and to transfer his rights collectively or severally to such assigns as he may choose. Copyright is a monopoly only in the sense that any ownership is a monopoly. Says Herbert Spencer: "If I am a monopolist, so also are you; so also is every man. If I have no right to those products of my brain, neither have you to those of your hands. No one can become the sole owner of any article whatever; and all property is 'robbery.'" In the copyright debates of 1891, Senator O. H. Platt rightly said: "The very essence of copyright is the privilege of controlling the market. That is the only way in which a man's property in the work of his brain can be assured." And as Senator Evarts pointed out in the same debate: "The sole question is what we shall do concerning something which is the essential nature of copyright and patent protection, namely, monopoly." In discussing patent monopoly and the law of contracts in Victor Talking Machine Co. *v.* The Fair, the U.S. Circuit Court of Appeals, through Judge Baker, said, in 1903, that "within his domain the patentee is czar. The people must take the invention on the terms he dictates or let it alone for seventeen years." Thus as the government grants and guarantees the monopoly, it is not to be taken as in restraint of trade or otherwise contrary to law. Said Judge Cullen in the case of Murphy *v.* Christian Press Association, in the Appellate Division of the

N. Y. Supreme Court, in 1899, decisions as to agreements in restraint of trade "have no application to agreements concerning copyrights and patents, the very object of which is to give monopolies."

Limit only in term

Copyright being in essence a monopoly giving to the copyright proprietor "exclusive rights," as the Constitution provides, the only limitation upon it should be that indicated in the Constitution which confines protection to "limited times." The opponents of copyright have frequently taken the course of falling back upon the plea that in the interests of the public the author should not have exclusive right to his writings and to manage his own affairs, but that Congress should prescribe how he should market his property. This commonly takes shape in the licensing scheme known in England as the Farrer plan and in America as the Pearsall-Smith plan, with respect to books; and in the passage of the "international copyright amendment" of 1891 this plan was made the basis of attack upon the measure. An analysis of the scheme as presented by R. Pearsall-Smith of Philadelphia is given by G. H. Putnam, from the book publisher's point of view, in the "Question of copyright." In the work on "The law and history of copyright," by Augustine Birrell, a member of the present British cabinet, this plan is characterized as a "preposterous scheme." In the case of a book, for instance, a publisher often suggests to the author the general idea of the book, so that it would be doubly unjust to permit any other publisher to issue that book on the compulsory license scheme; and this might hold true, although to less extent, in other fields of copyright. In any event, the original publisher makes large investment not only in type-setting, printing, and binding a book, or in the publishing of any other work, but in advertising and making a

market, and that a rival publisher should have the benefit of this market without paying the cost is a violation of the very essence of property. This scheme, however, is applied, in a limited way and as a compromise, respecting mechanical music, in the American code of 1909, and constitutes its most serious defect. There is question, indeed, whether the compulsory license and fixed price may not be an unconstitutional provision. This matter is more fully discussed in later chapters.

Altered theory of copyright

It should be noted that whereas the previous American law required certain statutory formalities before publication, the new American code somewhat alters the theory of copyright, and more nearly conforms statutory with common law, by making publication with notice the initial copyright act and registration and deposit secondary acts necessary for the completion of the copyright and its protection under the statute.

Publishing

The definition of the date of publication (sec. 62) as "the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority" remedies the vagueness of the previous law and adopts into the statute court decisions to the effect that acts not by the authority of the author or proprietor do not constitute publication in the sense of dedication to the public. In other words, it is made clear that the right to publish inheres in the author and that he cannot be divested of it without his consent. This is the fundamental principle of the new law in the vital matter of protecting the author at the critical point at which an unpublished work, absolutely his own, becomes a published work, subject to statute. In this respect the American code of 1909 comes very close to the acceptance of the right

in intellectual property as a natural and inherent right.

What constitutes publishing

As to what constitutes publishing, interpretation by the courts based on previous law will in many respects be applicable to the new code. A book which has been sold or leased to subscribers on a contract of restricted use is none the less published, as was set forth in the opinion by Chief Judge Parker of the N. Y. Court of Appeals in Jewellers' Mercantile Agency *v.* Jewellers' Weekly Pub. Co. in 1898, and in the opinion by Judge Putnam of the U. S. Circuit Court in Massachusetts in Ladd *v.* Oxnard in 1896, both having reference to credit-rating books leased to subscribers for their individual use.

"Privately printed" works

Publication depends upon sale or offer to the public, and it is a question whether the sale or offer of a copyrightable work, as the proceedings or publications of a society, to the members of that society only, constitutes publication, to be passed upon by the courts in view of the specific facts. A work "privately printed" or with the imprint "printed but not published," given or even sold by the author to his friends, and not sold generally by his authority, would probably not be held to be published; but the courts would probably hold that the sale of a work, though "privately printed," to merely nominal members of a nominal society, made up of the purchasers of the work, would constitute publication and, if without copyright notice, dedication.

Copying

As to the right to copy, this word in the broad sense as interpreted by the courts, covers the duplicating or multiplying of copies within the stated scope of the statute. It was argued in the mechanical music cases that the word copy extends to any form or method of duplication by which the thought of the author can be recorded or conveyed, but, as more fully stated in

the chapter on mechanical music, the U. S. Supreme Court in White-Smith *v.* Apollo Co. in 1908 upheld the decision below that a perforated roll is not a *copy* in fact of staff notation, and thus limited the statutory use of the word to duplication by similar or corresponding process. It was for this reason that such specific phrases as "to make any other version," "to convert," "to arrange or adapt," "to make transcription or record" were included in the new code, although these would be included in the broader sense of the right "to copy."

Vending

The right to vend covers by a comprehensive word, those general rights of sale through which only can the author obtain remuneration for his work. The most important question which has arisen in respect to the application of this word, which is used both in the previous laws and in the present code, has been as to the use of this exclusive right to limit the conditions of sale after the original sale from the author or proprietor as vendor to the immediate vendee. The courts have in general held that the copyright and patent laws, while creating a legal monopoly for the author or original proprietor, do not authorize any continuing control, and have indeed gone so far as to indicate that a sale is absolute and complete unless limited by special contract within the principles of common or statutory law of contracts. In the leading case of Keeler *v.* Standard Folding Bed Co., the U. S. Supreme Court in 1895, through Justice Shiras, said:

Control of sale

"Upon the doctrine of these cases we think it follows that one who buys patented articles of manufacture from one authorized to sell them becomes possessed of an absolute property in such articles, unrestricted in time or place. Whether a patentee may protect himself and his assignees by special con-

tracts brought home to the purchaser is not a question before us and upon which we express no opinion. It is, however, obvious that such a question would arise as a question of contract, and not as one under the inherent meaning and effect of the patent laws."

Specific relation to copyrights: the Macy cases

This question in specific relation to copyrights again came before the U. S. Supreme Court in a series of cases, known as the Macy cases, between Isidor and Nathan Straus doing business as R. H. Macy & Co., on the one side, and the Bobbs-Merrill Co. and Charles Scribner's Sons as the respective defendants.

In both cases, the publishers had sought to maintain the retail price of a book, as a right under the copyright law. The Bobbs-Merrill Co. copyrighted the "Castaway" May 18, 1904, and immediately below the copyright notice printed the following in each copy: "The price of this book at retail is one dollar net. No dealer is licensed to sell it at a less price, and a sale at a less price will be treated as an infringement of the copyright."

The Scribners sought to accomplish the same purpose as to their copyright books by printing in their catalogues, invoices and bills of goods the following notice: "Copyrighted net books published after May 1, 1901, and copyrighted fiction published after February 1, 1902, are sold on condition that prices be maintained as provided by the regulations of the American Publishers' Association."

New dealers were required by the American Publishers' Association, in consideration of a discount allowed by the publisher in question, to enter into an agreement as indicated, but this agreement Macy & Co. refused to accept and they bought books as best they could and sold them at "cut rates," thus induc-

ing dealers from whom the purchases were made to violate the agreement with the publishers.

The Bobbs-Merrill case

In the leading case of Bobbs-Merrill Co., appellant, *v.* Straus, the opinion of the U. S. Supreme Court was delivered June 1, 1908, by Justice Day, who said: "The precise question in this case is, does the sole right to vend (named in section 4952) secure to the owner of the copyright the right, after a sale of the book to a purchaser, to restrict future sales of the book at retail to the right to sell it at a certain price per copy, because of a notice in the book that a sale at a different price will be treated as an infringement, which notice has been brought home to one undertaking to sell for less than the named sum? We do not think the statute can be given such a construction, and it is to be remembered that this is purely a question of statutory construction. There is no claim in this case of contract limitation, nor license agreement controlling the subsequent sales of the book. In our view the copyright statutes, while protecting the owner of the copyright in his right to multiply and sell his production, do not create the right to impose by notice, such as is disclosed in this case, a limitation at which the book shall be sold at retail by future purchasers, with whom there is no privity of contract."

The Scribner case

In the Scribner case the decision delivered on the same day by the same justice, upheld the lower courts in their view, "that there was nothing in any of the notices of a claim of right or reservation under the copyright law," and "that independent of statutory law" the question of relief in equity was not open to the federal courts because there was no diversity of citizenship nor claim above $2000 "requisite to confer jurisdiction of questions of rights independent of the copyright statutes." On the allegations of the

bill as to alleged contributory infringement by inducing dealers to sell in violation of agreement, on which the lower courts held that complainants had not proved an agreement based upon their printed notice, the Supreme Court declined to review the question of fact.

English underselling case

In the English case of Larby *v.* Love, in 1910, however, Justice Bucknill in the King's Bench held the defendant liable for damages for the sale of certain maps to undersellers in disregard of prohibitions specified in the bill of sale.

Suits under state law

The Macy cases included suits in the New York State courts by Straus *v.* American Publishers' Association *et al.*, claiming that the action of the publishers in endeavoring to maintain rates constituted a conspiracy in restraint of trade contrary to the statutes. The N. Y. Court of Appeals held, through Chief Judge Parker, that the agreements would have been free from legal objections if confined solely to copyright publications, but were contrary to the statute in affecting the right of a dealer to sell books not copyrighted at the price he chooses. The copyright side of the question was again pressed in the lower courts and reached the Court of Appeals a second time in 1908, when it was passed upon by a divided court, four to three, Judge Gray for the court declining to review its previous action. The dissenting judges, through Judge Bartlett, held that the decision of the U. S. Supreme Court in the Bobbs-Merrill case did apply in the current case and that the State Court of Appeals should therefore conform its decision to the finding of the federal Supreme Court. The question has been brought into the federal courts in a new series of suits, and it has yet to be finally settled by the U. S. Supreme Court, whether the legal monopoly conferred by the copyright statute safe-

guards the copyright proprietor against certain provisions of the anti-trust laws, state or national.

Translating

The right "to translate into other languages or dialects" is strengthened in the new American code by the addition of the phrase "or to make any other version thereof," and the author is thus given exclusive right and entire control as to translation of his original work by himself or others, without specific reservation of rights except as implied and included in the general copyright notice. The broad phrase "make any other version thereof" may cover not only translation into another language, but into another literary form as from prose into poetry or *vice versa*. No case involving construction of this phrase seems yet to have arisen to be decided by the courts; but the author of a narrative poem, like Owen Meredith's "Lucile" or Tennyson's "Enoch Arden," could probably prevent the transformation of his poetical work into equivalent prose; and a novelist would have probably a like protection in case of an attempt to duplicate or transform his story as a narrative poem. This view is confirmed by the analogous specific protection of the right to dramatize a work or convert a drama into non-dramatic form.

"Other version"

Translating term

The exclusive right "to translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work" are granted by the act for the same period as the term of original copyright and the renewal term, instead of for a shorter period, as ten years, as is the case in certain foreign legislation. The right to translate or to dramatize is separate from the right to copyright a translation or dramatization, as is shown by the fact that a translation or dramatization can be separately copyrighted for a term extending from its own date of

publication and therefore possibly beyond the copyright term of the original work, though on the expiration of the primary copyright any one else may make a translation or dramatization despite the continuing existence of the copyright in the authorized translation or dramatization. These subjects are more specifically discussed for translations under the subject-matter of copyright and for dramatizations under dramatic and musical copyright.

Oral delivery

The exclusive right to deliver orally addresses and similar productions is now specifically included in the American law, as in the laws of some other countries, and probably involves the right to register, before publication, any literary production intended for oral delivery before it is printed in a book or periodical. Thus if Mr. Cable desires to include in his readings, especially if in public for profit, chapters from an unpublished novel, or a poet desires to protect his copyright in a poem which he publicly recites, it may be desirable that he should register such unpublished work under the provisions of the act for that purpose; although it is a generally accepted doctrine that oral delivery does not constitute publication, and that the matter orally delivered may thus be protected at common law.

"Publicly and for profit"

It should be noted that in the case of a lecture or other work for oral delivery and of a musical composition, the exclusive right is given for its delivery or performance "publicly and for profit," and in the case of a drama, "publicly," the words for profit being, probably by inadvertence, omitted. There is some question, therefore, whether a copyrighted lecture, drama, or musical composition can be given without consent of the author privately, or, except in the case of a drama, gratuitously before the public. In view of the special exception (sec. 28) exempting oratorios,

etc., performed for charitable or educational purposes and not for profit, from authorization or payment, as well as on general principles of construction, it would seem probable that the courts would protect the author of a lecture, drama, or musical composition, except in such instances as a private rendering in a private house, to which there was not public admission and at which no fee was charged or collection taken. The cases bearing on this point are given in the later chapter on dramatic and musical copyright.

Material and immaterial property

The American code adopts into the law an important distinction as between the property in the material and the immaterial rights, hitherto somewhat uncertain, in the following provision (sec. 41): "That the copyright is distinct from the property in the material object copyrighted, and the sale, or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained."

The negative provision in this section was inserted in the new copyright law apparently to differentiate it from patent law with the intent of preventing the proprietor of a copyrighted work from controlling the conditions of sale after copies had left his possession. It is doubtful what, if any, effect this provision may have, as the phrase "lawfully obtained" would scarcely have the result of limiting and annulling contractual conditions of sale. The innocent purchase of a stolen book would not relieve the purchaser from the necessity of returning the stolen property to its proper owner, although as far as intent, know-

ledge, and payment are concerned, he would have "lawfully obtained" it.

Schemes not copyrightable

The scope of copyright cannot be extended to cover a business or other scheme described in a copyrighted book, as was held in 1906 in Burk *v.* Johnson by the Circuit Court of Appeals in denying relief under copyright protection to the originator of a mutual burial association who copyrighted the articles of association.

The new British code

The new British measure defines copyright to mean "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever and in any language," thus assuring rights of translation hitherto imperfect or doubtful; "to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work"; and specifically includes the sole right of dramatization (from an "artistic," as well as other non-dramatic work), novelization, and reproduction by mechanical means (though with compulsory license provision as to reproduced music). A copyright may be assigned or licensed "either wholly or partially, and either generally or subject to limitations to any particular country, and either for the whole term of the copyright or for any part thereof."

"Copyright or any similar right in any literary dramatic musical or artistic work, whether published or unpublished," is expressly denied "otherwise than under and in accordance with the provisions of this Act" or other statutory enactment; and thus common law seems to be totally abrogated. Hitherto common law property in an unpublished work has been absolute and co-existed with statutory remedies up to publication, as was strongly upheld in 1908 in Mansell *v.* Valley Printing Co. in the English Court of Appeal.

As to published works, the new code continues the settled law reiterated as late as 1910 in Monckton v. The Gramaphone Co., where Justice Joyce in the Chancery Division denied the common law claim of the author of a song printed with prohibition of mechanical production, on the ground that after publication there was no copyright except as given by statute.

Foreign statutes

The statutes of foreign countries are in general of similar scope, though with variations of extent and phraseology in the several countries. The broadest seems to be that of Siam, above cited, translating common law rights into statutory privilege, though that country also contradictorily limits copyright in books by a manufacturing clause. Spain specifically protects works produced or published by "any kind of impression or reproduction known now or subsequently invented," as elsewhere quoted. France specifically gives an author right to assign his property in whole or in part — a right which is probably included in other countries under the general construction of statutory rights in property.

International provisions

The international copyright convention, as modified at Berlin, does not define the scope of copyright, but insures for authors the enjoyment of such rights as the domestic laws accord to natives; but in its several articles it makes specific provision as to representation, translation, adaptation, mechanical reproduction, etc., as set forth in the chapter on international copyright convention.

Common law, or a crude equivalent for it, as enforced by the courts, seems to extend copyright protection, in the absence of specific legislation, in Montenegro, Egypt and Liberia, Honduras, the Dominican Republic, and Uruguay, as formerly in Argentina.

VI

SUBJECT-MATTER OF COPYRIGHT: WHAT MAY BE COPYRIGHTED

Subject-matter in general

THE subject-matter of copyright should include, in the nature of things, those products of invention, creations of the human brain, which are realized and utilized immaterially through material records, and not, as in the case of patents, materially through the material itself. Copyrightable works, in brief, are those which appeal from the imagination to the imagination, or in which intellectual labor combines immaterial product into new form. What may be copyrighted specifically and practically depends, under present conditions of law, upon the statutory provisions, national or international, of the several nations of the world.

Classification

The new American code gives the following classification of copyrightable works:

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

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

"(b) Periodicals, including newspapers;

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

"(d) Dramatic or dramatico-musical compositions;

"(e) Musical compositions;

"(f) Maps;

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

"(h) Reproductions of a work of art;

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

"(j) Photographs;

"(k) Prints and pictorial illustrations:

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

Prints and labels excluded

Prints or labels "not connected with the fine arts," but "designed to be used for any other articles of manufacture," are subject only to registration in the Patent Office in accordance with the act of June 18, 1874.

All the writings of an author

It is enacted (sec. 4): "That the works for which copyright may be secured under this Act shall include all the writings of an author," thus linking the phraseology of the law with the provision in the Constitution of the United States in which the word "writings" is used, with the effect of construing that word by the classification above cited.

Component parts

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

Compilations, new editions, etc.

It is also enacted (sec. 6): "That compilations or abridgments, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when pro-

duced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works."

Non-copyrightable works

The provisions of the law regarding the subject-matter of copyright are completed by the negative provision:

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

Government use

It is not to be inferred from the provision as to Government publications, that the United States has itself a right to use copyright material without consent of the copyright proprietor. The sovereignty of the nation is not to transgress the rights of private property, unless in the necessary exercise of war or police powers, as the sovereign state cannot take land over which it is theoretically sovereign from a private

owner except for public purposes and then only by condemnation proceedings at law and with fair remuneration to the proprietor. No right of eminent domain in respect to copyrights is asserted by the United States, and the provision means only that material, otherwise copyrightable, furnished by a public officer or otherwise to the Government, becoming the property of the Government, is put freely at the service of the people.

"Author" and "writing" definitions

The constitutional provision is thus given the broadest interpretation in the act. In the narrow sense the dictionaries define "author" as "one who composes or writes a *book*" (Webster), and "writing" variously as "a record made *by hand*," "a production of the *pen*," "any expression of thought in *visible words*" (Century); "anything expressed in *letters*" (Webster, Stormonth, Standard); "a written paper," "a legal instrument" (Johnson); "a literary production" (Chambers); "forming by the hand letters or characters on paper or other suitable substance" (Bouvier's Law Dictionary); "words made *legible* by any device," "a document, whether manuscript or printed, as opposed to mere spoken words" (Rapalje and Lawrence, Law Dict.); "expression of ideas by visible letters" (Anderson's Dict. of Law). For years Massachusetts voters cast a handwriting ballot, until the courts held that a printed ballot fulfilled the "written ballot" requirement of the Massachusetts constitution. But in the wider sense an author is "a creator, an originator" (Webster, Standard), and a writing is the record or expression of a thought or idea.

Interpretation by Congress and courts

Congress, upheld by the courts, had specifically included (law of 1870) under "writings" in the Constitution a "statue," "statuary," "model," without requiring the artist to make a preliminary sketch (if that be specifically a writing) — otherwise, as sculp-

tors are not "inventors" making "discoveries," they could not be protected at all; and in other countries protection has been extended to oral delivery of an address presumably but not necessarily written. It might be claimed, under a restrictive interpretation of the Constitution, that only works specifically relating to "science and useful arts" might be protected, although literature and the fine arts are admittedly especial subjects of copyright. While it is for the judiciary and not for the legislature to construe or interpret the Constitution, the right of Congress to pass laws based upon its understanding of the Constitution, subject to the final decision of the federal courts, has not been challenged. And the code of 1909 by its classification (sec. 5) and its inclusive clause (sec. 4) is most comprehensive in this respect.

Supreme Court decisions

The U. S. Supreme Court, in 1884, in the decision of Burrow-Giles Lith. Co. *v.* Sarony, extending the principles of the copyright act to cover photographs, said through Justice Miller: "By 'writings' is meant the literary productions of those authors, and Congress very properly has declared these to include all forms of writings, printing, engraving, etching, etc., by which the ideas in the mind of the author are given visible expression. The only reason why photographs were not included in the extended list of 1802 is probably that they did not exist, as photography as an art was then unknown." It seems evident that the phrase "visible expression" as used in this decision was intended to give a broad definition and not to narrow the definition by the exclusion, for instance, of "audible expression," as otherwise the *performance* of a drama or of a musical composition could not be included under copyright protection. This view is confirmed by the later decision of the same court, in 1899, in Holmes *v.* Hurst: "It is the intellectual pro-

duction of the author which the copyright protects, and not the particular form which such production ultimately takes; and the word 'book' is not to be understood in its technical sense as a bound volume, but any species of publication which the author selects to embody his literary product."

Originality and merit

The courts are disposed to extend copyright to any work involving intellectual labor or brain skill, without emphasizing originality or literary merit. In the important case of Walter *v.* Lane, in which a *verbatim* report of Lord Rosebery's speeches was protected, by decision of the House of Lords, in 1900, Lord Chancellor Halsbury said: "Although I think in these compositions (*i.e.* the work of the stenographer) there is literary merit and intellectual labor, yet the statute seems to me to require neither — nor originality either in thought or language . . . the right in my view is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit, or of no merit whatever."

"Book" definitions

The word "book" covers the great body of copyright property, and has been many times the subject of judicial construction giving the most comprehensive meaning to the term. The English judges early held that protection "could not depend upon the form of the publication"; "that a composition on a single sheet might well be a book within the meaning of the legislature"; and that "any composition, whether large or small, is a book within the meaning of this act." The English law of 1842 afterward specifically construed the word "book" "to mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart or plan, separately published." The law of the United States makes no definition of the term, except by specifically including as books "composite

and cyclopædic works, directories, gazetteers, and other compilations"; but our judges have agreed with the English view, Judge Thompson holding, in 1828, in Clayton *v.* Stone, that a "book" may be printed "only on one sheet," and that "the literary property intended to be protected by the Act is not to be determined by the size, form or shape . . . but by the subject-matter," and Judge Leavitt, in 1862, in Drury *v.* Ewing, that a diagram for cutting dresses, with directions, printed on a single sheet, being "the product of thought and mental toil," was a "book" within the benefit of the law.

Inclusions adjudicated

In fact, though all English and American statutes have been avowedly for "the encouragement of learning" and "the progress of science and useful arts," the courts have construed the laws to cover in the widest sense any "useful book." The courts have indeed denied copyright protection only to works having absolutely no literary quality, such as advertisements (unless they contain original literary matter) and advertising cuts, labels, blank books, or blank forms. Even booksellers' and other trade catalogues, having descriptive notes or distinctive arrangement and combination, can be copyrighted. Compilations of existing materials, from common sources, arranged and combined in an original and useful form, receive the same protection as wholly original matter. Drone schedules English or American judicial constructions extending this principle to: (1) general miscellaneous compilations; (2) annotations consisting of common materials; (3) dictionaries; (4) books of chronology; (5) gazetteers; (6) itineraries, road and guide books; (7) directories; (8) map and charts; (9) calendars; (10) catalogues; (11) mathematical tables; (12) a list of hounds; (13) abstracts of titles to lands; and collections of (14) statistics, (15) statu-

tory forms, (16) recipes, and (17) designs — several of which classes are now specifically included in the new American statute. Later decisions have confirmed several of these categories and have specified also (18) trotting records; (19) racing charts; (20) newspaper reports of public speeches; (21) telegraphic codes; (22) mining reports; (23) a tradesman's alphabetical list of wares; (24) a list of public documents; (25) mathematical calculations; (26) legal forms; (27) an application form for membership; (28) compilations of railroad time-tables; (29) commercial circulars, protected by a Canadian decision; (30) school registers, and (31) stud book list of horses.

Exclusions adjudicated

On the other hand, the courts have declined to include as proper subjects of copyright (a) methods or plans, as for compiling credit-ratings or systems, as in the case of (b) shorthand, (c) trading stamps or coupons as described in a copyrighted advertising pamphlet, or (d) of letter-file indexes; (e) a sleeve pattern chart; (f) the face of a barometer; (g) a railway ticket designed for punching; (h) a day's sporting tips; (i) blank books; or (j) blank forms, as a cricket score-card; and (k) monograms.

Inclusions defined

In the new Rules and Regulations of the Copyright Office promulgated as approved by the Librarian of Congress in 1910 as Bulletin No. 15, it is said as to books:

"(4, *a*) *Books*. — This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term 'book' as used in the law includes tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables, etc., single poems, and the words of

a song when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopædias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers."

Exclusions defined

On the other hand, definitions are made negatively that:

"(5) The term 'book' can not be applied to —

"Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and check books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions.

"Directions on scales, or dials, or mathematical or other instruments; puzzles; games; rebuses; labels; wrappers; formulæ on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles.

"Advertisements or catalogues which merely set forth the names, prices, and places where articles are for sale.

"Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books.

"Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as 'books' or as 'prints' according to the nature of the copyrightable matter."

The Rules also make the following negative definitions:

"(12) No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles."

The definition of other classes of subject-matter given in the new Rules and Regulations of the Copyright Office, including that of maps, will be found in the chapters on dramatic and musical copyright and on artistic copyright.

Blank books

In the case of Everson *v.* Young, then Librarian of Congress, Judge Cole, of the Supreme Court of the District of Columbia, in 1889, refused a mandamus against the copyright officer while admitting that "the librarian had no discretion" on the ground that mandamus "will not be used to order a vain thing to be done" and that a blank book "containing not a single English sentence" is not a subject of copyright.

"The copyright statutes," as is said in Circular Letter no. 32 of the Copyright Office, "in designating the classes of articles which may be registered in this office do not mention blank forms or blank books. The United States courts which have jurisdiction in cases arising under the copyright laws have held that blank forms or blank books or similar articles *for use in themselves* are not subject to copyright, and hence are not registrable in this office. A bill was introduced in Congress in 1904 proposing to extend the protection of the copyright law to vouchers, certificates, or other business forms, wholly or partly printed. But the measure was not favorably acted upon and did not become law." This exclusion does not refer to such publications as an insurance policy or a legal document, on which blank spaces are to be filled in, which

are accepted as proper subject-matter for copyright by the Copyright Office.

Combinations and arrangements

The copyright under certain categories above scheduled may be in the combination and arrangement only, or it may be also in any original material included with other material. Quantity is not an essential element in copyright so much as "substantial importance." An English court protected a passage of only sixty words.

Advertisements

In respect to advertisements and advertising matter as such, the new American code is silent, and court decisions, mostly English, have been contradictory. In 1863 Vice-Chancellor Page Wood, in Hotten *v.* Arthur, "found no difficulty" in deciding that a catalogue of old books was a subject of copyright "notwithstanding that the catalogues were for the purpose of advertising the plaintiffs' stock-in-trade, and were not in themselves offered for sale"; but in 1872 Lord Romilly, in Cobbett *v.* Woodward, made an absolutely contrary decision, saying: "But at the last, it comes round to this, that there is no copyright in an advertisement. If you copy the advertisement of another, you do him no wrong in doing so, unless you lead the public to believe that you sell the articles of the person whose advertisement you copy." This last decision was definitely overruled and in 1882, in Maple *v.* Junior Army & Navy Stores, the English Court of Appeal, in protecting an advertising catalogue consisting mostly of engravings of furniture, said through Justice Jessel: "The case which has done all the mischief is Cobbett *v.* Woodward . . . I think that is not law. I am not aware that the use to which a proprietor puts his book makes any difference in his rights." In 1906, in Davis *v.* Benjamin, the Chancery Division held a sheet of advertising illustrations with headlines and prices a book.

Undistinctive advertising not protectable

An advertisement *per se* of an ordinary character, the courts may decline to protect, either on behalf of the advertiser or of the publisher of the periodical in which it appears; thus possibly ordinary advertisements might be copied by another paper, to give an inflated impression of its advertising patronage unless enjoined for intent to deceive. On the other hand, characteristic advertisements, as those for which department stores pay large sums to advertisement writers, could doubtless be copyrighted to prevent their use by rival firms, though the advertiser would scarcely be interested in preventing the wide diffusion of his advertisement with his name by its gratuitous publication elsewhere. Some street-car advertisements, however, bear copyright notices. Whether the proprietor of a copyrighted periodical could prevent the use of a copyrightable advertisement not protected by specific copyright, in a rival newspaper, would be questionable, though a publisher might be granted an injunction for the combination or arrangement of copyrightable advertisements in his periodical. In 1892, in Lamb *v.* Evans, Lord Justice Lindley, in the English Court of Appeal, said: "I do not see myself the difficulty in the publisher's having a copyright in a sheet of advertisements. I do see a difficulty in his having a copyright in one advertisement, because, as Mr. Justice Chitty pointed out, that might prevent the advertiser from republishing his advertisements in another paper, which is absurd." An advertisement appearing in several publications, some of them not copyrighted, could only be protected in these latter by specific copyright notice, even though covered in the copyrighted periodicals as a component part. The Copyright Office can make no clear line of demarcation in advance as to advertisements, but it has declined in a recent instance to accept for regis-

try recipes printed on tin and inserted in packages of flour to advertise the flour, which could scarcely be accepted as a "book" or other copyrightable matter.

New editions are protected under the American code as new works (sec. 6), to the extent that they include new material; and this is in accord with the whole trend of court decisions. In 1852 Vice-Chancellor Kindersley stated the doctrine that "if a man prints a second edition, not being a mere reprint of the first edition, but containing considerable and material alterations and additions, *quoad* those, it is a new work." So in 1870, in Black *v.* Murray & Son, Lockhart's edition of Scott's "Border Minstrelsy" was protected, on Lord President Inglis' decision, to the full extent of the notes: "Questions of great nicety and difficulty may arise as to how far a new edition of a work is a proper subject of copyright at all; but that must always depend upon circumstances. A new edition of a book may be a mere reprint of an old edition, and plainly that would not entitle the author to a new term of copyright running from the date of the new edition. On the other hand, the new edition of a book may be so enlarged and improved as to constitute in reality a new work, and that just as clearly will entitle the author to a copyright running from the date of the new edition." A few colorable alterations or unimportant notes may not justify a new copyright; a Scotch justice, however, contended that Walter Scott's change of a single word in "Glenallan's Earl" authorized a copyright for the new edition, though another law lord differed, and the case was decided on other grounds. It is doubtful indeed whether there can be protection of a single word, a question which arose in the *Belgravia* case, unless having association in the public mind as a trade-mark. In any event, the copyright on a new

New editions

edition, whether made by re-writing, extending, condensing, annotating, or otherwise altering, runs independently of the term of the original or any other edition, covers only the new parts, and cannot prevent the issue by others of the original or any other edition on which copyright has expired. This is made entirely clear in the new code (sec. 6).

Copyright comprehensive

"A book must include every part of the book; it must include every print, design, or engraving which forms part of the book, as well as the letter-press therein, which is another part of it," according to the ruling decision of Vice-Chancellor Parker, in 1852, in the English case of Bogue *v.* Houlston. To the same effect Drone says: "The copyright protects the whole and all the parts and contents of a book: when the book comprises a number of independent compositions, each of the latter is as fully protected as the whole." The copyright under the new law protects (sec. 3) "all the copyrightable component parts of the work copyrighted." The practice of some publishers in copyrighting a magazine and also specific articles or engravings seems, therefore, a work of doubtful expediency. The new law specifically gives to the proprietor of "composite works or periodicals" (sec. 3) "all the rights in respect thereto which he would have if each part were individually copyrighted."

Non-copyrightable parts excepted

On the other hand, copyright cannot extend to any part of a book not subject in itself to copyright, even under the old law, and the new law (sec. 3) is perfectly plain. The general copyright is not, however, vitiated as to copyrightable portions by its seeming to cover non-copyrightable portions, as was held by Lord Kenyon, in 1801, in Cary *v.* Longman. But when copyright is claimed on a work partly composed of uncopyrightable matter the courts may require the

claimant, on interrogatories, to designate which parts are and which are not original. "If the parts cannot be separated," says Drone, "it would seem that copyright will not vest in any of it." The new code is to the same effect.

Book illustrations

The application of these principles to the protection of a "new edition" which is new only with respect to added illustrations, is very simple. It is only the new illustrations which can be copyrighted, and it is matter for question whether the endeavor to protect an edition of unaltered text by a general copyright notice which really covers only a few added illustrations would not be a false use of the copyright notice. A proper copyright notice on an illustrated book will, however, protect the illustrations against indirect as well as direct reproduction; thus in 1908 in Harper *v.* Kalem, Judge Lacombe in the U. S. Circuit Court in New York protected certain illustrations in "Ben Hur" against their reproduction in moving pictures.

Translations

In respect to translations, the new American law is specific, not only in its mention of "translations" (sec. 6), but in giving (sec. 1, b) the exclusive right "to translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work." The early American precedent was the case of "Uncle Tom's cabin," in 1853, in which Mrs. Stowe had copyrighted not only the original work, but a German translation which she had provided; Justice Grier in the U. S. Circuit Court held that she could not recover against one Thomas who was issuing another German translation, since it was not "*copies* of her *book*." This case was previous to the statute permitting authors to reserve the right of translation, and the new code as above cited fully protects translations. The author of a copyrighted

work thus has the exclusive right to translate his work, or license its translation, into any other language, and under such a license the translator with the consent of the author would have the right to copyright his translation. Where the author employs a translator for hire, the copyright in the translation may be secured by the author of the original work, but under ordinary circumstances the copyright in the translation would be secured by or on behalf of the translator. In case of contest on this point, the issue would be a question of contract, and in the absence of contract or specific assent the courts would doubtless base their decisions on the circumstances of the case so far as they could be held to imply contract. The inclusion of the notice of copyright of the original work on a translation, without specific copyright of the translation itself, would be held, it seems probable, to protect the translation under the author's original copyright; but this would limit the copyright term on the translation to the copyright term of the original work, and for this and other reasons a specific copyright on each translation is desirable, in which case the notice of copyright of the original work need not be given on the translation.

Translator's rights

In the case of the translation of a copyright work, the author of the original work has the right to prevent other translations, but the translator has no such right to prevent translation by another translator except as exclusive right to translate is conveyed or implied to him by the author of the original work. A work in the public domain, as a non-copyright work or a work on which copyright has expired, may be translated by any one and the translation copyrighted, but such translator would not have the right to prevent translation by another translator.

In England, while the right of translation may be

reserved under the international copyright act by notice on the title-page, an English author could reserve his right of translation only by providing such translation, but the new code gives the full right. English practice

The American provisions as to translations apply with especial importance to international relations. "The original text of a book of foreign origin in a language or languages other than English" is copyrightable in America without manufacture here; and such a work, duly copyrighted, can only be translated into English or any other language by authority of the foreign author or his assigns, and such translation in English or any other language can be copyrighted only when manufactured in this country as provided in the act. If the original text of a foreign work is not duly copyrighted under the American law, then translation is open to any one and copyright can be secured only for the particular translation copyrighted, as above stated, and this cannot prevent independent translation into the same or any other language. Thus, a German original duly copyrighted may not be translated into English, French, or any other language without authority of the copyright proprietor, nor can an English translation be made, for instance, from a French translation of the copyrighted work; but any number of translations of the copyrighted German work into English or any other language may be separately copyrighted under the American law, subject to the manufacturing clause, if duly authorized by the copyright proprietor, and each translator could only prevent the copying of his particular translation or the translation of his own version into another language. Translations in international relations

A translation can be copyrighted by a translator only in case he is a citizen of a country with which the United States has copyright relations or is a resi- Foreign translators

dent of this country; thus a Swedish translation by a citizen of Sweden not resident in the United States could not be copyrighted unless the translator had been "employed for hire" by the author or proprietor of the original copyrighted work. If the entire copyright of the original work had been sold by the author to a citizen of Sweden, not a resident in the United States, it would seem to follow that the latter could not copyright a translation though he might retain the right to prevent unauthorized translation under the general copyright which he had purchased. In the case of an authorized independent translation made by a Swedish citizen not resident here, the general notice of copyright of the original work might be utilized to protect the translation, but in such case copies not manufactured in the United States could not be imported into this country; while if such authorized translation bore no copyright notice and were imported into the United States by the author or with his consent, it is probable that this translation, but not the original work or another translation from either, would be freed from copyright protection.

Abridgments

In respect to abridgments, these are specifically mentioned (sec. 6) as copyrightable works, and by inference from this clause and the provision (sec. 1) giving an author the exclusive right to "make any other version," the author or proprietor of a literary work may prevent abridgment of his work. The courts had held to precedents which the best writers, such as Curtis, Drone and Copinger, declare to be contradictory to the true principles of copyright law. In 1740 Lord Hardwicke, deciding against a mere reprint, "colorably shortened only," of Sir Matthew Hale's "Pleas of the Crown," declared that he would not restrain "a real and fair abridgment," and in 1774 Lord Chancellor Apsley, after consulta-

tion with Blackstone, held that an abridgment of Hawkesworth's "Voyages," involving understanding and skill, was not plagiarism or a copyright wrong, but "an allowable and meritorious work." In the leading American case of Story's "Commentaries," Story *v.* Holcombe, in 1847, in the U. S. Supreme Court, Justice McLean, while expressing his own opinion that "an abridgment, if fairly made, contains the principle of the original work, and this constitutes its value," added, "but a contrary doctrine has long been established in England . . . and in this country the same doctrine has prevailed. I am, therefore, bound by precedent, and I yield to it in this instance, more as a principle of law than a rule of reason or justice." Similarly, in Lawrence *v.* Dana, in 1869, Judge Clifford, in the U. S. Circuit Court, declared that "an abridgment ought to be regarded as an infringement . . . but the opposite doctrine has been too long established to be considered open to controversy." The language of the new code frees the courts from these precedents and settles the American law.

Compilations

In respect to compilations, these are protected by specific mention (sec. 6) in the new law, and also by the classification as books (sec. 5, a) of "composite and cyclopædic works, directories, gazetteers, and other compilations." Compilations can be protected even if consisting solely of non-copyright material, "because of the originality, arrangement, selection, abridgment, or amplification of such simple material," as stated in the Scotch Court of Session, in the case of Lennie *v.* Pillans in 1843, with which later English and American decisions are in accord.

Collections

Collections are copyrightable as compilations or otherwise, and where the use of copyrighted poems or other copyright material is permitted, these are protected by general copyright notice on the collection.

Permission to use a copyrighted poem, for instance, in a specified collection does not grant a license to use it in other form, though it could be used in a combination of such collections. In 1896, in Gabriel *v.* McCabe, Judge Grosscup in the U. S. Circuit Court in Illinois held that the licensor could not prevent the use of a song licensed for a particular collection in a combination of this collection in another collection or in an abridged edition of the collection, though an "abridgment" involving a reprint of the song by itself would have been an unfair use of the license.

Titles

As to titles, which are not mentioned in the new code, both English and American court decisions are broadly and generally, though with some exceptions, to the effect that there is no copyright protection for the title of a book *per se*, but it may be considered an essential part of the book. Judge Shepley held, in 1872, in his elaborate discussion of the question of titles in Osgood *v.* Allen as to the periodical *Our Young Folks*, that "the right secured is the property in the literary composition — the product of the mind and genius of the author — and not in the name or title given to it. The title does not necessarily involve any literary composition; it may not be, and certainly the statute does not require that it should be, the product of the author's mind. . . . It is a mere appendage, which only identifies, and frequently does not in any way describe, the literary composition itself. . . . If there were no piracy of the copyrighted book there would be no remedy . . . for the use of a title which could not be copyrighted independently of the book." Judge Lacombe accepted this view in his decision of the "Trilby" case, cited beyond.

Changed titles

Conversely, the publication of a copyrighted work under a changed title, with the original notice of copyright, would probably not invalidate the copyright,

though it would make identification more difficult and prevent the copyright certificate being *prima facie* proof; and change of title is a practice altogether reprehensible. A new copyright of the same book changed only in title, with a new copyright notice of later date, could scarcely be construed as a new edition and in the absence of the original copyright notice the copyright might thus be abandoned or forfeited and the work be dedicated to the public.

General titles

General titles cannot in any way be protected. The publishers of the "*Bibliographie Universelle*," in France, the "Post-Office Directory," in England, and of "Irving's Works," in America, were all defeated in attempts to prevent the use of those titles.

Titles as trade-marks

Titles are rather to be considered as trade-marks, which may be registered in the United States under the Trade-Mark acts of 1905–6, and protected by the statutory penalties, or may be protected on general principles of equity. This doctrine was early upheld by the English courts, especially in regard to periodicals, as in the titles of *Bell's Life* and the *London Journal*, and again came before the courts in the important case of Weldon *v.* Dicks, as to the specific title of the novel "Trial and triumph," in which case, in 1878, Vice-Chancellor Malins enjoined quite another book under the same title, though the title was chosen in ignorance of the first book and in entire good faith. So, also, as to the title "Splendid misery," used by Miss Braddon in 1879, Sir James Bacon, in the Chancery suit of Dicks *v.* Yates, in 1881, was inclined to support the claim of C. H. Hazelwood, who had used the title in 1874, until it was shown that a forgotten novelist named Purr had used it in 1801, so that it had become, in a measure, common property.

In the several American "Chatterbox" cases,

"Chatterbox" cases

Judge Wheeler's early decision restraining the use of this "name or word, or any name or word substantially identical therewith," in or upon any juveniles of the general character of the English book of that name, was followed by Judge Shipman, in 1887, in Estes *v.* Worthington, in the U. S. Circuit Court in New York, who also held that the word "Chatterbox" had become "a well-known trade-mark designating a well-known series," published in a distinctive style and enjoined the rival publication, simulating the external style, but of different contents. These decisions previous to 1891, resting on principles of trade-mark and not of copyright, indirectly assured a measure of international copyright.

Other title decisions

In 1888 the publishers of *Life* and of "The good things of *Life*" obtained an injunction from the N. Y. Supreme Court, in Mitchell & Miller *v.* White & Allen, to restrain the publication of "The spice of life," as seemingly a continuation or counterpart of the authorized collection of extracts from that periodical. In 1904, in Gannet *v.* Rupert, Judge Coxe in the U. S. Circuit Court of Appeals in New York, on suit of the publishers of *Comfort*, restrained the use of the title *Home Comfort* on a rival periodical "not as a case of unfair competition" but as "founded on a technical common law trade-mark"; and characterized the name as "a badge of origin and genuineness. It is as much a part of the proprietor's property as his counting room or printing press. A rival publisher has no more right to appropriate the name of its owner," — despite the defence that *Comfort* is "a standard English word not fanciful or manufactured." This defence had precedent in the doubt expressed by Lord Cairns in 1867 in the *Belgravia* case, cited beyond, as to copyright protection of a single word, and in the decision of Judge Curtis in Isaacs *v.* Daly, in the N. Y. Superior

Court in 1874, as to the drama "Charity," that "the use of the word 'Charity' as a designation for any work of art or literature cannot ordinarily be monopolized by any one person"; but under trade-mark law a single word associated by registry or in the public mind with a well-known product, may undoubtedly be protected as against misleading use of the word otherwise. The courts will go even farther in preventing the use of a title by another person with intent to deceive or to utilize the reputation of another work or author, as a fraud upon the public, or as unfair competition, without reference specifically to trade-mark principles. Thus Judge Newburger of the N. Y. Supreme Court, in 1910, in Eliot and Collier *v.* Jones and the Circle Publishing Company, restrained the issue under the title "Dr. Eliot's five-foot shelf" of books by the defendants of a set of books selected by and issued under the authority of President Eliot of Harvard, under arrangement with the co-plaintiff. The English rulings are to the like effect, that while a title has no copyright protection except as part of a book, the use of a title to attract purchasers on the supposition that they are getting another book previously known by that title is a fraud punishable at common law. Further citations of cases on these points are given in the chapter on infringement.

Projected titles

There can be no claim to protection for the title of an unpublished book, as a trade-mark or otherwise, just as there can be no copyright in a projected book. This question was elaborately discussed in the leading English case of Maxwell *v.* Hogg, in 1867, in relation to the magazine *Belgravia*, when the rule was laid down that no matter what expenditure had been made or advertising done, a title was not protectable previous to its association with a work actually before the public. Judge Shepley, in 1872, pointed out

that "there is no such thing as property in a trade-mark as an abstract name," for a trade-mark simply shows that certain goods "were manufactured by a certain person." Nor can an abandoned title, in the case of a periodical, be held against a person starting a new periodical of that name, providing it does not purport to be a continuation of the old, according to a French case quoted by English authorities.

Projected works not copyrightable

There can be no statutory copyright in a book or other work projected and not yet prepared, despite a very general notion that under the old law a projected book could be protected by registering a title and depositing a title-page of an unwritten or unpublished book. There is nothing in copyright law corresponding to the *caveat* in patent law. This is not in conflict with the protection of an unpublished work at common law or in equity referred to in the new American code (sec. 2) or the provision in the new law (sec. 11) permitting the registration of "a lecture or similar production or a dramatic or musical composition" or a work of art, before publication, with the deposit of a complete copy or identifying print.

Immoral works

There can be no copyright in an immoral book, and Lord Eldon, in Southey *v.* Sherwood, carried this doctrine so far as to deny the common law right of an author in a non-innocent manuscript, because there could be no right to hold what there was no right to sell. His opinion, resulting in the wide sale of a book which the author desired to suppress, has been severely criticised by later authorities. In the American case of Broder *v.* Zeno Mauvais Music Co., Judge Morrow, in the U. S. Circuit Court in California, in 1898, held that as a song which the plaintiff sought to protect contained indecent words, it was not entitled to protection under the copyright law. There can be no copyright in blasphemous, seditious, or libelous

books; but though this rule was very strictly enforced by English judges a century ago, the later courts hesitate to rule strictly on this point, lest the rule be perverted to sectarianism or despotism. There can be no copyright in books involving fraud, as those which spuriously obtain salable value by being represented to be the work of writers who did not write them, or to contain matter which they do not contain; but this rule does not extend to books under assumed names or innocently pretending to be what they are not, as when Horace Walpole's "Castle of Otranto" was put forward as a translation from the Italian.

Periodicals

In addition to the inclusion of "composite works," the new American law specifically covers (sec. 5, b) "periodicals, including newspapers," and by other provisions of the law above cited, this covers "all copyrightable component parts." It is further provided (sec. 3) that "the copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act." While the American code does not specifically provide as to the separate rights of authors in articles in periodicals or composite works, which must therefore be a matter of contract, or of practice or precedent implying contract, provision for separate copyright is implied in a clause (sec. 12) requiring the deposit of only one copy instead of two in the case of "a contribution to a periodical, for which contribution special registration is requested" — although the specific article is fully protected, as indicated above, by the general copyright.

Definition of periodicals

The new Rules and Regulations of the Copyright Office define periodicals as follows:

"(6) This term includes newspapers, magazines, reviews, and serial publications appearing oftener than

once a year; bulletins or proceedings of societies, etc., which appear regularly at intervals of less than a year; and, generally, periodical publications which would be registered as second class matter at the post office."

Periodicals under manufacturing clause

Periodicals, as well as books, are subject to the manufacturing clause (sec. 15), but affidavit is not required, and the importation of "a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor," is not prohibited (sec. 31, b), "unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization" — but these and other conditions are treated in later chapters.

Periodicals copyrightable by numbers

The law provides (sec. 19) in the case of a periodical, that the notice of copyright may be "either upon the title-page or upon the first page of text of each separate number or under the title heading," "provided that one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice." This implies that each issue of a periodical must be separately copyrighted as though a separate work, although the title may be registered as a trade-mark and possibly protected in this way. A daily newspaper may thus be copyrighted day by day at a cost of $365 per year, so as to protect all its original material of substantial literary value. This was done in fact under the American law previous to 1909, though periodicals were not specifically mentioned; a daily price-list of the New York Cotton Exchange was so entered day by day, but the question of maintaining such a copyright under the old law seems never to have been tested in the courts, and New York dailies copyrighted their Sunday cable letters separately.

In respect to news, there is no provision in the new

code. A bill to protect news for twenty-four hours was at one time before Congress, but was never passed. There is, therefore, no copyright protection for news as such, but the general copyright of the newspaper or a special copyright may protect the form of a dispatch, letter, or article containing news. Thus the New York *Herald* copyrighted without question Dr. Cook's Arctic dispatches, and the question as to the copyright by the New York *Times* of Commander Peary's dispatches describing his dash for the pole hinged solely on the question of ownership or authority to copyright, as set forth in a later chapter. But any such copyright could not prevent publication by other newspapers of the news that Cook and Peary claimed to have reached the North Pole, at stated dates and under stated circumstances, though their own form of statement of the facts could not lawfully be copied except within "fair use." News

In 1892 Justice North in the English Court of Chancery, in Walter *v.* Steinkopff, said that "although it is sometimes said that there is no copyright in news, there could be copyright in the particular form of language or mode of expression by which information is conveyed." The English courts went further in two actions brought by the Exchange Telegraph Co., 1895–97, in the first of which Gregory & Co. were restrained from using information furnished to subscribers first as unpublished matter before publication, second after publication because of copyright on the publication, and third as "unfair competition." In 1902, in Nat. Tel. News Co. *v.* West. Union Tel. Co., the U. S. Circuit Court of Appeals protected news on ticker tapes, and in 1910, in Press Assoc. *v.* Reporting Agency, the English Chancery Division protected election reports on the last-named ground alone.

British periodicals

The statutes of Great Britain have hitherto provided that a work published in parts or a periodical may be fully protected by copyright entry of the first part; the new code covers newspapers and periodicals generally as collective works. When the London *Times*' memoir of Beaconsfield was reprinted as a penny pamphlet, the *Times* brought suit as a matter of common law right, but the judge held that a newspaper was copyrightable under the statute, and therefore that a common law suit could not hold.

Oral works

The American law now specifically protects oral works by including in the classification (sec. 5, c) "lectures, sermons, addresses, prepared for oral delivery," and by assuring (sec. 1, c) exclusive right "to deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production." The phrase "similar production" and the spirit of the statute suggest that, though the manuscript of a book cannot be copyrighted prior to publication, a "reading" from an unpublished book, as a chapter, scene, or poem, might be registered and protected for oral delivery before publication; and the Copyright Office will make such registry on such application. The former law made no specific provision, but the courts seemed disposed to protect a lecturer on the common law ground that the lecture read is not published by reading, and can be controlled as a manuscript. In the application of common law doctrine to extemporaneous or other oral deliveries, the question of implied contract between the speaker and his auditors enters, and the trend of court decisions is that a hearer who has purchased or obtained a ticket, may make notes for his own use but may not publish them for profit. In the leading English case of Abernethy *v.* Hutchinson, in 1825, Lord Chancellor Eldon pro-

tected Dr. Abernethy against the publication of notes of unwritten medical lectures, evidently obtained through a student hearer.

Newspaper reports

Newspapers have, however, in practice freely republished lectures. and probably even under the present law the courts would permit, unless report was specifically and entirely forbidden by the speaker, a reasonable report but not a *verbatim* reproduction of the address, as within the bounds of "fair use." The publication of an unauthorized report by one newspaper would not justify another newspaper in copying the report without consent of the copyright proprietor on the ground of publication, for such unauthorized publication cannot deprive the copyright proprietor of his rights. If a speaker delivers an address, extemporaneously or even from written manuscript without registering the address as an unpublished work or taking other precautions, it is probable that the courts would protect his rights at common law; but it would be hazardous not to take advantage of the statute.

Lectures in England

Lectures have hitherto been protected in England in case the lecturer gave notice of reservation in writing two days in advance to two justices at the place of reading, but this complicated proviso caused speakers to rely rather on the common law doctrine that oral delivery is not publication. The new British code specifically provides that delivery is not publication, but permits newspaper report unless the speaker prohibits such report by notice posted near the main entrance and except during public worship near the speaker's position; "newspaper summary" within "fair dealing" is expressly permitted.

Letters

Letters are not specified either in English or American statutes under copyright law. A private letter has been held an unpublished manuscript, the right

Letters

to publish or copyright remaining with the author while living, though the material letter, its paper and ink, has passed to the receiver. Thus in 1741 Pope prevented Curl, an English bookseller, from republishing his letters to Swift, and in 1774, in Thompson *v.* Stanhope, Lord Chesterfield prevented his son's widow from publishing letters which he had made a gift to her. Letters, however, are copyrightable by themselves or as part of a book; and the writer may protect a letter against unauthorized publication by himself publishing and copyrighting it. The U. S. Supreme Court in 1841, in Folsom *v.* Marsh, enjoined the republication of letters of Washington, published by authority in Sparks's "Life of Washington," through Justice Story, who said: "The author of any letter or letters, and his representatives, whether they are literary letters or letters of business, possess the sole and exclusive copyright therein; and no person, neither those to whom they are addressed, nor other persons, have any right or authority to publish the same." But as manuscripts posthumously published, the copyright in letters may belong to the receiver or his assigns; and in Macmillan *v.* Dent, in 1906, the English Court of Appeal held, where the owners of letters of Charles Lamb had sold the copyright to certain publishers, these could not be republished by another who had later bought the material letters even under the authorization of the representative of Lamb's heirs. In Philip *v.* Pennell, Whistler's executrix was denied an injunction to prevent the use of biographical information obtained from the receivers of letters. But *obiter dicta* indicated that the courts may grant to the writer's representatives an injunction against publication or misuse. The laws of some countries specifically permit the publication of letters in the interest of justice.

Unless the letter is of the nature of privileged correspondence, the courts can probably require the production of a letter in court, and in fact do subpœna telegraph companies to produce the originals or transmittal records of telegrams in court, and thus make them *quasi* public property. The sale of a manuscript letter cannot authorize a vendee to publish it without consent of the writer, and the receiver of a letter is perhaps bound to keep a letter private or destroy it, if so required by the writer, but this is a right difficult of enforcement if not doubtful *in esse*. The receiver of a letter has probably a right to destroy it at his will, unless the writer has required its return to him.

The subject-matter of copyright in respect to musical and dramatic compositions and works of art, is treated specifically in later chapters on dramatic and musical copyright and on artistic copyright.

Designs patentable

Designs for use in manufacture are, in the United States, subjects of patent and not copyright. It is provided by the act of May 9, 1902, that "any new, original, and ornamental design for an article of manufacture" may be patented, and this classification inferentially excludes such designs from copyright. This generalized description of design patents replaced, at the suggestion of the Commissioner of Patents, the specific descriptions in the design patents act of December 1, 1873, and adopted instead the more comprehensive phraseology of the act of February 4, 1887, for the punishment of infringement of design patents. In like manner the new British code excludes designs registrable under the patents and designs act, 1907, "except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process."

Foreign practice

"The foreign copyright legislation," as is stated in Copyright Office Bulletin, No. 9 of 1905, "instead of specifically naming the productions which are subject-matter of copyright, generally uses some inclusive expression, such as 'all writings,' 'every kind of literary work,' 'works of literature,' 'literary and scientific works,' 'every production of literature and science,' and even such inclusive terms as 'every work of the intellect.'" Spain adds the inclusive phrase "produced or published by . . . any kind of impression or reproduction known now or subsequently invented." Great Britain, most of her colonies, and some other countries have set forth specific categories. But the new British measure uses the general phrase "every original literary dramatic musical and artistic work" — this replacing the several categories in the several previous laws. In a few countries manuscripts, personal letters and telegraphic messages, mostly in newspaper use, and in Ecuador, titles of periodicals, are specifically scheduled as subjects of copyright.

International definition

The Berlin convention uses the general expression "literary and artistic works," which it defines as including "all productions in the literary, scientific or artistic domain, whatever the mode or form of reproduction," then specifying in detail categories of literary, dramatic, musical and other artistic works, as set forth in the chapter on international conventions and arrangements.

VII

OWNERSHIP OF COPYRIGHT: WHO MAY SECURE COPYRIGHT

THE American code of 1909 names (sec. 8) "the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns" as the persons in whom the copyright may lodge. It also provides specifically (sec. 62) that "the word 'author' shall include an employer in the case of works made for hire." **Persons named**

The American law formerly named "the author, inventor, designer, or proprietor of any work, and the executors, administrators, or assigns of any such person" as the persons in whom copyright may lodge. The Librarian of Congress accordingly issued copyright certificates for books as to an "author" or "proprietor" only, assuming usually that an editor was the "author" and a publisher the "proprietor," and never going behind the claim set forth in the application. Under the new law the applicant is designated only as the "claimant," and no such distinction is made, except that the Copyright Office has an index card for proprietor, as well as author, when another than the author makes the application.

The author is the person primarily entitled to copyright. He may sell or otherwise transfer his production before it is copyrighted, in which case the new proprietor obtains all the common law rights of property, both in the manuscript and its publication, including the right to copyright. This common law right, including the right to copyright, may extend, Drone argues, to the finder of an unpublished manu- **The author primarily**

script, provided no one successfully disputes his ownership of his find, if the manuscript be copyrightable; but there are no decisions on this point. If a copyright is taken out by another person (as the publisher of the book), it is done impliedly in trust for the author, as is a usual custom among American publishers. The proprietor is defined to mean "the representative of an artist or author who might himself obtain copyright."

Claimant's right to register

The Register of Copyrights is not a *quasi* judicial officer, as is the Commissioner of Patents, and he does not undertake to make decision as to the right of the claimant, this question being one for determination by the courts in specific instances. In cases of doubt, however, he may in practice, for the sake of convenience and of clearness of record, call the attention of the claimant to such doubt and invite explanation, but he probably would not be justified in refusing to register the application for a claimant who asserted his right to such entry. A former Librarian of Congress, then directly the copyright officer, used to say that he would enter copyright for any one on the Bible in King James' version if formal application were made to him, thus emphasizing the statement that he had no judicial authority. In the case of Everson *v.* John Russell Young, then Librarian of Congress, Judge Cole in 1889, while refusing the mandamus asked for, asserted incidentally that "the Librarian had no discretion." Where a second application is made for the entry of the same copyrightable work by a second party, the copyright officer would not decline to register the second application, if the claimant insisted on his right, after the fact of the first registration had been brought to the second claimant's notice, and the question of ownership would have to be brought before the courts. It

is only in the case of works evidently not copyrightable, or in the case of claimants not entitled to apply for registration, as a citizen of a foreign country with which the United States has no copyright relations, or in other cases evidently beyond the scope of the law, that the copyright officer would exercise discretion and decline to make the record.

Employer as author

The provision of the new code specifically including as author (sec. 62) "an employer in the case of works made for hire" is new in American law, but it adopts previous decisions of the courts. It does not, however, adjudicate the application or specific definition of this phrase, which remains in large measure a question of contract. Earlier copyright decisions were to the effect that the authorship may inhere in the employer, if the design of the work is so far his as to make him the virtual creator and the actual writer a deputy merely; but that he is not an author who "merely suggests the subject, and has no share in the design or execution of the work." But under the new law, the case turns upon the meaning of "employment," which would be clear in the case of writers paid wages or salary for doing the work on an encyclopædia, but might not be clear in the case of an author paid in advance or on account by a publisher, though working on a general plan suggested or invented by the publisher. In such cases the proprietary right, including the right to secure copyright, depends upon the contract, implied or express, and the courts will decide this according to the law of contracts. In Boucicault *v.* Fox, in 1862, Judge Shipman, in the U. S. Circuit Court, held, as to the play "The octoroon," that "a man's intellectual productions are peculiarly his own, and he will not be deemed to have parted with his right and transferred it to his employer until a valid agree-

ment to that effect is adduced." It is safer in all cases, for the protection of the employer and for the sake of clear relations with the actual person who does the work, that there should be a definite contract.

When a salaried law reporter had been employed by the State of New York under a law that the copyright of the Reports should vest in the State, Judge Nelson for the Circuit Court of Appeals, in 1852, in Little *v.* Gould, held as valid an entry by the Secretary of State, "in trust for the State of New York," though no formal assignment had been made.

Implied ownership

In the absence of specific contract, or even in some cases of specific contract, many cross-questions may arise which the law does not and cannot determine in advance. In the case of a book "with illustrations by John Leech," where Leech retained the copyright of the designs, though the publishers owned the wood on which he had drawn them, an English court held to a distinction between the copyright and the right to the material, and directed the publishers to waive their lesser right and surrender the blocks, in view of the circumstances of the contract.

Protection outside of copyright

Most of the cases arising as to ownership are, in fact, issues outside of copyright law, as when in 1883 in Clemens *v.* Belford, in the U. S. Circuit Court in Illinois, Samuel L. Clemens vainly sought to restrain the use of his pen-name, "Mark Twain," in a collection of his uncopyrighted papers, Judge Blodgett holding that whoever has a right to publish has a right to state authorship, though an author can restrain the publication over his name of things he did not write. The same doctrine was upheld in 1910 in Ellis *v.* Hurst, where a publisher had printed with the real name of the author some non-copyright books which Edward S. Ellis had put forth under a

pseudonym. Judge Greenbaum, in the N. Y. Supreme Court, held that the law insuring right of privacy does not prevent the use of a writer's name on a book undoubtedly of his writing.

In 1908 Mr. Clemens sought in vain to prevent the use by others of his pseudonym, "Mark Twain," by incorporating a company with this name, planning thus to secure the exclusive use of the name for this corporation and practically obtaining a continuing trade-mark protection for it under this device. But that an author may protect a *nom de plume* of settled use independent of copyright or trade-mark was held in Landa *v.* Greenberg in 1908, in Chancery Division.

Work in cyclopædias

When, as in the case of a cyclopædia, many persons are employed at the offices of an employer, using his materials and facilities, and especially if on salary, the courts would undoubtedly uphold his full proprietorship in their work. Where outside persons contribute special articles, the presumption would probably be that the ownership of the copyright, for that special publication, vested in the employer, but that neither he, without the author's consent, nor the author, without his consent, could publish the article in other competing shape. In Bullen *v.* Aflalo, the House of Lords, in 1903, reversing the lower courts, protected the proprietors of an encyclopædia who had purchased articles from authors, against reprints of the material elsewhere, by the authors themselves, on the ground "that the right to obtain copyright was intended to pass to the publisher, otherwise he would get nothing from his bargain; and unless the publisher and proprietor of the encyclopædia stood in the shoes of the actual writer and was the proprietor of the copyright, he would have nothing for his money, because the articles might be published by others and he would have no remedy, not having the copyright."

Association of author's name

The right of a contributor to have his name associated with his work in the case of an encyclopædia, at issue in Basil Jones *v.* American Law Book Co., where the individual writer's name was replaced by that of a distinguished jurist, though upheld in 1905 by Judge McCall in the N. Y. Supreme Court, was denied in the reversal of this decision in 1908 by the Appellate Division through Judge Houghton.

Added material and alteration

Where a publisher had affixed additional material to a copyrighted book, the author was denied relief in Holloway *v.* Bradley, in 1886, by Judge Butler in the U. S. Circuit Court; but this decision would not hold where the added material was so placed as to give the false impression that it was written by the author of the copyrighted work. Thus in 1910, in Gilbert *v.* Workman, Sir W. S. Gilbert obtained an order in the Chancery Division through Justice Neville against the interpolation of a song into his copyrighted opera without his consent.

Separate registration of contributions

This would hold true to like extent in respect to alterations, which might be permissible when in the nature of proof-reading correction or editorial revision, but contrary to equity when they pervert, obscure, or otherwise misrepresent the author.

In respect to composite works, the new American code indicates (sec. 23) that there may be separate registration of contributions, inferentially in the person of "an individual author," as distinguished from the general entry for copyright of the composite work. This doubtless refers to the practice, for instance, of the entry in his own name of his specific work, by a novelist or other contributor to a periodical, in addition to the general entry of the number of the periodical of which it is a copyrightable component part. The only direct effect is to give to the specific author *prima facie* evidence of ownership in his specific con-

tribution, as distinguished from the right of the proprietor of the general copyright, and in some respects the clause is ambiguous and perhaps misleading, making it the more desirable that the relation of the individual author should be defined by contract. It is not really in conflict, however, with the principle that there cannot be two copyrights in the same work, as the evident distinction implied is that the proprietor of the general copyright holds the right for publication in the periodical and that the specific author reserves the right of publication in other form, which distinction is sufficiently provided for as a matter of contract and does not depend upon specific entry of the contribution. The wisest course may be for the proprietor of the periodical or other composite work to reassign his interest in the specific contribution, as was done by the proprietors of the *Smart Set* as adjudicated in the case of Dam *v.* Kirke La Shelle Co., cited in the chapter on dramatic and musical copyright, and thus remove possible doubt as to ownership.

Anonymous works

There is no specific reference in the new American code as to anonymous or pseudonymous works, except as to duration of copyright. In practice, the Copyright Office assumes that the applicant for the entry of an anonymous or pseudonymous work is the qualified and legal author or proprietor, and any disputed question of fact would ultimately be decided by the courts.

Joint authorship

There may be joint authorship in a work of common design, in which case the joint authors will become owners in common of the undivided property; but mere alterations or work on specific parts could not justify claim to more than such alterations or parts. The copyright would naturally be entered in both names, but as one copyright; it was held in

1902, in Mifflin *v.* Dutton, by the U. S. Supreme Court, that "there cannot be duplicate copyrights of the same book in different names." If one of the joint authors and not the other should apply for entry, the Copyright Office would in practice probably record the copyright claim on the presumption that the author was acting in the common interest; but if two joint authors applied simultaneously and severally, the question of ownership would have to be settled by the courts.

Corporate bodies

A corporate body, even though not incorporated under statute, is considered an author in the case of its own proceedings or similar publications, and in 1903 Justice Holmes rendered the decision of the U. S. Supreme Court in the case of Bleistein *v.* Donaldson Lith. Co., though the court was divided on the subject, that a copyright taken in the name of the Courier Lithographing Company, which was only the trade name of the complainant, was valid.

Posthumous works

In the case of posthumous works, the person entitled to copyright would be the executor, administrator, or the heirs of the author, and the owner of an unpublished manuscript could probably enter and maintain copyright in the absence of other legal claimant.

The Peary cases

The first important case under the new American code, in September, 1909, dealt with the question who may obtain copyright. On the report of the discovery of the North Pole, the New York *Herald* procured from Dr. Cook his account of his journey and copyrighted it on its publication in the *Herald*,— which copyright does not seem to have been questioned. Immediately thereafter came Commander Peary's account of his polar journey, for which the New York *Times* had contracted with him before his departure in the previous year. The Peary report was pub-

lished simultaneously by the New York *Times* and the London *Times*, but the difference of five hours enabled the correspondents of the New York *Sun* and *World* to cable the report to their respective papers in time for publication at the same hour in America as in the New York *Times*. Anticipating this course, the New York *Times* had taken the precaution to publish the report in pamphlet or "book" form some hours before newspaper publication, and to copyright this as a book. When an injunction was asked in the U. S. Circuit Court from Judge Hand, that judge granted the injunction, but on the required production of the contract in court, dissolved his injunction on the ground that the contract between Peary and the New York *Times* gave to the *Times* only the right to news publication and specifically reserved to Peary magazine and book rights. He inferred thus that the *Times* had no right to copyright the news report as a book, and was not the agent of the author for that purpose. To the contrary, Judge Grosscup in Chicago, in an exactly similar case against the Chicago *Inter-Ocean* and other Chicago papers, and with the contract before him, maintained the copyright by the *Times*. The two contradictory decisions have not so far been adjudicated in the higher courts. It will be observed that the question is not strictly one of copyright, but of contract, and that it is not denied that the news report, in the literary form given it by the author, was a proper subject of copyright, though the news of the discovery of the North Pole might not be copyrightable. Judge Hand perhaps erred in assuming that there could be separate copyright for news, magazine, or book publication, overlooking the fact that Peary had conferred on the *Times* authority to protect the report sent to it by cable, while reserving to himself rights

Opposing decisions

in magazine or book publication of his material, whether in the same or different form.

Renewal rights

In the renewal of copyright, the new American code follows the previous law in differentiating the persons entitled to renew the copyright. It provides (sec. 23) that in the case of a posthumous composite or corporate work originally copyrighted by the proprietor thereof or a work made for hire, the proprietor of such copyright shall be entitled to a renewal; but in other cases, including a separately registered contribution by an individual to a composite work, the author or the widow, widower or children, or, if such be not living, the author's executors or next of kin shall be entitled to a renewal. This means that there can be no renewal by an assignee proprietor, and that in the absence of natural heirs of a personal author, no person is entitled to a renewal of his copyright. The new law has been specifically construed to this effect by the Attorney-General in his opinion of February 3, 1910. It should be noted that the word "administrators," included in the provision as to original application (sec. 8), is omitted from the provision as to renewal (sec. 23) including renewal of existing copyrights (sec. 24), indicating that while an author may make bequest of copyright for the renewal term, which right may then be claimed by his executor, the right to renew lapses when he makes no will and has no next of kin to inherit the right of renewal.

Assigments

Specific provision as to the method and record of the transfer of copyrights by assignments are contained in the following provisions of the code of 1909:

"(Sec. 42.) That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

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

Assignment record

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

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

Substitution of name

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

It should be noted that this last provision, authorizing the substitution of a name, is applicable only to the general copyright in a work, and not to a divided right; otherwise there would seem to be more than one copyright in the same work. The Copyright Office will, however, record assignments of specific

or divided rights without reference to this power of substitution. Further assignment from one assignee to another is permissible to any extent, and in cases of repeated assignment of a general copyright there may be further substitution of names.

Witnesses

There is no specific requirement as to the witnessing of assignments, which would therefore follow the usual principles of law. This was, however, an important question in England, and under the early English statute the courts held that assignments must be in writing, attested by two witnesses; the later statute of Victoria modified the language, and the new English code requires assignment in writing signed by the owner or his authorized agent, without specifying witnesses. But assignment of common-law rights (as in an unpublished manuscript) may doubtless be by word of mouth.

"Outrights" and renewal

Where an author sells his entire rights "outright," he cannot transfer the right to take out renewal, but he may directly or by inference bind himself to apply for such renewal in the interest of the new proprietor. Under such a contract, this proprietor could probably require him by equity proceedings to take this step. Such a contract, however, would not bar the author from his right to renewal under the copyright law and through the Copyright Office, although it is possible that the courts might enjoin an author from renewal or assignment of a renewed copyright in the interest of another than the original assignee. It should be noted that in the case of composite, corporate or like impersonal works, copyrighted under the new code, renewal is not restricted to the *original* proprietor, though by analogy this should be the practice; but that in the case of renewal of copyrights existing before July 1, 1909, and in extension of the present renewal terms, the use of the phrase "such proprietor," referring

back to "the original proprietor," does make such limitation.

Proof of proprietorship

Where the copyright proprietor of record is not the author, the courts may require him to prove his rights, in default of which the copyright certificate will be adjudged null and void, as was done in 1909 by the Circuit Court of Appeals both in Bosselman *v.* Richardson, where a son copyrighted paintings by his father and failed to prove that they had not before been published, and in Saake *v.* Lederer, where the court canceled the copyright of the play "Old Heidelberg" because Lederer had obtained from the German author only a license to perform and not a right to copyright.

Foreign citizens

As to copyright by others than citizens of the country, the law of 1909 provides (sec. 8) "that the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

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

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

"The existence of the reciprocal conditions aforesaid shall be determined by the President of the

United States, by proclamation made from time to time, as the purposes of this Act may require."

Earlier provisions

The Revised Statutes formerly extended copyright to "a citizen of the United States or *resident therein* or his widow or children," and the act of 1891 provided for a *quasi* international copyright on a basis similar to that in subsection (b), cited above, of the law of 1909, *i. e.* on a basis of reciprocity. The new American code practically adopts the features both of the Revised Statutes and the act of 1891, though with verbal and substantial differences. The word "domiciled" is new in the law and has yet to be construed in a copyright case, but it is presumably the equivalent of "resident." The new Rules and Regulations of the Copyright Office use the phrase "(2) a resident alien domiciled in the United States at the time of the first publication of his work."

Residence

A resident, under the American decisions, is a person who intends to reside permanently in this country. It is decided by the intention of the resident. A person who is residing here without intention of permanence probably cannot maintain copyright under this clause. For English copyright, on the contrary, a person temporarily residing in His Majesty's dominions has been considered a resident. "The United States" would doubtless be construed to include territories and dependencies, as specific jurisdiction is given (sec. 34) to stated courts in Alaska, Hawaii, the Philippine Islands and Porto Rico, in addition to the general decisions of the U. S. Supreme Court.

Under the statute of Anne the English courts differed persistently on the question whether a non-resident foreigner could obtain British copyright by first publication within the British dominions, until in 1854, in the ultimate case of Jefferys *v.* Boosey, the House of Lords, after consulting the judges, of whom

six denied and four sustained the contention, decided unanimously that a non-resident foreigner could not acquire copyright by first publication. Under the law of 1842, the question was again raised, in view of the variation of the language from that in the statute of Anne; in 1868, in the case of Routledge *v.* Low, in which an American author claimed copyright for his work first published in London while he resided for a few days in Canada, the House of Lords held that a foreigner might thus obtain copyright by temporary residence within the British dominions and indicated, but did not decide, that a foreigner could obtain copyright by first publication, even if not temporarily resident within the British dominions. After the passage of the "international copyright amendment" in 1891, the American law authorities consulted with the law officers of the Crown, who rendered a decision that foreign authors were entitled to British copyright on the sole condition of first publication, and on this decision the President based his proclamation of reciprocal relations with Great Britain. The new British measure retains first publication within the included parts of the Empire as the essential condition, except in unpublished works, unless otherwise provided under international copyright, though the Crown may withdraw this privilege from foreigners whose countries do not assure reciprocity.

Intending citizens

The provision of subsection (a) is chiefly useful, it would seem, to protect intending citizens who have applied for naturalization papers and incidentally renounced their previous allegiance to another power and thus put themselves beyond the pale of the international conventions.

Time of first publication

"First publication" is not limited in terms to the United States, and the "alien author or proprietor," provided he makes application under this clause and

is not a citizen of a country with which the United States has a copyright convention, must therefore be domiciled here, it would seem, at the time of first publication, in whatever country that may be.

Non-qualified authors cannot transfer

It has twice been decided, both prior to and since the "international copyright amendment" of 1891, that a foreign author not qualified to secure a copyright cannot indirectly obtain one by assignment to an American or other proprietor. In 1890 J. M. Barrie assigned to J. W. Lovell, and he to the U. S. Book Company, his American rights in "The little minister," and after the act of 1891 the latter endeavored to restrain a dramatization of the story. Judge Jenkins held with the lower court that the foreign author could transfer only, prior to the act, the right to publish from advance sheets and not the right to copyright. In the case of Bong *v.* Campbell Art Co., in which it was sought to protect under the act of 1891 a work by a Peruvian painter, Hernandez, whose country had no international relations with the United States, through transfer to a German proprietor, whose country had reciprocal relations, it was held in 1909 by the U. S. Supreme Court, through Justice McKenna, that an author who is a citizen of a country with which the United States has no copyright relations cannot indirectly obtain American copyright by making a citizen of a country with which the United States has copyright relations the proprietor of his work. A proprietor has been construed by the courts to mean merely an assignee of a qualified author. It is evident, therefore, despite the ambiguous phrasing of the statute, that an assignee proprietor, though domiciled in the United States at the time of first publication of a work, could not obtain copyright unless the author were so domiciled, for the contrary ruling would nullify the general purport of

the law by permitting an assignee to acquire rights which the non-qualified author could not secure. The evident construction of the word "proprietor" in this clause is as proprietor of an impersonal work and not an assignee proprietor. The Rules and Regulations of the Copyright Office, construing the code of 1909, say specifically (2): "If the author of the work should be a person who could not himself claim the benefit of the copyright act, the proprietor cannot claim it."

Foreign ownership

But it seems that a foreigner may enter copyright in the work of a citizen or resident author — it being foreign authorship, not ownership, which the law refuses to protect, though this point has not been judicially determined. Under the provision (sec. 62) of the new American code giving copyright to an employer as author "in the case of works made for hire," it would seem that a person entitled to make copyright entry might, as an employer, obtain copyright on the work of an alien employee not domiciled here and not otherwise entitled to enter copyright; but it is probable that this construction would not extend to a separate or separable work, as this would be contrary to the principles adjudicated as above cited.

The complicated question of the ownership and the right to secure copyright in translations from foreign works or into foreign languages, under this international copyright provision, is covered under translation in the preceding chapter on subject-matter of copyright.

Proclaimed countries

Under the provisions of the international copyright clause of 1891 Presidential proclamations have designated as countries with which the United States has copyright relations (July 1, 1891) Belgium, France, Great Britain and her possessions, Switzerland; (April 15, 1892) Germany; (October 31, 1892) Italy; (May 8, 1893) Denmark; (July 20, 1893) Portugal;

(July 10, 1895) Spain; (February 27, 1896) Mexico; (May 25, 1896) Chile; (October 19, 1899) Costa Rica; (November 20, 1899) Holland and possessions; (November 17, 1903) Cuba; (January 13, 1904) China — this treaty of October 8, 1903, protecting for ten years books, maps, prints or engravings "especially prepared for the use and education of the Chinese people," or "translation into Chinese of any book," but leaving to Chinese subjects liberty to make "original translations into Chinese"; (July 1, 1905) Norway; (May 17, 1906) Japan — this treaty of November 10, 1905, also excepting translations, and (August 11, 1908) additionally protecting Japanese relations in China and Korea; (September 20, 1907) Austria, not including Hungary; and (April 9, 1908) under the Pan American convention signed in Mexico City, January 27, 1902, effective from July 1, 1908, Guatemala, Salvador, Costa Rica, Honduras and Nicaragua.

Under act of 1909

Under the provisions of the act of 1909, the President of the United States issued a general proclamation, dated April 9, 1910, certifying anew to the existence of reciprocal relations with the above-mentioned countries, under the arrangements of the new act, as from its effective date July 1, 1909. This accepted such relations as continuous and uninterrupted, without the necessity of new treaties, with the effect that international copyrights before July 1, 1909, were under the arrangements of the act of 1891 and from and after that date under the arrangements of the code of 1909. Luxemburg was added by proclamation of June 29, 1910, and Sweden by that of May 26, 1911. Proclamations of December 8, 1910, as to Germany, and June 14, 1911, as to Belgium, Luxemburg and Norway, proclaimed reciprocal relations as to mechanical reproductions.

The ratification of the Buenos Aires convention

by the U. S. Senate, February 16, 1911, has the effect of authorizing the President to proclaim reciprocal relations with other countries which are parties to that treaty, as each ratifies the convention. **Buenos Aires convention**

The new British measure specifies that "the author of a work shall be the first owner of the copyright," except where an engraving, photograph, or portrait is ordered for valuable consideration or where work is done in the course of employment. The owner may assign the copyright in writing, "either wholly or partially, and either generally or subject to limitations to any particular country, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by license"; in case of partial assignment, the original owner and the assignee become respectively the owners of the residual and assigned portions of the copyright. But any assignment, except by will, becomes null and void twenty-five years after the death of the author when the entire rights revert to his heirs. **The new British code**

In general the statutes of most of the copyright countries designate "authors" and their "assigns and heirs" as the persons who may obtain copyright. The Australian law of 1905 defines "author" to include "the personal representatives of an author." In certain countries the laws specifically mention as persons who may secure copyright "joint authors," "proprietors" in some countries and "publishers" in other countries of anonymous and pseudonymous, posthumous or unpublished works, periodicals and composite works, "corporate bodies," "translators," "editors, compilers or adapters" and "persons who give a commission for a portrait or photograph." **Foreign practice**

VIII

DURATION OF COPYRIGHT: TERM AND RENEWAL

Historic precedent

THE duration of copyright was in the early printers' privileges for a short term, as for seven years, except in France, where copyrights were in perpetuity until the act of the National Assembly; in modern times the copyright term has been lengthened until a term extending through and beyond the life of the author has been adopted by thirty-seven countries, or more than half of those which have copyright laws, of which four assure perpetual copyright. The Constitution imposes only one limitation on the comprehensive rights of authors, in the provision that protection shall be "for limited times" only. This provision has made the discussion of perpetual copyright purely academic in this country. The new American code adopts the double term of twenty-eight and twenty-eight years, making fifty-six years in all, without reference to the life of the author.

Previous American practice

The American law previous to 1909 provided for a uniform term of twenty-eight years, dating from the time of recording the title, with a renewal of fourteen years, securable only by the author, or, if he be dead at the expiration of the term, by his widow or children. No other heirs or persons could renew. The new code differs in making the renewal period a second twenty-eight years and extending the right of renewal to the executors or next of kin and to the proprietors of composite or other impersonal works; but it still denies renewal to assignee proprietors of personal works.

Term in code of 1909

The American code of 1909 provides (sec. 23) "that the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name," and makes provision also in the cases specified for renewal for a second period of twenty-eight years, provided that renewal application is registered in the Copyright Office "within one year prior to the expiration of the original term of copyright."

Renewal

The provisions as to renewal are in full as follows (sec. 23): "*Provided*, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopædic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the

copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication."

Extension of subsisting copyrights

The extension of copyrights subsisting July 1, 1909, is provided for as follows (sec. 24): "That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: *Provided, however*, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term."

Assignee of unpublished manuscripts

In holding with the Attorney-General that an assignee cannot obtain renewal, Judge Brown in the U. S. Circuit Court in Rhode Island, in White Smith *v.* Goff, in 1910, raised but did not decide the "difficult" question whether, if an author sells his unpublished manuscript with right to publish and copy-

right, the new owner as the original copyright proprietor may claim renewal, or whether the author might reclaim the right.

Extension of subsisting renewals

Under the provisions of the renewal clauses (sec. 24), not only may the original copyright term of a subsisting copyright be renewed for the longer term of twenty-eight years instead of fourteen years, but a subsisting copyright renewal may be extended from the added fourteen years to the full renewal term of twenty-eight years, and a separate application form for this latter class of cases is provided by the Copyright Office.

Publishers' equities

In the copyright conferences, it was pointed out by publishers that the right of the author to renewal, and the implied denial of that right to an assignee proprietor, placed at serious disadvantage a publisher who had made investment in plates of an author's works, and would be deprived of the use of his investment at the end of the original term in case the author preferred to make arrangements with another publisher for the renewal term. The Congressional Committee failed, however, to provide a remedy for this through the proposed Monroe-Smith amendment, requiring that in such case author and publisher should unite in the application for renewal. No contract on the part of an author can give a publisher the right to claim copyright renewal under the new code, although a contract to make claim for the renewal period and transfer the copyright for the renewal period to the publisher, might be enforced by the courts through a writ requiring the author to enter such claim and assign the renewed copyright in accordance with the contract. When a copyrighted work is sold "outright," it therefore does not include renewal of the copyright, and unless the author registers his renewal claim, the right to renewal lapses.

Estoppel of renewal

Where an author has sold "outright" all his right, title and interest in his work, it is possible that this may estop him from application for renewal or invalidate a renewal, but this question must be decided by the courts when a case arises. It is important that any contract between author and publisher should be clear and specific on this vexed question of rights for the renewal term. No provision is made for notification of renewal in the copyright notice, and therefore, after the expiration of the original term, information must be sought from the Copyright Office as to whether there has been renewal extension of the term. As it would be hazardous to omit the original copyright notice or to replace it by one giving the date of renewal, which might be construed to involve claim of a longer term and thus defeat itself, it may prove the wiser course to add to the official original notice, the unofficial notice "Copyright renewed, 19 ."

Life term and beyond

The international copyright convention, as modified at the Berlin conference of 1908, adopted the term of life and fifty years, — previously in force in France and fourteen other countries, — subject to adoption by domestic legislation. A term of life and a specified number of years after the death of the author, preferably fifty years for personal works, and a term of fifty years for impersonal works, was advocated by the American Copyright leagues and other friends of copyright and was in the early drafts of the new copyright code.

It was pointed out that Emerson, Longfellow, Lowell, Whittier, Holmes and others outlived their earlier copyrights; that Edward Everett Hale, whose "Man without a country" did for this nation a patriotic service scarcely second to that of the great generals of the civil war, had no longer copyright in this work, although private soldiers, their relicts and descend-

ants, were still paid pensions; and that many others of our foremost authors had been, or under the present system would be, deprived of their created property within their lifetime. The term advocated provides for the author and his children's children during the probable minority of the grandchildren, a period to which the entail of realty is limited by our laws. But the final decision of the Congressional Committees was for the simpler, though in other respects less satisfactory, period of twenty-eight years, as heretofore, with a renewal period of a second twenty-eight years, under the limitations above cited. No other countries, except Canada and Newfoundland, following our example, have this double or renewal term.

Unpublished works

As a lecture or other work intended for oral delivery or a dramatic or musical work or a work of art, an unpublished dramatic or musical work or a work of art not reproduced in copies for sale is copyrightable without reference to date of publication, it is not altogether certain whether the term extends from the date of registration or the date of first delivery, performance or exhibition, or whether the statutory law now protects such a work under common law as unpublished, pending publication and therefore for an indefinite period if not practically in perpetuity. The Copyright Office issues a certificate for twenty-eight years, but without reference to initial date, which would be presumably the date of the certificate. The Copyright Office will doubtless, under this precedent, issue renewal certificate for the second term of twenty-eight years.

Publication as date of copyright

As the new copyright code makes publication with notice the basis of copyright instead of entry and deposit, as formerly, the term of copyright now dates from publication, and "the date of publication" is specifically defined (sec. 62) as "the earliest date

when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority." Such date is included in the application for registry at the Copyright Office, and on the same day twenty-eight years or fifty-six years thereafter the copyright ends. A provision for terminating copyrights at the end of the calendar year of expiration was included in the early drafts of the code, but was not included in the law as enacted.

Serial publication

In the case of works published and copyrighted as serials, as a novel published in parts in a monthly magazine, the copyright runs technically from the first publication of each part; and at the end of the twenty-eight or fifty-six years, each part could be successively published at monthly intervals free from copyright. Practically, however, such a copyrighted serial could not be published complete until twenty-eight or fifty-six years from the publication of the last part. In usual practice a novel is printed in book form a month or two before its completion as a serial in a magazine, and the date of the copyright on the completed work would then terminate at the end of the twenty-eight or fifty-six years from publication in book form.

Joint authorship

The use of the date of publication as the beginning of the copyright term and the specification of twenty-eight years and twenty-eight years for its duration, obviates questions as to anonymous and pseudonymous works, composite works or works of joint authorship. The earlier drafts of the bill, providing for a term through and beyond life, made the lifetime of the last surviving author the basis for the term of copyright on works of joint authorship. This method was interestingly applied in the German courts, when it was held as to the opera "Carmen" that Bizet's

music was out of copyright, but that the libretto was protected because one of its three joint authors was still living.

Termination by forfeiture or laches

A copyright is terminated *ipse facto* by forfeiture as provided in the act, either because of failure to deposit copies after notice from the Copyright Office (sec. 13), or because of false affidavit of American manufacture (sec. 17). It may also be terminated by *laches*, that is, carelessness in protecting one's rights, as by omission of the notice, unless by accident or mistake, from particular copies (sec. 20).

Abandonment

A copyright may be terminated by voluntary abandonment or purposed dedication as well as by expiration, forfeiture or *laches*. Thus in 1854 Congress purchased for $10,000 the copyright of Sumner's new method of ascertaining a ship's position, dedicated the method to general public use, and extinguished the copyright. The Copyright Office has no authority to recognize annulments, but it has noted request for annulment when received on the registry. In 1910 the Oxford University Press, American Branch, formally notified the Treasury Department that they abandoned the copyright on Oxford Cyclopædic Concordance copyrighted by them in 1903, and collectors of customs were accordingly authorized by circular letter of January 25, 1910, to permit importation "of any copies of the said work with the notice of the copyright obliterated, or a notice of the abandonment of the copyright plainly printed upon the same page . . n the notice of copyright and adjacent thereto." This last was a curious "boomerang" effect of the manufacturing clause as extended to binding in the act of 1909.

In England

In England the term of book copyright has been the life of the author and seven years after his death, or forty-two years from first publication, whichever

the longer. The copyright in other articles has varied according to specific laws. The Copyright Commission of 1876 proposed, for all copyright articles as well as books, a term of life and thirty years after the author's death, according to the German precedent, or in case of anonymous and posthumous books and encyclopædias, thirty years from the date of deposit in the British Museum, an anonymous author to have the right during the thirty years to obtain the full term by publishing an edition with his name. The English law contained a specific provision that in the case of articles in periodicals (but not in an encyclopædia) the right to publish in separate form should revert to an author after twenty-eight years; the Commission proposed a term of three years, during which time also the author as well as the general owner may bring suit against piracy. The English committee appointed to make recommendations in respect to the adoption of the Berlin provisions of 1908 through domestic legislation, however, reported strongly in favor of a general term of life and fifty years; and this term has been adopted in the new code.

The new British code

This general term of "the life of the author and a period of fifty years after his death" holds "unless previously determined by first publication elsewhere." In joint authorship, copyright shall subsist during the life of the author who first dies and fifty years after or during the life of the author who dies last, whichever the longer. In posthumous works, copyright subsists for fifty years from first publication or performance, whichever the earlier. Anonymous and pseudonymous, and corporate works are not named in the act, and the term is presumably fifty years, unless in the former cases identity is disclosed. For photographs and mechanical music reproductions as such, the term is fifty years from the making of the original

negative or the original plate. Existing copyrights are extended through the new period; but for the extended term the rights revert to the author, though an assignee may require continuance of the assignment or continue to publish on royalties, as determined by agreement or arbitration. Assignments, except for parts of collective works, terminate in twenty-five years, when rights revert to the heirs.

Perpetual copyright

The Crown has held an exclusive and perpetual right to license the printing of the Bible, Book of Common Prayer, ordnance surveys, and possibly the Acts of Parliament; and specified universities and colleges were assured perpetual copyright in works given or bequeathed to them unless given for a limited term, but the right lapsed into the usual copyright term unless the work were printed on their own presses and for their own benefit. Under the new code, "without prejudice to any rights or privileges of the Crown," any work prepared or published for His Majesty or any Government department has copyright for fifty years from first publication — the effect of which provision on Crown perpetual copyrights is not clearly evident. A saving clause protects the universities "in any right they already possess," inferentially limiting their future copyrights to the statutory term. After the death of the author of a literary, dramatic or musical work, on complaint of the withholding of the work from publication or performance, the Judicial Committee of the Privy Council may require the owner to grant a license to reproduce or perform the work in public under conditions determined by the Committee. After twenty-five years, or in the case of existing copyrights thirty years from the author's death, the work may be reproduced by any person on prescribed notice in writing of his intention and payment of ten per cent on the published

price in accordance with regulations by the Board of Trade.

Other countries

Perpetual copyright is granted by the laws of other countries, Mexico, Guatemala, Nicaragua and Venezuela, while in Montenegro, Egypt, Liberia, Honduras, the Dominican Republic, Paraguay and Uruguay, which give copyright protection without specific legislation under a crude civil or common law enforced by the courts, the term is indefinite. A copyright term extending eighty years beyond the death of the author is granted by Spain, Cuba, Colombia and Panama. The French precedent of fifty years after the author's death was followed by Belgium, Russia and the Scandinavian countries, Hungary, Portugal and some others, and was adopted by the Berlin convention as the international standard term; the German precedent of thirty years beyond death was followed by Austria, Switzerland and Japan, while the British precedent of seven years beyond death or forty-two years from publication, whichever the longer, was followed in many of the English colonies and in Siam. Italy has a curious term of life or at least forty years after publication, with a second period of forty years during which, though the exclusive rights lapse, the author enjoys a royalty of five per cent on publication price. Haiti has the curious term of the life of the author and twenty additional years for widow or children, or ten years for other heirs. In Holland fifty years or life, in Brazil fifty years from the preceding January 1st, and in Greece fifteen years are specified.

International standard term

Special categories

In many countries there are special terms for special categories of works, as for anonymous, pseudonymous, and corporate works, translations, photographs and telegraphic dispatches — the latter for a stated number of hours.

IX

FORMALITIES OF COPYRIGHT: PUBLICATION, NOTICE, REGISTRATION AND DEPOSIT

COPYRIGHT may inhere as a natural right, as under English common law before the statute of Anne, without record or formalities, but also without statutory protection; or formalities may be required only as a prerequisite to protection by actions at law; or formalities may be required to validate and secure the copyright. English formalities belong to the second class. American formalities are of the third class, and without them copyright does not exist. **General principles**

The American copyright law of 1909 prescribes exactly the method of securing copyright, and makes clear the cases in which non-compliance invalidates copyright. Previous to 1909 copyright was secured by complying exactly with the statutory requirements of (1) the delivery to the Librarian of Congress on or before the day of publication, in this or any foreign country, of a printed (including typewritten) copy of title or description of the work, (2) the insertion in every copy published of the prescribed copyright notice, and (3) the deposit not later (under the law of 1891) than such day of publication (earlier law allowing ten days after publication) of two copies of the best edition of a book or other article, or a photograph of a work of art (as to date of deposit of which last the law was not explicit); and any failure to comply literally and exactly with these conditions forfeited the copyright. **Previous American requirements**

The American code of 1909 substitutes an entirely different basis for securing copyright. Copyright

Present American basis

now depends upon (1) publication with the notice of copyright, and (2) deposit of copies, these copies in the case of books and certain other works to be manufactured within the United States. The accidental omission of the copyright notice from "a particular copy or copies" does not invalidate the copyright though it may relieve an innocent trespasser from penalty as an infringer; but failure to deposit within a specified time, or false report as to manufacture, makes the copyright not valid.

Provisions of 1909

The general provisions as to formalities are as follows (sec. 9): "That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking *ad interim* protection under section twenty-one of this Act"; and (sec. 10): "That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the Register of Copyrights shall issue to him the certificate provided for in section fifty-five of this Act."

Publication

The definition in the act (sec. 62) of "the date of publication" as "the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority" defines publication, and the clause (sec. 9) requiring the copyright notice to be affixed to each copy "published or offered for sale in the United States by authority of the copyright proprietor" confirms the principle that the copyright proprietor cannot be held responsible, nor can copyright be voided because of copies "published," offered,

sold or distributed without his authority. The Copyright Office Rules and Regulations (23) add to the definition of publication the parenthetical explanation: "(*i. e.*, so that all persons who desire copies may obtain them without restriction or condition other than that imposed by the copyright law)." It is questionable, however, whether this explanation does not go beyond the letter of the law. In Stern *v.* Remick, in 1910, the U. S. Circuit Court protected the copyright of a song, though only one copy had been offered for sale and sold. Advance distribution to the trade or of review copies would not constitute publication. While the law does not prescribe first publication in this country, it is at least doubtful whether a book published in another country prior to publication here, unless protected by international copyright relations, has not fallen into the public domain and thus forfeited copyright protection here.

Copyright notice

The first step in securing copyright, being publication "with the notice of copyright" "affixed to each copy published or offered for sale in the United States by authority of the copyright proprietor," the method and form of this notice is of first importance. The act of 1909 provides (sec. 18): "That the notice of copyright required by section nine of this Act shall consist either of the word 'Copyright' or the abbreviation 'Copr.,' accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible

portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four."

Previous statutory form

Under the law of 1874, the prescribed notice was in the old form (Rev. Stat. 4962), "Entered according to Act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington," with the optional alternative of the form "Copyright, 18—, by A. B." Under the new code the latter form is preserved, with the alternative of the provision "Copr.," with date and name, but the longer form may be used on books copyrighted under the earlier acts, even if reprinted after the passage of the later act. Except for books previously copyrighted, the longer form is not now the legal notice, and its use would be dangerous, as it does not contain the specific word copyright, or its abbreviation, now made an obligatory part of the notice. While in Osgood *v.* Aloe in 1897, the omission of the name from the notice, though on the title-page, and in Record & Guide Co. *v.* Bromley in 1910, the omission of the date, though indicated by the date of the periodical in the line below, were held to void the copyright, such addition as the words "published by" has been held, as in Hills *v.* Hoover in 1905, a mere superfluity not voiding copyright.

Exact phraseology required

The exact phraseology and order of words must be followed, and it has been held that any inaccuracy in the name of the copyright proprietor, as in the English case of Low *v.* Routledge, by Vice-Chancellor Kinders-

ley, in 1864, or in the date of the entry, as in the American case of Baker *v.* Taylor in 1848, when 1847 was put for 1846, makes the copyright invalid.

Name

The name in the copyright notice (C. O. Rule 24) must be the real name of a living person or of a firm or corporate body or the trade name in actual use, and may not be a pseudonym or pen-name or other make-believe. A copyright notice should not be in the name of one person for the benefit of another; the beneficiary's name should be the one printed. A publisher may take out a copyright for an author, however, in which case the publisher's name and not the author's name will be given, unless the publisher makes application as the agent of the author-claimant. The name in the copyright notice must correspond fully with the real name as given in the application, but an objection that N. Sarony instead of Napoleon Sarony was not the real name, was quashed in 1884, in Burrow-Giles Lith. Co. *v.* Sarony, by the U. S. Supreme Court.

Date

The date of copyright notice, being that of publication, should correspond with the imprint date on the original edition; but on later printings or editions, where the date of imprint is changed, the copyright notice would of course show the earlier date of the original edition. Thus a book first published in 1911 could not bear copyright notice of 1910 date, which would mean that copyright was registered before instead of after publication, which is not possible under the new law; nor should an edition of 1910 bear copyright notice of 1911, as the application and notice should state the actual year of publication; and the date of 1911 in imprint where the copyright notice is of 1910, would be correct only on a later edition, as above stated. A book may be printed, however, in a certain year and not published till a later year, in which case the copyright notice would be of later

date than the imprint date; thus the Copyright Office registered in 1910, under the new law, a copyright on a work with the imprint of 1904, on assurance that though printed in 1904, the work was not actually published until 1910. Under the old law, where, as stated above, a copyright notice later than the actual copyright was disallowed as claiming protection beyond the copyright term, a later decision, in 1888, in Callaghan *v.* Myers, held, that where a copyright notice gave the year 1866, while the true date was 1867, there was no harm done to the public, because a year of the copyright, which really ended in 1895 instead of 1894, was given to the public, whereas in the previous case an additional year was claimed. Doubt was thrown upon this decision by Judge Wallace in Schumacher *v.* Wogram, also in 1888. In Snow *v.* Mast in 1895, the substitution for 1894 of the abbreviated '94, and in Stern *v.* Remick in 1910, the use of words or Roman numerals for Arabic, were upheld.

Accidental omission

An important safeguard, new in copyright law, is enacted in the provision (sec. 20): "That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct."

It is further provided (sec. 19): "That the notice

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

Although the code of 1909 relieves the copyright proprietor from permanent forfeiture in the case of an accidental omission of the copyright notice from certain copies (sec. 20), the statute is otherwise specific, and there seems to be no means of relief where the copyright notice is, however innocently, in the wrong place or in the wrong form. Thus in 1909, in Freeman *v.* Trade Register, the U. S. Circuit Court held that where the copyright notice of a periodical appeared on the editorial page, which was not the first page of text, the copyright was voided. The copyright notice can probably, however, be placed safely and preferably on the first page, being the title-page, of a specially copyrighted part of a book, as an introduction preceding a non-copyright work or an index or appended notes, or upon specific illustrations; and this is perhaps preferable in copyrighting editions with such features of works otherwise in the public domain. In the case of articles in a periodical or parts of a composite work separately copyrighted or registered, the copyright notice should appear on the same page as the title heading.

The proviso (sec. 19) that one notice of copyright in each volume or in each number of a periodical shall suffice is complementary to the provision (sec. 3) by which a copyright protects all the copyrightable component parts of the work copyrighted, and gives to **One notice sufficient**

the proprietor of a composite work or periodical all the rights he would have if each part were individually copyrighted. It means that there need be no repetition of the general copyright notice on different portions of a book or periodical. In West Pub. Co. *v.* Thompson Co., under the old law, Judge Ward, in the U. S. Circuit Court of Appeals in 1910, overruled the defense that the copyright was not valid because the copyright notice did not repeat the several copyright notices originally protecting the several parts of the compilation; and this view, that the general copyright notice protects all copyrighted and copyrightable parts, is now specifically embodied in the statute.

Separate volumes

The proviso (sec. 61) "that only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time" indicates that one copyright entry suffices for several volumes simultaneously published, but each separate volume should contain the notice. Volumes published separately, not only in successive years but at successive dates within the year, should be separately registered, and if published separately in successive years, must each bear its copyright notice for the year of publication — this being the direct sequence from the provision that copyright runs from the specific date of publication and not from the year or date of registration. The Copyright Office will, however, under the law, register for one fee volumes or parts deposited at the same time, though published at various times. In the case of a book issued in successive parts, of which only the first part includes a title-page or title headings, the law is not specific; but it seems probable that, in default of copyright notice and registration for each part, the parts not bearing copyright notice might be legally reprinted, and that the safer course is to place the copyright notice on the

first page of each part and register each part separately, in which case the completed work should have the date or dates of the year or years within which the several parts were published. There seem to be no objections, within the law or from court decisions, to coupling two dates in the same notice, in such cases as "Copyright, 1910, 1911, by A. B.," though there is no specific decision on this point. Under the previous law a book published in more than one volume or part, the portions not complete in themselves, was probably protected by copyright entry of the first part, all parts being of course ultimately deposited; but the change in the new code basing copyright on publication with notice, seems to change this rule of practice. In the case of Dwight *v.* Appleton, in 1840, it was held that as the statute did not expressly prescribe that the copyright notice should appear in successive volumes after the first, this was not necessary; but the application of this doubtful decision under the new code would be more than questionable.

Different dates

It may be emphasized that publication with notice is the first step in copyright under the new code, and that registration on deposit is the secondary and completing act, and therefore that no registry in the Copyright Office is necessary to authorize the printing of the copyright notice, as was formerly the case.

Notice part of initial step

The requirement (sec. 9) that the notice of copyright "shall be affixed to each copy published or offered for sale in the United States by authority of the copyright proprietor" makes clear what was a subject of dispute under the old law. The courts, however, generally held that extraterritorial notice of copyright, *i. e.* on foreign editions, was impracticable and unnecessary; and this view is specifically adopted in the new code. In 1905, in Harper *v.* Donohue, it was held by Judge Sanborn, in the U. S. Circuit Court,

Extraterritorial notice

that the omission of the American copyright notice from an English edition could not vitiate copyright here, especially in view of the prohibition in the law of the importation of foreign-made copies of copyright works. In 1908, in Merriam *v.* United Dictionary Co., it was held by the U. S. Supreme Court, through Justice Holmes, that even where the omission of the notice on a foreign-made edition was with the assent of the American copyright proprietor, there was no waiver of copyright in this country.

Successive editions

In the case of successive printings or editions of a copyrighted book, the original copyright entry must appear in every reprint of the first edition; and it would seem that this entry should also appear in every new edition newly copyrighted, as well as the new notice, so long as it is desired to protect the matter contained in the old edition. Judge Clifford, in the U.S. Circuit Court, in Lawrence *v.* Dana, in 1869, ruled this to be superfluous; but his decision is contrary to the rule that a proprietor may not claim through the copyright notice a longer term than the law permits, since a later date, referring only to new matter, but apparently comprehensive of the whole contents, might be voided under this rule. It is doubtful whether on a new edition with old and new matter one copyright notice with two dates is safe, and the wiser course is to give both the earlier copyright notice and the later notice in proper sequence. In the case of new printings of works published and copyrighted prior to July 1, 1909, no new notice or application is required unless there is added material to be additionally protected and constituting to that extent a new work, in which case a new application and the deposit of two copies is necessary.

False copyright notice

Provision is specifically made against false notice of copyright by the enactment (sec. 29): "That any

person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars," and the importation of any article bearing a notice of copyright when no American copyright exists is absolutely prohibited (sec. 30).

Ad interim protection

It should be noted that the copyright notice is not required on books published abroad in the English language before publication in this country, entered for *ad interim* copyright, and therefore that within sixty days after the publication abroad of a book in the English language, such book may be protected by American registration, though containing no notice of copyright; and within this period inquiry at the Copyright Office is necessary to determine the status of the book.

Substitution of name

It is provided (sec. 46): "That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act." This applies only where the entire copyright has been assigned and the assignment duly recorded in the Copyright Office as provided by law, and does not permit a change of name in the copyright notice under any other cir-

cumstances, as partial assignment. Substitution without authority of law voids copyright, as was held in Record & Guide Co. *v.* Bromley in 1910, where another trade name of the copyright claimant was substituted for the original trade name.

Registration The method of registration, or rather of application therefor, is not specified in the law, for the reason that under the code of 1909 deposit succeeding publication is made the act completing the securing of copyright, and registration is incidental thereto instead of the first requisite. Under the old law it was decided in the U. S. Circuit Court through Judge Colt, in Gottsberger *v.* Estes, that publication before deposit of copies voided the copyright.

Rules and regulations The act provides (sec. 53): "That, subject to the approval of the Librarian of Congress, the Register of Copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act," and (sec. 54) "whenever deposit has been made in the Copyright Office of a copy of any work under the provisions of this Act, he shall make entry thereof."

Application It is provided (sec. 5): "That the application registration shall specify to which of the [s:c] classes the work in which copyright is claimed belongs," but it is also provided "nor shall any error in classification invalidate or impair the copyright protection." In Green *v.* Luby, in 1909, the U. S. Circuit Court protected a vaudeville sketch, though classified as a dramatic instead of a dramatico-musical copyright, against infringement by a mimic performance.

Certificate It is further provided (sec. 55): "That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the Copyright Office, to contain his name and address, the title of the work

upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen of this Act, the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The Register of Copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the Copyright Office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any court as *prima facie* evidence of the facts stated therein. In addition to such certificate the Register of Copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration."

Application requirements

The application is in general in simple form, and care should be taken in filling out the card that the space at the top intended for use by the Copyright Office should be left blank. The application must be signed with the name and address of the copyright claimant, who may be the author or his representative, as where his publisher is taking out the copyright. In the case of works made for hire, the employer may make application as author. The name of the author should be given on the line provided for that purpose, even though the name of the author as claimant is also given above; but in the case of anonymous or pseudonymous works, the name of the author is not required. The title should be given exactly as on the title-page of the book or on the work, and the other particulars called for in the application should

be exactly as indicated by the work itself. The day of publication must be exactly stated, and the application cannot be made, therefore, until *after* publication. Provision is also made on the card for the name and address of the person to whom the certificate of registration is to be sent and of the remitter of the fee, and in the case of books, the application must be accompanied by the affidavit made either on the reverse of the application card or on the separate card also provided. In applications, as for foreign or *ad interim* copyright, where the nationality of the author should be stated, information as to citizenship, not race, is required. A person naturalized in the United States is defined as an American. A foreign author claiming copyright because of residence, must state that he is a "permanent resident" of the United States (C. O. Rule 29).

Illustrations The illustrations of a book may be separately registered, and if by lithographic or photo-engraving process must also have affidavit of manufacture in this country.

Maps and charts are classed with works of art, and the formalities in respect to these, as well as in respect to dramatic and musical compositions, are treated specifically in the chapters on those specific subjects.

Periodicals In respect to periodicals, application should be made as for books, but no affidavit is required; separate registration is necessary for each number published, with notice of copyright, and can be made only after publication. It is not possible to register the title of the periodical in advance of publication. (C. O. Rule 36.) Two deposit copies of periodicals are required; but a contribution to a periodical separately registered requires the deposit of only one copy of the periodical. The entire copy should be sent, as

a mere clipping does not comply with the statute. (C. O. Rule 37.) The date of publication of a periodical is not necessarily the printed date of issue, and the actual day of publication should be stated in the application, whether for the registration of the periodical itself or a contribution to it.

Application cards

The Copyright Office has prepared blank forms in library card shape, which are furnished applicants free of charge, for the several classes of applications mentioned in the law, the cards being in *pink*, except as hereafter stated, lettered and numbered as follows: (A¹) book by citizen or resident of the United States; (A¹. New ed.) new edition of book by citizen or resident of the United States; (A¹ for.) book by citizen or resident of a foreign country, but manufactured in the United States; (A²) edition printed in the United States of book originally published abroad in the English language, all these being double cards including affidavit of American manufacture — supplemented by *blue* cards providing with specific instructions, (*A*¹) for separate affidavit of American manufacture from type set or plates made in the United States, and (*A*²) for lithographic or photo-engraving process within the United States; (A³) book by foreign author in foreign language; (A⁴) *ad interim* copyright — book published abroad in the English language; (A⁵) contribution to a newspaper or periodical; (B¹) periodical, — for registration of single issue; (B²) periodical, — general application and deposit, supplemented by a *white* blank for depositing single subsequent issues; (C) lecture, sermon, or address prepared for oral delivery; (D¹) published dramatic composition; (D²) dramatic composition not reproduced for sale; (D³) dramatico-musical composition; (E¹) published musical composition; (E²) musical composition not reproduced for sale —

these supplemented by a *blue* card (*U*), notice of use on mechanical instruments; (F) published map; (G) work of art (painting, drawing, or sculpture), or model or design for a work of art; (H) reproduction of a work of art; (I) drawing or plastic work of a scientific or technical character; (J^1) photograph published for sale; (J^2) photograph not reproduced for sale; (K) print or pictorial illustration; (R^1) renewal of copyright subsisting in any work; (R^2) extension of a renewal copyright subsisting in any work. Thus an applicant for copyright on an American book should send for card (A^1), on which he may enter his application and also include affidavit as to American typesetting, printing, and binding; if he wishes the affidavit to be separately made he should obtain also the special *blue* card (A^1), or if lithographic or photoengraving is used he should obtain also the special *blue* card (A^2). A dramatic applicant should send for card (D^1) or card (D^3), respectively, for the entry of a dramatic or dramatico-musical composition; or for (D^3) if he desires to copyright without reproducing for sale. The applicant for a musical composition, as distinguished from a dramatico-musical work, should send for card (E^1) or (E^2) respectively. The art applicant should send for card (G) for an original work of art, or card (H) for a reproduction, or for a photograph card (J^1) or card (J^2) respectively.

Certificate cards

Similar certificate cards, also of library size, uniformly *white*, are provided for the several classes of registration, correspondingly lettered and numbered, except in a few cases where one certificate form serves for more than one class or subdivision, with the addition of a general form (Z) to cover anything unprovided for in the other certificate forms. The certificate bears on one side the uniform statement of the deposit of two copies or one copy of the article

named herein, and of registration for the first or renewal term, with the name of the claimant (printed in the case of a few of the publishers making most applications), and on the other side the specification (following the wording of the application and the deposit copy) of the title or description, date of publication, receipt of affidavit (where required), receipt of copies and entry number by class, together with the seal of the Copyright Office.

Fees

This certificate is sent without charge other than the fees directly provided for in the law (sec. 61), viz., "for the registration of any work subject to copyright, deposited under provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents. . . . For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents." The law no longer contemplates record before publication, and it is unnecessary and undesirable to send application or money previous to sending of deposit copies. In fact, as the certificate must show date of publication, publication *cannot* be anticipated, and money sent in advance, for individual registrations, is only an embarrassment to the Copyright Office. The Office will, however, receive advance deposits from publishers of periodicals or other publishers making frequent registrations, against which each registration will be charged. Fees should be sent by money order, or at the remitter's risk, in currency (but not in stamps). Bank drafts and certified checks are accepted in practice, though the Register of Copyrights cannot legally receive checks except at his personal risk and therefore from persons

known to him as in frequent relation with the Copyright Office Postage must be prepaid on the signed application, as there is no provision for free transmission through the mails, such as applies to deposit copies. In practice the application with remittance and the deposit copies should be simultaneously sent immediately after publication.

Deposit

The law provides that deposit copies shall be sent *promptly* after publication, and that *two complete* copies of the *best* edition then published (or one copy in case of a contribution to a periodical or for identification of a work not reproduced for sale) shall be deposited; and if a work is published with notice of copyright, and copies are not promptly deposited, the copyright is voided and the proprietor becomes subject to penalty three months (or in case of outlying possessions or foreign countries six months) after formal demand by the Register of Copyrights for deposit copies. The word "promptly" is indefinite and has been vaguely construed to mean "without unnecessary delay," but this does not mean the very day of publication (C. O. Rule 22). The status of undeposited works published with copyright notice and not formally demanded by the Register of Copyrights, is also not defined by the law. In such case the copyright has not been perfected by the completing act, and it would be impracticable to proceed against an infringer, and the proprietor might be liable to penalty for false notice of copyright. In the event of such a case arising, through carelessness or otherwise, the courts would have to decide the question by definition of the word "promptly" and an interpretation of the implication that copyright is voided, meaning that the right to obtain copyright lapses, if the process is not completed without undue delay.

The deposit copy must be the complete work; a

fragment is not a work, and a part of a work cannot be copyrighted, especially as this would nullify the manufacturing clause, as set forth in the opinion of the Attorney-General, February 9, 1910.

Fragment not depositable

A work may be published and deposited in typewriting copies, as set forth in the opinion of the Attorney-General of May 2, 1910, but this will not operate to avoid the manufacturing clause when the work is published in print.

Typewriting publication and deposit

The completion of the copyright by deposit of copies is covered by the provision (sec. 12): "That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the Copyright Office or in the mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with."

Legal provisions

In case of failure to deposit, the law of 1909 provides for penalties and finally voiding of the copy-

Voiding by failure to deposit

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

Forfeiture by false affidavit

In the case of a printed book or periodical or of a lithograph or photo-engraving, the copies deposited must be manufactured in America, as set forth in the manufacturing provision (sec. 15) as verified in the case of a book by affidavit (sec. 16) separately treated hereafter, and the book copyright is forfeited (sec. 17) in the event of false affidavit. Thus failure to deposit, and, in the case of books, false affidavit as to American manufacture, are the two lapses of formalities which work forfeiture of copyright.

Works not reproduced

In the case of works not reproduced for sale, copyright may be secured under the provision (sec. 11): "That copyright may aiso be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; of a photograph or other identifying reproduction

thereof if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit copies under sections twelve and thirteen of this Act where the work is later reproduced in copies for sale." The entire work should in each case be deposited (C. O. Rule 18) and not a mere outline, epitome or scenario; and the copy should be in convenient form, clean and legible, with the leaves securely fastened together, and should bear the title of the work exactly as given in the application.

Second registration

It should be noted that in this class of copyright, which is a common law copyright fortified by statutory protection, an ideal example of copyright law, double registration is required in case the unpublished copyrighted work is published, requiring one application fee and deposit of one identifying copy for the unpublished work and a second application fee and deposit of two copies promptly after publication.

Free transportation in mail

It should be noted that the deposit copies may be deposited either in the Copyright Office or "in the mail addressed to the register of copyrights," and it is provided (sec. 14): "That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant." Franking labels are not required and are no longer issued by the Copyright Office. Deposit copies, and all mail matter, should be addressed to the "Register of Copyrights, Library of Congress, Washington, D. C.," and not to any person by name.

Loss in mail

Thus even if the deposit copies should not reach Washington, as in case they were burned in the mail,

the copyright proprietor can validate his claim by production of the postmaster's receipt in lieu of deposit copies.

Foreign works

In respect to foreign works, it should be noted that "the original text of a work of foreign origin in a language or languages other than English," may be formally copyrighted and fully protected by registration under the same formalities as domestic works except that the deposit copies need not be manufactured within the United States, thus giving the author the exclusive right of translation. Copies published for use in America must of course bear the copyright notice. A translation into English from such text cannot be copyrighted unless the deposit copies of the English translation are manufactured within the United States; and this holds true also in respect to translations into a language other than English, as it is only "the original text" which can be copyrighted without American manufacture.

Ad interim deposit

In respect to books published abroad in the English language, *ad interim* protection is assured by the provision (sec. 21): "That in the case of a book published abroad in the English language before publication in this country, the deposit in the Copyright Office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an *ad interim* copyright, which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of thirty days after such deposit in the Copyright Office."

On such works the provisional copyright is made permanent under the provision (sec. 22): "That

Completion of ad interim copyright

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

The *ad interim* provision requires the same formalities and fee as in the case of domestic works, except that only one copy of the foreign work in English need be deposited, and that this deposit copy need not contain the statutory notice of American copyright. The claimant is given thirty days after publication abroad in which to request reservation and a second thirty days after deposit of the foreign copy within which to publish or cause to be published an edition manufactured in America and thus to complete his copyright. This gives a period of *ad interim* protection, ranging from thirty days to sixty days, within which to obtain permanent copyright, the exact period depending upon the number of days elapsing after publication before deposit of the foreign copy in the Copyright Office. Thus a copy deposited on the day of publication will have thirty days in all within which to secure permanent copyright by the publication of the American-made edition, while a copy deposited on the thirtieth day after publication will have sixty days in all; but the failure to deposit the foreign copy within thirty days after publication, or the failure to publish an American-made edition within thirty days after such deposit, will forfeit the right to obtain copyright protection and throw the foreign work into the public domain,

despite the *ad interim* registration. When an American-made edition with notice of copyright can be published in America simultaneously with its publication abroad, *ad interim* protection is of course rendered unnecessary; and such simultaneous publication is the simplest and best practice for publishers to adopt.

Omission of copyright notice

It may also be emphasized here that the notice of copyright can be omitted only from foreign-made copies and must be included in the American-made edition. The American publisher desiring to reprint a book published abroad in the English language within sixty days after publication, without consent of the copyright proprietor, must therefore assure himself, by inquiry from the Copyright Office, whether the work has been registered *ad interim*. The printing of an American copyright notice on the foreign edition in anticipation of the publication of an American-made edition and the deposit of copies thereof within the statutory requirements is a questionable practice, as a failure to publish American-made copies in the United States, because of defective publishing arrangements or a printers' or binders' strike, would make such notice a false notice of copyright. The copyright term in the case of such foreign work in the English language dates, it would seem, from the date of publication abroad rather than from the date of publication of the American-made edition; but this would be of importance only toward the expiration of the original term and in connection with the renewal term.

Books only ad interim

Ad interim protection seems to be confined exclusively to a book as such, and therefore does not apply to articles in periodicals.

It should be noted that an American author publishing his work abroad is not benefited by either of these provisions respecting foreign works. The pro-

vision regarding works in other languages is specifically confined to a work of foreign origin, that is, not by an American author; and he gains nothing, if his work is in English, from *ad interim* protection. Thus an American author publishing his work first in German in Berlin, must copyright and deposit an American-made edition of his German text in this country to obtain American protection, without which his work in German could be imported into this country without his consent, and an independent translation of his text into English and its publication in America could not be prevented.

American authors not thus protected

In view of the exact prescription of the method of securing copyright, unless the statute is precisely complied with the copyright is not valid. Said Judge Sawyer, in 1875, in Parkinson *v.* Laselle: "There is no possible room for construction here. The statute says no right shall attach until these acts have been performed; and the court cannot say, in the face of this express negative provision, that a right shall attach unless they are performed. Until the performance as prescribed, there is no right acquired under the statute that can be violated." And in the case of the play "Shaughraun," Boucicault *v.* Hart, in 1875, Justice Hunt held, as regards copyrights in general: "Two acts are by the statute made necessary to be performed, and we can no more take it upon ourselves to say that the latter is not an indispensable requisite to a copyright than we can say it of the former." The Supreme Court laid down this general doctrine in Wheaton *v.* Peters, in reference to the statutes of 1790 and 1802, and the later statutes are most explicit on this point. In the same case of Wheaton *v.* Peters, Justice McLean, in delivering the judgment of the Supreme Court, held that while the right "accrues," so that it may be protected in

Exact conformity required in formalities

chancery, on compliance with the first requirement of the prescribed process, it must be perfected by complying with the other requisites before a suit at law for violation of copyright can be maintained.

Expunging from registry

A false or unjustifiable entry of copyright may be expunged from the registry by court order, as was done in the English case *Re* Share Certificate Book in 1908.

British formalities

The statutory formalities of copyright in other countries vary greatly. In Great Britain copyright has been secured by first (or simultaneous) publication within the British dominions or under the "international copyright act." The law provided that a copy of the best edition of a book must be deposited in the British Museum, this giving basis for proof of publication, which deposit must be made within one month after publication if published within London, three months elsewhere in the United Kingdom, and one year in other parts of the British dominions; the failure to deposit did not forfeit copyright, but involved a fine; but under the international copyright provisions, deposit in the British Museum of a colonial or foreign work was not required, though useful as *prima facie* evidence of publication. Four other copies of domestic books must be supplied to the universities of Oxford, Cambridge, Edinburgh and Dublin if demanded within twelve months from publication. Registration at Stationers' Hall was necessary for books only as a prerequisite to an action at law against infringement, but was obligatory in the case of paintings, drawings and photographs. Copyright notice on a book was not required except to reserve the right of representation of a dramatic work, etc., though it has been customary for English publishers to print the phrase "All rights reserved" as the equivalent to the copyright notice. But copyright notice was re-

quired to protect sculpture, engravings and musical compositions and in respect to oral lectures.

The new British code

The new British code bases copyright for all published works on first publication within "the parts of His Majesty's dominions to which this Act extends" or as provided for in colonial or international arrangements — copyright of unpublished works depending upon British citizenship or residence at the time of making. Delivery of copies to the British Museum and on demand to the other libraries is required from the publisher of every book published in the United Kingdom, but on penalty of five pounds and the value of the book and not of forfeiture of copyright. The National Library of Wales is entitled to a sixth copy, in prescribed classes of books. Registration is no longer made a condition or circumstance of copyright.

Most of the British colonies have followed the precedent of the mother country, with slight variation, in their domestic legislation. Canada and Newfoundland, following the precedent of the United States, require copyright notice in statutory form.

Other countries

France requires deposit of two copies upon publication, and registration is required prior to a suit for infringement. Germany requires the registration of the name of the author of anonymous or pseudonymous works as the condition for copyright, but otherwise grants copyright practically as natural right without requiring formalities. The greater number of copyright countries do not impose any formalities except for specific privileges as the right of translation, of representation or of reproduction in the case of periodical contributions; or for special subjects as works of art, musical compositions, telegraphic messages, where these are protected, and oral lectures. Deposit of copies is, however, generally re-

quired, either before putting the book on the market or before circulation, or upon publication, or else within a specified time after publication, ranging from ten days in the case of Greece to two years in the case of Brazil, while in several countries no specific time is mentioned. In Italy, if no deposit of a registered work is made within ten years, the copyright is considered to be abandoned. The number of copies required varies in the several countries from one to six. In some countries specific formalities are required to establish the beginning of the term of protection for collective or posthumous works, etc., or in connection with the disclosure of the author's name on anonymous or pseudonymous works. Spain, Colombia and Panama, and Costa Rica have a curious provision that if a work is not registered within one year from publication the copyright is forfeited for ten years, at the end of which period it may be recovered by registration. Canada and Newfoundland, following the United States precedent, Australia, Holland and the Dutch colonies, and Siam require manufacture within the country. In several countries penalty for failure to deposit is provided, the limit being usually the value of a book and a sum not exceeding £5, or in France 300 francs. The deposit of a photograph or sketch of a work of art is in many countries required for purposes of identification.

International provisions

International copyright throughout the countries of the International Copyright Union and the Pan American Union, if the Berlin and Buenos Aires conventions are ratified throughout, will depend, as now it depends for most countries, entirely on the formalities in the country of origin.

X

THE AMERICAN MANUFACTURING PROVISIONS

Manufacturing provision of 1891

IN the American law of 1891, embodying the "international copyright amendment" which for the first time permitted the copyright in the United States of works by foreign authors not resident in this country, the copyright of books was conditioned on the manufacture within the United States, and this condition was made applicable also to American authors.

Text in 1909 code

The American code of 1909 follows this precedent in making manufacture within the United States a *sine qua non* of copyright for printed books and periodicals, lithographs and photo-engravings, under the following provision (sec. 15), commonly cited as the manufacturing provision: "That of the printed book or periodical specified in section five, subsections (a) and (b) of this Act except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of

printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking *ad interim* protection under this Act."

Scope and exceptions

This manufacturing provision requires that every "book" except the original text of a book of foreign origin, *i. e.*, not by an American writer in a language or languages other than English, or a book published abroad in the English language seeking *ad interim* protection, or a book in raised characters for the use of the blind, can obtain American copyright whether by an American or foreign author, only in case the type is set, the plates made and lithographic or photo-engraving text or illustrations produced and the work printed and bound within the limits of the United States—inclusive, presumably, of the outlying dependencies. The provision extends to periodicals, though these are not subjected to the affidavit clause, and periodicals containing authorized copyrighted material are not prohibited from importation. The provisions extend also to lithographs or photo-engravings, issued separately as well as for book illustration, unless these represent foreign subjects or illustrate a scientific work or reproduce a work of art.

Changes 1891–1909

The provision of 1909 differs from the provision of 1891 in requiring that a book should be from plates type-set as well as made, and be printed and bound, within the United States, in adding periodicals and by omitting photographs and dropping the word

chromo, and including photo-engravings as well as lithographs. The inclusion of binding in the manufacturing provision met with especial opposition, on the ground that binding is not an integral part of, but an incidental addition to, a completed book.

German-American instances

The effect of these provisions, to cite specific instances, is that an original German text by a non-American author is exempt from the manufacturing provisions, but that a French translation or an English translation is not, and that an original German work by an American author must be manufactured in this country to obtain protection, and that the American author printing his work in English abroad may claim *ad interim* protection but can obtain no substantial benefit from it. In case a German-American citizen, or German resident of this country, writes a book in the German language and prints it first in Berlin, he can have no American copyright in the German edition; and if copies of such an edition, without copyright notice, should reach the United States previous to manufacture and publication of the work here, any one would have the right to reprint it, and the work would be practically dedicated to the public, while the copyright notice could not be affixed to such foreign printed edition without violation of the law. If, however, the German work were a translation made by or for the author of a work written in English, the general copyright of the English work would cover the German edition, but the German copies could not then be imported.

Dramas excepted

A drama copyrightable as such under subsection (d) is not subject to the manufacturing provision, unless classified as a book under subsection (a). A printed drama was held not to be subject as a book to the manufacturing provision in Hervieu *v.* Ogilvie, in the U. S. Circuit Court, by Judge Martin

in 1909, and this decision under the old law is applicable to the new code.

Exception of foreign original texts

The exception of "the original text of a book of foreign origin in a language or languages other than English," — drafted by the author of the present volume, introduced at the instance of the American (Authors) Copyright League, as the McCall bill with the assent of the representatives of the typographical unions responsible for the manufacturing provision, — was included to assure a real reciprocity in copyright with continental and other non-English nations. The exception is repeated toward the close of the section in the somewhat wider phrase "books of foreign origin in a language or languages other than English," which omits restriction to "the original text"; but it is probable that the second phrasing would be construed in conformity with the first, as the evident intention of the law.

Exception of foreign illustrative subjects

The exception from lithographs and photo-engravings of subjects which "are located in a foreign country and illustrate a scientific work or reproduce a work of art" is intended to permit the importation, either separately or for book use, of direct reproductions made abroad of scenes or objects which otherwise could be reproduced in this country only indirectly and at second-hand; the confusing and probably careless use of the word "and" might seem to exclude from the exemption a lithograph or photo-engraving of a natural scene, illustrating a work of travel, but the courts might here feel justified in taking the more liberal view.

Affidavit requirement

To the manufacturing provision of the previous law has been added a new affidavit requirement (sec. 16) as follows:

"That in the case of the book the copies so deposited shall be accompanied by an affidavit, under

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

Avoidance of errors

In preparing the affidavit, which is necessary for books only, the applicant should be careful to note the following points, as to which errors are commonly made. The affidavit should correspond exactly with the application (as that with the title-page or other data in the work itself). The affidavit cannot be made till *after* publication and must state the exact day of publication or the date of completion, either or both, which last means not necessarily the completion of printing the whole edition, but of the deposit copies. The affidavit must be taken and signed by an individual, not by a corporation, company or firm as such, and the affiant must state whether he is the claimant, agent of the claimant, or printer, striking out the other designations. The name of the printer

and binder must be given in the affidavit with city and state (but not street) address; but this means the printing and binding establishment and not the individual type-setter or binder. If the book is not bound but only issued in paper, the word "unbound" should be written into the affidavit. It is necessary to give the *venue*, that is, the county and state in which the affidavit is made, and to take the oath before a notary or other official authorized to take such oath in that locality (not merely a justice of the peace). The affiant's and notary's names should be signed exactly as written into the body of the affidavit, and the seal should correspond exactly with the name of the official and the *venue*. The signature of the affiant and of the notary and the seal are all necessary to validate the affidavit. The names and other writing should be written plainly, and the affiant should make sure to read the affidavit and compare it with the application and with the book.

Forfeiture by false affidavit

In case of false affidavit, forfeiture of copyright is provided (sec. 17) as follows:

"That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited."

Exact compliance necessary

The affidavit clause is exact and specific It may be made either by the printer or the publisher. This exacting and drastic addition to the manufacturing clause met with strong opposition from the friends of copyright, particularly authors and book publishers, as unnecessary and unreasonable, but was successfully insisted upon by the representatives of the typo-

graphical unions. The voiding of copyright because of a false affidavit by a printer or publisher, which might even be mistakenly made and of which the author would have no cognizance, was opposed as especially unjust to authors and out of keeping with the rest of the law. Under the statute as enacted, this provision must be exactly complied with, and the courts would doubtless enforce it to the letter.

Importation questions

The manufacturing provision of 1891 and its extension in the code of 1909 have raised important and difficult questions as to the time at which these provisions become effective in relation with copyrights previously existing. It was claimed by Benziger Brothers, as proprietors of a copyright American edition of the "Key of Heaven," that an edition of sheets printed in America previous to the law of 1909 and sent abroad for binding, could be reimported notwithstanding the new provision against binding, but the decision of the appraisers at New York against this claim was upheld by the Secretary of the Treasury, under advice of the Attorney-General, and the courts have not yet had occasion to pass on the question. This ruling indicates that since July 1, 1909, copyright could not be maintained on any book unless type-set, printed and bound completely within the limits of the United States, and that any copyrighted books, partly manufactured in the United States, but bound and otherwise completed abroad since July 1, 1909 must be denied importation. It has been decided, however, by the Attorney-General, that the manufacturing requirement as to binding refers only to the original, and that copyright books rebound abroad cannot be denied importation. Also it has been held that a foreign translation of a copyright work, for which translation American copyright is not claimed, cannot be refused importation.

The provisions supplementing the manufacturing clause by prohibiting importation are given in the chapter on importation.

Foreign manufacturing provisions

Holland is the only country in Europe which requires that the deposit copies shall be printed within the country and thus makes manufacture a condition of copyright — an inheritance probably from the times when the printer-publishers of the Protestant Netherlands were the only ones printing the books barred in Catholic countries by the *index expurgatorius*, and when deposit was naturally required from them. The law covered the Dutch West Indies, and the precedent was followed in Siam; and in the Transvaal and Orange State the Dutch law continued after they had become English colonies. Otherwise than in these countries, only the British dominions of Canada and Newfoundland and the Commonwealth of Australia have manufacturing provisions. Canada made such provision as to domestic copyright in 1886 and again in the act of May 2, 1889, which last provides that a literary, scientific, musical or artistic work shall, before or simultaneously with publication or production elsewhere, be registered in the office of the Minister of Agriculture, and be printed or published or produced in Canada within one month after publication or production elsewhere. Newfoundland in its statute of 1892, following our own of 1891, provided similarly that the condition for obtaining copyright shall be that the literary, scientific or artistic work shall be printed and published or produced in this colony. Australia, under the new code of 1905, confines domestic copyright to books (inclusive of drama) "printed from type set up in Australia, or plates made therefrom, or from plates or negatives made in Australia in cases where type is not necessarily used," and in an artistic work to those "made in Australia."

English patent proviso

Unfortunately, the precedent of our copyright act of 1891 has since been followed in England in the patent and designs act of 1907, which provides (sec. 27) that a patent may be revoked after four years "on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom." Such a provision had been a feature of the patent laws of Germany, Canada and other countries, but it is new in British law and has evoked strong protest from American patentees, notwithstanding that it is parallel with our manufacturing provision with respect to copyrights.

XI

DRAMATIC AND MUSICAL COPYRIGHT, INCLUDING PLAYRIGHT

Dramatists' and composers' rights

THE dramatic author and the musical composer receive recompense for their creative labor not so much from publication of their works in the printed form of a book as through their performance or representation, when protected as playright or performing right, as the artist receives remuneration not only for the reproduction and sale of copies, but also from the exhibition as well as sale of his original work. Dramatic and musical copyright, in the wide sense, therefore, covers copyright in the specific sense and playright, as to which latter common law rights especially need statutory protection.

American provisions

In the protection of dramatic and musical compositions the new American code specifically provides not only for copyright, but for playright or right of performance. Under subject-matter of copyright (sec. 5) such works are classified as "(d) Dramatic or dramatico-musical compositions; (e) Musical compositions"; and the Copyright Office Rules and Regulations further define these classes as follows:

Copyright Office definitions

"8. (*d*) *Dramatic and dramatico-musical compositions*, such as dramas, comedies, operas, operettas and similar works.

"The designation 'dramatic composition' does not include the following: Dances, ballets, or other choreographic works; tableaux and moving picture shows; stage settings or mechanical devices by which dramatic effects are produced, or 'stage business'; animal

shows, sleight-of-hand performances, acrobatic or circus tricks of any kind; descriptions of moving pictures or of settings for the production of moving pictures. (These, however, when printed and published, are registrable as 'books.')

"9. *Dramatico-musical compositions* include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung.

"Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions.

"10. (*e*) *Musical compositions*, including other vocal and all instrumental compositions, with or without words.

"But when the text is printed alone it should be registered as a 'book,' not as a 'musical composition.'"

Rights assured

To dramatic and musical authors are given (sec. 1) in addition to the general right, granted in subsection "(a) To print, reprint, publish, copy and vend the copyrighted work," the specific exclusive rights:

"(b) . . . to dramatize it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama; to arrange or adapt it if it be a musical work; . . .

Dramatic rights

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

or reproduce it in any manner or by any method whatsoever;

Musical rights

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

— to which provision of subsection (e), in respect to copyright control of mechanical records, are added provisos that such control shall not extend to compositions published and copyrighted before July 1, 1909, and works of foreigners whose state does not grant similar right to American citizens, and shall be subject to compulsory license arrangements, requiring that if the author permits any mechanical reproduction, he shall license any manufacturer under conditions stated in detail in the act, all of which exceptions and conditions are fully stated in the chapter on mechanical music provisions.

Excepted performance

An exception to these exclusive rights is, however, made in the proviso (sec. 28) "*Provided, however:* That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit."

This proviso is singularly defective in phraseology, as the phrase "octavo choruses" has no musical significance and uses a music-trade term to designate

choruses usually but not necessarily published in octavo form; and the duplication of the words "public school," etc., is probably a verbal error in the bill which mistakenly became part of the law. The proviso is doubtless intended and would fairly be construed to permit gratuitous unauthorized performance of religious or secular works such as oratorios, cantatas, masses, and choruses by public schools, church choirs, school choirs or vocal societies, from copies rented, borrowed, or obtained from some public library, provided the performance is given for charitable or educational purposes and not for profit. Curiously the letter of the proviso would seem to provide that the beneficiary organization cannot perform from a purchased copy, but only from copies rented, borrowed or "obtained from" some public source; but this also is an evident error.

Performance "for profit"

It should be noted that the omission from subsection (d) as to drama and the inclusion in subsection (e) as to music, of the words "for profit," — doubtless with the intent of assuring to the individual purchaser of music the right to perform it privately, — have significance here, and serve, it would seem, to give the dramatic author absolute control even over gratuitous performances and to limit the control of the musical author to performances which are not gratuitous, a negative provision covering, and giving much wider latitude than, the proviso (sec. 28) above cited. But as dramatico-musical compositions are classified (sec. 5, d) with dramatic compositions, and an oratorio and possibly a cantata might be considered as a dramatico-musical composition, the proviso (sec. 28) may have a specific effect as to this kind of dramatico-musical compositions. The law unfortunately defective and confusing by reason of this proviso and will be so difficult of judicial construc-

tion as to suggest the omission, by amendment, of this proviso. The use of the word "public" in both cases implies that the author cannot control private representation and opens other questions difficult of judicial interpretation.

Works not reproduced

It is provided (sec. 11): "That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be . . . a dramatic or musical composition"; provided that the required deposit of two copies shall be made, as in the case of books, on publication thereafter by the multiplication and public sale or distribution of copies.

Copyright notice

The notice of copyright must be printed (sec. 18) on each copy, as in the case of a book in the form "Copyright" or the abbreviation "Copr.," "accompanied by the name of the copyright proprietor" and "the year in which the copyright was secured by publication." In the case of a published dramatic work the notice must be placed, as in the case of a book, upon the title-page or the page immediately following, but in the case of a published musical work the law provides that the notice "shall be applied . . . either upon its title-page or the first page of music," and this specification makes the copyright notice of doubtful validity if applied in a musical work on the page following the title-page, unless this is the first page of music.

Dramatico-musical works protected from mechanical reproduction

The classification of dramatico-musical compositions under subsection (d) as dramatic works and not under subsection (e) as musical compositions, defines an opera and possibly an oratorio or cantata as a dramatic rather than a musical composition. As the dramatic author is given (sec. 1, d) the comprehensive rights over reproduction "in any manner or by

any method whatsoever" while the musical author is limited (sec. 1, e) in respect to mechanical reproductions, it would seem to follow that the author of an opera may retain absolute control over mechanical reproduction, as the author of a non-musical drama retains absolute control over phonographic or other reproduction of his drama. This would seem to confine the requirements that the author of a musical composition permitting mechanical reproduction should license any manufacturer, to musical compositions which are not dramatic, *i. e.*, to instrumental compositions or to songs and other vocal music not associated with drama. As an overture to an opera is an integral part of the dramatico-musical composition, it would even seem that an overture which is part of an opera, or possibly an orchestral introduction or interlude in an oratorio or cantata, would not be subject to the mandatory license provided as to musical compositions. But this question has not yet come before the courts.

Dramatic and musical works excepted from manufacturing provisions

Dramatic and musical works are not mentioned in the manufacturing and affidavit provisions (secs. 15, 16, 17) which are specifically confined to "the printed book or periodical specified in section 5, subsections (a) and (b)," while dramatic and musical compositions are classified in subsections (d) and (e). It might be alleged that dramatic or musical compositions in book form or produced as books from type or by lithographic or photo-engraving process should be classified as books and subjected to the manufacturing provisions; but this is distinctly not the letter of the law. This exception was specifically upheld for music in the case of Littleton *v.* Ditson in 1894, by Judge Colt in the U. S. Circuit Court in Massachusetts, where the defense that there was no copyright in certain songs because the music sheets

were not from type set or plates made within the United States, was overruled; and for drama in Hervieu *v.* Ogilvie in 1909, where in the U. S. Circuit Court in New York, Judge Martin cited with approval Judge Colt's decision. This ruling was also embodied in Treasury decision No. 21012 of April 17, 1899, permitting the importation of musical compositions copyrighted in the United States and printed abroad.

British colonial practice

The Australian law, on the contrary, specifically includes under the definition of "book," a "dramatic work" and a "musical work," and thus subjects both to the manufacturing clause. Printing and publishing are required in Canada ("within one month after publication or production elsewhere") and in Newfoundland to obtain copyright under the local acts; and as drama is not mentioned but included generically as a book or literary composition, and music is specifically included, both dramatic and musical compositions must be manufactured within each country to obtain local, as distinguished from British or Imperial, protection.

Entry under proper class

The author of a dramatic, dramatico-musical, or musical composition should therefore be careful to make application in the United States under class (d) or (e) and not as a book under class (b). The fact that the law classifies under subsection (d) dramatic or dramatico-musical compositions and under subsection (e) musical compositions, has caused the

Applications and certificates

Copyright Office to prepare separate application forms and certificates for (D^1) a dramatic composition, (D^3) a dramatico-musical composition and (E^1) a musical composition, "published"; as also for (D^2) a dramatic composition (or a dramatico-musical composition) and (E^2) a musical composition, "not reproduced for sale." It would seem advisable therefore that the author of an opera, oratorio or the like,

to obtain the fullest protection under the law, should enter such work in class (d) as a dramatico-musical composition rather than in class (e) as a musical composition, and thus safeguard himself against the mechanical music proviso applied exclusively to class (e).

Right of dramatization

In regard to dramatization, the new American code is specific (sec. 1, b) in giving to the author of an original work the exclusive right "to dramatize it if it be a non-dramatic work" or "to convert it into a novel or other non-dramatic work if it be a drama." The relations of a maker of a dramatic version of a literary work or of a literary version of a dramatic work, would follow the same rule as in the case of a translator. An author has the exclusive right to dramatize or permit the dramatization of his work, and the dramatization may be copyrighted in the name of the original author or of the dramatizer, but the dramatizer cannot prevent another dramatization of the same work unless by transfer of exclusive right from the original author.

Dramatization term

The specific copyright on a published dramatization dates from the publication of the dramatization, which may extend the protection of the dramatization beyond the copyright term of the original work. But on the expiration of the copyright in the original work rival dramatizations can no longer be prevented. All this holds true as to the novelization of a drama.

Musical arrangements

In respect to music, the language of the law (sec. 1, e) is thoroughly comprehensive in covering the arrangement or setting of a musical composition or of a melody in any notation or in any form whatever. This gives to the musical author entire control over the use of any part of his work, as for instance the transcription from an orchestral work for piano use, the instrumentation of a vocal work or the use for a

song of any melody in an orchestral work. On the other hand, variations, transcriptions and so forth of a copyrighted work, made under authorization from the copyright proprietor, may be separately copyrighted as to that extent original works.

Copyright Office definitions

The Copyright Office Rules and Regulations say specifically: "(10) 'Adaptations' and 'arrangements' may be registered as 'new works' under the provisions of section 6. Mere transpositions into different keys are not expressly provided for in the copyright act; but if published with copyright notice and copies are deposited with application, registration will be made."

Transposition

In Hein *v.* Harris in 1910, the U. S. Circuit Court awarded damages where the chorus of a song proved on transposition into the key of the copyright song to be practically a copy of the melody.

Works in the public domain

It is specifically provided (sec. 6) that "adaptations, arrangements, dramatizations . . . or other versions of works in the public domain, . . . shall be regarded as new works subject to copyright," and in the case of such versions copyright inheres in the dramatizer, adaptor or maker of a version, as in the case of a translator of a book, in the public domain. Thus a dramatic or musical work in the public domain may be dramatized or adapted freely and any individual dramatization or adaptation may be copyrighted by the dramatizer or adaptor, but he cannot prevent other dramatization or adaptation of the same work.

Dramatization right protected by courts

The American courts have fully upheld the control over dramatization under the right "to dramatize" specifically given in the law of 1891 and preserved under the new code. In 1895 in Harper *v.* Ranous, Judge Lacombe, in the U. S. Circuit Court in New York, enjoined a play, "Trilby," on the ground that the drama "presents characters, plot, incidents,

dramatic situations and dialogue appropriated from Du Maurier's copyrighted novel," while denying protection against the mere use of the title. In the same year and in respect to the same novel, in Harper *v.* Ganthony, the Harpers, as owners of the copyright of "Trilby," also obtained from Judge Lacombe an injunction against Miss Ganthony, who had presented at the Eden Musée a series of monologues in costume following the plot of the story, which the judge held to constitute a dramatic version and therefore an infringement. A story, "The transmogrification of Dan," purchased by the *Smart Set* for $85, copyrighted as part of that periodical and assigned back to the author, was dramatized by Paul Armstrong and produced by the defendants under the name of "The heir to the Hoorah," retaining the central incident of the story, though with modification and extension of the characters, situation and dialogue. In 1908 Judge Hazel, in Dam *v.* Kerke La Shelle Co., in the U. S. Circuit Court in New York, awarded the full profits from the dramatic representation as damages to the executor of Dam, the author of the story; which decision was fully upheld in 1910 by the Circuit Court of Appeals through Judge Noyes. Thus the new American code specifically enacts into statute law previous decisions of the American courts.

English law and practice

Under English law, on the contrary, the right of dramatization has not been included under copyright; the mere copyrighting of a book could not prevent its dramatization, but the copyrighting of a work in dramatized form before its publication as a novel practically prevented other dramatization of the literary work in so far as the one drama was a reproduction of the features of the other. As stated by Colles and Hardy in their recent work (1906) on "Playright and copyright in all countries," "a novel is not a

dramatic piece, ready and fit for representation on the stage. Consequently, the author of a novel has the copyright in his book, but he has no playright according to English law." The general principles were best stated in 1874 by Chief Justice Cockburn in Toole *v.* Young, where Grattan's drama "Glory" was declared not to be an infringement either of Hollingshead's novel "Not above his business," on which it was confessedly founded, nor of the dramatic version made under the title of "Shop" by Hollingshead himself, but never printed or performed and therefore unpublished: "Two persons may dramatize the same novel, for that is common property. It is true that a writer cannot produce and represent a drama, which he has borrowed from a drama written previously by another person; he would then be representing the production of the first dramatist. . . . I wish to guard myself against being supposed to lay down that, if a writer, while dramatizing a novel, takes the incidents, characters, and dialogue of a previous drama founded upon that novel, and reproduces what is in substance identical with the previous drama, there might not be an infringement of the right of the earlier dramatist if the later drama be represented on the stage."

The new British code

The new British measure remedies this defect by specifically including the sole rights to convert a novel or other non-dramatic work, or an artistic work, into a dramatic work, by way of performance in public or otherwise, and to convert a dramatic work into a novel or other non-dramatic work.

Infringement cases

A curious early case was that of Reade *v.* Conquest in 1862, in which the son of Charles Reade had made and sold to the defendant, who produced it at his theatre, a dramatic version of "It is never too late to mend" in ignorance of the fact that his father had

first written a play called "Gold" and had then transformed that into the novel; in this the defendant was enjoined because the version which he produced infringed the earlier play. In Beere *v.* Ellis in 1889, Baron Pollock enjoined a rival dramatic version of "As in a looking glass" on the ground that while bits of dialogue, presumably copied into the defendant's version, were scarcely substantial, yet a special situation founded on a new incident not in the novel and certain stage business connected with the death of the heroine constituted an infringement. In 1890, in Schlesinger *v.* Turner, the executors of Wilkie Collins obtained an injunction against a rival dramatic version of "The new Magdalen," the judge holding that although the defendant's version had not been copied from the author's own play, it was substantially similar and therefore an infringement. That an independent and different dramatic version can, however, be made, was specifically held in the case of Schlesinger *v.* Bedford in the same year, when Collins's executors failed to obtain an injunction against the defendant's rival dramatic version of "The woman in white," although the novelist himself had previously dramatized his work, the judge holding that the two plays were "essentially different."

Use of substantial quotations

But the use in a play of considerable portions of a copyrighted novel would be an infringement. That a dramatization using substantial parts of a novel infringes the novel, was definitely established in 1863 in Tinsley *v.* Lacy, where the proprietor of Miss Braddon's "Lady Audley's secret" and "Aurora Floyd" obtained an injunction against a bookseller who sold dramatizations under the same titles of which a quarter or more of the text was taken bodily from the novels. So in 1888 an injunction was obtained from Judge Stirling, in Warne *v.* Seebohm, in the Court of

Chancery, against a dramatization of "Little Lord Fauntleroy" which copied from the novel beyond the limits of fair use and was therefore considered a "copy" from the work.

Specific scenes or situations

Where in dramatizing a novel, the dramatic author invents and introduces new scenes, situations or other features, the copying of such added features into another dramatic version of the novel, otherwise independent, constitutes an infringement of the original play. In the case of Nethersole *v.* Bell in 1903, with respect to rival English dramatic versions of Daudet's "Sapho," it was held that while there might lawfully be independent dramatizations of the novel, the circumstances indicated that the Espinasse version of the defendant, said to have been written in Australia, had been so modified consequent to representation of Clyde Fitch's version, as to constitute an infringement of the plaintiff's rights. In Tree *v.* Bowkett in 1896, plaintiff obtained an injunction against the use by the defendant in a rival dramatic version of "Trilby" because of two scenes introduced by the plaintiff into his drama which were not in the novel or in the American dramatization. On the other hand, in Chatterton *v.* Cave in 1876, where the plaintiff had dramatized Eugene Sue's "The wandering Jew" and added two scenes not in the novel, an injunction was denied by Lord Chief Justice Coleridge against an independent dramatization, though it had included similar scenes, on the ground that these were not sufficiently substantial and material in the play to constitute an infringement. And this application of the principle of *de minimis non curat lex* was affirmed by the House of Lords in 1878.

What is a dramatic composition

As to what is a dramatic composition or representation, no definition is given in the American law, and the English laws of 1833 and 1842, quoted beyond,

are not explicit. Both English and American courts have therefore been obliged to make or to extend definitions, but the decisions have been somewhat confusing. The most explicit general statement is that made by Judge Blatchford in discussing Daly *v.* Palmer in 1868: "A composition, in the sense in which that word is used in the act of 1856, is a written or literary work invented or set in order. A dramatic composition is such a work in which the narrative is not related, but is represented by dialogue and action. When a dramatic composition is represented in dialogue and action by persons who represent it as real by performing or going through with the various parts or characters assigned to them severally, the composition is acted, performed, or represented; and if the representation is in public, it is a public representation. To act in the sense of the statute is to represent as real by countenance, voice, or gesture that which is not real. A character in a play who goes through with a series of events on the stage without speaking, if such be his part in the play, is none the less an actor in it than one who, in addition to motions and gestures, uses his voice. A pantomime is a species of theatrical entertainment, in which the whole action is represented by gesticulation without the use of words. A written work consisting wholly of directions, set in order for conveying the ideas of the author on a stage or public place by means of characters who represent the narrative wholly by action, is as much a dramatic composition designed or suited for public representation as if language or dialogue were used in it to convey some of the ideas."

Judge Blatchford's opinion

In a recent case of Barnes *v.* Miner in 1903, where an injunction was asked against a vaudeville change artist who had combined songs in costume with a cinematograph representation of scenes in the dress-

Judicial definitions

ing room during the changes, Judge Ray, in the U. S. Circuit Court in New York, declined to grant relief, adding that as a mere spectacular composition such "sketch" was not properly a dramatic composition. The English law was construed in 1848 in Russell *v.* Smith, when a song "The ship on fire," in which dramatic action was exhibited by the singer alone without costume or scenery, while seated at the piano, was construed to be a "dramatic piece" — the action being "not related but represented." In 1872, in Clark *v.* Bishop, a music hall song "Come to Peckham Rye" was similarly protected as a "dramatic piece." But in 1895, in Fuller *v.* Blackpool Winter Gardens Co., it was held that the song "Daisy Bell," though sung in character costume, was not a "dramatic piece" because its representation did not require acting or dramatic effect. Later decision construed the act of 1833 to cover only spoken words, the English Court of Appeal holding in Scholz *v.* Amasis in 1909, through Lord Chief Justice Farwell, that only substantial copying of written dialogue, and not of a plot or situation, constitutes infringement, and in Tate *v.* Fullbrook in 1908, that the writer of the dialogue is the sole author of the musical sketch though devised and staged by another. But in two cases, one by Moore in 1903 and one by Fraser in 1905, against George Edwardes, English juries gave heavy damages where the scenarios for musical comedies submitted to that theatrical manager had been made the basis for musical comedies by other writers afterward produced at Daly's Theatre, London.

Moving pictures may be infringements

The opinion of Judge Blatchford was quoted and followed by the U. S. Circuit Court of Appeals in New York, in 1909, in Harper *v.* Kalem Co., which said through Judge Ward: "The artist's idea of describing by action the story the author has written in words is

a dramatization. It is not necessary that there should be both speech and action in dramatic performances although dialogue and action usually characterize them." In this case the defendants had caused persons to represent the action in certain scenes of "Ben Hur" and photographed this representation on a moving picture film, which they reproduced for sale to theatoriums, where public exhibitions were given for profit. The court held under the old law that "moving pictures would be a form of expression infringing the author's exclusive right to dramatize his writings and publicly to perform such dramatization." The contrary view was held in the English case of Karno *v.* Pathé Frères in 1908, where also the Court of Appeal held, in 1909, that not the manufacturer but the exhibitor of such a film would be the responsible party if there were infringement.

Literary merit not requisite

The doctrine that copyright does not depend on literary merit, was strengthened in a dramatic case in Henderson *v.* Tompkins in 1894, in the U. S. Circuit Court in Massachusetts by Judge Putnam, who held that a paraphrase of "I wonder if dreams come true," from "Ali Baba," constituted an infringement, though the offending piece had slight literary merit.

What is a dramatico-musical composition

As to what is a musical composition, the term defines itself. But the phrase "dramatico-musical compositions," as used in the American code, bristles with perplexities, not altogether solved by the definitions of the Copyright Office Rules, above cited. It means, of course, music and drama in association, but in this combination the definition of the dramatic side is peculiarly difficult. Whether a dance, ballet or other choregraphic work, with or without music, is included, is a mooted question. In 1892, in Fuller *v.* Bemis, where the plaintiff sought to protect a skirt dance of which she had filed a description for copyright as a

dramatic composition, Judge Lacombe, in the U. S. Circuit Court in New York, held that: "It is essential for a dramatic composition to tell some story. The plot may be simple, it may be but the representation of a single transaction; but it must repeat or mimic some action, speech, emotion, passion, or character, real or imaginary. A series of graceful movements, combined with an attractive arrangement of drapery, lights, and shadows, telling no story, portraying no character, depicting no emotion, is not a dramatic composition." This view is adopted in the Copyright Office Rules and defines accepted American practice, but is not consonant with English and international views.

The new British code

The new British measure is definitely comprehensive and specific in including as a dramatic work "any piece for recitation, choreographic work or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character."

Protection of playright

It is evident that the methods for securing copyright for published dramatic and musical works are in general the same, with exceptions noted in this chapter, as for literary works, that is, publication with copyright notice and registration with deposit promptly after publication of two copies of the best edition then published, with a fee of one dollar. Copyright in the specific sense is, however, of less importance to the dramatic or musical author, as has already been pointed out, than playright or performing right, which is also covered and protected specifically by the code of 1909, though in less accurate, definite and satisfactory provisions, involving in some respects serious questions. The right at common law or in equity to prevent the copying, publication or

use of an unpublished work and to obtain damages therefor, is specifically confirmed (sec. 2), and this applies especially to unregistered manuscripts.

Protection of unpublished work

The method of registration of an unpublished work to secure playright or performing right, as previously stated, is absolutely simple, consisting solely in the registration of a claim and the deposit of one copy of the work in manuscript or other unpublished form, with a fee of one dollar. The law is clear and satisfactory as to the punishment, after such registration, of infringement of playright or performing right, but it is not clear as to the date from which such protection starts, and whether protection is for an indeterminate period up to publication (practically in perpetuity if no publication be made), or for the statutory term. This is because the relations of publication and first performance are inferences only and specifically defined in the law. The Copyright Office issues a certificate for twenty-eight years, but without reference to initial date, which would be presumably the date of the certificate. The Copyright Office will doubtless, under this precedent, issue renewal certificate for the second term of twenty-eight years. The trend, and in several instances the letter of the law, shows publication to mean the multiplication or reproduction of printed or other copies and their public offering, sale and distribution, and indicate that performance, whether privately or publicly and for profit, is not publication. The new Copyright Office Rules specifically hold that: "Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication." Judicial decisions on this point both in England and this country are confusing if not contradictory. In the absence of specific provision in the law for renewal of term in unpublished works, the

view that the grant of the statute is for protection under the common law rather than a statutory and limited grant of privilege, is defensible and may be upheld by the courts, should a case arise. No case is likely to arise for twenty-eight years from the time of first copyright, under the act, of an unpublished work; but the dilemma will then present itself to the author whether he should apply for a renewal term and thus accept the limitations of the statute, or rely upon the original registration as a protection in perpetuity up to the time of publication. Possibly before that time this difficult point may be made clear by supplementary legislation.

Indeterminate protection

The most serious argument against the view that unpublished works may be protected indeterminately, is founded on the provision of the Constitution authorizing Congress to grant protection for limited terms, as to which the view may be upheld that Congress is not here making a grant, but is offering statutory protection to the inherent right of an author in an unpublished work.

In any event the author has clear rights for twenty-eight years from the date of publication or the date of first performance, whichever the earlier. In case of publication, it is altogether probable that the playright or performing right will be construed by the courts to lapse at the end of the copyright term and renewal thereof of the published work, and in case a "book of the play" or libretto of an opera is printed for sale within a theatre in connection with the performance, that will undoubtedly constitute publication and such copies should be copyrighted.

Printing and performance

The doctrine that performance is not publication was upheld by the N. Y. Court of Appeals in Palmer *v.* DeWitt in 1872, in which the assignee of the manuscript and playright of Robertson's drama "Play"

was granted an injunction against the printing of the drama, although it had been publicly performed, but not printed, in London. The same doctrine was applied in the Illinois Supreme Court in 1909 in Frohman *v.* Ferris. But publication abroad, by the printing of a drama unless protected under the international copyright provisions, has been held to forfeit the common law playright transferred with an unpublished manuscript, by the decision in Daly *v.* Walrath in 1899, by Judge Bartlett in the N. Y. Supreme Court, when an injunction was refused against the performance of Sudermann's "Die Ehre," translated as "Honor," because the author had printed the play in Germany despite a contract with the American assignee to refrain from publication. In the case of Wagner *v.* Conried in 1903, in the U. S. Circuit Court in New York, Judge Lacombe declined to enjoin a production of "Parsifal," holding that the publication of a printed edition by Schotts in Germany had forfeited playright, since the reservation by Wagner in his contract with Schotts of the acting rights was not applicable in this country. The printing of a dramatic manuscript solely for the use of the players is not publication, as was held in French *v.* Kreling, in 1894, by Judge Hawley in the U. S. Circuit Court in California, where Farnie's opera "Falka," of which the musical score had been published, but the libretto printed only for the singers, was protected as an unpublished manuscript.

English confusion

The English law as to dramatic and musical copyright and playright and performing right, has been most confusing if not contradictory, and authorities differ, as do MacGillivray and Scrutton, in its interpretation. Whether public performance constitutes publication or whether they are separable and separate events has been diversely treated in the laws, by the

Specific English provisions

judges and in legal text-books. The dramatic copyright act of 1833, known as Bulwer-Lytton's act, a clumsy attempt to clear up earlier uncertainty, provided that the author of "any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published," shall have "the sole liberty of representing in any part of the British Dominions"; "and the author of any such production, printed and published," shall, "until the end of twenty-eight years from . . . such first publication" or for life, have "the sole liberty of representing . . . as aforesaid." The general copyright act of 1842 specifically applied this previous act also to "musical compositions" and enacted "that the sole liberty of representing or performing . . . any dramatic piece or musical composition" shall "endure . . . for the term in this act provided for . . . copyright in books," that is, for forty-two years or life and seven years; and the provisions of the act as to copyright and registration were extended to representing or performing, "save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent in the construction of this act to the first publication of any book." The "copyright (musical compositions) act" of 1882 added the requirement, that in the case of a musical composition, to retain the performing right, notice of reservation should be printed on the title-page of every published copy, and the act further provided that the proprietor of the performing right, if the owner of the copyright be another person, may require him to print such notice of reservation, for neglect of which he shall forfeit twenty pounds.

Probable effect

Thus common law rights, it would seem, in an unpublished and unperformed dramatic or musical

work were given, pending publication, statutory protection, apparently in perpetuity, from the date of composition. Publication of a dramatic or musical composition in printed form ensured copyright protection as a book for forty-two years or life and seven years; and performing right was protected for forty-two years from "the first public representation or performance of any dramatic piece or musical composition" or life and seven years, whichever the longer.

Publication prior to performance

It had been the view of many English authorities that publication in printed form as a book before the first public performance forfeited performing rights, which opinion was shared by the Royal Copyright Commission as voiced in the report of 1878 in the digest of Sir James Stephen, who said: "The exclusive right of representing or performing a dramatic piece or musical composition cannot be gained if such dramatic piece or musical composition has been printed and published as a book before the first representation thereof." But in the later case of Chappell *v.* Boosey in 1882, in respect to John Oxenford's play of "The bellringer," which had been printed and published previous to performance, it was held in the Court of Chancery that publication as a book before performance does not take away performing rights. On musical compositions, however, the performing right is forfeited on publication in print unless notice of reservation is printed on the published copies. There remain the difficult questions whether when publication precedes performance the statutory protection of the performing right extends beyond the forty-two years from publication and whether copyright and playright should be separately registered. It has been the practice of English dramatists to give a so-called "copyright performance" at a minor

theatre, in which actors walk and talk through the drama and the public is invited to pay a shilling at the box office — and sometimes given half a crown apiece for the purpose; which performance, though probably not necessary to fulfill any legal requirement, permits registration of first performance at Stationers' Hall and gives useful public notice to possible infringers.

The new British code

This uncertain and confused situation will be remedied under the new British measure by the inclusion under "copyright" of the right "to perform . . . to deliver, in public" and the making of the copyright term the "life of the author and fifty years after his death," which together afford the simplest and most complete protection of playright as incident to copyright.

British international protection

The international copyright act of 1844 contained the provision "that neither the author of any book, nor the author or composer of any dramatic piece or musical composition . . . which shall . . . be first published out of her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such, if any, as he may become entitled to under this act," — a provision inserted probably for advantage in negotiating reciprocal conventions with other countries. This provision was applied in 1863, in the case of Boucicault *v.* Delafield, to a British author whose play had been first printed and published as well as performed in America. In Boucicault *v.* Chatterton in 1876, the Chancery Division held that the prior performance of "The Shaughraun" in New York was publication and deprived the author of playright in England, — which again seems incompatible with the doctrine upheld in the later case of Chappell *v.* Boosey, above cited. Great Britain

is the only country in the International Copyright Union which has declined to accept the declarative interpretation made in Paris in 1896 of the Berne convention of 1886, declaring that performance does not constitute publication. Thus if a dramatic or musical work is first publicly performed outside the British dominions, the performing right is extinguished therein, unless protected under the international copyright acts, though first publication outside the British dominions of a work first publicly performed within them, may not extinguish the performing right.

Statutory ambiguity

The confusion of judicial interpretations, as to the relations between performance and publication, in international as well as domestic copyright, was invited by the unfortunate draftsmanship in the copyright act of 1842, in which the clause making first performance "equivalent in the construction of this act to the first publication of any book" may be taken either in a comprehensive sense or merely as defining the starting-point for performing right as well as for copyright in the specific sense.

What is public performance

The question of what is public performance is of some importance, especially in Great Britain, where playright is not infringed except by representation in a place of dramatic entertainment and where it has been held that any place in which a dramatic piece is publicly performed is for the time a place of dramatic entertainment. A public performance is probably one to which the public in general is admitted either by sale of tickets or by invitation; and this would probably include a performance given before a society to membership in which the public might be admitted, although a performance limited to a certain class of the public might not be construed as a public representation. Where "Our boys" was performed

at Guy's Hospital, London, by an amateur company, for nurses and others connected with the hospital specially invited, it was held in 1884, in Duck *v.* Bates, that though a performance may be public where the public are present, although no money is taken, yet the production in question was not a public representation. In this leading case, important as a precedent for America as well as in England, the decision was made by Justices Brett, M. R., and Bowen, L. J., Justice Fry dissenting, and the Master of the Rolls, in an elaborate opinion, discussed the relations of private and public performance, as a question of fact: "In order to entitle the author to penalties there must be a representation which will injure the author's right to money; such, for instance, as a representation which, although it is not for profit, would attract persons who are willing to pay money, and would induce them not to go and see a performance licensed by the author. . . . The representation must be other than domestic or private. There must be present a sufficient part of the public who would go also to a performance licensed by the author as a commercial transaction. . . . I wish to say, by way of warning, that those who go beyond the facts of the present case may incur the penalties of the statute."

Manuscript rights

Common law rights in an unpublished manuscript of an unperformed work, cover both copyright and playright. In 1894, in Gilbert *v.* Star, while the comic opera "His Excellency" was in manuscript and under rehearsal, Justice Chitty in the Court of Chancery granted an injunction against a newspaper report of the plot and incidents on the common law ground that its communication to the newspaper involved a breach of contract, thus confirming the right of an author to full control of his manuscript work for copyright as well as playright, upheld in Prince Al-

bert *v.* Strange in 1849. But a dramatic author cannot enjoin a drama, however similar, completed before the publication or performance of his own work, as was decided in the case of Reichardt *v.* Sapte, in 1893, where the author of "The picture dealer" was denied relief against the closely parallel play "A lucky dog," which was proved to have been completed in 1890, though not performed until after the writing and presentation of the author's play in 1892.

American cases

The right of control of an unpublished dramatic manuscript under common law was strengthened in Herne *v.* Liebler, in 1902, by the decision of Judge Ingraham in the N. Y. Supreme Court, which upheld the right of the plaintiff to prevent sub-license of a play beyond the terms of the contract by a licensee, who had agreed to keep the manuscript unpublished and use it only under specific limitations. In the case of Maxwell *v.* Goodwin, in 1899, where the plaintiff's play of "Congress" had been rejected by the defendant, who afterward produced a play "Ambition," also founded on scenes in Washington, Judge Seaman in the U. S. Circuit Court in Illinois overruled the defendant's contentions that there was no playright under common law in an unpublished manuscript and that there was no inherent property right in ideas or creations of the imagination apart from the manuscript in which they are contained or the language in which they are clothed; though an injunction was denied on proof that the defendant had not read the plaintiff's manuscript and that the actual author of "Ambition" had no knowledge of the plaintiff's play.

Unpublished orchestral score

In 1883, in Thomas *v.* Lennon, where Gounod's "Redemption," of which the orchestral score was unpublished, had been rewritten for orchestra from a

published non-copyright piano arrangement, Judge Lowell, in the U. S. Circuit Court in Massachusetts, ruled against this as an infringement of the unpublished work on common law grounds — but this decision has not been considered good law.

Dramatic work by employee

Copyright in dramatic work can be obtained, as in the case of encyclopædic and like works, by the employment for hire of a dramatic author, as was fully established in the case of Mallory *v.* Mackaye in 1898, by Judge Wheeler in the U. S. Circuit Court in New York, where Mackaye had contracted for a salary of $5000, that all inventions and plays by him within the ten years of the contract should belong to Mallory, and was restricted accordingly from the independent production of "Hazel Kirke."

Copyright term

The duration of copyright in dramatic and musical compositions is the same as for books, in the United States (twenty-eight years with renewal for twenty-eight years more), in Great Britain (under the new code life and fifty years), in Australia (forty-two years or life and seven years, as hitherto in Great Britain), and in Canada and Newfoundland (twenty-eight years with renewal for fourteen years more), —as also in most other countries, the new term for those in the International Copyright Union which have accepted the convention of Berlin, being life and fifty years. But in the case of a "dramatico-musical" work, where the libretto and the music are by different authors, the respective terms may end at different dates, as was held in 1905, and upheld in 1909, by the German courts as to the opera "Carmen" under the Franco-German convention limiting copyright to thirty years after death. Bizet, author of the music, had died in 1875, but one of the three librettists was still living, on which facts the court held that the musical score, but not the libretto, was free from

copyright. Under the new British and Canadian measures, which include the unusual provision that the copyright term in a work of joint authorship shall be determined by the first instead of the last death, the result would be to the contrary effect.

Registration

Registration in the United States, as also in Canada and Newfoundland, through the deposit of copies, is entirely the same for a dramatic or musical composition as for a book. Registration in England of a dramatic or musical composition under the act of 1842 (sec. 20) was to be made at Stationers' Hall, as in the case of a book, by recording in statutory form the title, the time and place of first publication, or for performing right, of first public performance, and the name and abode of author and of proprietor. But the same law (sec. 24) provided that protection of performing right in a dramatic piece should not be dependent upon entry in the registry and, by including in the definition of a dramatic piece (sec. 2) a "musical entertainment," evidently included musical compositions in this exemption, and thus made registration optional. This view was upheld in 1848 in Russell *v.* Smith, when the song "The ship on fire" was protected as a "dramatic piece," though it had not been registered. The new British measure omits all requirements for registration of any works. Registration of any copyright, performing right or assignment is required in Australia as a prerequisite for legal action.

Assignment

Assignment or grant of a dramatic or musical composition, as of a book, may be made (sec. 42) by an instrument in writing, acknowledged, if in a foreign country, (sec. 43) before a consular or diplomatic officer, and must be recorded (sec. 44) in the Copyright Office within three months, or if made in a foreign country, six months, in default of which it is

void as against any subsequent purchaser. Assignment in Great Britain must be in writing, and previous to the new code with entry at Stationers' Hall, in the case of performing right as well as of copyright. It should be noted that playright does not pass with copyright *ipse facto*, though the new code as adopted by the House of Commons has no specific provision on this point. But it is most desirable that in any transfer of copyright or playright the exact nature of the right transferred should be defined in the writing. A partial assignment, or license, of performing right as well as of copyright may be made, and will be protected by the courts. The right to grant a specific license, and to enforce its limitations, was upheld in 1892 in Duck *v.* Mayen, in an English court by Justice Day, who held that where the defendant had obtained license at the price of one guinea to play "Our boys" for charity at a music hall, but performed it elsewhere, though for the same charity, the usual royalty of five guineas must be paid. Assignment in Canada and Newfoundland must be in writing in duplicate copies, of which one must be deposited in the office of copyright.

Parody

The general principles as to infringement and fair use, treated fully in another chapter, apply to dramatic and musical compositions, as already illustrated above, but some special applications may here be noted. That a parody or burlesque may not be an infringement, though including some quotations from the work parodied, was decided in 1903, in Bloom *v.* Nixon,—where Fay Templeton had given a parody or imitation of another actress's singing of "Sammy" in the "Wizard of Oz,"—in the U. S. Circuit Court in Pennsylvania by Judge McPherson, who held that as this was essentially an imitation of personality, it was not an infringement of copyright: "Surely a parody

would not infringe the copyright of the work parodied merely because a few lines of the original might be textually reproduced." The judge added: "No doubt the good faith of such mimicry is an essential element; a mere attempt to evade the owners' copyright . . . would properly be prohibited" as "doing in a roundabout way what could not be done directly."

Infringement by single situation

There may be infringement of dramatic copyright in the use of a single scene or situation, as already set forth with respect to novels, provided this is of dramatic character. In 1892, in Daly *v.* Webster, the U. S. Circuit Court of Appeals, through Judge Lacombe, held that the railroad rescue scene in Brady's "After dark" infringed the copyright of Daly's "Under the gaslight," which contained the similar situation of the rescue of a person on a railroad track before an approaching train. Though there was little dialogue in this scene, the court held that while mechanical appliances are not entitled to copyright, a series of events dramatically represented are copyrightable. In the subsequent suit for damages, Daly *v.* Brady, the U. S. Supreme Court in 1899, through Justice Peckham, upheld this decision, and held also that such a situation constituted an integral part of the copyrighted drama and should therefore be protected against infringement. That there may be infringement of a dramatic composition without the use of scenery or costumes was incidentally decided in Russell *v.* Smith, where the song "The ship on fire," sung dramatically without these accessories, was protected as a dramatic piece.

Protection of title

While the title of a dramatic or musical composition, like that of a book, cannot be copyrighted as such, the courts seem disposed to emphasize the title as an integral part of a play, perhaps more than in the case of a book because the advertising of another play of

like name, especially in the case of one of long run and wide popularity, may mislead the public and involve unfair competition. This protection was upheld as a matter of common law in Aronson *v.* Fleckenstein in 1886, by Judge Blodgett in the U. S. Circuit Court in Illinois, when the use of the title "Erminie" was held to be unlawful, though the operetta originally designated by the title had not been copyrighted. But in Glaser *v.* St. Elmo Co. in 1909, the U. S. Circuit Court denied relief where the title of Miss Evans's novel, then out of copyright, was used for a second and unauthorized dramatization. There may be danger to copyright or playright when a work is published or performed under a title differing from that under which it is copyrighted; but the change of a descriptive sub-title has been held to be immaterial. In the case of Daly's play "Under the gaslight," which in the copyright entry bore the sub-title "A romantic panorama of the streets and homes of New York," but in printed form the changed sub-title "A totally original picturesque drama of life and love in these times," the defendants in Daly *v.* Webster alleged that this change made the copyright invalid, which contention was negatived by the U. S. Circuit Court of Appeals, which held in 1892 that the subtitle was merely descriptive and not an essential part of the title — a principle later applied by Judge Lacombe in Patterson *v.* Ogilvie, in 1902.

Names of characters

In the case of Frohman *v.* Weber in 1903, in the N. Y. Supreme Court, where the proprietor of the play entitled "Sherlock Holmes" sought to enjoin another play "The sign of the four," in which the name Sherlock Holmes designated the leading character, Judge Clarke held that this did not constitute unfair competition and denied a preliminary injunction.

The question of the person liable for the infringe-

ment, especially of playright, is one of some difficulty. In general, while any one participating in a piratical performance, as an actor, is technically guilty of infringement, it is usually the person or persons responsible for and profiting by the performance who should be sued. The question of responsibility is one of fact, and the early English decisions seem confused and even contradictory. The person who has the initiative and control of a performance, particularly if he is directly the employer of the performers and has authority to discharge them, may be, *par excellence*, the infringer even if he does not know that the performance is piratical. In 1886, in Monaghan *v.* Taylor, the defendant was held liable for infringement because a singer employed in his music hall sang a copyright song, though the defendant did not choose or pass upon the number. Thereafter in the "copyright (musical composition) act" of 1888, it was provided that "the proprietor, tenant or occupier of any place of dramatic entertainment" shall not be liable, "unless he shall willfully cause or permit" a performance, "knowing it to be unauthorized." The courts seem disposed to acquit a mere agent of responsibility. In 1893, in French *v.* Day, Gregory, *et al.*, it was held by Justice Kennedy as to a performance of "The miner's wife" asserted to be an infringement of "Lost in London," that the proprietor of the theatre, Day, "who merely used Gregory," the manager, "as his mouthpiece," was the responsible defendant. The new British code holds liable any person who for profit permits a place of entertainment to be used for an infringing performance unless he were not aware and had no reasonable grounds for suspecting it to be an infringement.

Persons liable for infringement

Principal in control

In the prevention or punishment of unauthorized performances by irresponsible private companies, the

Protection against "fly by night" companies

chief obstacle in the United States was the difficulty of reaching the "fly by night" companies, as they were called, as they flitted from state to state, and from one court jurisdiction to another. To remedy this difficulty, an important protection of the performing right in dramatic works was assured by the act of January 6, 1897, obtained largely through the efforts of Bronson Howard, as president of the American Dramatists Club. This act provided penalty of $100 for the first and $50 for each subsequent unlawful performance, and imprisonment for not exceeding one year, when such unlawful performance was willful and for profit; and also that an injunction issued in any one circuit might be enforced by any other circuit in the United States. This was in consonance with successful efforts to obtain the passage of state laws to protect dramatic and musical works, aside from the federal copyright law, obtained by the Dramatists Club between 1895 and 1905 in the states of New Hampshire, New York, Louisiana, Oregon, Pennsylvania, Ohio, New Jersey, Massachusetts, Minnesota, California, Wisconsin, Connecticut, and Michigan. These varied in form in the several states, though of the same general purport. The New York statute, for instance, adds to the penal code a new section as follows: "Sec. 729. Any person who causes to be publicly performed or represented for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner, or proprietor, permits, aids or takes part in such a performance or representation shall be guilty of a misdemeanor."

State legislation

The texts in all the states are given in full in Copyright

Office Bulletin No. 3, 1906, "Copyright enactments of the United States," pages 105–115.

Remedies under present law

The American code of 1909 enacts (sec. 28) that "any person who willfully and for profit shall infringe any copyright . . . or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor," punishable by "imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the court"; and provides (sec. 25, fourth) damages "in the case of dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance"; and also provides (sec. 36) for injunction operative throughout the United States.

Musical protection in England

In England the protection of musical properties under the acts of 1833–42 and 1882–88, had become so difficult that English music publishers threatened to cease printing new original works because of the freedom with which they could be pirated. Under the provisions of 1833, as reënacted in 1842, every infringing performance of a musical composition, as of a dramatic piece, involved liability to "an amount not less than forty shillings or the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever may be the greater damage," in addition to costs. The "copyright (musical compositions) act" of 1882 (45 & 46 Victoria, c. 40) had required that the right of public performance should be reserved by printed notice on each published copy and provided for a penalty of twenty pounds where the proprietor of the publishing copyright neglected, after require-

ment from the owner of the performing right, to print such notice. The "copyright (musical compositions) act" of 1888 (51 & 52 Victoria, c. 17) provided that the penalty or damages for every unauthorized performance of any musical composition shall, in the discretion of the court, be "reasonable" and may be less than forty shillings for each such performance, or nominal, and that the proprietor, tenant or occupier should not be liable unless "willfully" causing or permitting such unauthorized performance, "knowing it to be unauthorized," — but the act specifically excepted "any opera or stage play" from its provisions. The protest of the musical composers and publishers led to the passage of the "musical (summary proceedings copyright) act" of 1902, which authorized a constable to seize without warrant pirated copies hawked or otherwise offered for sale, on the written request and at the risk of the copyright owner or by direction of the court, and provided for their forfeiture and destruction or delivery to the owner on the decision of the court. A Musical Copyright Committee, for the consideration of these vexed questions, was appointed by the Home Office and made a report in 1904; and a further "musical copyright act" of 1906 continued the provisions stated and provided also for the seizure of plates as well as copies of pirated musical compositions and for the summary punishment of the offender by fine not exceeding five pounds and, for a repeated offense, by fine not exceeding ten pounds or imprisonment not exceeding two months, possession being proof of fraudulent intent unless the copies bore the name of a printer or publisher. Both these acts were applicable only within the United Kingdom. These provisions, in addition to those for injunction and adequate costs, have bettered the condition of musical properties in England, and

Acts of 1902-1906

they remain unrepealed, except as to requirement of registration, under the new British code as adopted by the House of Commons.

Playright in other countries

In most countries playright in the case of dramatic or musical works is specifically covered in the copyright statutes or protected in connection with copyright, although in Austria, Russia, Denmark and Norway, in the case of music, special notice of reservation is required, while in Australia special reservation of the performing right must be made on publication in print of drama or music.

International provisions

In general, performance is differentiated from publication, and while in some countries, as above indicated, publication in printed form, especially of a musical work, may waive the exclusive right of performance, performance is generally held not to constitute publication. This view is expressly set forth in the interpretation made at Paris, 1896, of the Berne convention of 1886, whereby section 2 of the interpretative declaration defines "published works" as "works actually issued to the public." "Consequently, the representation of a dramatic or dramatico-musical work, the performance of a musical work . . . do not constitute publication." The Berlin convention of 1908 repeats the same language in article 4, prefacing it with the definition that "by published works (*'œuvres publiées'*) must be understood, according to the present convention, works which have been issued (*'œuvres éditées'*)" — the English text here given being the official translation of the U. S. Copyright Office.

Foreign protection of arrangements

In most foreign countries which include musical compositions under subjects of copyright either as covered under "literary and artistic works" or by specific mention, the general principles as to arrangements and adaptations hold in such countries. Sev-

eral countries, as Belgium, specify however "the exclusive right of making arrangements on motives of the original composition," Brazil, Luxemburg, Mexico, Nicaragua and Tunis following this precedent in nearly identical language. Germany specifically protects the "sole right of making extracts from musical works and arranging for orchestra or in parts." Spain specifies among its prohibitions "the total or partial publication of melodies, with or without accompaniment, transposed or arranged for other instruments or with different words." Hungary specifies that "every arrangement of a musical work, published without the consent of the author, which cannot be considered as a composition in itself," is an infringement. Where, however, the author of a work permits or licenses an adaptation or arrangement, or an original adaptation or arrangement is made from a work in the public domain, that is properly a separate subject of copyright, as is specified in the statutes of Colombia, to the effect that "variations, etc., on a theme or air which is public property, constitutes property. Transpositions are similar to translations of literary subjects."

International definitions

Dramatic and musical works were specifically included under the protection of the International Copyright Convention of Berne, 1886, by the definition in article IV of "literary and artistic works" as including "dramatic or dramatico-musical works; musical compositions with or without words." In the Berlin convention, 1908, the same general term was defined in article 2 as including "dramatic or dramatico-musical works; choregraphic works and pantomimes, the stage directions ('*mise en scène*') of which are fixed in writing or otherwise; musical compositions with or without words." "Adaptations, arrangements of music, etc., are specially included,"

in the phraseology of article X of the convention of 1886, "amongst the illicit reproductions to which the present convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, or abridgments, so made as not to confer the character of a new original work"; and practically the same language is repeated in article 12 of the convention of 1908. On the other hand, "adaptations, arrangements of music," etc., are protected as original works without prejudice to the rights of the author of the original work, in article 2 of the convention of 1908.

The German law of 1901 permits, however, extract from or other use of musical compositions in adaptations or arrangement under specified circumstances, as for family, social or other gratuitous performance, under the limitations of the law, which exception seems to be permitted also under the law of 1910.

National formalities

Throughout the countries of the International Copyright Union, first publication in any of these countries and compliance with its formalities entitle the author to playright as well as copyright in all the other countries within the Union, with some exceptions to be noted. Thus in Switzerland the conditions of performance must be given at the head of the printed play; and the law stipulates that the author may not require as royalty more than two per cent of the gross profits, and a performance at which the admission fee is reckoned to cover only cost of production or a performance for charitable purposes, is not considered an infringement of playright. In Italy a play performed, but not printed and published, must be submitted in manuscript for inspection within three months of first performance, together with a declaration reserving the playright; a printed book or play should be deposited with accompanying

notice of reservation within three months, or the proprietor cannot obtain damages until such deposit, and failure to deposit within ten years abandons copyright protection. Italian proprietors of music sometimes refrain from printing and publishing music, with the intent of maintaining copyright and playright indefinitely.

Specific reservations or conditions

In Luxemburg and Sweden, reservation of playright must be stated on printed copies, as is also the case as to music in these countries and in the other countries elsewhere cited. In Sweden, the term for playright is less than for copyright in the printed work, being for life and thirty years only. In Sweden and Norway, the author protecting his rights by first publication in these countries, must be a citizen of one of the countries within the International Copyright Union or must acquire rights through a publisher therein; though in the other countries of the Union, this question of nationality is immaterial. In Norway and Denmark, there must be reservation of right of recitation, but in Norway this lapses in any event at the end of three years, provided the recitation does not take the shape of a dramatic performance. In Holland and the Dutch Indies, reservation of playright must be given, and printing within the country has hitherto been required to protect a published work. In Hungary, the author of a play must give his name on the title-page or in the announcement of the play, and protection is extended to foreigners who have been for two years rate-payers and residents in Hungary, as well as those whose countries have reciprocal relations. In Finland, the author's name and reservation of playright must be given on the printed copy, and protection is extended to foreigners on condition of residence and publication in Finland.

Most of the smaller European countries and many South American countries, including playright under copyright, base protection on reciprocal protection of their citizens in other countries, while protection of performing rights in Brazil requires notice on printed plays of the reservation of royalty for performance. In many oriental countries, as Egypt, China, etc., protection is afforded to some extent in the consular courts.

Pan American Union

In the Pan American Union, the Buenos Aires convention of 1910 specifically includes dramatic and musical works as literary works, without special provisions.

XII

MECHANICAL MUSIC PROVISIONS

"Canned music" contest

As the international copyright provision with the manufacturing clause was the central feature of the copyright campaign culminating in the law of 1891, so the provision for the control of mechanical music with the compulsory license clause was the central feature of the contest culminating in the act of 1909. This came to be known as the "canned music" fight, and arguments pro and con consumed the greater part of the hearings before the Committees on Patents. The solution finally reached was in the provisos added to the musical subsection (e) of section 1 of the bill, which in full is as follows:

"(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided*, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: *And*

Mechanical music provisos

provided further, and as a condition of extending the copyright control to such mechanical reproductions, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit: *And provided further,* That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defense to any suit, action, or proceeding for any infringement of such copyright.

Compulsory license

"In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand the court may award taxable costs to the plaintiff and a reasonable

Damages

counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times such amount.

Public performance

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

This provision, though somewhat involved in form, tells its own story, and there has thus far been no occasion for judicial construction.

The compromise result

In the series of discussions before the Committees, the friends of copyright argued for the exclusive and unrestricted right of the musical composer to control absolutely the mechanical reproductions of his work, while the representatives of "canned music" argued at first that mechanical reproduction should be permitted without reference to copyright, and later that there should be entire liberty to make reproductions of a musical work on the sole condition of a specified payment to the copyright proprietor. The provision as actually adopted was a compromise upholding the negative right of the author to prevent mechanical reproduction, but requiring him, in the event of a grant of authority to any one manufacturer to reproduce his work mechanically, to extend that privilege to any other manufacturer on payment of the specified royalty. This scheme is practically modeled on what was known as the Pearsall-Smith royalty plan, which, as proposed for books, was stoutly fought by the proponents of the copyright act of 1891, throughout that memorable copyright campaign.

In the case of the White-Smith Music Pub. Co. *v.* Apollo Co., in which the Æolian Co. was supposed

Judicial construction

to be the real complainant, the representatives of the musical author were, in 1906, denied protection against the mechanical music rolls made by the defendant, by the Circuit Court of Appeals, where the judges considered themselves "constrained" by the necessity of strict construction to decide that "a perforated roll is not a copy in fact of complainant's staff notation," while saying "that the rights sought to be protected belong to the same class as those covered by the specific provisions of the copyright statutes." It was presumed by many during the copyright campaign that the Supreme Court would make a broad construction of the statute, but that court held, February 24, 1908, in an opinion written by Justice Day, that the considerations adduced "properly address themselves to the legislative and not to the judicial branch of the Government" and that "as the act of Congress now stands, we believe it does not include these records as copies or publications of the copyright music involved in these cases." Justice Holmes, while not dissenting, added a memorandum to the effect that "the result is to give to copyright less scope than its rational significance and the ground on which it is granted seems to me to demand. . . . On principle, anything that mechanically reproduces that collocation of sounds ought to be held a copy, or if the statute is too narrow, ought to be made so by a further act, except so far as some extraneous consideration of policy may oppose." While the judges thus felt "constrained" to deny relief, their strong language in defense of copyright control doubtless had its effect upon the legislative authorities in the framing and the passage of the new code.

This decision was confirmatory of an earlier decision, in Stern *v.* Rosey in 1901, of Judge Shepard in the Court of Appeals in the District of Columbia,

that the mechanical reproduction of two copyrighted songs could not be prevented under the existing law.

Punishment of infringement

Specific and elaborate provision is made for the punishment of infringers under the mechanical music proviso (sec. 1, e) by sec. 25, e:

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

Notice to proprietor of intention to use

Copyright Office form and fees

The Copyright Office provides a special form (U) on a blue card for registration of "notice of use on mechanical instruments," in which the copyright owner of a musical composition gives notice that he "has used or has licensed the use of said composition for the manufacture of parts of instruments serving to reproduce mechanically such musical work." The recording fee for such notice, as fixed by the statute (sec. 61), is twenty-five cents for the first fifty words and twenty-five cents additional for each additional hundred words.

For recording and certifying the license referred to (sec. 1, e) the statute provides (sec. 61) for a fee of one dollar for not over three hundred words, two dollars if not over one thousand words and one dollar for each additional one thousand words or fraction thereof over three hundred words.

The constitutional question

The actual fixing of a specified price, as that of two cents or a halfpenny on each reproduction, is a feature quite new in law, American or English, and involves a serious constitutional question. Congress has granted to the Interstate Commerce Commission, and state legislatures to specified authorities, as public service commissions, power to regulate prices; and the U. S. Supreme Court, in 1909, confirming the N. Y. Court of Appeals in the Consolidated Gas Co. cases, upheld the application of the sovereign power of the state to limit the price of gas to 80 cents per 1000 cubic feet, as sold by a corporation enjoying a public franchise. In this compulsory license provision of the copyright code, Congress has gone further in two directions: it has fixed a royalty price, not by definition or limitation of a "reasonable" price, but absolutely, and it has applied this provision not to a corporation enjoying franchise privileges, but to the individual owner of property created by his own labor.

English law

The English laws had not mentioned mechanical reproduction up to the musical copyright act of 1906, which in section 3 expressly provided that "'pirated copies' and 'plates' shall not, for the purposes of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made." The test case meanwhile on this question was that of Boosey *v.* Whight, which was finally decided in the Court of Appeal in 1900, with respect to the use of copyrighted songs on the perforated rolls of the Æolian. Justice Sterling in the lower court had decided that the perforations were not an infringement of the copyright but that the marginal directions for playing might be such; Justice Lindley, M. R., held with him that the perforated roll was not a "copy" of the sheet music, but overruled him on the second point, holding that the directions, though copied from the printed page, were neither music nor a literary composition.

The new British code

The new British measure as prepared in 1910 included as incident to copyright the sole right "in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered," thus in the simplest fashion completely covering the control of mechanical reproduction in conformity with the convention of Berlin. But in the Parliament of 1911 the bill emerged from committee stage with an elaborate proviso, based on the American precedent, excepting from the definition of infringement contrivances for the mechanical reproduction of sounds on (1) proof that the copyright owner has previously acquiesced in mechanical reproduction, (2) prescribed notice of

intention, and (3) payment of royalty of 2½ or 5 per cent with a minimum of a halfpenny for each record, or in the case of different works on the same record, to each copyright proprietor.

The Berne situation, 1886

When the international representatives met at Berne in 1886, the mechanical reproduction of music was confined chiefly if not wholly to Swiss music-boxes and orchestrions and to hand-organs, of comparatively little commercial importance; and, possibly with some thought of the recognition of the hospitality of Switzerland, little emphasis was placed on the protection of musical composers against mechanical reproduction of their works. In fact, the final protocol of the Berne Convention of 1886 contained, as clause 3, the following paragraph: "It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright."

Lack of action at Paris, 1896

Despite strong representations at the congresses of the International Association for the protection of literary property, held at London in 1890, Neufchâtel in 1891, and Milan in 1892, and a vigorous endeavor in connection with the Paris convention of 1896 to replace this clause, it was not modified until the convention of Berlin in 1908, in preparation for which a strong resolution was passed at the congress of the International Association at Vevey in 1901.

The Berlin provision, 1908

With the increasing development of the phonograph and of the mechanical player, mechanical reproductions became so important a matter to musical composers and publishers, that much of the discussion in respect to the amendatory convention of Berlin of 1908 was upon this subject. In the amended convention, the subject was fully covered by article 13:

"Authors of musical works have the exclusive right

to authorize: (1) the adaptation of these works to instruments serving to reproduce them mechanically; (2) the public performance of the same works by means of these instruments.

"The limitations and conditions relative to the application of this article shall be determined by the domestic legislation of each country in its own case; but all limitations and conditions of this nature shall have an effect strictly limited to the country which shall have adopted them.

"The provisions of paragraph 1 have no retroactive effect, and therefore are not applicable in a country of the Union to works which, in that country, shall have been lawfully adapted to mechanical instruments before the going into force of the present Convention.

"The adaptations made by virtue of paragraphs 2 and 3 of this article and imported without the authorization of the parties interested into a country where they are not lawful, may be seized there."

German precedents

In Germany, under the general copyright law of 1870, the higher courts gave to musical composers control over mechanical reproductions from which, as the industry grew, the authors or publishers obtained some little return. But succeeding the adoption of the permissive clause in the Berne convention of 1886, it was proposed in the new copyright law to free mechanical reproductions from the control of the composer. A protest was at once made by musical authors and publishers, which resulted in a modification of the form proposed by the government and the addition of a clause giving control where the reproduction involved personal interpretation. In this form the "unfortunate section 22" became part of the law of 1901 relating to copyright in literary and musical works. Section 22 was in the following language:

"Reproduction is permitted when a musical composition is, after publication, transferred to such discs, plates, cylinders, bands and similar parts of instruments for the mechanical rendering of pieces of music. This provision is applicable also to interchangeable parts, provided that they are not applied to instruments by which the work can, as regards strength and duration of tone and tempo, be rendered in a manner resembling a personal performance."

This had the extraordinary and contradictory effect of giving the author control over the finer reproductions of his works but denying to him any control over the cruder reproductions, as on hand-organs, orchestrions, etc. The opposition which developed against this impossible situation was largely influential in bringing about the modification at Berlin in 1908 of the Berne clause. The law of May 22, 1910, amended the previous general laws in conformity with the Berlin convention, especially by extending protection to the mechanical reproduction of music and cinematograph reproduction of artistic works. Section 22 of the law of 1901 was specifically replaced by an elaborate section, modeled on the American compulsory license provision and requiring a composer who permitted mechanical reproduction to grant similar rights on equal terms to any other manufacturers domiciled in Germany, with provisions for reciprocity and for the treatment of non-German composers through the tribunals of Leipzig. This law became effective coördinately with the Berlin convention on September 9, 1910, and in connection with it an ordinance promulgated by the Emperor July 12, 1910, defined the time during which mechanical reproductions already made of copyrighted works should still be permitted. The use of extracts from musical as from other works, as perhaps in *potpourris*,

Law of 1910

seems however still to be permitted as a result of the law of 1901.

Germany and the United States

As a result of the reciprocal provisions of the new German law, the President of the United States on December 8, 1910, proclaimed reciprocal relations between Germany and the United States with reference to mechanical reproductions of music. In the opinion of May 6, 1911, approved by the Attorney-General, a Presidential proclamation is required to determine "the existence of reciprocal conditions" as to the mechanical music provision (sec. 1, e) as in respect to sec. 8; but as the proclamation of December 8 did not recite that reciprocal conditions existed between September 9 and December 8, 1910, it is held that "it would not afford evidence sufficient to sustain an action for infringement between said dates."

French precedents

In France the general copyright act of 1793, as considered to cover mechanical music, was interpreted or modified by the act of 1866, which enacted that "the manufacture and sale of instruments serving to reproduce mechanically musical airs which are still in the private domain, does not constitute musical infringement." In the suit of Enoch *v. Société des phonographes et gramophones*, the Civil Court of the Seine had decided in 1903 that phonographic instruments were excepted from the protection of the law of 1793 by the "general immunities" concerning the mechanical musical instruments in the act of 1866. But in 1905 the Court of Appeals of Paris reversed this decision, holding that the law of 1866 applied solely to musical airs, that is, those involving no words, on the ground that the law of 1793 was enunciatory of the rights of authors, applying to all modes of publication and distribution, and that the word "publication" should be understood broadly "as jurisprudence has applied it to numerous modes of publication discov-

ered since the law of July 19 and 24, 1793, and the Code of 1810, and as nothing prevents its extension, in consequence of scientific progress"; and it therefore concluded that literary works either by themselves or associated with music were practically under the law of 1793 and not exempted by the law of 1866. A more recent case, in the Court of Commerce of the Seine in 1905, resulted, however, in the dismissal of a suit for infringement. France accepted the Berlin convention, June 28, 1910; but its provision in article 13, that "the limitations and conditions" as to mechanical music protection "shall be determined by the domestic legislation of each country in its own case," makes uncertain whether protection becomes effective in the absence of specific legislation.

Belgian precedents

In Belgium in 1904, in the suit of Massenet and Puccini *v. Compagnie Générale des phonographes, et al.*, it was held by the court of first instance of Brussels that the introduction for sale of discs and cylinders reproducing the musical compositions of the plaintiffs was illegal and liable for damages and punishable as an infringement. This decision was, however, overruled by the Court of Appeals of Brussels in 1905. Belgium accepted the Berlin convention, May 23, 1910, has since protected mechanical reproduction, and was proclaimed as in reciprocal relations with the United States, June 14, 1911.

Italian precedents

In Italy the copyright law was considered in relation to mechanical instruments by several court decisions of which the latest and most important seems to be in the case of the *Società Italiana d. Autori v.* Gramophone Co. of London, in which, in 1906, the Royal Court of Milan held that reproductions of music by gramophone constituted infringement. This decision held that article three of the Berne convention of 1886 could not derogate from or modify the domestic

private law of 1882, and as the Italian law specifically covers publication and reproduction "by any method," it includes gramophone discs. "Publication means a process by which the intellectual concept of the artist is revealed, and brought to the knowledge of others." "What the legislature wanted has been this: that the author be the exclusive owner of the external form in which the creation of the mind has been fixed, and, so to speak, materialized; and that the right be reserved to him to get from his studies and his exertions all the economic benefits which he could derive therefrom."

Other countries

In the laws of Switzerland of 1883, and Monaco and Tunis of 1889, the fabrication and sale of mechanical instruments or devices for reproducing musical airs were excepted from the definition of piracy. But all these countries have ratified the Berlin convention "without reservation." Luxemburg and Norway have applied the Berlin provision and were proclaimed as in reciprocal relation with the United States on June 14, 1911. Russia has followed American precedent in the new law of 1911, but has no reciprocal relations with the United States.

Argument for inclusion

As the opposition to the control by musical composers of mechanical reproductions of their works is still strong in the United States and in several countries, notwithstanding recent conventions and legislation, and is based largely upon restrictive definitions of the words "writings" and "copies" or their equivalent in other languages, it may be well to include here the argument made by the writer as Vice-president of the American (Authors) Copyright League, at the Congressional hearings on the new American code, of which the essential portions are as follows.

"The American Copyright League stands, as it has stood for a quarter of a century, simply and

solely for the protection of authors' rights to the fullest extent, and it asserts that a musical composer is as fully entitled as is the author of any other creative work to the exclusive and full benefits of his compositions, in whatever manner reproduced. The opponents of the bill base their objections largely on a restrictive definition of the word 'writings,' and criticise the bill because this word 'writings' is interpreted throughout the bill by the word 'works,' although this accurately reflects the understanding of Congress and the interpretation of the courts. They would, in fact, confine copyright protection specifically, it may be said, to e-y-e-deas, that is, visible records, and exclude as not visible or legible by the eye, copies of musical compositions mechanically made and interpreted.

Inscribed writings

"The earliest *writing* which remains to us is in the Assyrian wedge-shaped inscriptions, made by pressing the end of a squared stick into a soft clay cylinder; the phonograph point inscribes its record in exactly the same manner upon the 'wax' or composition of the cylinder or disc, for the mechanism only revolves the roll, and the point is actuated by the sound vibrations. The words 'phonograph,' 'graphophone' and 'gramophone' literally mean 'sound-writing,' for the Greek form *graph-*, the Latin form *scrib-*, and the Saxon form *write*, equally parts of our language, denote exactly the same meaning. It is even probable that a future development of phonograph impressions (the third dimension being translated into breadth of stroke as can be mechanically done) will give ultimately a visual phonograph alphabet even more natural and logical than Professor Bell's remarkable system of 'visible speech,' which, of course, like all alphabets, can be read only when the reader has mastered the significance of the

Direct sound-writing

symbols. Mr. Edison has himself made some experiments in this direction, though the confusion from the overtones, which give *quality* of speech, has so far prevented result. A large share of literary productivity to-day is by voice-dictation recorded mechanically by a stenographer on the typewriter or directly on the phonograph disc, and I may instance from personal experience a further step. As one of the committee for the Edison birthday dinner, commemorating the twenty-fifth anniversary of his invention of the incandescent lamp, I was asked to supply some original verse, and it occurred to me to put this in shape by help of Mr. Edison's inventions, without direct or indirect hand- or type-writing. Accordingly I completed the verses mentally without use of paper and voiced them into an Edison phonograph, verifying this through the telephone, and the lines were set in type by the printer from the sound-record, and thus printed on the *menu* for the dinner. Thus my formulated ideas were recorded through the nerves and other mechanism of the vocal organs, instead of through the nerves and other mechanism of the hand, directly by the phonograph point on the phonograph cylinder; and it seems a common-sense inference that if I had caused copies of the phonograph cylinder, though not legible in the ordinary sense, to be published instead of the secondary copies in print, I should be as much entitled to copyright protection in the one case as in the other. The 'telegraphone' directly records on a steel tape the sounds of the human voice as sent through the telephone, and by an absolutely invisible re-arrangement of the magnetized particles of steel, makes a writing in which there is no possibility of visual legibility.

Music transmissal

"Moreover, invention is now developing a series of reproducing mechanisms such as Dr. Cahill's 'tel-

harmonicon' or 'dynamophone,' in which musical compositions will be translated to the ear without the interposition even of a cylinder or disc sound-record; and it seems a common-sense inference that the musical composer should have as full rights in this as in other forms of copying or reproducing his thought. Buda-Pesth is said to have not only a telephone 'newspaper,' but a system of reading novels and other works of literature to telephone subscribers, and if this should reach such proportions as substantially to reduce the sale of the printed copies of a new novel from which the author would receive benefit, it would also seem a common-sense inference that the same or an equivalent royalty should be paid him.

Music notation

"In music writing or notation there are two and only two essentials: relative vertical position, showing pitch, and relative horizontal position, showing duration of notes. The earliest form of our present music writing is the system of the 'large,' 'long,' 'breve' and 'semi-breve' notes, in which the pitch was shown by the vertical relations of the notes, and the length of the note by the length of the black mark, the 'large' mark being twice the length of the 'long' mark. This corresponds closely to the perforated music roll of to-day, which could be read by a practiced eye with and probably without staff lines, to the extent that if every other form of reproduction were destroyed, the melody and harmony of a musical work could be reproduced into the ordinary notation of music writing. I speak from personal knowledge of these music rolls, having had a mechanical instrument for some years. The different kinds of rolls differ in the relative spacing and in distance from the edge of the roll, which gives the standard, but a foreshortened photograph of any, bringing them to the same scale, would pattern closely the

early form of music writing above cited. The London postal telegraph system dispatches newspaper material from St. Martin's le Grand throughout the kingdom from continuous perforated ribbons made somewhat in the same way, visible and legible only to an expert, and reproductions by the medium of this device would certainly not vitiate copyright.

The law prior to 1909

"It may be observed that the existing law gives to the author or proprietor of a musical composition the sole liberty not only of printing, but of publishing, copying, vending, performing, or representing a musical composition; that the statute does not restrict 'copying' either to a copy of 'staff notation' or from or in any particular form, but prohibits in general any copy of a musical composition; that there is no suggestion in the statute that the copy must be one to be read, *e. g.*, a copy of a sculpture; that any sound-record is in the wide sense as truly a copy of a musical composition as a printed sheet, which is not a copy, in fact, of the author's manuscript writing; and that as the roll has for its sole purpose the performing by the aid of a mechanism useless without it, of a musical composition, just as a printed sheet of music has the sole purpose of the performing by the aid of the voice, the piano, or the orchestra, of a musical composition, the maker and vendor of the roll is in exactly the same position as the maker or vendor of a printed sheet of music.

Manuscript and copies

"But even if phonograph and perforated records should not be considered, as is sculpture, to be 'writings,' the arguments of the opponents of this bill do not fit the case. The Constitution explicitly provides that authors shall have *exclusive rights* to their writings. This cannot mean exclusive rights to their written manuscripts, for these are protected by common law and no constitutional provision was neces-

sary. It meant and means evidently that authors shall have exclusive rights to the benefits of their writings, the usufruct of the property they have created, and that means practically a monopoly control over all copies or reproductions from such writings, whether the copies are in handwriting, printing, or any other form. A musical score is definitely a writing, for it is even more than a literary manuscript, originally in the personal handwriting of the composer himself, without the intervention of a stenographer or a typewriting machine. Therefore, if the narrowest meaning of the word 'writings' should be interpreted into the Constitution such as would exclude sculptures and other works which are admittedly proper and legal subjects of copyright, it would still specifically include musical and dramatic as well as literary manuscripts. There is no specification in the Constitution confining the exclusive rights over writings to copies in handwriting or print or any other stated process of reproduction; in fact, the Constitution does not use the word 'copyright' or in any way limit by specification the comprehensiveness of the exclusive rights Congress is thus authorized to secure. Indeed, Congress in the copyright laws has interpreted the Constitution to cover the several artistic or reproductive processes from time to time developed or invented; thus in the law of 1865 the provisions of the copyright laws were extended to include 'photographs,' which did not exist at the time of the adoption of the Constitution — which word specifically means 'light-writings' as phonograph records specifically mean 'sound-writings.'

Protection of the inventor

"The position taken by the American Copyright League is that an author is literally entitled to the exclusive right, that is, the exclusive *benefit*, in his writings, in whatever form the writings, that is, his

recorded thoughts, can be reproduced for sale or gain. If Mark Twain writes a book or Bronson Howard a play or Sousa or Victor Herbert a musical composition or Millet makes a painting or French a statue, each is equally entitled to whatever benefit inures from his creative genius. Mr. Sousa has stated clearly that although Caruso has been paid $3000 — and the fact widely advertised — for singing into a phonograph record, and his own band (not under his leadership) has also been paid for playing his compositions and those of others into the phonograph horn, he has never received as a musical composer one cent for such use of his creations, though from twenty to a hundred of his compositions are to be found on the catalogues of the several manufacturers of mechanical instruments. Mr. J. Howlett Davis, who properly appeared as an inventor in defense of his own inventions in mechanical instruments, which he mistakenly believes would be rendered useless if the copyright protection were extended to sound-records, really asked that Congress should protect the thing which he had invented, and compel users to pay for it, but should permit him to use the thought which the musical composer had invented and expressed, without paying for it. His argument analyzed presents an even stronger argument for the proposed copyright bill than for the protection of patented inventions. When Mr. Sousa buys a patented cornet he has paid for the use of it, but Mr. Sousa makes no claim either to make another cornet like it or to play copyrighted musical compositions for profit without payment or permission. A piano, a pianola, a music roll or new form of mechanism, is patentable; a musical composition as played on a piano by hand or by mechanism, whether reproduced on a printed sheet or a mechanical roll, is copyrightable; but each should have like

The counter argument

protection. I speak from specific knowledge as one who has taken out patents as well as copyrights and as the active head for some years of the Edison Illuminating Company of New York and a participant in successfully defending the Edison lamp patents. Mr. Edison, both as an inventor and as a manufacturer of his own inventions, has profited much more than a million dollars from his patents, and would naturally be expected to be foremost in upholding the right of authors to payment for their brains."

Complete protection

The acceptance by most countries within the International Copyright Union of the Berlin convention, without reservation on this question of mechanical music, sets an example of complete protection of the musical composer which it is hoped may be ultimately adopted by the United States as well as by other countries.

XIII

ARTISTIC COPYRIGHT

Threefold value in art works

THE artist-author, by the labor of his brain and hand, produces three classes of property right or a threefold value: he receives recompense from the sale of the original work made by his hand, or from the exhibition of it, or from the reproduction and sale of copies. The new American code is perhaps in advance of legislation in any other country in the protection of the artist, for it assures to him separate values in the right to sell his work and the right to reproduce and sell copies, neither one of which rights is necessarily transferred with the other; it enables him to copyright his original work before the reproduction of copies, though it does not make absolutely clear whether the exhibition without restriction of an uncopyrighted work results in dedication; and it protects his right to control and profit from reproductions, with the simplest possible copyright notice, not including date, though as to lithographic and photo-engraving reproductions it requires manufacture in this country. The literary, dramatic or musical author produces no value in the original work itself, except as his fame may ultimately make his manuscript valuable as an autograph, and in this respect the artist-author has an advantage of practical importance in the general provision separating the copyright from the right in the material object. On the other hand, show-right or right of exhibition is not as specifically treated or as clearly defined and protected as is playright or right of performance in the case of drama or music.

American provisions

The copyright of works of the fine arts and cognate works is specifically provided for in the code of 1909 by including as subject-matter of copyright (sec. 5) the following divisions: "(f) Maps; (g) Works of art; models or designs for works of art; (h) Reproductions of a work of art; (i) Drawings or plastic works of a scientific or technical character; (j) Photographs; (k) Prints and pictorial illustrations." It is not intended to include under subsection (k) labels or prints of advertising or commercial character which may be registered as trade-marks under the Trade-Mark law in the Patent Office. The proprietor of a work of art is given in addition to the general rights (sec. 1, a) the specific rights (sec. 1, b) "to complete, execute, and finish it if it be a model or design for a work of art."

Copyright Office classification definitions

The new Coypright Office Rules and Regulations, promulgated 1910, define these classifications in the following language:

"11. (*f*) *Maps.* — This term includes all cartographical works, such as terrestrial maps, plats, marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence.

"12. (*g*) *Works of art.* — This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

"Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented.

"No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles.

"13. (*h*) *Reproductions of works of art.* — This term refers to such reproductions (engravings, woodcuts, etchings, casts, etc.) as contain in themselves an

artistic element distinct from that of the original work of art which has been reproduced.

"14. (*i*) *Drawings or plastic works of a scientific or technical character*. — This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, etc.

"15. (*j*) *Photographs*. — This term covers all positive prints from photographic negatives, including those from moving-picture films (the entire series being counted as a single photograph), but not photogravures, half tones, and other photo-engravings.

"16. (*k*) *Prints and pictorial illustrations*. — This term comprises all printed pictures not included in the various other classes enumerated above.

"Articles of utilitarian purpose do not become capable of copyright registration because they consist in part of pictures which in themselves are copyrightable, e. g., puzzles, games, rebuses, badges, buttons, buckles, pins, novelties of every description, or similar articles.

"Postal cards cannot be copyrighted as such. The pictures thereon may be registered as 'prints or pictorial illustrations' or as 'photographs.' Text matter on a postal card may be of such a character that it may be registered as a 'book.'

"Mere ornamental scrolls, combinations of lines and colors, decorative borders, and similar designs, or ornamental letters or forms of type are not included in the designation 'prints and pictorial illustrations.' Trademarks cannot be copyrighted nor registered in the Copyright Office."

The question of exhibition

The new law does not specifically make clear the relation between the exhibition of works of art and publication, or define whether or not exhibition may constitute dedication to the public and thus prevent the protection of the copyright thereafter. But in

making copyright a sequent to publication (sec. 9) and providing (sec. 2) "that nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work," it makes it at least probable that the author of an artistic or cognate work who simply exhibits, does not surrender the right to copyright. The trend of the courts in recent decisions has been, as in the Werkmeister case, cited below, to protect exhibited works, at least where any reservation of rights could be construed into the circumstances of the exhibition; but it is still uncertain whether the exhibition of a work of art at a public museum where there is no regulation against copying or reservation by the artist, might not constitute a dedication and thus prevent later copyright.

Protection of unpublished work

In providing however (sec. 11) specifically "that copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright . . . of a photographic print if the work be a photograph; or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing," it gives to the artist or the author of a cognate work an easy means of protecting his production beyond question; and he is not wise who neglects the simple precaution provided in the law.

Copyright notice

It is not made absolutely clear in the new law whether the copyright notice must be attached to the original of a work of art; but again the provision for protection is so simple that it is wise to take advantage of the method of the law, by placing the copyright notice on the original. The copyright notice may be in the form (sec. 18) "'Copyright' or the abbreviation 'Copr.' accompanied by the name of

the copyright proprietor," the year of publication not being required in the case of an artistic work. It is further provided that "in the case of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear."

If the copyright notice is attached to the original, it is not made clear whether it should be on the face of the work and visible to the casual spectator; but again the wise artist will take an easy precaution.

Deposit

It is further required (sec. 12) that "if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction" required as above stated, "accompanied in each case by a claim of copyright."

The new Copyright Office Rules and Regulations schedule (17) among unpublished works that may be registered "(*c*) photographic prints; (*d*) works of art (paintings, drawings, and sculpture), and (*e*) plastic works," and states specifically as to the deposit in such cases:

"19. (2) In the case of photographs, deposit one copy of a positive print of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

"20. (3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photographic reproduction."

As deposit in the case of an unpublished work

takes the place of publication and deposit in the case of works reproduced for sale, there can be no claim for statutory protection of an unpublished work of art without the deposit of the identifying copy, and the general provision (sec. 13) for fine and for voiding of copyright in the case of non-deposit, has, of course, no bearing on unpublished works. Any action or proceeding in respect to an unpublished work not registered by deposit must therefore be under common law and not under statutory provision.

Summary of requirements

To sum up, the author of a work of art, who is exhibiting his painting or statue or other work and not multiplying copies for sale, will assure himself of full protection if before such exhibition he places on the original work, in some visible but not obtrusive fashion, the letter C inclosed in a circle with his name or mark, and deposits a photograph of such work with the Librarian of Congress or in the mails addressed to him, accompanied by a claim of copyright, — for which an application form (J², "photograph not reproduced for sale") is furnished on request, by the Copyright Office from Washington, — with inclosure of one dollar.

As soon as the artist multiplies copies for sale, or permits reproduction of his work, as in a newspaper report of an exhibition, for instance, he must then take the precaution of depositing two copies of such reproduction as provided in general by the act, and it is further provided (sec. 18) "that on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear." In case two copies are not so deposited, it is probable that a fine and forfeiture of copyright would ultimately ensue, as indicated in section 13.

It is specifically provided (sec. 41) that copyright

Material and immaterial properties distinct

is distinct from the property in the material object, which accomplishes for the artist the important result that when he sells his painting he does not transfer the copyright, but retains that for himself unless he specifically contracts with the buyer to include in the sale the copyright or the right to copyright. This adopts into the law the decision of the courts that copyright does not pass with a painting unless distinctly included in the transfer. The provision (sec. 41) is specific that the copyright "is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object." Thus the author of a work of art has two separate properties, the painting, statue or other work in itself, on the one hand, and the copyright or the right to copyright on the other, neither of which is transferred by the transfer of the other unless both are specifically included in the transfer.

Manufacturing clause covers lithographs and photo-engravings

The copyright in certain classes of reproductions of works of art is dependent however on manufacture in this country, as in the case of books. This provision no longer includes photographs as in the preceding law, but is confined specifically (sec. 15) to "text produced by lithographic process, or photo-engraving process," "illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art." It is further provided that "in the case of the book . . . if the text be produced by lithographic process, or photo-en-

Foreign subjects excepted

graving process . . . the copies so deposited shall be accompanied by an affidavit . . . that such process was wholly performed within the limits of the United States." This affidavit, therefore, is not required in the case of separate lithographs or photo-engravings. The manufacturing provisions chiefly concern the publishers of books, but they imply that artists cannot send works abroad to have reproductions made. But by the opinion of January 9, 1911, approved by the Attorney-General, a design, drawing, or painting made and located abroad intended as "the first step" for lithographic reproduction, may be registered, if a "work of art" — which question of fact is to be determined by the Register of Copyrights; and such lithographic reproductions of it may be imported.

German post-cards

It was held by the Attorney-General January 27, 1910, that lithographic reproductions of original paintings in the form of illustrated post-cards made in Germany, are subject to registration, provided the original paintings may properly be classified as works of art; and thus importation of such post-cards would be permissible.

Artistic merit unimportant

While there must be originality in a work of art, especially under English law, this means little more than a prohibition of actual copying, and as in the case of literary and dramatic works, artistic merit is of little importance.

Application forms

The Copyright Office furnishes without charge application forms, lettered as indicated, for the following classes of art works: (F) published map; (G) work of art (painting, drawing, or sculpture); or model or design for a work of art; (H) reproduction of a work of art; (I) drawing or plastic work of a scientific or technical character; (J[1]) photograph published for sale, (J[2]) photograph not reproduced for sale; (K) print or pic-

torial illustration. Thus the applicant should send for application blank (G), if for an original work of art, (H), if for a reproduction, or the proper blank in the other specified cases. But it should be noted that it is both unnecessary and undesirable to apply separately under different blanks as (G) and (H), since the single copyright on the original work covers reproductions.

Certificates

Certificates are returned by the Copyright Office on receipt of the application form and of the statutory fee of one dollar, covering the same specified subjects.

Term in unpublished work

When an original work of art is copyrighted, but is not published by reproduction of copies for sale or distribution, it is uncertain under the law, as in the case of dramatic and musical compositions, from what date the copyright protection runs and whether the sole right of reproducing copies for sale terminates at the end of a statutory term beginning with the registration of the original work or with its publication by the reproduction of copies for sale. The Copyright Office issues a certificate of the registration of the original work as covering a period of twenty-eight years and will doubtless base a renewal on the termination of this term; and only a court decision will determine whether the copyright of the original unpublished work exists in perpetuity until publication or whether the right to reproduce copies for sale lapses with the termination of twenty-eight or fifty-six years from the registration of the original work.

Date not required

The omission of the requirement of date in the copyright notice in the case of a work of art is significant and important, although it has the disadvantage that knowledge of the expiration of the term of copyright can be had only by specific inquiry from the Copyright Office. It has been the mistaken practice of more than one artist, under the old law, to enter

copyright on his original sketch or on his original work under date of its beginning, again on the finished original under date of its completion, and possibly again on reproductions under the date of the first publication of copies; and when also the artist changed the name of his work under these progressions, confusion became worse confounded. From this superfluous zeal and mistaken carefulness, serious results have come, as in Caliga *v. Inter-Ocean* Newspaper Co., decided in 1909 by the U. S. Supreme Court through Justice Day, wherein an artist failed to protect himself against an infringing reproduction, because he brought suit under a second copyright which he had entered on finishing his picture, instead of under the original and lawful copyright, under which he had originally entered his work. The fact that by this second copyrighting he laid claim to a longer term than the law allowed, made the second copyright void and a suit under it of no avail. Under the new law the author of a work of art is not only given specifically the exclusive right "to complete, execute, and finish it if it be a model or design for a work of art" as in the previous law, so that an artistic work is protected by one copyright from design to completion and reproduction; but he may also protect his original work during its progress or exhibition before publication and thus safeguard his future right to control and benefit from the multiplication of copies.

Re-copyright objectionable

In case of the sale of the original work of art, the right to exhibit, of course, passes with the original, although the right to copyright and reproduce copies is expressly reserved to the artist. In view of the uncertainty whether the unrestricted public exhibition of a work of art constitutes dedication and prevents copyright thereof, the carelessness of the purchaser of the original might raise question as to the validity of

Exhibition right transfer

later copyright of reproductions by the artist. It is therefore unwise for an artist to sell the original of a work of art without affixing to it the required copyright notice and depositing one copy of an identifying photograph or print.

Early English decision

The leading case under English law as to exhibition is that of Turner *v.* Robinson in the Irish Court of Chancery in 1860, previous to the passage of the act of 1862 which first provided statutory copyright for paintings, and interpretative therefore of common law. Turner's "Death of Chatterton" had been reproduced in a magazine and exhibited at the Royal Academy and in Manchester, and was thereafter exhibited for the purpose of obtaining subscriptions for an engraving, in Dublin, where a photographer copied it and published a stereoscopic reproduction. The Master of the Rolls held that the painting had never been published because the exhibitions were on condition that no copies should be made, and the engraving in the magazine was only a rough representation and not a publication of the picture. The Court of Appeal also held against the defendant, but because of his breach of contract, and declined to decide whether there had been publication in London or Manchester. The Lord Chancellor, however, expressed the opinion that exhibition at the Academy, though conditioned, was publication, though a private view in a studio rather than a picture gallery would not be. The Court of Appeal did not pass on the further opinion of the Master of the Rolls that the publication of a print was not publication of the picture. These confusing opinions left the question in very misty shape and the most important interpretation of English practice has come from an American court.

The latest and leading case as to exhibition is that of Werckmeister *v.* American Lithograph Co.,

American Tobacco Co., *et al.*, which was decided by the U. S. Supreme Court in 1907, in an opinion written by Justice Day. The English artist Sadler had sold, in 1894, to Werckmeister of the Berlin Photographic Co. the copyright in his picture "Chorus," which he exhibited at the Royal Academy Exhibition of 1894, and the design had been reproduced by the American Lithograph Co. for use on an American Tobacco Co. label, though the photograph had been given protection by copyright. In reply to the claim of the infringers that such exhibition constituted dedication to the public, the Supreme Court's decision quoted from Slater on "The law relating to copyright and trade-marks."

The Werckmeister leading case

"It is a fundamental rule that to constitute publication there must be such a dissemination of the work of art itself among the public as to justify the belief that it took place with the intention of rendering such work common property," the court adding, "and that author instances as one of the occasions that does not amount to a general publication the exhibition of a work of art at a public exhibition where there are by-laws against copies or where it is tacitly understood that no copying shall take place, and the public are admitted to view the painting on the implied understanding that no improper advantage will be taken of the privilege. We think this doctrine is sound and the result of the best considered cases." The court said further: "We do not mean to say that the public exhibition of a painting or statue where all might see and freely copy it might not amount to publication within the statute, regardless of the artist's purpose or notice of reservation of rights which he takes no measure to protect."

U. S. Supreme Court opinion

In fact, in Pierce & Bushnell Co. *v.* Werckmeister, in 1896, the U. S. Circuit Court of Appeals, through

Unrestricted exhibition hazardous

Judge Colt, had held that the exhibition of Naujok's painting of St. Cecilia, in Berlin and Munich, without copyright notice on the original work, constituted publication and dedication, and therefore denied protection to photographic copies thereafter copyrighted and published.

Reservation on sale

That the sale of the original work of art as a material object does not involve the transfer of the copyright is a direct application in the new American code of previous judicial decisions. In Werckmeister *v.* Springer Lith. Co., in 1894, where the defense contended that the purchaser of a painting was the person authorized to become the copyright proprietor, this contention was absolutely overruled, in the U. S. Circuit Court in New York, by Judge Townsend. But it may nevertheless be desirable to include in any contract of sale a specific reservation of copyright, especially in the case of works executed for public authorities or to be exhibited in a public place. In Dielman *v.* White, in 1900, Judge Lowell in the U. S. Circuit Court in Massachusetts declined to enjoin a photograph of certain mosaics by Dielman in the Library of Congress, the original cartoon for which as sent to Venice, as well as the mosaic work itself, bore copyright notice, on the ground that the correspondence with the government constituting the contract, did not clearly reserve to the artist the right to copyright and prevent copying, — though this decision may be questioned.

Publication construed

The courts are disposed to limit the definition of publication to insure the fullest protection of an author's right. In Werckmeister *v.* Springer Lith. Co. it was further held by Judge Townsend that the printing in an exhibition catalogue of a cut of a painting was for the information of patrons and was not publication. In the same case the defense contended that the sale of

an earlier replica of the plaintiff's painting constituted a publication and forfeited copyright, but the court held that the replica was not a copy but was made beforehand to assist in the preparation of the painting afterward copyrighted, and that there was no publication.

In Falk *v.* Gast, in 1893, where the defense claimed that the copyright notice was omitted from published copies, referring to a sample sheet of miniature reproductions sent to dealers for their information and convenience, the U. S. Circuit Court of Appeals, through Judge Shipman, held that this issue of sample sheets did not constitute publication. This doctrine of limitation had a curious application in Harper *v.* Shoppell, in 1886, in which Judge Wallace, in the U. S. District Court, held, where an electrotyper had sold to a third party an unauthorized electrotype of a copyrighted illustration, that the copyright law was not violated because the illustration had not been printed or published.

Danger of forfeiture

The artist-author or the proprietor of an artistic copyright should be most careful to comply with the statutory requirements as to notice and other formalities, as otherwise copyright may be forfeited. Several court decisions indicate that the copyright notice should be placed on the original when exhibited, even if copies are not then reproduced for sale; and as the question is not made quite clear in the new code, it is wise to follow this indication. In the original trial in 1902 of the Werckmeister case, Judge Thomas in the U. S. Circuit Court held that the omission of copyright notice from the exhibited original waived the copyright, but his decision of the case was reversed by the U. S. Supreme Court on other grounds as previously stated, and this particular point remains unsettled.

Copyright is not forfeited where a notice properly affixed has been omitted in later use beyond the control of the copyright proprietor. "If copied afterwards or put upon a new mount the complainant should not suffer," said Judge Coxe in Falk *v.* Gast in reference to copies from which the notice had been separated. In Bennett *v.* Carr, in 1899, the U. S. Circuit Court of Appeals, through Judge Thomas, nonsuited the complainant because he had not deposited a written description, in addition to filing identifying copies, both formalities being required under the old law.

Limited use and license

The principle is especially important regarding works of art that a copyright proprietor may grant specific license for the limited use of his work; and this has many times been upheld by judicial decisions. In the American courts, such cases have usually been settled by preliminary injunction, without further trial, so that most of the cases are unreported in the law digests, as in that of Miles *v.* American News Co., in 1898, where General Miles obtained a preliminary injunction restraining the distribution by the defendants of "Remington's frontier sketches," including illustrations made for and copyrighted in General Miles' "Personal recollections." In the English case of Nicholls *v.* Parker, in 1901, it was held that a license to print illustrations in the *Graphic* did not permit their use in another periodical of the defendant despite the defense of "custom of the trade," which the judge characterized as "ridiculous." In the important case of Green *v. Irish Independent*, the Court of Appeal held that the newspaper, though acting "in good faith and without knowledge," was guilty of infringement in printing an illustration sent to it as an advertisement which the proprietor had not licensed for such use. Where, in Guggenheim *v.* Leng, in

1896, the periodical *Sports* printed and sold as a separate sheet an illustration licensed for use in the periodical, it was held in the Queen's Bench Division that publication and sale of the supplement separately from the paper was beyond the terms of the license and therefore an infringement.

Character, not method of use

Copyright in a work of art is dependent upon character rather than use. "A picture is none the less a picture and none the less a subject of copyright that it is used for an advertisement," said Justice Holmes in the U. S. Supreme Court, in Bleistein *v.* Donaldson Lith. Co., in 1903, the leading case on this subject, in which three lithographs designed for a circus poster were protected. In Mott *v.* Clow, in 1896, Judge Grosscup in the U. S. Circuit Court in Illinois had held that illustrations, in this instance of bathtubs in a trade catalogue, which "are mere advertisements," are not entitled to copyright; and in Schumacher *v.* Wogram, in 1888, it had been held by Judge Wallace that a picture of a young woman holding a bouquet intended for a cigar label could not be protected as copyright, but should be registered as a trade-mark. "The distinction here," said Judge Wallace, "seems to be that a picture expressly intended as a label should be considered a trade-mark, though a picture which may be used for a label is not for this reason excluded from copyright." An artistic design for paper-box covers was held copyrightable in 1910 in De Jonge *v.* Breuker & Kessler, in the U. S. Circuit Court, by Judge McPherson, who also held that the same subject could not be protected both under copyright and as trade-mark.

Illustration

That an illustration of a person, incident or scene in a copyright work is not an infringement of its copyright, was indicated in 1909 in Harper *v.* Kalem Co., in the opinion of the U. S. Circuit Court of Appeals in

New York, through Judge Ward, who said: "As pictures only represent the artist's idea of what the author has expressed in words, they do not infringe a copyrighted book or drama and should not be enjoined." That illustrations may be protected as part of a book without reference to the engravings act, was held in Marshall *v.* Bull, in 1901, in the English Court of Appeal, which held also that though electrotype blocks had been legally sold, unauthorized reproduction from such blocks constituted infringement.

Description of artistic work

Likewise, a description in words of a copyrighted work of art is probably permissible without infringement of copyright, when the work is published or publicly exhibited. But this does not hold good in the case of an unpublished or privately exhibited work, as was held in 1849 in the case of Prince Albert *v.* Strange, where a descriptive catalogue of unpublished etchings by Queen Victoria and the Prince Consort was enjoined, as well as the exhibition of prints therefrom unlawfully obtained.

Portraits

In the case of portraits, whether by painting, sculpture or photography, an important question as to ownership arises. A portrait paid for by the subject or a person other than the artist is the property, for copyright as well as other purposes, exclusively of that person; but if an artist produces a portrait at his own expense, even if by the suggestion of another person, the right to copyright remains with the artist. The general principle was best stated by Judge Wheeler in 1894, in the U. S. Circuit Court in New York, in Press Pub. Co. *v.* Falk, where the *World* was held to have infringed the copyright in the photograph of an actress, copyrighted by the photographer and not paid for by her, though a complimentary copy, given to the actress, had been sent by her to the newspaper. "When a person has a negative taken

and photograph made, for pay, in the usual course, the work is done for the person so procuring it to be done, and the negative, so far as it is a picture or capable of producing pictures of that person, and all photographs made from it, belong to that person; and neither the artist nor any one else has any right to make pictures from the negative or copy the photographs, if not otherwise published, for any one else. But when a person submits himself or herself as a public character to a photographer for the taking of a negative, and the making of photographs therefrom for the photographer, the negative and the right to make photographs from it belong to him. He is the author and proprietor of the photograph, and may perfect the exclusive right to make copies by copyright." The same principle was upheld in the closely similar English case of Ellis *v.* Ogden, in 1894, by Justice Collins in the Queen's Bench Division. But in the case of Ellis *v.* Marshall, in 1895, Justice Charles in the same court held that where two actors had been invited by a photographer to sit for him in costume and some photographs had also been taken in plain clothes, of which the actors purchased copies, they were entitled to authorize publication in a magazine. It may be noted that New York and other states have statutes forbidding portraiture of persons without their consent; but this prohibition would probably not apply to photographing of a crowd, unless the portrait of a special person were lifted out or made prominent. A photographer may not exhibit a photograph of a patron, as in his shop window, without the sitter's consent.

Right of employer

The employer of an artist in other work as well as portraiture may become *ipse facto* the copyright proprietor. In 1871, in Stannard *v.* Harrison, where a wall map had been made by an engraver from rough

sketch and material and from directions given by the plaintiff, the English Court of Chancery, through Vice-Chancellor Bacon, held: "That the plaintiff cannot draw himself is a matter wholly unimportant if he has caused other persons to draw for him. He invents the subject of the design beyond all question . . . this is a work of diligence, industry, and for aught I know of genius on the part of the plaintiff." This case, which arose under the engravings acts in England, where an engraving may be copyrighted by an employer, — though the engraver of his own original design is the only person entitled to copyright, — is of wide bearing throughout artistic copyright. On the other hand, in 1898, in Bolton *v.* London Exhibitions Co., Justice Mathew in the Queen's Bench Division held that the employer, who had given to the engraver only a "general idea" of what he desired, was not the party liable for infringement.

Photographs

Photographs, a modern development since the early copyright laws, were first included with negatives in the American act of 1865, in respect to which the action of Congress was upheld by the U. S. Supreme Court in 1884 in the decisive case of Burrow-Giles Lith. Co. *v.* Sarony, and in the English fine arts copyright act of 1862. They are specifically named (sec. 5, j) in the new American code, and are included specifically or impliedly under copyright protection in most countries. The peculiar circumstance that the skill of the photographic artist is not necessarily shown in the composition of the picture taken, but more usually in the selection of subject or point of view and treatment in the process, leads to complexities as to authorship, ownership, etc. It is unnecessary and indeed undesirable to copyright separately a photograph of a copyrighted work, of which the general copyright is comprehensive of all reproduc-

tions, but the original copyright notice including the name of the artist must appear on each photograph or its mount. An original photograph of an uncopyrighted or uncopyrightable subject may be copyrighted as a photograph, as was held with respect to natural scenery in 1903, in Cleland *v.* Thayer, in the U. S. Circuit Court of Appeals, where a colored photograph of a Colorado pass was protected. Where a photographer had posed a woman and a child characteristically, Judge Wheeler in the U. S. Circuit Court in New York held, in 1891, in Falk *v.* Brett Lith. Co., where defendant had merely reversed the photograph in a lithographic reprint, that the photograph was copyrightable and that the photographer was the author. And this doctrine, that the posing and treatment of a photograph subject gave justification for copyright, was also upheld in the case of a portrait of an actress in the same year in Falk *v.* Gast by Judge Coxe. In the English case of Bolton *v.* Tomlin *et al.*, in 1895, Justice Grantham in the Queen's Bench Division held that the photograph of a tiger was infringed by a drawing from the photograph published in the *Sketch* magazine. But the copyrighting of a photograph of an uncopyrighted subject cannot prevent the photographing of the same subject independently by others, nor can the use of a "general idea" be prevented. Under the new American code, the fee for registering a photograph is but fifty cents, if a certificate is not desired, and the new Copyright Office Rules hold that in moving picture films only one registration is requisite, "the entire series being counted as a single photograph."

Tableaux vivants and moving pictures

Whether living pictures, *tableaux vivants*, infringe a work of art, is a difficult question, determinable only by the circumstances of each case. Moving pictures telling a dramatic story may infringe a dramatic or

even literary work, as well as possibly a work of art, as was decided in the case of Harper *v.* Kalem Co. But the House of Lords, in 1894, in the case of Hanfstaengl *v.* Baines, where the proprietor of the copyright in paintings sued the proprietors of the *Graphic* for reproducing by sketches living pictures exhibited at a music hall, patterned after the paintings, decided that the word "design" in the English law did not cover the *tableaux* at the music hall. It is probable, however, that an exact reproduction, as nearly as may be, of a painting at a public place, might be held an infringement. In 1903 the Circuit Court of Appeals through Judge Buffington, in Edison *v.* Lubin, overruled the defense that each picture making up a moving picture series should be separately registered for copyright. But separable parts of a composite design, when used separately, must bear separate copyright notice, as was held in 1910 in De Jonge *v.* Breuker & Kessler by Judge McPherson in the U. S. Circuit Court.

Exclusions and inclusions construed

A shadow-trick perforated card, giving an outline of the picture "Ecce Homo" when held between a light and a screen, was held by Vice-Chancellor Bacon, in Cable *v.* Marks, in 1882, not to be subject of copyright. Playing cards have been included as prints by an English decision.

Architectural works

Architectural works are not protected as such under the American code, the decision of the Congressional Committees being adverse to this proposal. They are specifically included in the new British code. It is possible that they might be included under the general designation of works of art, and drawings or models for buildings might be copyrighted as "drawings or plastic works of a scientific or technical character." The question, however, is one of much doubt. In 1903, in Wright *v.* Eisle, the Appellate

Division of the N. Y. Supreme Court, through Judge Woodward, held, where an architect had filed plans with the building department which he claimed were copied in a house of the defendant, which plans had not been copyrighted, that the filing of the plans in a public office constituted publication and as there were no copyrighted copies, there was no case at common or copyright law.

Copy of a copy

A copy of a copy is an infringement of the original work and incidentally of the direct copy, unless the latter is published without proper copyright notice by authority of the proprietor of copyright in the original. This was held in 1892, in Lucas *v.* Williams, by the Queen's Bench, where a photograph from an engraving was held an infringement of the original painting; and the decision of Judge McPherson in the U. S. Circuit Court in Pennsylvania non-suiting, in Champney *v.* Haag, in 1903, the proprietor of a copyright painting because the offending photograph infringed only the copyrighted photograph from which it was directly taken, is not considered good law. A photograph may infringe the copyright in statuary, as was held in 1907, in Bracken *v.* Rosenthal, in the U. S. Circuit Court.

Alterations

As to altered copies and alterations, there have been many judicial decisions, the gist of which is that a copy is not less an infringement because it alters details, provided there is copying of a substantial part; that a copy in another medium not exactly reproducing the original or a copy of it, is nevertheless an infringement; that a substantial alteration, or adaptation of an existing work, may in itself be copyrightable, but that slight alterations will not justify the copyrighting of a work in the public domain; and that an artist has the right to prevent alteration of his original work by a subsequent owner, as involving

Alterations

damage to his professional reputation. Where a copyrighted portrait of Lillian Russell was combined with a portrait of another actress, the composite photograph was held to be a violation of the copyright, in Springer Lith. Co. *v.* Falk, in 1894, by the U. S. Circuit Court of Appeals, through Judge Lacombe. So in the English case of Bolton *v.* London Exhibitions Co., in 1898, where a lithographer copied the outline of a lion from a copyrighted photograph, and filled in details from natural histories in making a circus poster, Justice Mathew in the Queen's Bench Division held that there had been reproduction of the photograph and that a work of art had been "vulgarized unlawfully." Where certain etchings and engravings had been copied by the Brooklyn Photogravure Co., omitting the tints, plate mark and title, it was held in 1892, in Fishel *v.* Lueckel, by Judge Townsend in the U. S. Circuit Court in New York that this was an infringement; said Judge Townsend: "The appropriation of a part of the work is no less an infringement than the appropriation of the whole, provided 'the alleged infringing part contains any substantial repetitions of any material parts which are original and distinctive.'" And where a photograph of Julia Marlowe was reproduced in a lithograph, with many points of dissimilarity, some of them because of difference in process, it was held in Falk *v.* Donaldson Lith. Co., in 1893, by Judge Townsend in the U. S. Circuit Court in New York, that the differences did not constitute a defense. In Dr. Gaunsaulus's book, "The Man of Galilee," well-known pictures were altered substantially and artistically, as by the omission of a spinning wheel from a picture of the Nativity. Copies made from these illustrations were enjoined, though the original pictures were non-copyrighted, in Monarch Book Co. *v.* Neil, in 1900, by

Judge Grosscup in the U. S. Circuit Court in Illinois. But a slight alteration, by the addition on the negative of a cane, thus put into the hands of a person in a photograph not copyrighted in its original form, was held not to justify copyright, in Snow *v.* Laird, in 1900, by Judge Woods in the U. S. Circuit Court of Appeals. In the N. Y. Supreme Court, in the common law case of Dodge *v.* Allied Arts Co., in 1903, where the plaintiff had painted four historical scenes on commission which the defendants proposed to have altered, an injunction pending suit was granted by Judge McCall, thus upholding the common law or equity right of an artist to be protected against such misuse of his work.

Remedies

For the infringement of a work of art the copyright proprietor is entitled (sec. 25) to an injunction, the forfeiture of infringing copies and to damages "as well as all the profits . . . or in lieu of actual damages and profits such damages as to the court shall appear to be just," not less than $250 nor more than $5000, except that "in the case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed $200 nor be less than $50." These damages, within the limits stated, may be assessed by the court in the case of painting, statue or sculpture at ten dollars, and in the case of any other works at one dollar, "for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees." Under the old law, damages were confined to copies found in possession, and the courts were constrained to apply this literally though in several recorded cases with evident injustice.

Artistic copyright term

Copyright in artistic works in the United States has always been covered under the general copyright acts, including the code of 1909 providing for copyright for twenty-eight and renewal for a second

twenty-eight years, and this is true also in Canada and Newfoundland, where the term is for twenty-eight with renewal for fourteen years. The Australian code of 1905 covers artistic copyright specifically in part IV of the act, which provides for the general term of forty-two years from "the making of the work" or life and seven years, whichever the longer, but confines it to artistic work "which is made in Australia."

British practice

Artistic copyright in Great Britain, on the contrary, has been protected by several concurrent acts beginning with the engraving copyright acts of 1734 and 1767 and including the prints copyright act of 1777, the sculpture copyright act of 1814, the prints and engravings copyright (Ireland) act of 1836 and the fine arts copyright act of 1862 covering paintings, drawings and photographs, previously unprotected, —all forming part of the English law until repealed by the new code. Under these several laws, the copyright term for paintings, drawings and photographs has been the life of the author and seven years, for engravings twenty-eight years from first publication and for sculpture fourteen years from first publishing and renewal for fourteen years. Under the act of 1862 — which did not afford protection outside the United Kingdom, as was affirmed by the Privy Council in 1903, upholding a Canadian decision, in Graves *v.* Gorrie — copyright in artistic works began with the making of the work wherever made (except that a foreigner must be resident in England apparently at the time of making) and did not depend upon publication; but the international copyright act of 1844 nevertheless denied protection in Great Britain where a work was first published in a country outside of treaty relations. Registration at Stationers' Hall, at a cost of one shilling, has been a prerequisite to protection. The right to copyright

lapsed when the original work was sold by the artist without previous registration or written reservation, a provision applied in 1909 in Hunter *v.* Clifford.

Sculpture provisions

An original work of sculpture was protected only if first published within the British dominions, if by a British subject or resident, provided it bore the proprietor's name and date of first publication; and renewal for a second fourteen years was possible only if the author was then alive and held the copyright. Toy soldiers, artistically modeled, were protected in England as a work of sculpture by Justice Wright in Britain *v.* Hanks, in 1902. Common law protected until and statute law after publication, *i. e.* when the public in general is first permitted to view the work.

Engraving provisions

An engraving was protected in Great Britain and Ireland, if first published (and probably also made) within the British dominions, provided it bore the proprietor's name and date of publication. Prints, as by lithography or otherwise, were included with engravings; maps, charts and plans were, however, included as books under the general copyright act. Also engravings which are part of a book enjoy the wider protection of the general copyright act. The sale of the plate of an engraving probably does not transfer the copyright, unless intention to do so is clearly evident.

The new British code

The new British code includes as an "artistic work" under the general copyright provisions, "works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs." Architectural works are protected only as regards artistic character or design as distinguished from process or methods of construction. Photographs have the exceptional term of fifty years from the making of the original negative, and the owner of such negative at the time of making

is considered the author. Registration is no longer required.

Foreign countries

Works of art are protected in most foreign countries either impliedly or specifically under general copyright legislation, although sometimes by special laws. France covers artistic works "whatever may be the merit. use or destination of the work"; the Scandinavian countries include specifically drawings, etc., "not works of the fine arts"; in India copyright is extended in industrial designs to "some peculiar shape or form given an article, but not the article itself." Architectural works are protected in France, Luxemburg and Brazil, but in most countries only architectural plans, drawings, designs, figures, or models and not buildings are covered. Geographical and topographical drawings and technical drawings, maps and charts, illustrations, engravings, in some cases lithographs, photographs, and negatives are among classes specified in many countries. In some countries the term of copyright is different in the case of artistic works. Luxemburg has the peculiar provision that portraits may not be reproduced until twenty years after the death of the person portrayed. Photographs are in several countries protected for a shorter term, frequently five years from taking, publication or registration as the case may be; in Norway the copyright may not extend beyond the death of the photographer.

Berne convention, 1886

When the International Copyright Union was created at Berne in 1886, artistic works were conjoined with literary works under like protection throughout the convention and they were specified (art. IV) as covering "works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architec-

ture, or science in general; in fact, every production whatsoever in the . . . artistic domain which can be published by any mode of impression or reproduction." In the final protocol it was specifically provided: "(1) As regards article IV, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention, from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them. It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights."

Paris declaration, 1896

In the amendatory act adopted at Paris in 1896, the final protocol of 1886 was modified respecting architectural and photographic works as follows (1, a, b): "In the countries of the Union in which protection is accorded not only to architectural designs, but to the actual works of architecture, those works are admitted to the benefit of the provisions of the Convention of Berne and of the present additional act.

"Photographic works, and those obtained by similar processes, are admitted to the benefit of the provisions of these acts, in so far as the domestic legislation allows this to be done, and according to the measure of protection which it gives to similar national works.

"It is understood that the authorized photograph

of a protected work of art enjoys legal protection in all the countries of the Union, within the meaning of the Convention of Berne and the present additional act, as long as the principal right of reproduction of this work itself lasts, and within the limits of private conventions between those who have legal rights."

Berlin convention, 1908

In the Berlin convention of 1908, artistic works were defined (art. 2, par. 1) by specification as "drawings, paintings; works of architecture and sculpture; engravings and lithographs; illustrations; geographical charts; plans, sketches and plastic works relating to geography, topography, architecture, or the sciences," — thus covering architectural works under general copyright. It was further provided by the convention of 1908 (art. 2, par. 4) that "works of art applied to industry are protected so far as the domestic legislation of each country allows." And article 3 provided: "The present Convention applies to photographic works and to works obtained by any process analogous to photography. The contracting countries are pledged to guarantee protection to such works."

Exhibition not publication

By the interpretative declaration adopted at Paris in 1896, it was specifically provided (sec. 2): "By *published* works must be understood works actually issued to the public in one of the countries of the Union. Consequently, . . . the exhibition of a work of art, does not constitute publication in the sense of the aforementioned Acts." In the Berlin convention of 1908 it was similarly provided (art. 4, par. 4) that "the exhibition of a work of art and the construction of a work of architecture do not constitute publication."

Pan American Union

In the Pan American Union, the Buenos Aires convention of 1910 covers artistic works on the same basis as literary works, without special provisions.

XIV

INFRINGEMENT OF COPYRIGHT: PIRACY, "FAIR USE" AND "UNFAIR COMPETITION"

THE word "piracy," since that gentle craft has disappeared from the high seas, has come commonly into use to mean free-booting with reference to literary property. In this sense it is used as early as 1771 by Luckombe in his history of printing, in which he says: "They . . . would suffer by this act of piracy, since it was likely to prove a very bad edition." It was especially applied in America more or less jocularly in the days when there was no legal protection for works by English authors, to the reprinting chiefly of English novels without authority from or payment to their authors, when publishers whose imprints were chiefly on such reprints were commonly known as pirates. This secondary meaning has been accepted by the dictionary makers, and the use by English law authorities, and now in the new American code, of the phrases "pirated works" and "piratical copies," gives the word specific legal *status*. It is the comprehensive term now in common and legal use to mean the stealing of an author's work by reprinting it in full or in substantial part without the authority of the copyright proprietor, and is in fact an infringement at wholesale or otherwise of the author's exclusive right. This is of course prohibited by the law to the full extent of its jurisdiction and is punishable as prescribed in the law.

Piracy

"The true test of piracy," said Judge Shipman in the U. S. Circuit Court in 1875, in Banks *v.* McDivitt, is "whether the defendant has in fact used the plan,

Test of piracy

arrangements and illustrations as the model of his own book, with colorable alterations and variations, or whether his work is the result of his own labor, skill and use of common materials and common sources." Judge Story said in 1841, in Folsom *v.* Marsh: "If so much is taken that the value of the original is sensibly diminished, or the labours of the originai author are substantially, to an injurious extent, appropriated by another, that is sufficient in point of law to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author and it is no defence that another person has appropriated a part and not the whole of any property."

Infringement in specific meaning

Infringement is commonly taken to mean specific invasion of the author's rights rather than wholesale piracy; and the question of what is infringement or "literary larceny" is more often a question of the interpretation of the facts than the construction of the statute. The legal cases arising under infringement constitute a very large proportion of copyright litigation, demanding as they do judicial determination as to the acts complained of in each particular case. It is therefore impossible in this volume to give citations or references for the hundreds of cases recorded in the law reports or in the various works on copyright, but it may be noted that the foot-note citations in Macgillivray's "Law of copyright" cover a very large number of American as well as English cases. No treatise on copyright can apply, however, in advance, the general principles of copyright to the infinite variety of possible cases; and only general notions and a few illustrative cases can here be given.

Infringement is a question of fact rather than of intent. It is not a valid defense that the infringer is ignorant; nor, on the other hand, can any one be held for intention to infringe, where the act of infringe-

ment has not been accomplished. The new American code, nevertheless, recognizes knowledge and intent in certain cases of punishment or damages by the use of the words "willfully" and "knowingly." The letter of the law is in general that the infringer must be held responsible and must make good any damages suffered by the copyright proprietor, but proof that he had no guilty knowledge or intent may effect mitigation of punitive damages. The trend of court decisions and of judicial opinion does not seem to be evident and consistent in this development; but it may perhaps be said that while copyright law is more closely applied from the letter of the statutes, in the legal aspect, the principles of equity have been given freer play where the statute is not specific and definite. In 1899, in Green *v. Irish Independent*, the English Court of Appeal held that the proprietors of a newspaper who had printed an advertisement containing an illustration which the advertiser had license to use only for specified purposes, were liable for penalties, though they did not know that the illustration was copyrighted; and in 1902, in American Press Assoc. *v.* Daily Story Pub. Co., the U. S. Circuit Court of Appeals held the defendants liable, though they had innocently copied from a newspaper reprint which had inadvertently omitted the copyright notice. But in 1898 Justice Mathew, in Bolton *v.* London Exhibitions, declined to hold the defendants punishable, because they did not know that the lithographer from whom they had ordered a poster had infringed the copyright of a photograph.

Questions of fact and intent

"Fair use" means quotation from or other use of an author's work within the evident meaning or judicial construction of the copyright statute, and is the usual answer of the defendant to a complaint that he has taken without authority some portion of the author's

"Fair use"

work or utilized in some way the result of the author's labors. The borderland between infringement and "fair use" is peculiarly and necessarily one of uncertainty, not so much because of ambiguity in the statute as of difficulty in determining the extent of use within which it is said *non curat lex*. No statute can be so clear or so complete as to obviate questions of this kind. In general there must be copying of a material or substantial part. What is a material or substantial part, constituting infringement, is a difficult question of fact.

Principle of infringement

"Copying is not confined to literal repetition," said Judge Clifford, in Lawrence *v.* Dana, in the U. S. Circuit Court in 1869, "but includes also the various modes in which the matter of any publication may be adopted, imitated, or transferred, with more or less colorable alterations to disguise the source from which the material was derived; nor is it necessary that the whole, or even the larger portion of the work, should be taken in order to constitute an invasion of copyright." The Chancery Division, through Lord Chief Justice Alverstone, took the extreme course in Trengrouse *v.* "Sol" Syndicate, in 1901, of holding a work an infringement, though less than a page was taken from the plaintiff's football guide.

Infringement by indirect copying

Infringement may be by indirect as well as by direct copying. In the case of Cate *v.* Devon in 1889, in the Chancery Court, the defense that the copying was not from the original copyright work but from a newspaper reprint, was rejected. Infringement may be through quite a different medium from the original; thus a shorthand reproduction of a lecture on "The dog as the friend of man," published in a text-book of shorthand, was held in the Chancery case of Nichols *v.* Pitman, in 1884, to be an infringement of the lecture as much as if in ordinary type.

Exceptions from infringement

The doctrine of infringement cannot be invoked to obtain monopoly of any particular subject, and the authorized biographer of President Garfield was denied relief in 1889, in Gilmore *v.* Anderson, when he sought to prevent the publication of a life of Garfield by another writer. Nor will mere similarity of treatment of the same subject constitute infringement. A copyright owner cannot prevent another person from publishing the matter contained in his book, if invented or collected independently, or from making "fair use" of its contents. Two map-makers, collecting at first hand the same *data*, would naturally make the same map, and each would equally be entitled to copyright. In this respect, copyright law differs from patent law, where a first use bars others from the same field. It has even been held that the collected material might be used by a second compiler as a guide in a second compilation, if subjected to original verification, as in the case of a street directory. But in the case of rival Boston directories in 1905, the U. S. Circuit Court of Appeals held, in Sampson & Murdock Co. *v.* Seaver Radford Co., that a verification by actual canvass from a list of discrepancies made up from the earlier work was beyond fair use.

Infringement by abridgment and compilation

Abridgments were construed by early English decisions not to be infringements, and this precedent was followed, reluctantly and often with protest, in later cases by English and American judges, as set forth in the chapter on subject-matter. Later copyright provisions, — as by use of the word "*retranchements*" in the Berne-Berlin conventions, and the specific authorization in the American code "to make any other version thereof," and for copyright of an abridgment of a work in the public domain, — directly or by implication, make abridgment an infringement and free the courts to take this view.

Compilations also constitute infringement if they extract substantial parts of a copyright work, beyond the limits of "fair use," or even if they adopt the plan or arrangement or bodily transfer the material of a copyright compilation of non-copyright matter.

Abridged compilations

A curious complaint of infringement by abridgment was made in Gabriel *v.* McCabe, in 1896, before Judge Grosscup in the U. S. Circuit Court in Illinois, where the plaintiff had licensed the use of a copyright song, "When the roll is called up yonder," in a collection of religious poetry, "The finest of the wheat, no. 2," published by the defendant, who included the song also in an abridged edition of this collection and in a combined edition of this and another collection. Judge Grosscup held that: "Future editions of a book may contain a composition published in an earlier edition by license, even though parts of the earlier edition are omitted. . . . To hold otherwise would practically forbid any new editions of books of compilations, for the consent of all the authors contributing could not, in many instances, be obtained." But if the collection had been so abridged as to result in the publication of the song alone as sheet music, it would have been an unfair use under the license.

Separation of infringing parts

The general principles as to quotation beyond "fair use" were well laid down by Lord Chancellor Eldon, in the early English case of Mawman *v.* Tegg, in 1826: "If the parts which have been copied cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion.

If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame."

Law digests

The difficult question of the extent to which a compiler may utilize the materials of another has come especially to the front in the American courts with reference to law digests and reports, within recent years. In 1896, in Mead *v.* West Pub. Co., concerning rival annotated editions of "Stephen on pleading," then out of copyright, where the defendant's editor admitted having clipped the text from the complainant's edition and having obtained some ideas or suggestions from it, Judge Lochren, in the U. S. Circuit Court in Minnesota, held that there was no infringement because non-copyright matter could not be protected in a copyright work from such clipping, because the defendant's notes were original even though suggested from the other, and because the few errors and citations in common were immaterial since there were many new citations and the work was on the whole the result of original research. That bodily transfer of citations is beyond "fair use" was emphasized by Judge Ray in White *v.* Bender, in 1911.

Proof from common errors

As to proof from common errors, it had been held in 1895, in the case of Chicago Dollar Directory Co. *v.* Chicago Directory Co., that the later work, containing sixty-seven errors found in the other, was evidently an infringement of the earlier compilation. In Bisel *v.* Welsh, *Re* Brightly Pennsylvania reports, in 1904, the U. S. Circuit Court held that repetitions of errors in citations were evidence of infringement

by the author of his own reports published under an earlier contract by the plaintiffs; and in 1911, in Shepard *v.* Taylor, Judge Hazel held that common errors were *prima facie* proof of infringement.

In the important case of West Pub. Co. *v.* Lawyers' Pub. Co., where a collection of selected cases and a general digest were alleged to be infringements of the plaintiff's reports and monthly digests, Judge Coxe in the U. S. Circuit Court enjoined 303 proved "instances of piracy" but not the remaining portions of the digest, but in 1897 the U. S. Circuit Court of Appeals, through Judge Lacombe, held that under such circumstances the burden of proof must be on the unfair user and broadened the decision by issuing an injunction against the work as a whole, excepting those parts which were public property. In 1910, in Park & Pollard *v.* Kellerstrass, Judge Philips enjoined the whole work because the infringing parts were not separable. In 1903, in Thompson Co. *v.* American Law Book Co., where the editor of the defendant's law encyclopædia had made a list of cases cited in complainant's work, which included material "pirated" by the complainant from copyright works, the Circuit Court of Appeals, reversing the lower court, held through Judge Coxe that there was no infringement, because the only use made of the list was to guide the defendant to the reports and because the complainant had no standing in equity. "If the defendant was guilty of piracy, so was the complainant; and equity will not protect a pirate from infringements of his piratical work." To like effect in Slinsgby *v.* Bradford Co., in 1905, Justice Warrington, in the Chancery Division, held that the plaintiff could not recover against an evident copying because his own catalogue was fraudulent in advertising as patented articles not so protected, and a fraud will not be protected. In

Infringement in part

No infringement of piracies or frauds

the later case of West Pub. Co. *v.* Thompson Co., where the publishers of the original reports and digests sought to restrain the Thompson encyclopædias, the Circuit Court of Appeals held that while a compiler may use a copyright digest by making lists from which to run down cases, which is "fair use," extensive copying or paraphrasing of the language of the digest, whether to save literary work or mechanical labor, constitutes an infringement. The case was sent back to the lower court for rehearing and assessment of damages and was settled in 1911 by an agreement involving transfer of the encyclopædia to the plaintiff. Reference to a copyright work giving pagination is not an infringement, as was decided in 1909, in Banks Law Pub. Co. *v.* Lawyers Co-operative Pub. Co., in the U. S. Circuit Court of Appeals.

Quotation

Whether simple quotation constitutes an infringement or is "fair use," depends upon extent and in some respects upon purpose. In 1892 Justice North, in the English Court of Chancery, in Walter *v.* Steinkopff, held that the use by the *St. James Gazette* of two fifths of an article by Kipling, copyrighted by the *Times*, was beyond "fair use" of quotations, notwithstanding the newspaper custom of copying from one another. On the other hand, quotations in a review of a book made to reasonable extent for the purposes of criticism, have usually been considered "fair use," provided they do not go to the extent of a description or abridgment which would be measurably a substitute for the book.

Private use

The multiplication of copies by handwriting or other process for private use, as among the members of an orchestra or in a business office, has been held an infringement in English decisions, though prohibition of the making of a single copy for personal use would be an extreme application of this doctrine,

and such use is specifically permitted in the new English code.

The doctrine of "unfair competition"

Beyond the purview of copyright law, there is a means of legal remedy for the copyright proprietor which can be enforced by state as well as by federal courts, resting either upon statutes outside the copyright law, or on the general principles of equity. This is the application of the doctrine of "unfair competition" especially in cases involving "fraud" or fraudulent representation, direct or implied, leading the purchaser to buy something other than what he supposes he is buying. Thus if a publisher prints and binds a book with a title and in a style that leads a purchaser to suppose that it is another book which he is buying, the publisher of the other book has the right to obtain equitable relief by an injunction from the transgressor on the ground of unfair competition without any reference to copyright law, although this doctrine is more applied in the case of patents, trade-marks and copyrights than perhaps any other field.

The doctrine of deceptive intent

There is also evident a growing tendency on the part of the courts to protect the public from possible deception especially if done with fraudulent intent, where some distinctive name or symbol or form associated with some line of product is used for another line of product of different origin and character, though there may be here no direct competition; but this comparatively new doctrine is more likely to be used in regard to trade-mark articles than in respect to literary and like property. It might, however, apply in a case where a well-known publishing house had published, for instance, a popular series of school-books as Smith's Arithmetical Readers and another firm containing the same name had started to publish a Smith's Algebraic Readers — but the application would be extremely doubtful.

The "Chatterbox" cases

In the Chatterbox cases, 1884–1887, previously referred to, the final decision of Judge Shipman emphasized the view that the use of the title "Chatterbox" on a similar publication was misleading to the public, thus bringing both trade-mark law and common law protection to the rescue against unfair competition.

Encyclopædia Britannica cases

In the series of Encyclopædia Britannica cases, 1890–1904, the English publishers Black or their American representatives Scribner sought to protect in this country the English edition, or an American authorized edition, under the copyright law previous to 1891, copyrighted articles by Americans being included, and under common law because of the alleged fraudulent misuse of the name to mislead the public. In 1893, in Black *v.* Allen, Judge Townsend held that the use of copyrighted material in a non-copyright work did not vitiate the copyright, that the American author was entitled to secure and protect copyright even though the right to use was assigned to an English house which could not directly secure copyright, and that the fact of discrepancy in the title of the copyrighted articles as registered for copyright on separate publication and deposit and in the cyclopædia, did not endanger the copyright. In 1904, in Encyclopædia Britannica Co. *v.* Tribune Association, Judge Lacombe in the U. S. Circuit Court enjoined condensations of the copyrighted American articles. But in Black *v.* Ehrich and other cases, the complainants were not successful in obtaining an injunction against the use of the title Encyclopædia Britannica on reprints of non-copyright material which did not mislead the public.

Webster Dictionary cases

In the Webster Dictionary cases in 1890–1909, a long litigation between the Merriams as authorized publishers of Webster, and Ogilvie and other defendants, the courts held that the use of the name Webster

or the title Webster's Dictionary could not be restrained when used in connection with a reprint of the original Webster Dictionary, then out of copyright, or otherwise in a manner not likely to mislead the public; but injunctions were granted and sustained against the use of these names on dictionaries issued in form so like the Merriam editions as to deceive the public, or in connection with misleading advertisements or circulars.

"Old sleuth" cases

In 1888–1890 George Munro, publisher of the "Old sleuth" detective series, sought in actions against several defendants to protect the use of the name "Sleuth" and was upheld in the N. Y. Supreme Court in separate decisions by Judges Andrews, O'Brien, and Patterson, while in one of the cases Judge Ingraham held that "sleuth" was a dictionary word and could not be protected; in 1889 the N. Y. Court of Appeals through Chief Judge Parker decided that the name "Sleuth" was protectable, and in 1890 Judge Macomber of the N. Y. Supreme Court held that "Sleuth" was properly a subject of trade-mark. But in 1890 also, Judge Shipman in the U. S. District Court dismissed the complaint in another Munro case, as to an illustration picturing "Old Sleuth," on the ground that though of the same subject it was not of the same character. These cases illustrate the difficulty of decisions in this borderland of equity.

Other title decisions

In 1894 Judge Green, in the U. S. Circuit Court in New Jersey, in Social Register Association *v.* Howard, protected on grounds of equity the title "Social register" as descriptive of a social directory covering Orange, N. J., and enjoined the use of "Howard's Social register" as unfair competition. In 1896, the Harper house, as publishers of the *Franklin Square Library*, obtained from the U. S. Circuit Court, through Judge Waite, an injunction against the

Franklin Square Library Company for violation of their trade-mark rights in the name.

Where the American Book Co. brought suit against Doan & Hanson, who had restored and rebound used copies of schoolbooks, the U. S. Circuit Court of Appeals held in 1901 that there was no violation of law, but required notice that the books were second-hand copies by conspicuous stamp on the cover. In 1891 the Pennsylvania Supreme Court, in Dodd *v.* Smith, declined to grant Dodd, Mead & Co. an injunction against re-binders who had purchased from them sheets of a fifty-cent paper-covered edition of a novel by E. P. Roe and bound these in cloth to sell at sixty cents in competition with the plaintiff's $1.50 cloth edition. Rebound copies

In 1899 G. P. Putnam's Sons purchased from Kipling's authorized publishers sheets of twelve volumes, added three volumes of non-copyright or otherwise authorized material and published the fifteen volumes, "Brushwood edition," of Kipling's works, with the design of an elephant's head on the binding. Kipling sought an injunction for infringement of copyright, use of trade-mark and unfair competition with the "Outward bound edition" of his works, which also bore an elephant's head. In 1903 the U. S. Circuit Court of Appeals, through Judge Coxe, affirmed a decision holding as "a well-recognized principle of law" that "the defendants, having purchased unbound copyrighted volumes, were at liberty, so far as the copyright statute is concerned, to bind and resell them"; that the elephant's head, not being a registered trade-mark, could not be protected as a trade-mark; and that there was no similarity of editions constituting unfair competition. But in 1907, in Dutton *v.* Cupples & Leon, the plaintiffs obtained damages for a series of books closely imitating the The Kipling case

get-up of their "Gem" or "Dainty" series. Passing off, however, cannot be made ground of action when material protectable by copyright has not been copyrighted, as was held in 1908, in Bamforth *v.* Douglas Post Card Co., by Judge McPherson in the U. S. Circuit Court.

Burlesqued title

The suit to enjoin the use of a reversed or burlesque title, when the *Boston Herald* printed, under the title of "Letters of a son to his self-made father," a skit on Lorimer's "Letters of a self-made merchant to his son," was denied by Judge Morton in the Massachusetts Supreme Court in 1903 as involving no deception.

The Drummond case

In 1894 Henry Drummond, a British subject, obtained from Judge Dallas, in the U. S. Circuit Court, an injunction restraining Henry Altemus from publishing what purported to be exact reports of twelve lectures, of which eight only had been imperfectly reported in the *British Weekly*, on the ground that the author had a common law right to restrain the publication "of any literary matter as the plaintiff's, which was not actually his creation, and to prevent fraud."

The new British code

The new British measure comprehensively defines infringement as the doing without consent of the owner of the copyright of "anything the sole right to do which is by this act conferred on the owner of the copyright," but specifically excepts (1) fair dealing for private study, research, criticism, review or newspaper summary; (2) use by an artist of sketches, etc., made for a work of which he has sold the copyright, provided he does not repeat or imitate that work; (3) graphic reproduction of objects, or photographing of paintings, etc., in a public place; (4) limited extracts for use in schoolbooks; (5) report of lectures unless prohibited by placard; (6) reading or recitation of reasonable extracts.

XV

REMEDIES AND PROCEDURE

Protection and procedure

It was for the protection of copyrights that the statute of Anne was passed and that statutory law thus began to replace English common law — a gain to authors sadly offset by its losses. But it was undoubtedly true that without statutory provision the proprietor of literary and similar property could not obtain the protection necessary for the enforcement of his rights. The new American code is comprehensive, detailed and specific in its legal provisions for protection and procedure, and in respect to punishment far beyond any copyright legislation on the statute books of any other nation.

Injunction

The first protection given by the statute is the injunction usual in equity proceedings, following the precedent of early legislation.

Damages

Under previous American law, damages were levied primarily on infringing copies found in possession of the infringer or his agents, with the unfortunate result that when an infringer was successful in selling his edition, few, if any, copies were found on which to levy damages. The new code thoroughly corrects this defect by providing for specified damages on infringing copies "made or sold by or found in the possession of the infringer or his agents or employees." The plaintiff is entitled to damages and all profits and is required only to prove sales, while the defendant is required to prove the elements of cost. The damages — assessed as such and not as penalties so as to free copyright litigation from the restrictions of penal proceedings — are stated as one

dollar for each infringing copy, except copies of a painting, statue or sculpture on which they are ten dollars per copy; fifty dollars for each infringing delivery of an oral work; one hundred dollars for the first and fifty dollars for each subsequent infringing performance of a dramatic, dramatico-musical, choral or orchestral work; and ten dollars for each infringing performance of any other musical work. These damages shall not be less than $250 or more than $5000 in any one case, with the exception that for a newspaper reproduction of a photograph the minimum shall be fifty dollars and the maximum two hundred dollars, a concession insisted upon by newspaper proprietors.

One suit sufficing

Injunction, damages and profits, and delivery of infringing copies or means of production, are covered in the single suit to protect the copyright.

Deposit of infringing articles

During the pendency of an action the defendant may be required to deposit all articles alleged to infringe copyright, making oath that he has deposited all such, under regulations for his protection prescribed, as the law directs, by the Supreme Court, which regulations are given in full in the appendix of this volume; and when such articles are adjudged to be infringements, he must deliver up for destruction not only such infringing copies or devices, but also all plates, molds, matrices or other means for making such infringing copies as the court may order, making oath that he has delivered up all such.

The text covering these provisions, with the exception of subsection (e), referring to mechanical musical reproductions, given in the chapter on that subject, is as follows:

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

"(a) To an injunction restraining such infringement; Remedies specified

"(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in the case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty:

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

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

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

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

other musical compositions, ten dollars for every infringing performance;

Impounding

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

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

Supreme Court rules

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

Court jurisdiction

The Circuit Court, or District or other courts having circuit jurisdiction, of the United States, have original jurisdiction "of all suits at law or in equity arising under the patent or copyright laws of the United States" with appeal or writ of error to the Supreme Court of the United States. Copyright cases are brought in the first instance before a single judge sitting in Circuit Court or District Court, and thence are appealed to the Circuit Court of Appeals consisting of three or more circuit judges, and thence again to the United States Supreme Court, the final authority. These federal courts have sole jurisdiction under the copyright law as such; but copyright cases are often adjudicated in State courts on questions arising under the law of contracts or other statute or common law, regard being always given to the decisions of the federal courts as to copyright questions proper which may be involved. In other words, the State courts do not pass upon copyright law, but may apply, within the respective states, the copyright decisions of federal courts. Thus in Hoyt *v.* Bates, in 1897, Judge Putnam in the U. S. Circuit Court in Massachusetts remanded the case back to the State

courts because the question was not under the copyright law as such, but regarding the ownership of copyright property. In this case the author of a play "A black sheep," containing a song "Sweet Daisy Stokes," licensed the defendant to print the song. The defendant copyrighted the song and the plaintiff sued to compel him to assign his copyright. The case illustrates the respective jurisdictions of federal and State courts in copyright matters.

Court jurisdiction

The United States courts have authority to enter the decrees necessary to enforce the remedies provided by the law. Important provisions of the new code provide that civil action in copyright cases may be brought "in the district of which the defendant or his agent is an inhabitant or in which he may be found" — thus preventing avoidance by the defendant possible under earlier law; and also that any injunction granted in any one district may be operative throughout the United States — a provision adopted into the law from recent legislation intended to prevent the evasion of injunctions, particularly by "fly by night" dramatic companies passing from one state or court jurisdiction into another, but usefully applicable also throughout the whole range of copyright infringements. Criminal proceedings under the copyright act may not be brought after three years from the commission of the offense.

Limitation

Under the former laws the District courts also had certain — or uncertain — jurisdiction. The distinction between the District courts and the Circuit courts of the United States, both of which are courts of first instance, has been so complicated and uncertain as to be practically impossible of statement — a situation which has led to a measure for the abolition of the distinction and the provision of a single court in each federal district having original jurisdiction in

the first instance, from which appeal will go to the Circuit Court of Appeals and thence to the U. S. Supreme Court, or in certain cases direct to the Supreme Court.

Text of procedure provisions

The text of these provisions is as follows:

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

Proceedings united in one action

"(Sec. 27.) That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action."

Jurisdiction in copyright cases

"(Sec. 34.) That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the circuit courts of the United States, the district court of any Territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

"(Sec. 35.) That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

Injunction provisions

"(Sec. 36.) That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted

anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

"(Sec. 37.) That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

Appeal

"(Sec. 38.) That the orders, judgments, or decrees of any court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

No criminal proceedings after three years

"(Sec. 39.) That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose."

Strict compliance requisite

The copyright statutes are construed strictly, by the letter of the law, in respect to procedure as well as to other features. This is especially the case in respect to forfeiture and penalties, as where, in Falk *v.* Heffron, in 1893, 2400 copies of a copyright portrait of Lillian Russell had been lithographed, twenty-one on a sheet, Judge Wheeler in the U. S. Circuit Court in New York held with the jury that only one dollar per sheet could be recovered as penalty, because the law specified "sheets." In McDonald *v.* Hearst, in 1899, in the U. S. Circuit Court in California, Judge De-Haven held that the proprietor of the San Francisco *Examiner* could not be held liable for copyright penalties because an employer could not be held to penal

responsibility for the act of his agent. In a suit to obtain damages based on forfeiture, in Wheeler *v.* Cobbey, in 1895, Judge Shiras in the U. S. Circuit Court in Nebraska sustained a demurrer on the ground that the damages asked for depended on forfeiture and could not be obtained unless the actual forfeiture was had within the statutory limit of two years. In Morrison *v.* Pettibone, in 1897, in the U. S. Circuit Court in Illinois, Judge Seaman held that certain sheets, seized during the process of lithographing, when only one color had been printed, were not exact copies and therefore could not be forfeited. In Bennett *v.* Boston *Traveler* Co., in 1900, the Circuit Court of Appeals, through Judge Colt, refused relief because the plaintiff had alleged infringement of a cartoon published in the New York *Herald*, which was not specifically copyrighted, instead of alleging infringement of the copyrighted newspaper of which it was a part. An extreme case was that of Child *v.* N. Y. *Times* Co., in 1901, where the plaintiff had purchased infringing copies from the defendant, in which case Judge Hazel in the U. S. Circuit Court in New York held that as these were not literally "found in possession" of defendant, a penalty could not be collected. Several of these cases illustrate escapes from justice which will not be possible under the code of 1909, which uses broader phraseology. In Walker *v.* Globe Newspaper Co., in 1908, where no copies of a pirated map were found in possession of the defendants, the U. S. Supreme Court held that outside of statutory remedies no suit for damages could be maintained.

Damage not penalty

On the other hand, in the case of Brady *v.* Daly, which came before the U. S. Supreme Court in 1899, the defendants, on a question of jurisdiction, raised the issue that the old law provided for a penalty and

not for damages, in denying which Justice Peckham held that: "The statute in using the word 'damages' did not mean a forfeiture or penalty, as it is difficult to prove the exact amount which the proprietor of a play may suffer by reason of an infringement. It is probable that Congress intended to provide a remedy so that the proprietor could recover a certain amount of damages without proof of what his actual loss had been. In the face of the difficulty of determining the amount of damages, a minimum sum is provided in any case, with the possibility of recovering a larger amount on proof of greater damage. The idea of punishment is not so much suggested as the desire to provide for compensation to the proprietor." This rule was applied by Judge Lacombe in Patterson *v.* Ogilvie, in 1902.

Other procedure decisions

In the case of Falk *v.* Curtis Pub. Co., which came before the U. S. Circuit Court in Pennsylvania twice in 1900, some important decisions or indications as to copyright procedure were given. The defense that under the copyright act the words "any person" did not include a corporation was overruled by Judge Dallas on the ground that the general statute specifically construed the word "person" to extend to partnerships and corporations. In this case an action to recover penalties and an action to replevin copies in possession were started independently and simultaneously, and the Circuit Court of Appeals through Judge Buffington affirmed the decision that as the penalties under the old act were restricted to copies "found in possession," the suit for penalties was premature. In the later case of Rinehart *v.* Smith, also in the Pennsylvania circuit, it was pointed out that an action for replevin was not the proper form of suit because in such actions bonds might be given and the forfeiture of copies thus be barred; and in Hegeman *v.*

Springer, the Circuit Court in New York held, in 1901, that a replevin suit, involving prior demand, was not necessary and that the copyright statute itself gave authority for an action for seizure without previous demand, as would be necessary in replevin proceedings. It was held, however, in the Illinois circuit in an earlier case, that a suit of replevin will lie to enforce forfeiture under the copyright act. Several of these perplexities, however, are removed by the code of 1909, which expressly (sec. 27) authorizes the bringing together of all the remedies in one action.

Preventive action

That there can be no infringement of copyright by acts committed before the copyright was obtained, was decided in 1900 in the U. S. Circuit Court in the case of Maloney *v.* Foote, where the two parties were jointly engaged in preparing directories, and the plaintiff obtained the copyright and brought suit for infringement for the prior use of material, the question being of contract and not of copyright. On the other hand, as far as practicable, "it is the policy of the law to arrest the pirate before he actually makes off with the plunder," said Judge Coxe in the U. S. Circuit Court of Appeals, in Gannet *v.* Rupert, in 1904.

Party in suit

In 1903, in Champney *v.* Haag, it was held in the U. S. Circuit Court in Pennsylvania, that though a copy of a photograph of a copyright painting was an infringement, it was not the owner of the original copyright but the owner of the photograph who must sue — but this is contrary to the English ruling case of Lucas *v.* Williams, and is probably not good law.

Suit for injury to reputation

A curious case arose in England in 1892 as to the rights of an author after publication and transfer of copyright, in Lee *v.* Gibbings, where the plaintiff had prepared for the defendant, a publisher, at an agreed price, an edition with introduction of Lord Herbert's autobiography, which the defendant re-issued in a

condensed edition without the introduction and other matter by the author, though retaining his name. The author sued to restrain the condensation as an injury to his reputation, but Justice Kekewich in the Chancery Division held that this should be a suit for libel and not under copyright, and declined to enjoin the defendant before the question whether this was actually a libel was settled.

Damages in willful case

In a case of evident bad faith in wholesale copying, the U. S. Circuit Court in Hartford Printing Co. *v.* Hartford Directory Co. awarded as damages the gross receipts less estimated cost.

Penal provisions

The provisions for collecting damages and profits are supplemented in case of infringement, willfully and for profit, by penal provisions which make the offense a misdemeanor punishable by imprisonment not exceeding one year or fine not less than $100 or more than $1000, or both, in the discretion of the court, according to the following provision (sec. 28):

Penalty for willful infringement

"That any person who willfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the court."

This provision (sec. 28) includes however a proviso exempting from prevention or punishment the performance of certain musical works for charitable or educational purposes and not for profit, which proviso is given in full in the chapter on dramatic and musical copyright.

Provision is also made in the new statute for the punishment by fine, but not by imprisonment, of any

Penalty for false notice of copyright

person who with fraudulent intent affixes a copyright notice or its equivalent on an uncopyrighted work, or removes or alters the copyright notice in a copyrighted work, the fine being not less than $100 nor more than $1000; and of any person who shall knowingly issue, sell or import any article bearing notice of United States copyright which has not been copyrighted in this country, the fine in this case being $100, according to these provisions:

"(Sec. 29.) That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars."

Further provisions as to importation are given in the chapter on that subject.

Allowance of costs

In addition to injunction, damages and profits, delivery of copies, etc., the courts may allow costs inclusive of attorney's fees as provided:

"(Sec. 40.) That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs."

It seems impracticable and undesirable to attempt in this chapter a statement of the procedure under

former copyright laws in this country, or under the legal methods in vogue in other countries, for which the legal authorities on local procedure and practice should be consulted.

The new British code

The new British measure provides the usual civil remedies of injunction, damages, account and costs in the discretion of the court. The author, or if no author the publisher whose name is indicated on the work, is *prima facie* recognized as owner unless the contrary is proved. Infringing copies or plates become the property of the copyright owner. If the infringer proves ignorance, only an injunction will hold. In architectural works, after construction has been commenced, damages and not an injunction are provided for. Actions must be commenced within three years. Summary conviction is provided for in the case of any person knowingly and for profit or trade making, offering, distributing, exhibiting or importing infringing copies or making or having in possession infringing plates with penalty of a fine not exceeding fifty pounds, or in case of a second offense, imprisonment not exceeding two months, as also destruction or delivery up to owner of the copyright. The summary provisions of the musical copyright acts of 1902 and 1906 remain unrepealed.

Under previous law there had been two notable cases of criminal punishment for conspiracy. In 1906, *Re* Willets against a combination among cheap music publishers, where the Common Serjeant sentenced the vendors to nine months' imprisonment, and in 1910, *Re* Bokenham, where pirates who had conspired to print surreptitiously obtained copies of Oscar Wilde's poem "De Profundis," were also sentenced to six months and lesser periods.

XVI

IMPORTATION OF COPYRIGHTED WORKS

Copyright and importation

THE right to import a copyrighted book and, conversely, the right to exclude importation are rights incident to the general "exclusive right" of an author or copyright proprietor. This is recognized, in terms or inferentially, in the copyright law of most countries; and the American copyright code is exceptional and almost without precedent, save that of the preceding American law of 1891, in specifically permitting the importation of copyrighted books in stated cases, without the consent or authority of the copyright proprietor.

Fundamental right of exclusion

As Senator O. H. Platt in the copyright debate of 1891 said: "The fundamental idea of a copyright is the exclusive right to vend, and the prohibition against importation from a foreign nation is necessary to the enjoyment of that right. The privilege of controlling the market is indeed essential." The copyright laws of foreign countries, and our own copyright legislation previous to 1891, carefully safeguard this right. When an author cannot assure to an American publisher the American market he cannot get from that publisher the price he would otherwise secure. In the "international copyright amendment" of 1891, Congress accompanied the manufacturing clause, which prohibited the importation of foreign copies even with the consent of the author, by a proviso permitting certain importations even without the consent of the author — on the homœopathic principle of off-setting one restriction upon authors' rights by another restriction upon authors' rights.

General prohibitions

In general the law prohibits absolutely the importation of "piratical copies" or of works bearing a false notice of United States copyright; it also prohibits, even though with consent of the author and the copyright proprietor, the importation in the case of works subject to the manufacturing clause, of any copies not manufactured in this country — but this prohibition does not apply to books in raised characters for use of the blind; to foreign-made periodicals containing authorized copyright matter; to authorized copies of a work in a foreign language of which only an English translation has been copyrighted here; or to authorized copies published abroad when imported under specified exceptional circumstances.

Exceptions permitted

These exceptions permit the importation of authorized copies for individual use and not for sale, not more than one copy at a time (excepting a foreign reprint of a book by an American author); or by or for the United States; or by or for stated educational institutions, including libraries, not more than one copy at one time; or when parts of collections or libraries purchased and imported *en bloc*, or of personal baggage. Books imported under these exceptions cannot be adduced in defense of infringements, as the law specifically provides, *e. g.*, as when such a book contains no proper United States copyright notice. Copies unlawfully imported may be seized and forfeited like other contraband importations under regulations of the United States Treasury, but it is provided that importations through the mails or otherwise may be returned to the country from which the importation is made on petition to the Secretary of the Treasury when there is no evidence of negligence or fraud. The Secretary of the Treasury and the Postmaster-General are jointly required to make regulations against unlawful importation through the mails.

These provisions, it may be noted, are a singular mixture, almost without precedent, of acceptance and denial of the "exclusive right" of the author or copyright proprietor.

Text provisions

In respect to the importation of books in relation with copyright, the provisions of the American code as to prohibition and limited permission are specific and detailed, as follows:

Prohibition of piratical copies

"(Sec. 30.) That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

"(Sec. 31.) That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is hereby, prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply:

Permitted importations

"(a) To works in raised characters for the use of the blind;

"(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

"(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

"(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

"First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

"Second. When imported by the authority or for the use of the United States;

"Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States; Library importations

"Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

"(Sec. 32.) That any and all articles prohibited

Seizure

importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

Return of importations

Rules against unlawful importation

"(Sec. 33.) That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties."

Customs regulations as to importation of copyright articles and joint customs and postal regulations as to such importation through the mails, were issued under the law of 1909 under date of July 17, 1911, and are given in the appendix. As the copyright law forbids importation of copyright books not manufactured in this country, even with consent of the copyright proprietor, the customs regulations pro-

vide that copies imported with the copyright proprietor's assent shall be seized and destroyed by the government, while copies imported without the copyright proprietor's consent, being forfeited under the law to such proprietor, must be held by the customs authorities pending suit for forfeiture by the copyright owner or his abandonment of his right to such copies. Duties collected on books thus unlawfully imported are not refunded.

Supersedure of previous provisions

In relation especially to questions of importation, and in general, it is of first importance to note that the present code superseded by repeal, from July 1, 1909, all conflicting provisions, which practically means all previous copyright legislation, and that except as to infringement cases actionable at that date, the present code is the only copyright law.

The provision to this effect is (sec. 63): "That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law."

Manufacturing clause affects earlier copyrights

This principle as construed by the Treasury Department (Treas. dec. no. 30316) especially affects copies whose *status* has been changed by the new form of the manufacturing proviso (sec. 15). A modification adds the condition that books must be printed from plates made from type set within the United States and printed and bound in this country. The Treasury Department has held in the case of an American edition of the "Key of Heaven" copyrighted under the law of 1891, by Benziger Brothers, of which sheets were sent abroad for binding, that the edition as

bound abroad cannot be re-imported into the United States, although the sheets were manufactured here under the provisions of the law of 1891, previous to July 1, 1909. These books were accordingly denied importation and had to be returned to the country whence they were exported as bound. The opinion of Attorney-General Wickersham of November 17, 1909, on which the Treasury ruling was based, says:

"This language [of sec. 31] clearly embraces *every* American copyright in a book, regardless of whether that copyright was obtained under the copyright laws embodied in the Revised Statutes, or the act of 1891, or the copyright act of 1909. If the statute were otherwise, it would have produced the anomalous condition that books copyrighted prior to March 3, 1891, would not be prohibited from importation by any manufacturing provision; that books copyrighted after March 3, 1891, and prior to July 1, 1909, the date upon which the act of March 4, 1909, became effective, would be prohibited unless printed from type set in the United States or from plates made from type set in the United States, while books copyrighted after July 1, 1909, would be prohibited if not printed from type set in the United States or from plates made from type set therein, and the printing and *binding* both performed within the limits of the United States."

Importation of foreign texts

Where a work in a foreign language is copyrighted in the United States, it was held by the Secretary of the Treasury (Treas. dec. no. 22751) in 1901, on advice of the Attorney-General, under the act of 1891, in the case of Rostand's "L'Aiglon," that the original French edition must be denied importation under the prohibition feature of the manufacturing clause; but, as under the new code of 1909, "the original text of a work of foreign origin in a language

other than English," is excepted from the manufacturing clause, it follows that such original text cannot be denied importation on copyright grounds, though importation might be restrained as a matter of equity by an assignee who had bought for the American market the right to publish here. In the case, however, of Liddel and Scott's Greek-English Lexicon, of which an American edition was copyrighted previous to the law of 1891, on a question raised by the American Book Co., the Secretary of the Treasury held in 1901 (Treas. dec. no. 22781) that the English edition could not be denied importation, as the law previous to 1891 did not contain the prohibition incident to the manufacturing clause. The Attorney-General in this case considered that while the clause against importation, being remedial, might affect prior copyright, yet as it particularly applied to books "so copyrighted" as not to be imported during the existence of "such copyright," it should be inferred that only books copyrighted under that act should be denied importation — the law in general being prospective in its effect. These two earlier opinions were taken into consideration in the opinion in 1909 by Attorney-General Wickersham, who held that the language of the new code did not warrant the same construction.

Printing within country

Under the law of 1891, the Secretary of the Treasury held in 1903 (Treas. dec. no. 24742) that books printed abroad from type set or plates made within the United States could not be prohibited importation under the manufacturing clause; but the clause has been so amended in the code of 1909 that printing in this country from type set within the United States or from plates made within the country from type thus set, is required as a condition of copyright, and copyright does not hold if any of these three con-

ditions be neglected. It follows that in the case of books so copyrighted and manufactured, any other edition must be prohibited importation.

Innocent importation

An English decision holds that an importer is not innocent because he does not know that an importation includes copyright matter; and the wording of our law implies the same, though an American decision held that a partner or employer is not chargeable with statute penalties for acts done without his knowledge by a partner or agent.

Books not claiming copyright

An indirect and significant effect of the manufacturing proviso, in the nature of a "boomerang" to American industries, is to prevent the copyrighting of works which might otherwise be partly manufactured in America. Thus the American versions of the Book of Common Prayer and of Church Hymnals no longer seek American copyright, because the thin paper editions, as on "Oxford paper," are necessarily printed abroad and could not be imported if there were copyright on other editions which might be made in America. Baedeker's "United States," though dealing exclusively with and chiefly sold in this country, is not copyrighted, being protected rather by the cost of reproducing its German-made maps and text, and by its repute as a guide-book and characteristic form, which might under the doctrine of "fair use" give its American publishers some common law protection against imitators.

Periodicals may be imported

The code of 1909 permits the importation of periodicals containing copyright matter authorized by the copyright proprietor, though not manufactured in the United States, but this permissive exception does

Composite books not admitted

not extend to composite books; and under the law of 1891 the Treasury Department held that in the case of a book of poems, some of which were copyrighted in the United States, the book could not be imported

unless the parts containing copyrighted poems had been printed from type set within the United States. Under this ruling, applied to the present law, foreign-made copies of books containing American copyrighted poems or other articles, must be denied importation, because these copyrighted portions were not type-set, printed and bound in this country. It is possible, however, that under the rule "*de minimis non curat lex*," a court might not justify the prohibition of books incidentally containing in small proportion poems, extracts or other negligible items of American copyright. Thus if an English cyclopædia contained copyrighted contributions by American authors, such cyclopædia would be denied admission unless such contributions might be adjudged a negligible proportion of the work.

Rebinding abroad

The prohibition of importation under the manufacturing proviso of copyrighted books not bound in this country, has been construed by the Attorney-General, in an opinion of March 1, 1910 (given in Treas. dec. no. 30414), to refer to original bindings and not to rebindings. "Manifestly a book is produced within the meaning of section 31 when it is printed and bound; and the binding required to be done in the United States is the original binding, the one which enters into the original production of the book. When the manufacture of the book is thus completed it is entitled to all the protection offered by the copyright laws, and it may be exported and thereafter imported at the pleasure of the owner. There is, furthermore, nothing in the act to indicate any intention that a book may be deprived of this protection or right of importation when it has once been acquired. If it shall become necessary or proper that the book be rebound it is not thereby made a new book, but remains the same book, the one that

was printed and originally bound in the United States as required by the statute."

Importation of non-copyright translation

A curious question as to the prohibition of importation arose in connection with a Swedish translation of the "purity" books of the "Self and sex" series, by Dr. Sylvanus Stall, of Philadelphia, author and publisher of this series. The original works in this series are by an American author written and printed in English and manufactured and copyrighted in America; and there are translations into twenty or more languages authorized by the author but not copyrighted in the United States. The copyright proprietor made an importation of the Swedish translation without question, but the second importation was stopped by the customs authorities at Philadelphia on the ground that the Swedish translation was a copy of the American copyrighted work and must therefore be denied admission because not manufactured in America. On appeal, the Treasury Department, June 23, 1910, overruled the local authorities and admitted the translation made in Sweden, and bearing no copyright notice, as a work "of foreign origin in a language other than English."

Books dutiable

Copyright protection and tariff "protection" are often spoken of as related with each other, chiefly because in this country the importation of books for libraries is, to a limited extent, free from tariff duties as well as from copyright restrictions. There is no real relation between them, but the sections of the American tariff of 1910 dealing with books and works of art may be cited for the convenience of importers.

"(416) Books of all kinds, bound or unbound, including blank books, slate books and pamphlets, engravings, photographs, etchings, maps, charts, music in books or sheets, and printed matter, all the forego-

ing wholly or in chief value of paper, and not specially provided for in this section, twenty-five per centum ad valorem; views of any landscape, scene, building, place, or locality in the United States on cardboard or paper, not thinner than eight one-thousandths of one inch, by whatever process printed or produced, including those wholly or in part produced by either lithographic or photogelatin process (except show cards), occupying thirty-five square inches or less of surface per view, bound or unbound, or in any other form, fifteen cents per pound and twenty-five per centum ad valorem; thinner than eight one-thousandths of one inch, two dollars per thousand: Provided, That the rate or rates of duty provided in the tariff Act approved July twenty-fourth, eighteen hundred and ninety-seven, shall remain in force until October first, nineteen hundred and nine, on all views of any landscape, scene, building, place, or locality, provided for in this paragraph, which shall have, prior to July first, nineteen hundred and nine, been ordered or contracted to be delivered to bona fide purchasers in the United States. and the Secretary of the Treasury shall make proper regulations for the enforcement of this provision."

Books on free list

The following are included in the "free list" and are therefore free from any duties:

"(516) Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority or for the use of the United States or for the use of the Library of Congress.

"(517) Books, maps, music, engravings, photographs, etchings, bound or unbound, and charts, which shall have been printed more than twenty years at the date of importation, and all hydrographic charts and publications issued for their subscribers or exchanges by scientific and literary associations or

academies, or publications of individuals for gratuitous private circulation, and public documents issued by foreign governments.

"(518) Books and pamphlets printed chiefly in languages other than English; also books and music, in raised print, used exclusively by the blind.

"(519) Books, maps, music, photographs, etchings, lithographic prints, and charts, specially imported, not more than two copies in any one invoice, in good faith, for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or the use and by order of any college, academy, school, or seminary of learning in the United States, or any state or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe.

"(520) Books, libraries, usual and reasonable furniture, and similar household effects of persons or families from foreign countries, all the foregoing if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale."

Library free importation

The provisions as to importation for libraries are made unnecessarily onerous by Treasury regulations intended to insure the identification of the actual copies so imported. In practice such copies are usually imported by library agents acting for the library and not only must these agents make oaths and present evidence of authorization from the library authorities, but the librarian must certify to the receipt of the individual copy, before it can be technically cleared from the custom house through which it is imported, and the importer relieved from further liability. Blank forms for these purposes are

prescribed and provided by the Treasury Department.

Copyrights and the free list

The question whether copyrighted works could be imported because they were included under the free list of the tariff came before the Treasury Department in 1901. With respect to copyrighted music, the Attorney-General considered the two questions whether the copyright law prohibits the importation of copyright music and whether the free list in the tariff constitutes an exception to the copyright law. He held as to the latter that the tariff is to prescribe certain duties on importations; it is not designed to authorize importation. It simply provides when and under what circumstances certain articles are exempt from duty. Accordingly copyrighted musical compositions are not taken out of the effect of the copyright law. The Secretary of the Treasury ruled (Treas. dec. no. 23225), in accordance with this advice, that copyrighted music was prohibited importation, — but this refers to importation without consent of the copyright proprietor.

The duty on books

Although not of copyright bearing, the significance in respect to importations of books of the newly added phrase "wholly or in chief value of paper" in the tariff act of 1909, which otherwise continued the 25 per cent duty on books, may here be mentioned, as of importance to importers. It was included in the Payne tariff, apparently at the instance of the bookbinding interests, and was at first construed by the local customs authorities at New York to make books bound in leather subject to the 40 per cent duty on leather, and books bound in silk subject to the 50 per cent duty on silk, as the component parts of chief value. The Secretary of the Treasury has, however, overruled this view and admitted books thus bound under the 25 per cent duty on the ground that "the

limitation placed upon the paragraph by the addition of the words not found in the previous law was intended to exclude from that rate, books bound in such fancy or costly bindings as to be imported not on account of their intrinsic literary merit or their value as books." The Board of General Appraisers has since, however, rendered a decision supporting the local appraisers.

British prohibition of importation

In Great Britain the copyright act of 1842 (sec. 17) provided that any printed books, copyright in the United Kingdom, imported "for sale or hire" as reprinted out of the British dominions otherwise than by "the proprietor of the copyright or some person authorized by him" should be forfeited, seized and destroyed by any customs or excise officer, and the Customs act of 1843, setting forth that "great abuse had prevailed with respect to introduction for private use," prohibited importation for use as well as for sale or hire. The international copyright act of 1844 (sec. 10) excepted importations from the country "in which such books were first published," but this act did not in terms repeal the provisions of the acts of 1842 and 1843, and in the leading case of Pitt Pitts *v.* George, in 1896, the Court of Appeal, two judges to one, decided that this exception was inconsistent with the previous acts and not good law. In this case an English music publisher who had purchased British copyright in Raff's "La Fileuse," sued to restrain the importation of the original German edition. The lower court, relying on the statute of 1844, refused relief, but the Court of Appeal granted an injunction, holding, through Judge Lindley, that the complete exclusion given to the British proprietor by the act of 1842 "is most in accordance with legal principles and good sense." It was further held that where the copyright had been divided, the words "the

proprietor of the copyright" indicate the owner of the English rights, and that if he had to "submit to an unlimited importation of books lawfully printed in any part of Germany itself," the British copyright "would be absolutely worthless, and the beneficial object frustrated," and protection by covenant with the original proprietor is by no means adequate.

Foreign reprints

The colonial copyright act of 1847, usually known as the foreign reprints act, authorized suspension by the Crown of the prohibition of importation of foreign reprints, in any colony enacting "reasonable protection to British authors" — which protection, in the twenty colonies in which the act was availed of, usually took the shape of a stated duty to be paid as royalty to the British copyright proprietor. The customs consolidation act of 1876 continued the general prohibition, on condition of notice by the proprietor of the British copyright to the Commissioners of Customs.

Divided market

Thus the British copyright and customs law recognizes the subdivision of copyright territory for the exclusive control of a market, and excludes accordingly foreign reprints whether piratical copies or authorized foreign editions like the Tauchnitz series, and the original foreign edition as well. In theory, if not in practice, a Tauchnitz copy in the pocket of a traveler is subject to seizure, and written authority from the copyright proprietor is technically necessary for the importation of a single copy, apparently without exception in favor of the British Government or the libraries.

The new British code

The new British measure continues these provisions as embodied in the customs consolidation act of 1876 and the revenue act of 1889 and in the text of the new act. Copyright is infringed by any person who "imports for sale or hire any work . . . which to his

knowledge infringes copyright." Importation is prohibited of copies made out of the United Kingdom, which if made therein would infringe copyright and as to which the owner of the copyright gives written notice to the Commissioners of Customs in accordance with regulations by the Commissioners, which regulations may apply to all works or to different classes. The Isle of Man is specifically excepted from the United Kingdom in respect to this section. But the section is made applicable with the necessary modifications to any included British possession in respect to copies made out of that possession. The text of the new measure, retaining the phrase "for sale or hire" from the act of 1842 and reaffirming the customs act of 1876, which makes no such exception, continues an unfortunate ambiguity as to the importation of copies for private use, but precedent and court decisions favor the complete control of the market by the copyright proprietor through the complete exclusion of foreign copies.

Canadian practice

Canada had, in an act of 1850, availed itself of the foreign reprints act by imposing a duty "not exceeding 20 per cent" on foreign reprints of English works, and under this act the Dominion later became "flooded" with cheap American reprints, while the royalty to British authors, fixed at 12½ per cent, was so inadequately collected that only £1084 was paid in the ten years ending 1876. Canada accordingly passed its copyright act of 1875, providing for the reprinting of English copyright works in Canada under Canadian copyright and prohibiting importation of such works except in the original edition from the United Kingdom, and this act, although opposed as an invasion of the exclusive control of their works by British authors, was accepted by the British Parliament in the Canada copyright act of the same year,

with the proviso that Canadian reprints should be prohibited importation into the United Kingdom except with assent of the copyright proprietor. It has since provided in the Fisher act of 1900 for the prohibition of importation of an original edition of an English work licensed for reprint in Canada, except two copies for libraries and one copy through demand on the Canadian licensee by an individual for use and not for sale — a provision considered *ultra vires* by English authorities.

Australian provision

The Australian code of 1905 prohibits the importation of all pirated books or artistic works in which copyright is subsisting in Australia, "whether under this act or otherwise," and provides for the forfeiture of such works, on condition of written notice by the owner of the copyright to the Minister, directly or through the Commissioners of Customs of the United Kingdom, of the existence of the copyright and of its term. These provisions do not seem to make clear whether original editions of English works, of which an Australian edition is copyrighted, are held to be contraband.

Foreign practice

The legislation of France and Germany and other countries seems to provide against importation inferentially rather than specifically, Russia and Peru being exceptional in their specific prohibitions. But the treaties and conventions between the several countries are for the most part specific on this point, as are those of France providing that "when the author of a work of which the property rights are guaranteed by the present treaty shall have assigned his right of publication or of reproduction to a publisher in the territory of either of the high contracting parties with the reservation that the copies or editions of this work thus published or reproduced cannot be sold in the other country, these copies or editions

shall be considered and treated, respectively, in that country as illicit reproductions"; and the treaties of Germany are especially specific with respect to musical compositions.

The authorities as to the prohibition of importation in other countries are fully given in a statement from the Librarian of Congress made part of the printed record of the third hearing before the Patents Committees at Washington, March 26–28, 1908, which includes the text of the opinion in Pitt Pitts *v.* George as the leading English case.

International practice

The Berne convention of 1886 provided (art. XII) that "every infringing (*contrefait*) work may be seized on importation into those countries of the Union where the original work has right to legal protection," which was modified by the amendatory act of Paris, 1896, to read "may be seized by the competent authorities of the countries of the Union." The Berlin convention continues in article 16 the later phraseology, and adds, "in these countries seizure may also be made of reproductions coming from a country where the work is not protected or protection has ceased." All three conventions include also the proviso that the seizure shall take place conformably to the domestic legislation of each country. This phraseology apparently leaves the prohibition of editions authorized for other countries as an open question to be determined under the domestic legislation or practice of each country. The Pan American convention of Buenos Aires, 1910, provides (art. 14): "Every publication infringing a copyright may be confiscated in the signatory countries in which the original work had the right to be legally protected, without prejudice to the indemnities or penalties which the counterfeiters may have incurred according to the laws of the country in which the fraud may have been committed."

XVII

COPYRIGHT OFFICE: METHODS AND PRACTICE

History of Copyright Office

UNDER the early American copyright laws, copyright entries and deposits were made in the clerk's office of the respective District courts and there was no central copyright office. The deposit copies were not properly cared for, but what remained were collected into the vaults of the national Capitol when copyright administration was centralized in the Library of Congress. Under the law of 1870, the Librarian of Congress was made the copyright officer, and for many years Ainsworth R. Spofford, occupying that position, personally recorded entries and did much of the work. Before the close of his administration of the Library, and while it was still housed in the Capitol, the copyright business required the services of a staff including at the last twenty-four persons. By a special act of 1897, the office of Register of Copyrights was created, subject to the authority of the Librarian of Congress, who remains the ultimate administrative authority. The code of 1909 provided also for an assistant register of copyrights. The Copyright Office now occupies the southern end of the ground floor in the new Library building and the staff has increased to eighty-four persons.

Routine of registration

When a book is deposited for registration, accompanied by the claim for copyright, preferably on the application form gratuitously provided by the Copyright Office, its class designation, with its accession or sequence number in that class, is at once stamped upon the deposit copy or copies, with the date of receipt, and also upon a green record slip on

which all details in the progress of the work through the Copyright Office are recorded with exact time of each act and the initials of the respective clerks. This record, when completed, shows, besides the class number and the title of the work, the date and hour of the receipt of deposit copies and of the receipt of application, affidavit and fee, with memorandum of the disposition of the fee if out of the ordinary course; the examination of the application and affidavit, the preparation of the white card for printer's copy, and the clearance of the work. Thus cleared, the book is ready for examination by the Library Commission, the delivery of one copy to the Catalogue Division of the Library of Congress, the making of the certificate and its record and the making of the index cards, all of which acts are performed usually on the day of receipt, or otherwise as early as practicable on the following day. The record slip also provides for noting and notifying claimants of defects as to the deposit copies or the application for copyright, and for noting also the reference to other departments, and the disposition of second deposit copies.

Treatment of deposits

The deposit copies, as entered on day of receipt and stamped with date, group and accession number, are placed on a table for inspection by what is known as the Library Commission of the Library of Congress, consisting of the Assistant Librarian, the Superintendent of the Reading Room and the Chief of the Catalogue Division, who decide which books are desired for the Library of Congress, and whether one or two copies thereof are required; one copy not so required is retained as part of the records of the Copyright Office. Accumulations of the past years and current accessions were until recently stored in the sub-basement of the Library of Congress building, but a new stack now furnishes abundant and well-

lighted space for deposit copies and gradually all deposit articles will be removed to this stack. The new provision for the destruction of useless material happily prevents the continuing storage of such material to an indefinite future.

Destruction of useless material

The Librarian of Congress and the Register of Copyrights jointly are authorized "at suitable intervals" to determine what articles received during any period of years and remaining undisposed of, are useful for permanent preservation, and in their discretion to provide for the destruction of others, after a statement of the years of receipt of such articles and notice to permit any lawful claimant to claim and remove them has been printed in the catalogue of copyright entries from February to November, permitting their reclamation within the month of December. There is a special proviso that no manuscript of an unpublished work shall be destroyed during the term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

Register of Copyrights

The Register of Copyrights, originally appointed by the Librarian of Congress under the act of February 19, 1897, is made by the new code of 1909 a permanent administrative officer, appointed by and under the direction and supervision of the Librarian of Congress at a salary of $4000 per year and under bonds of $20,000. He is authorized under the law to make rules and regulations for the registration of claims to copyright, subject to the approval of the Librarian of Congress; is required to make an annual report to the Librarian of Congress to be printed in the annual report on the Library of Congress; to cover all fees into the Treasury and report as to the same to the Secretary of the Treasury and to the Librarian of Congress, and to provide and keep the necessary

record books, indexes, etc. He is authorized to affix the seal of the Copyright Office provided for by law, and is happily relieved by the new code from the necessity of formal signature of certificates, etc., which under the old law wasted precious and difficult hours in small routine work, the affixing of the seal being the sufficient and sensible substitute for the personal signature. An assistant register of copyrights at a salary of $3000 was provided for in the new act, also to be appointed by the Librarian of Congress, with authority during the absence of the Register to attach the seal and perform other necessary functions.

Catalogues and indexes

The law directs that the Register of Copyrights "shall print at periodic intervals a catalogue of the titles of articles . . . together with suitable indexes, and at stated intervals . . . complete and indexed catalogues for each class of copyright entries," which "shall be admitted in any court as *prima facie* evidence," shall be promptly distributed to collectors of customs and postmasters of all exchange offices and shall be furnished to others at a price not exceeding $5 per annum for the complete catalogue or $1 for the catalogues issued during the year for any one class.

The practice of the Copyright Office is to make for each copyrighted book an index card, in conformity with the printed catalogue card of the Library of Congress, and to utilize the linotype slugs set for this purpose, with some modification, as the basis for the "Catalogue of copyright entries" for books. The catalogue for books proper, Part I, Group 1, is printed weekly with an annual index, which, together with Part I, Group 2, issued monthly with more condensed entries,—containing the titles for all other material registered under the legal designation "book," not found in Group 1, *i. e.*, local directories and other an-

nuals, pamphlets, leaflets and literary contributions to periodicals, as also dramatic compositions, lectures and maps, including also the preliminary reports of court decisions,—may be subscribed for at a price of $1 per year. Part II, appearing monthly, covers periodicals, with an annual index, at fifty cents per year. Part III, appearing monthly, covers music, with an annual index, at $1 per year. Part IV, appearing monthly, covers works of art, reproductions of a work of art, drawings or plastic works of a scientific character, photographs and prints and pictorial illustrations, with an annual index, at fifty cents per year. The subscription price for the entire catalogue is $3 per year. Subscriptions should be sent direct to the Superintendent of Documents, Washington, D. C., with money orders or drafts in his name (stamps and uncertified checks not accepted), and should not be sent to the Librarian of Congress or to the Copyright Office.

Entry cards

The Library of Congress prints for all such books as are selected from the copyright deposits for use in the Library, on the decision of the Commission appointed by the Librarian, a catalogue card which forms part of the library card catalogue system, and which can be had by public libraries and by private purchasers at the price of two cents a card. This card is used for the catalogues of the Library of Congress and for the catalogues of depository libraries throughout the country, but is not furnished in exchange by the Smithsonian Institution to foreign institutions. The catalogue cards for "books" in Group 2, representing considerably more than twice as many registrations as Group 1, as well as the index cards for all articles comprised in the remaining classes of copyright deposits, are prepared in the Copyright Office, and are not furnished to other libraries or to the public.

Text provisions

The provisions as to the Copyright Office, its administration, methods and practice, are set forth in the American code of 1909 in much detail, as follows:

Copyright records

"(Sec. 47.) That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

Register of copyrights and assistant register

"(Sec. 48.) That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

Deposit and report of fees

"(Sec. 49.) That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the

applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

"(Sec. 50.) That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties. **Bond**

"(Sec. 51.) That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act. **Annual report**

"(Sec. 52.) That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated. **Seal**

"(Sec. 53.) That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act. **Rules**

"(Sec. 54.) That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof. **Record books**

"(Sec. 55.) That in the case of each entry the per- **Certificate**

son recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

Receipt for deposits

Catalogue and index provision

"(Sec. 56.) That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as

prima facie evidence of the facts stated therein as regards any copyright registration.

Distribution and subscriptions

"(Sec. 57.) That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

Records open to inspection and copying

"(Sec. 58.) That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

Preservation of deposits

"(Sec. 59.) That of the articles deposited in the copyright office under the provisions of the copyright

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

Disposal of deposits

"(Sec. 60.) That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

"(Sec. 61.) That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For

the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents. For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in section one, subsection (e), or for any copy of such assignment or license, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. For recording the notice of user or acquiescence specified in section one, subsection (e), twenty-five cents for each notice if not over fifty words, and an additional twenty-five cents for each additional one hundred words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time."

Fees

Only one registration required

The organization of the Copyright Office under the

Present organization

present administration of the Librarian of Congress, Herbert Putnam, appointed by President McKinley in 1898, and the Register of Copyrights, Thorvald Solberg, the first and only occupant of that post, appointed by the Librarian of Congress in 1897, presents a standard of efficiency, celerity and economy which is a model for governmental departments, or indeed for any administrative business. The enormous amount of detail is systematized and controlled by a remarkable method of record, and blank forms provide in the utmost variety of detail for every feature of the work of correspondence, especially in calling the attention of applicants to defects in their applications, which are many and various.

Efficiency of methods

As the result of this organization, the complex law of March 4, 1909, was put in operation July 1, 1909, without a hitch; and inquiries made to the Copyright Office are answered, usually on the same day, with remarkable dispatch and accuracy. For instance, the many letters directed mistakenly to the Register of Copyrights, instead of to the Commissioner of Patents, the frequent applications for the protection of prints designed for articles of manufacture, and the multitudinous applications on articles not subject to copyright, or for projected works or for book manuscripts previous to publication, are each covered by a form letter with an index card of a distinctive color for each, so that a full record is kept in the Copyright Office of such errors without unduly complicating the copyright records proper. The Copyright Office now handles approximately half a million items of entries, deposits and correspondence during the year, and covers into the Treasury more than $100,000, returning to the government a substantial sum above the direct cost of administration.

The Copyright Office prints annually a summary of

its work, from which it appears that in the year ending June 30, 1910, the first year of operation of the new copyright code, it had issued copyright certificates to the number of 96,634, representing an equal number of registrations at $1 each. In addition thereto 11,433 registrations were made for photographs at fifty cents each, for which no certificates were issued. This annual summary for the fiscal year ending June 30 is printed as a part of the annual report, for presentation to Congress each December; and a summary for the calendar year is printed in separate form at the beginning of the new year.

Registration 1909–1910

In addition to the regular certificates in card form, the Copyright Office also issues certificates in quarto shape when desired, which are especially utilized in court proceedings as parts of the record.

Certificates for court use

The Copyright Office makes searches for information, under the provisions of the new law, at the rate of fifty cents for each full hour of the person employed in such search.

Searches

The new Rules provide for such searches as follows:

"(49.) Upon application to the Register of Copyrights, search of the records, indexes, or deposits will be made for such information as they may contain relative to copyright claims. Persons desiring searches to be made should state clearly the nature of the work, its title, the name of the claimant of copyright and probable date of entry; in the case of an assignment, the name of the assignor or assignee or both, and the name of the copyright claimant and the title of the music referred to in case of notice of user."

Patent Office registry for labels

Question having been raised by the Commissioner of Patents whether the act of 1909 did not charge the Copyright Office with the registration as "prints" of labels, etc., the Attorney-General, in an opinion of December 22, 1909, held that the copyright act of

1909 did not relieve the Patent Office of this duty, and it is still required to register all prints which have heretofore been registered therein under the act of June 18, 1874, and in the same manner as they have heretofore been registered.

Many of the features of the Copyright Office, such as the forms for applications, certificates, etc., have been treated in detail in the chapter on formalities, which should be read in connection with this chapter.

Foreign practice

In Great Britain there is no official copyright office, but registration has been made at Stationers' Hall in charge of the Stationers' Company, a *quasi* public institution, while deposit is made primarily in the national library at the British Museum. The records at Stationers' Hall and the printed or other catalogues of the British Museum are public. But there is no printed copyright list except of prohibitions of importations issued by the Commissioners of Customs. Under the new British measure there is no registration at Stationers' Hall or elsewhere.

In France there is no copyright office proper and the deposit copies required from the printer are deposited with the Ministry of the Interior at Paris or at the Prefecture or town clerk's office in the provinces. In other European countries, the registration, when required, is made for the most part in one of the government departments, as Ministry of Interior, Department of Agriculture, etc. In Italy, as in several Spanish-American countries, the registry is provincial instead of central, though in some of these countries provision is made for report from time to time to a central government office. In few countries is there a copyright office proper, distinctively organized and named, except in certain English colonies, as Australia and Canada, which have now a copyright office and a Registrar of Copyrights.

XVIII

INTERNATIONAL COPYRIGHT CONVENTIONS AND ARRANGEMENTS

International protection of property

WITH the growth of civilization, the practice of protecting in all countries the property of the citizen of any other country has also grown, until it is now a generally recognized principle. This principle, applied to literary property, has resulted in international copyright among most civilized nations.

Early copyright protection

The first provision for international copyright, aside from the ancient practice in France of giving protection to authors of other countries who published their works therein, was made by Prussia in 1837, in a law which provided that any country might secure copyright for its authors in Prussia to the extent of reciprocal privileges granted by that country.

Early English protection

England followed, in 1838, with an "act for securing to authors, in certain cases, the benefit of international copyright," which empowered the Queen, by an Order in Council, to direct that the author of a book first published in a foreign country should have copyright in the United Kingdom, on certain conditions, providing that country conferred similar privileges on English authors. The act of 1844 extended this privilege to prints, sculpture and other works of art, and provided for international playright. It expressly denied the privilege, however, to translations of foreign works, and it was not until 1852 that provision was fully made for translations of books and of dramatic compositions, the latter with the proviso that "fair imitations or adaptations" of foreign plays or music might be made. In this early period Great

Britain negotiated treaties with the German states (1846–55), France (1851), Belgium (1854), Spain (1857), and Sardinia (1860), afterward extended throughout Italy. The treaties generally included a proviso that duties on books, etc., imported into the treaty country, should not be above a stated sum, and in the case of France there was to be no duty either way. The domestic copyright acts had also provided, on the condition of first publication in the United Kingdom, a practical measure of international copyright. The international copyright act of 1875 repealed the exception as to plays, and authorized the protection of foreign plays against imitation and adaptation. Under these international copyright acts, registration at Stationers' Hall, at a fee of one shilling only, was made a condition of the copyright of foreign works, and the deposit of a copy of the first edition and of every subsequent edition containing additions or alterations at Stationers' Hall, for transmission to the British Museum, was required, besides other local formalities, particularly in connection with the limited protection of translations, which was for five years only.

Adhesion to Berne convention

Great Britain became a signatory power of the Berne convention of 1886, and the international copyright act of 1886, amending and in part repealing the previous international copyright acts, was passed to enable Her Majesty through Orders in Council to become a party to this convention, which was ratified in 1887. This was made effective with respect to the eight other countries which were parties to the original Berne convention by the Order in Council of November 28, 1887, taking effect December 6, 1887. The provisions of 1886 made registration and deposit unnecessary for foreign works which had complied with the formalities requisite in the country of origin,

but it was nevertheless held in Fishburn *v.* Hollingshead, in 1891, by Justice Stirling, that a foreign work must comply with the provisions of the copyright acts applicable, as to registration and delivery, to works first produced in the United Kingdom, since a foreign work was entitled only to the protection afforded to natives. In Hanfstaengl *v.* Holloway, in 1893, Justice Charles took the opposite view, and he was supported by the Court of Appeal in Hanfstaengl *v.* American Tobacco Company, in 1894, which decided finally that the acts of 1842 and 1844 were repealed as to foreign works and that registration and deposit of a foreign work were unnecessary. The decision of the Court of Appeal in 1908, in Sarpy *v.* Holland, that notice of reservation may be in foreign languages, confirmed the provisions that no formalities beyond those in the country of origin were requisite.

Effect of Berne convention

With the development of the International Copyright Union, through the Berne convention of 1886, copyright relations between the leading countries became more largely and truly international, and most of the existing treaties of the unionist countries were superseded by the international convention proper. In accordance, however, with the terms of the convention, treaties broader than the provisions of the convention might still remain in force or be later negotiated between one country and another, and such conventions, on the "most favored nation" basis or otherwise, have in fact been negotiated, especially by Germany, within the present century. The arrangement for protection of foreign works in unionist and other countries, under special treaties, will be found in succeeding chapters on copyright in foreign countries, where treaties broader than the international convention or made since 1900 are also scheduled. The main features of international

copyright arrangements are tabulated in condensed form in the conspectus of copyright by countries given in the preliminary pages.

International literary congresses

At the time of the Universal Exposition in Paris in 1878, the French *Société des Gens de Lettres* issued invitations for an International Literary Congress, which was held in Paris, under the presidency of Victor Hugo, commencing June 4, 1878. From this came the *Association Littéraire et Artistique Internationale*, which held subsequent congresses at London in 1879, at Lisbon in 1880, at Vienna in 1881, at Rome in 1882, at Amsterdam in 1883, at Brussels in 1884, and at Antwerp in 1885, at which the extension of international copyright was discussed and advocated.

Fundamental proposition

The Congress at Antwerp, in 1885, ratified the following proposition: "The author's right in his work constitutes an inherent right of property. The law does not create, but merely regulates it."

Preliminary official conference, 1883

Partly at the initiative of this association and at the invitation of the Swiss government, a preliminary conference of official representatives of the several nations was held at Berne in September, 1883, at which the following draft, submitted by the International Literary and Artistic Association, was substantially adopted as the basis for a general convention on the part of civilized nations:

"1. The authors of literary or artistic works published, represented, or executed in one of the contracting States, shall enjoy, upon the sole condition of accomplishing the formalities required by the laws of that State, the same rights for the protection of their works in the other States of the Union, whatever the nationality of the authors may be, as are enjoyed by natives of the States.

"2. The term literary or artistic works comprises

books, pamphlets, and all other writings; dramatic and dramatico-musical works; musical compositions, with or without words, and arrangements of music; drawings, paintings, sculptures, engravings, lithographs, maps, plans, scientific sketches, and generally all other literary, artistic, and scientific works whatsoever, which may be published by any system of impression or reproduction whatsoever. Propositions of 1883

"3. The rights of authors extend to manuscript or unpublished works.

"4. The legal representatives and assignees of authors shall enjoy in all respects the same rights as are awarded by this convention to authors themselves.

"5. The subjects of one of the contracting States shall enjoy in all the other States of the Union during the subsistence of their rights in their original works the exclusive right of translation. This right comprises the right of publication, representation, or execution.

"6. Authorized translations are protected in the same manner as original works. When the translation is of a work which has become public property, the translator cannot prevent the work from being translated by others.

"7. In the case of the infringement of the above provisions, the courts having jurisdiction will apply the laws enacted by their respective legislatures, just as if the infringement had been committed to the prejudice of a native. Adaptation shall be considered piracy, and treated in the same manner.

"8. This convention applies to all works that have not yet become public property in the country in which they were first published at the time of coming into force of the convention.

"9. The States of the Union reserve to themselves the right of entering into separate agreements among

themselves for the protection of literary or artistic works, provided that such agreements are not contrary to any of the provisions of the present convention.

"10. A Central International Office shall be established, at which shall be deposited by the Governments of the States of the Union the laws, decrees, and regulations affecting the rights of authors which have already been or shall hereafter be promulgated in any of the said Governments. This office shall collect the laws, etc., and publish a periodical print in the French language, in which shall be contained all the documents and information necessary to be made known to the parties interested."

First official conference, 1884

This draft, as adopted, was submitted by the Swiss government to the first formal international conference for the protection of the rights of authors, held at Berne from September 8 to 19, 1884. At this conference representatives from thirteen countries were present — Austria, Belgium, Costa Rica, France, Germany, Great Britain, Haiti, Holland, Italy, Salvador, Sweden and Norway, and Switzerland; and the result of their deliberations was a new "draft convention for the creation of a general union for the protection of the rights of authors," similar to the Universal Postal Union, in the following form:

"1. Authors placing themselves within the jurisdiction of the contracting countries will be afforded protection for their works, whether in print or manuscript, and will have all the advantages of the laws of the different nations embraced in the Union.

"2. These privileges will be dependent upon the carrying out of the conditions and formalities prescribed by the legislation of the author's native country, or of the country in which he chooses to first publish his work, such country being, of course, one of those included in the convention.

"3. These stipulations apply alike to editors and authors of literary works, as well as to works of art published or created in any country of the Union.

"4. Authors within the jurisdiction of the Union will enjoy in all the countries the exclusive rights of translation of their works during a period of ten years after publication in any one country of the Union of an authorized translation.

"5. It is proposed that it shall be made legal to publish extracts from works which have appeared in any country of the Union, provided that such publications are adapted for teaching or have a scientific character. The reciprocal publication of books composed of fragments of various authors will also be permitted. It will be an indispensable condition, however, that the source of such extracts shall at all times be acknowledged.

"6. On the other hand, it will be unlawful to publish, without special permission of the holder of the copyright, any piece of music, in any collection of music used in musical academies.

"7. The rights of protection accorded to musical works will prohibit arrangements of music containing fragments from other composers, unless the consent of such composer be first obtained."

Second official conference, 1885

A second international conference was held at Berne from September 7 to 18, 1885, for the further consideration of the project. This was participated in by representatives from sixteen countries, — Argentina, Belgium, Costa Rica, France, Germany, Great Britain, Haiti, Honduras, Holland, Italy, Paraguay, Sweden and Norway, Spain, Switzerland, and Tunis. The United States was also represented at that conference by a "listening delegate," Boyd Winchester, then the United States minister at Berne.

The negotiations at Berne culminated at the third

Third official conference, 1886

formal conference, of September 6 to 9, 1886, by agreement on a convention constituting an international copyright union, the *Union Internationale pour la Protection des Œuvres Littéraires et Artistiques*, which was signed on September 9, by the plenipotentiaries of ten countries, Great Britain, Germany, Belgium, Spain, France, Haiti, Italy, Switzerland, Tunis and Liberia. At this conference the United States was represented only as in 1885.

Berne convention, 1886:

The convention included twenty-one articles besides an additional article and final protocol, article I being as follows: "The contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works."

Authors and terms

It was provided (art. II) that authors of any one of the countries shall enjoy in the other countries the same rights as natives, on complying with the formalities prescribed in the country of origin, *i. e.*, of first publication, or in case of simultaneous publication, in the country having the shortest term of protection, for a period not exceeding the term of protection granted in the country of origin. This protection was extended (art. III) to the publishers within the Union of works whose authors belong to a country outside the Union.

"Literary and artistic works" defined

The expression "literary and artistic works" was defined (art. IV) by specification, including dramatic and musical works, but not mentioning photographs or actual works of architecture. Translations were protected (art. V) for ten years, which period should run for works published in incomplete parts (*livraisons*) from the publication of the last part, or in the case of volumes or serial collections (*cahiers*), from that of each volume, and in all cases from the thirty-first of December of the calendar year of publication. Authorized translations were protected (art. VI) as

original works, but translators of works in the public domain could not oppose other translations. Reproduction of newspaper or periodical articles was permitted (art. VII) unless expressly forbidden, but this prohibition could not apply to political discussions, news matter or "current topics" (*faits divers*). Liberty of extract from literary or artistic works otherwise was left (art. VIII) to domestic legislation or specific treaties.

Performing rights

Protection was specifically extended (art. IX) to the representation of dramatic or dramatico-musical works or translations thereof, and, on condition of express reservation, to musical works; and adaptations, arrangements, and other unauthorized indirect appropriations were specially included (art. X) among illicit reproductions subject to determination by the courts of the respective countries.

Other provisions

The author indicated on a work, or the publisher of an anonymous or pseudonymous work, was given (art. XI) authority to institute proceedings, but the tribunal might require certificate that the formalities in the country of origin had been accomplished. Pirated (*contrefait*) works might be seized (art. XII) on importation, according to domestic law. The convention was not to derogate (art. XIII) from the right of each country to domestic control by legislation or police. Existing works, not fallen into the public domain in the country of origin (art. XIV), were protected. The several countries reserved (art. XV) the right to make separate and particular treaty arrangements. An international office was established (art. XVI) under the name of "Office of the International Union for the Protection of Literary and Artistic Works," under the authority of the Swiss Confederation, the expenses to be borne by the signatory countries. Revision at future conferences was

provided for (art. XVII) with stipulation that alterations should not be binding except by unanimous consent. Accession of other countries was permitted (art. XVIII) on notice to the Swiss Confederation, and similar provision was made (art. XIX) for the accession of colonies. Ratification within one year (art. XX) and operation within three months thereafter (art. XXI) and withdrawal by one year's notice of denunciation were provided for. The "additional article" provided that the convention should not affect existing conventions between the states, conferring more extended powers or containing other stipulations not contrary to the convention.

Final protocol

On the exchange of ratifications September 5, 1887, a final protocol was agreed upon, extending article IV to cover photographs in those countries whose domestic legislation or treaty arrangements permitted such protection; extending article IX to choregraphic works in countries in which they were covered by domestic legislation; explicitly excepting mechanical music reproductions from protection; and specifically referring to domestic or treaty arrangements, the protection afforded by article XIV to existing works not fallen into the public domain. The final protocol also provided for the organization of the international office under regulation by the Swiss Confederation, for French as the official language, for the allotment of expenses among the countries, and for other administrative details.

Ratification in 1887

The Berne convention, as signed in that city September 9, 1886, by the representatives of ten nations, Great Britain, Germany, Belgium, Spain, France, Haiti, Italy, Switzerland, Tunis and Liberia, was ratified in the same city September 5, 1887, by exchange of ratifications on the part of all these powers except Liberia, and became effective December 5, 1887. The

French acceptance included Algiers and the other French colonies, the Spanish acceptance all Spanish colonies, and the British acceptance, India, Canada and Newfoundland, the South African and the Australian colonies. To these powers were later added Luxemburg (1888), Monaco (1889), Montenegro (1893), which however withdrew in 1900, Norway (1896), Japan (1899), Denmark (1903), Sweden (1904), and Great Britain's new colonies, the Transvaal and Orange Free State (1903), leaving three nations of first rank outside the Union, *i. e.*, Austria-Hungary, Russia, and the United States, aside from the South American countries later associated in the Pan American Union.

Paris conference, 1896

The revision of the Berne convention provided for in art. XVII, which was to be made according to the final protocol at a conference at Paris to be called by the French government within from four to six years, was not actually undertaken until 1896. When the signatory powers met in conference at Paris, April 15 to May 4, 1896, they adopted an "additional act," of four articles, which besides making verbal amendments for clarification, substantially modified articles II, III, V, VII, XII, XX, of the Berne convention and the first and fourth numbers of the final protocol; and issued also an "interpretative declaration" as to both the Berne convention and the final protocol, the additional act and the interpretative declaration being sometimes cited together as "the Paris acts."

Paris Additional Act

The Additional Act of Paris (art. I and II) included "posthumous works" amongst protected works, replaced the privileges given to publishers by a provision extending protection to authors not subjects of unionist countries for works first published in one of those countries; extended the protection of translations throughout the term of the original work, but

with the proviso that the right for any language should expire after ten years unless the author had provided for a translation into that language; specifically included serial novels published in periodicals, and required indication of the source of articles reproduced from periodicals. The right to seize piratical works was given to the "competent authorities" of each country without specific reference to importation. Withdrawal by denunciation was made applicable only to the country withdrawing, leaving the convention binding upon all others.

It further provided (art. III) that the several countries of the Union might accede to these additional acts separately, as might other countries, and for ratification within a year and enforcement within three months thereafter.

Paris Interpretative Declaration

The Declaration, simultaneously adopted, interpreting the convention of Berne and the Paris additional act, declared (1) that protection depends solely on accomplishment in the country of origin of the conditions and formalities prescribed therein; (2) that "published works" (*œuvres publiées*) means works actually issued to the public (*œuvres éditées*) in one of the Union countries — "consequently, the representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of works of art, do not constitute publication"; and (3) that "the transformation of a novel into a play, or of a play into a novel" comes under the protection provided.

Ratification in 1897

The Paris acts, as adopted May 4, 1896, were ratified September 9, 1897, the declaration becoming effective immediately and the additionai act three months later. Both the additional act and the interpretative declaration were ratified by Belgium, France, Germany, Haiti, Italy, Luxemburg, Monaco,

Montenegro, Spain, Switzerland and Tunis. Great Britain ratified only the additional act and not the interpretative declaration, while Norway, which had become a unionist country April 13, 1896, ratified only the interpretative declaration and not the additional act. Thus from December 9, 1897, the Berne convention and the Paris acts together constituted, with the exceptions noted, the fundamental law of the International Copyright Union.

Berlin conference, 1908

A second conference for revision was called in 1908 by the German government, and met at Berlin October 14 to November 14, resulting in the signature on November 13, 1908, of a revised convention continuing or reconstituting the International Copyright Union and replacing by substitution the Berne convention and Paris acts in those states accepting it by ratification. To this conference the German government invited not only the signatory powers of the Union, then fifteen, — Belgium, Denmark (which had acceded to the Union in 1903), France, Germany, Great Britain, Haiti, Italy, Japan (1899), Luxemburg, Monaco, Norway, Spain, Sweden (1904), Switzerland, and Tunis; but also non-unionist countries, of which representatives were sent from twenty countries, — Greece, Holland, Portugal, Roumania and Russia, China, Persia and Siam, Liberia, the United States of America, Mexico, Guatemala and Nicaragua, Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela. The working committees were made up exclusively from representatives of the signatory powers, only these countries participating in the votes; active participation otherwise was confined to representatives of countries expecting to become signatory powers, Holland and Russia, while the other participants acted as observing representatives or supplied information on request.

United States' position

The United States delegate, Thorvald Solberg, Register of Copyrights, was present only to make observations and report, with no power to vote or to take part in the discussions, as stated in the remarks for which, on October 15, he was called upon, as follows:

"In 1885 and 1886, at the conferences convened to draft the convention to create the International Union for the Protection of Literary and Artistic Property, the United States was represented. At that time, however, it was not deemed possible to send a plenipotentiary delegate, nor could such a representative be sent to attend the first conference of revision which met at Paris in 1896.

"When the present conference was arranged for — early in the year — the German ambassador at Washington wrote to the Secretary of State of the United States a letter explaining the purpose and scope of this congress, inviting the Government of the United States to send delegates. The ambassador's letter explained that, in addition to delegates representing governments in the union, there would be present representatives from a considerable number of non-union nations. It was further stated that the attendance of such delegates from non-union countries would be greeted with special pleasure. This because of the conviction that whatever might be the final position taken by the non-union countries, or their laws, in relation to copyright, participation in the proceedings of this conference by such delegates from non-union countries would at all events contribute to arouse and increase interest in the Berne Union and its beneficial work.

"The German ambassador's letter further explained that the delegates from non-union countries attending the conference would have full freedom of

action; that they might confine themselves to following the discussions without taking any stand with regard to them, and that it would be left to the discretion of the non-union governments as to whether they would empower their delegates to join the Berne Union.

"The Government of the United States again finds it impracticable to send a delegate authorized to commit the United States to actual adhesion at this time to the Berne Convention. Nevertheless, it has been felt that the representation of the United States, even within the limitations indicated, might be beneficial: first, to indicate the sympathy of our Government with the general purposes of the International Copyright Union; second, to secure such information regarding the proceedings of the conference as might prove valuable; and third, to place (by means of such representation) at the disposal of the conference authoritative knowledge as to the facts of copyright legislation and procedure within the United States — information which it is hoped may be of use to the members of the conference in their deliberations."

Welcome of non-unionist countries

In response to the participation of non-unionist countries, Prof. L. Renault of the French delegation, Chairman at the working sessions of the conference, spoke of the wisely liberal practice of including non-unionist countries in the invitation, recognized "the difficulty which these countries find in passing through the halting places," which the Union had itself gone through, and referred with especial gratification to the representation of Holland, Russia and the United States.

Death of Sir Henry Bergne

The closing days of the conference were darkened by the fatal illness of Sir Henry Bergne, head of the British delegation, who expired on November 15, the day after the adjournment of the conference, at the

successful culmination of work toward which he had given many years of active and effective life.

Berlin convention, 1908:

The Berlin convention included thirty articles, covering the same ground as those of the Berne convention and the Paris acts, but somewhat differently arranged, so that comparison is not quite direct. Article 1 reconstitutes the International Copyright Union. The expression "literary and artistic works" is defined (arts. 2 and 3, covering previous arts. IV–VI) as including "all productions in the literary, scientific or artistic domain, whatever the mode or form of reproduction, such as: books, pamphlets and other writings; dramatic or dramatico-musical works; choregraphic works and pantomimes, the stage directions ('*mise en scene*') of which are fixed in writing or otherwise; musical compositions with or without words; drawings, paintings; works of architecture and sculpture; engravings and lithographs; illustrations; geographical charts; plans, sketches and plastic works relating to geography, topography, architecture, or the sciences. Translations, adaptations, arrangements of music and other reproductions transformed from a literary or artistic work, as well as compilations from different works, are protected as original works without prejudice to the rights of the author of the original work." The contracting countries are pledged to secure protection fully for these categories and for photographic works and "works obtained by any process analogous to photography" and to protect "works of art applied to industry" so far as domestic legislation allows.

"Literary and artistic works" defined

Authors' rights

The convention assures (art. 4, broadening art. II) to authors within the jurisdiction of a unionist country for their works, whether unpublished or published for the first time in one of the countries of the Union, such rights in each other unionist country as domestic

laws accord to natives, as well as the rights accorded by the convention, "not subject to any formality" and "independent of the existence of protection in the country of origin," and regulated exclusively according to the legislation of the country where the protection is claimed. The "country of origin" is defined as "for unpublished works, the country to which the author belongs; for published works, the country of first publication" and for works published simultaneously in several countries within the Union (as also in countries without the Union), the unionist country granting the shortest term of protection. Published works (*œuvres publiées*) are again defined as works that have been issued (*œuvres éditées*). "The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art and the construction of a work of architecture do not constitute publication."

"Country of origin"

Authors of a unionist country first publishing in another country of the Union enjoy (art. 5) in the latter country the same rights as national authors; and authors of a non-unionist country first publishing a work in any unionist country enjoy (art. 6) in that country the same rights as national authors and in the other Union countries the rights accorded by the convention. This article greatly broadens the scope of the convention, and by recognizing without formalities the rights of authors of non-unionist countries, makes it of a world-wide inclusion for works unpublished or first or simultaneously published within a unionist country, to the full extent of domestic protection in each unionist country, whether the country of origin does or does not grant protection, — thus giving to citizens of the United States full protection throughout unionist countries on the sole condition of first or simultaneous publication within one of them.

Broadened international protection

Term

The convention takes the important step (art. 7) of providing for a uniform term of "the life of the author and fifty years after his death" in place of the respective national terms, with the proviso that if this term should not be adopted uniformly by all the unionist countries, duration shall be regulated by the law of the country where protection is claimed, but cannot exceed the term in the country of origin. For photographic and analogous works, posthumous, anonymous or pseudonymous works, the term of protection is regulated by the law of the country where protection is claimed, but may not exceed the term in the country of origin. The exclusive right of translation is assured (art. 8) for the entire term. Serial stories and other works published in newspapers or periodicals (art. 9) may not be reproduced, but other newspaper articles may be reproduced by another newspaper if reproduction has not been expressly forbidden, on acknowledgment of the source, but protection is not extended to news of the day or press information on current topics. The right of extract is to be governed (art. 10) by domestic legislation.

Performing rights, etc

The public representation or performance of dramatic, dramatico-musical or musical works, whether published or not (art. 11), and adaptation, dramatization or novelization, etc. (art. 12), are fully included; and this protection applies (art. 13) to the mechanical reproduction of music, with the proviso that this application shall not be retroactive and shall be regulated in each country by domestic legislation. Infringing mechanical musical appliances may be seized on importation even though lawful in the country from which they come. Cinematograph and analogous productions of literary, scientific or artistic works are included (art. 14) as subject to copyright protection.

Other provisions

The provisions as to the identification of author or publisher (art. 15) of the work, seizure of infringing works (art. 16) and domestic regulation and supervision (art. 17) are continued. The convention is applied (art. 18) to existing works, provided they have not fallen into the public domain in the country of origin or by expiration of the term in the country where protection is claimed.

National powers reserved

It is specially provided (art. 19) that the convention does not prevent "more favorable provisions" through domestic legislation "in favor of foreigners in general"; and the right of any country to make special treaties conferring more extended rights (art. 20) is continued.

Organization provisions

The provisions as to the International Bureau made in the Berne protocol are continued (arts. 21–23), and also those as to revision (art. 24) through conferences, to take place successively in the countries of the Union. Accession of other countries (art. 25) and colonies (art. 26) is to be made as heretofore, by notification through Switzerland, and it is provided that acceding countries may adhere to the present convention or those of 1886 or 1896. The present convention is made (art. 27) to replace the Berne convention of 1886 and the Paris acts of 1896, but it is specifically provided that the states signatory to the present convention may declare their intention to remain bound by specific provisions of previous conventions. The convention was to be ratified (art. 28) not later than July 1, 1910, and was to take effect (art. 29) three months thereafter, subject to withdrawal of any country by denunciation on one year's notice, in which case the convention would still remain in force for the other countries. It is specially provided (art. 30) that the states which introduce into their legislation the new term of pro-

tection shall notify the Swiss government accordingly, and any renouncements of reservations shall be similarly notified.

Ratification in 1910

The Berlin convention was signed in that city November 13, 1908, by the representatives of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Sweden, Switzerland, Tunis, the signatories being in alphabetical order according to the French names of the countries. Ratifications were exchanged in Berlin June 9, 1910, and the convention became operative September 9, 1910. The convention was ratified without reservation by Germany, Belgium, Spain, Haiti, Liberia, Luxemburg, Monaco and Switzerland, and with reservations by France and Tunis (as to works of applied art); Japan (as to exclusive right of translation and the public performance of musical works); Norway (as to works of architecture, periodical articles and retrospective action). Denmark and Italy have not ratified the Berlin convention and therefore remain under the Berne convention and Paris additional act and declaration. Great Britain will be enabled under the new copyright act to accede to the Berlin convention, but has hitherto remained under the Berne convention and the Paris additional act, and Sweden, not having ratified, remains under the Berne convention and the Paris declaration. Portugal acceded in 1911.

Official organ

The official documents of the International Copyright Union, and especially accessions thereto, as well as current copyright information from all parts of the world, are given in the *Droit d'Auteur*, published monthly at Berne, under the able editorship of Prof. Ernest Röthlisberger, from the Bureau of the Union, as its official organ.

Three years after the Berne convention, a congress

of seven of the South American republics was held at Montevideo, at which a convention with reference to literary and artistic copyright was adopted January 11, 1889. The Montevideo convention has been ratified by Argentina (1894), Bolivia (1903), Paraguay (1889), Peru (1889), and Uruguay (1892), though not by Brazil and Chile, which were also participants in the congress. It was in general on the lines of the Berne convention, though no mention was made of unpublished works. A work first published or produced in any one of the signatory countries and protected in that country in accordance with its requirements, was also accorded in the other countries the rights secured in the first country, but not for a longer term than was given in the country where protection was claimed. Dramatic works were specifically and playright impliedly protected. Provision was made for the inclusion of countries outside of South America, under which Belgium, France, Italy and Spain have become parties to the convention, but only in relation with Argentina and Paraguay.

Montevideo congress, 1889

In the winter of 1889–1890, the first Pan American conference was held in Washington, and at this a committee, of which Andrew Carnegie was the United States member, reported in favor of the adoption of the Montevideo convention. No action seems to have been taken, but it is probably this convention which is referred to as the first Pan American copyright treaty. The second Pan American copyright treaty, according to this numeration, was that adopted at the Pan American conference in Mexico City, signed January 27, 1902, at the same time with the patent and trade-mark treaty. This copyright convention was modeled somewhat on the lines of the Berne convention. At the Pan American conference in Rio de Janeiro, 1906, what is spoken of as the third Pan

Pan American conferences

American copyright treaty, was adopted, and signed August 23, 1906, but this was really not so much a new treaty, as a supplementary convention providing for the development and regulation of international bureaus at Havana and Rio de Janeiro, and its provisions were never put into operation. A fourth Pan American copyright treaty, distinct from patent and trade-mark protection, was adopted at the Pan American conference at Buenos Aires in 1910 and signed August 11, 1910. The Mexico copyright convention was not ratified by the Senate of the United States until 1908 and was proclaimed by the President, April 9, 1908; the Rio convention has never been accepted by the United States; the Buenos Aires convention, replacing that of Mexico, was promptly approved by the U. S. Senate, February 16, 1911, but is yet to be acted upon by the other countries.

Mexico City conference, 1902

At the Pan American conference held in Mexico City in 1902, the second copyright convention was signed January 27, 1902, by representatives of Argentina, Bolivia, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay and the United States, the delegates of Nicaragua, Paraguay and the United States acting *ad referendum*.

Mexico convention, 1902

The first article of the Mexico convention formed the signatory states into "a Union for the purpose of recognizing and protecting the rights of literary and artistic property," which was defined (art. 2) as including "books, manuscripts, pamphlets of all kinds, no matter what subject they may treat of and what may be the number of their pages; dramatic or melodramatic works; choral music and musical compositions, with or without words, designs, drawings, paintings, sculpture, engravings, photographic works;

astronomical and geographical globes; plans, sketches and plastic works relating to geography or geology, topography or architecture, or any other science; and finally, every production in the literary and artistic field, which may be published by any method of impression or reproduction." Copyright was defined (art. 3) as the exclusive right to dispose of the work, to publish, to sell and translate it or authorize translation, and to reproduce it in any manner, in whole or in part.

Indispensable condition

The "indispensable" condition of copyright was (art. 4) a petition from the author or his representative to the proper office, presumably of his own government, with two deposit copies, and if he desired recognition in other countries, with additional copies for each country designated, which copies were to be forwarded to the respective governments accompanied by a copy of the certificate of registration. Authors were secured (art. 5) in each country the rights granted by their own government within the term of protection of the country of origin — in works published in installments, the term of copyright to date from the publication of each part. The country of origin was defined (art. 6) as that of first publication, or in case of simultaneous publication, that having the shortest period of protection. The name or acknowledged pseudonym on a work (art. 9) was accepted as indication of the author except on proof to the contrary.

Special provisions

Authorized translations or those of non-protected works (art. 7) could be copyrighted as original works, but not to the exclusion of other versions of the latter. Newspaper articles might be reproduced (art. 8) on acknowledgment of source and author's name, if given; addresses before legislative assemblies, court or public meetings (art. 10) might be freely repro-

duced, and extracts made (art. 11) in publications devoted to public instruction or chrestomathy.

"Unauthorized indirect use" or reprint under pretext of annotations or criticism (art. 12) was specified as unlawful reproduction. Pirated copies might be seized (art. 13) in any of the countries, without prejudice to other punishment of the infringer. Each country was to exercise (art. 14) police power in its own jurisdiction. The convention was to become effective for each signatory power three months after communication of its ratification to the Mexican government, and any participant might withdraw after one year's notice of denunciation, the convention to remain binding on the other powers. The signatory powers were to declare (art. 16) whether they would accept accession from countries unrepresented at the conference.

Ratification

The Mexico convention of 1902 was ratified by Guatemala (1902), Salvador (1902), Costa Rica (1902), Honduras (1904) and Nicaragua (1904), and by the United States (1908), perhaps also by the Dominican Republic and Cuba, and does not seem to be operative in the other countries whose representatives signed the treaty.

Rio de Janeiro conference, 1906

At the third Pan American conference, held at Rio de Janeiro, in 1906, a convention was signed August 23, 1906, to protect patents of invention, drawings and industrial models, trade-marks and literary and artistic property, thus binding in one document patent and copyright protection. This is usually referred to as the third Pan American treaty, but it has not been accepted by the United States, partly because of objections to patent provisions and the combination of copyright provisions with them.

This Rio convention re-adopted (art. 1) the Mexico treaty, with modifications as stated in the conven-

tion. These provided for two international bureaus (art. 2) for the centralization of registrations (art. 3), one at Havana for the United States, Mexico, Central American states, Panama, Colombia and Venezuela, Cuba, Haiti and San Domingo, and one at Rio de Janeiro for Brazil, Argentina and the other South American states, both to have (art. 4) identical systems and books, and to exchange monthly authenticated copies of documents, so that the two should practically constitute one bureau. The proper bureau was to receive (art. 5) from each country authenticated copies of its own registrations of patents and copyrights for transmission (art. 6) to the other countries, where they should be given full faith and credit, unless the proper bureau be notified to the contrary within one year. The registration in one country (art. 7) should have the same effect in each other country, as if made in all, and the term of protection was made that provided by the legislation of the country "where the rights originated or have been recognized," or, if no term is specified, then for patents fifteen years, for designs ten years, both subject to renewals, and for literary and artistic copyright life and 25 years. The expenses of the bureau were to be guaranteed (art. 8) by the several countries in the same proportion as for the bureau of American Republics (now called the Pan American Union) at Washington; the two bureaus were placed under the protection of Cuba and Brazil under identical regulations, made by concurrence of the two governments with the approval of the other countries; and an additional registration fee, equivalent to $5, collected in the country of original registration, was to be equally divided for the maintenance of the two bureaus. The bureaus were authorized (art. 9) to (1) collect and publish information, (2) print an official

Rio provisions

review, (3) to advise the respective governments of defects, (4) to arrange for future international conferences, (5) to make yearly report, (6) to exchange publications with other institutions, and (7) to act as coöperative agents for each of the governments concerned. The convention was to become effective (art. 10) on the establishment of one of the bureaus for such countries as should accede to the new convention, the other countries remaining bound by the former convention; and each of the bureaus was to be established (art. 11) as soon as two thirds of the countries in its own group should ratify the convention, and the first bureau established might act temporarily for the other countries. It was finally provided (art. 12) that Brazil should be the intermediary for exchange of ratifications.

Ratification

The Rio convention of 1906 was ratified only by Guatemala (1907 and 1909), Salvador (1907), Nicaragua (1908) and Costa Rica (1908), and by Chile (1910); and it never became effective.

Buenos Aires conference and convention, 1910

At the fourth Pan American conference, held at Buenos Aires in 1910, — twenty powers, including all the South American countries except Bolivia, being represented, — the fourth copyright convention was signed August 11, 1910. It undertakes to "acknowledge and protect the rights of literary and artistic property," and includes (art. 2) with dramatic and musical works those of a choregraphic character. It retains (art. 4) the definition of the scope of copyright. The provision as to the indicated author is continued (art. 5) in more precise language. It substitutes for the previous cumbrous method the simple provision (art. 3) "the acknowledgment of a copyright obtained in one State, in conformity with its laws, shall produce its effects of full right in all the other States without the necessity of complying with

any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right." It continues (art. 6) the Mexico provisions as to copyright duration. The country of origin is further defined (art. 7) as "that of its first publication in America," and in case of simultaneous publication in several of the signatory countries, then that having the shortest term of protection. It specially provides (art. 8) that a work shall not acquire copyright through subsequent editions. It continues also (art. 9) the provisions for copyright in translations. It provides (art. 11) for the protection of "literary, scientific, or artistic writings, . . . published in newspapers or magazines." But other articles may be freely reproduced, on acknowledgment of the source, which, however, is not required for "news and miscellaneous items published merely for general information," — the provisions as to extracts in journals for public instruction or chrestomathy (art. 12) and those as to public addresses (art. 10) subject, however, to the internal laws of each state, being continued. The provisions as to unlawful reproduction (art. 13) are continued, and seizure of pirated copies (art. 14), police powers (art. 15) and provisions for ratification (art. 16) are the same as in the Mexico convention, except that the ratifications and denouncements are to be communicated to the Argentine government. This treaty, approved by the United States Senate, February 16, 1911, and signed by the President, waits other ratification to become effective.

Attorney-General's opinion on ratification

The Mexico convention was signed by the United States delegates *ad referendum*, and before submitting it to the Senate for ratification, the President obtained through the Secretary of State an opinion from the Department of Justice, as to any reason against

Relation with importation provisions

its submission for ratification, especially with reference to the act of 1891. Acting Attorney-General Hoyt replied in a confidential report of June 3, 1902, since made public, after quoting the prohibition of importation in section 3 of the act of 1891: "In the convention now in question there is no inhibition against such importations as are prohibited by said section 3, unless it can be said that such convention is 'an international agreement which provides for reciprocity in the granting of copyrights, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement,' as provided in section 13 of the same act. It is a matter of grave doubt whether this convention, made by the United States originally, is such an 'international agreement.' It is therefore quite probable that its ratification would except the authors of the nations signing it from the provisions of said section 3 of the act of March 3, 1891, leaving the authors of other countries still subject to such provisions. Your attention is directed to the fact that an affirmative answer to article 16 of the convention would also except from the provisions of said section 3 all countries that might hereafter adopt said convention. There appears to be no legal impediment to the ratification of this convention, nor would it constitute a breach of faith toward other countries; and in pointing out the probable effect of some of its provisions I do not intend thereby to express or intimate an opinion that it ought not to be ratified." The question of the relation between treaty provisions and domestic legislation especially affects copyright arrangements and has been the subject of discussion and a matter of difficulty in England and other countries as well as in the United States. The Senate did not act finally upon the Mexico convention until 1908, when it was duly

ratified, and this precedent opened the way for more prompt ratification of the Buenos Aires convention.

United States international relations

The United States, as a party only to the Pan American Union and not a member of the International Copyright Union under the Berne-Berlin conventions, has not secured for its citizens general rights of copyright in other countries, without repetition of formalities, and such rights are secured only in the countries designated by Presidential proclamation and according to the formalities of their domestic legislation. It seems, however, that citizens of the United States may obtain general protection throughout the unionist countries by publishing in a unionist country simultaneously with first publication in the United States, and thus coming under the protective provisions of the Berlin convention. The Mexico convention permits citizens of the United States to obtain copyright in other countries ratifying that convention, by deposit at Washington of extra copies for transmission to countries designated, with certified copy of the registration. When the Buenos Aires convention is ratified by other powers nothing more will then be required than the usual application and deposit at Washington and notice of the reservation of rights, preferably in connection with the copyright notice, of which "all rights reserved for all countries" is the most comprehensive form.

"Proclaimed" countries

Under section 8 of the act of 1891, the President "proclaimed" from time to time the existence of reciprocal relations with other countries, which permitted their citizens to obtain copyright in the United States under the act, and American citizens to obtain protection under their respective copyright laws. The question of the *status* of these countries under the act of 1909 was solved by the proclamation of the

President on April 9, 1910, stating that "satisfactory evidence has been received that in Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and her possessions, Norway, Portugal, Spain and Switzerland, the law permits . . . to citizens of the United States the benefit of copyright on substantially the same basis as to citizens of those countries," and proclaiming "that the citizens or subjects of the aforementioned countries are and since July 1, 1909, have been entitled to all the benefits of the said Act other than the benefits under section 1, (*e*), thereof, as to which the inquiry is still pending" — the exception being as regards mechanical music. To this list of countries, Luxemburg was added by proclamation of June 29, 1910, and Sweden by that of May 26, 1911.

Mechanical music reciprocity

Under date of December 8, 1910, the first proclamation with respect to the international protection of mechanical music was made by the President, declaring the existence of reciprocal relations with Germany. Belgium, Luxemburg, and Norway were added by proclamation of June 14, 1911.

It may be repeated, to make the list complete, that by the ratification in 1908 of the Mexico City convention of 1902, Guatemala, Honduras, Nicaragua and Salvador, as well as Costa Rica, have reciprocal copyright relations with the United States, making in all twenty-four countries (including Japan under the treaties excepting translations, and China under the limited provisions of the treaty of 1903) with which the United States has international copyright relations.

XIX

THE INTERNATIONAL COPYRIGHT MOVEMENT IN AMERICA

Initial endeavor in America, 1837

SIMULTANEOUSLY with the earliest legislation for international copyright among European states, there was a movement in the same direction in the United States. In the Twenty-fourth Congress, February 2, 1837, Henry Clay presented to the Senate an address of British authors asking for copyright protection in this country. This petition was signed by Thomas Moore and fifty-five others, and was later supplemented by additional signatures and by an American petition to the same effect.

The British address

The text of the address is as follows, the reference in paragraph seven being to a letter by Dr. M'Vickar, printed in the New York *American*, November 19, 1832:

"The humble address and petition of certain authors of Great Britain, to the Senate and House of Representatives of the United States, in Congress assembled, respectfully showeth —

"1. That your petitioners have long been exposed to injury in their reputation and property, from the want of a law by which the exclusive right to their respective writings may be secured to them in the United States of America.

"2. That, for want of such law, deep and extensive injuries have, of late, been inflicted on the reputation and property of certain of your petitioners; and on the interests of literature and science, which ought to constitute a bond of union and friendship between the United States and Great Britain.

The British address

3. That, from the circumstance of the English language being common to both nations, the works of British authors are extensively read throughout the United States of America, while the profits arising from the sale of their works may be wholly appropriated by American booksellers, not only without the consent of the authors, but even contrary to their express desire — a grievance under which your petitioners have, at present, no redress.

4. That the works thus appropriated by American booksellers are liable to be mutilated and altered, at the pleasure of the said booksellers, or of any other persons who may have an interest in reducing the price of the works, or in conciliating the supposed principles or prejudice of purchasers in the respective sections of your union: and that, the names of the authors being retained, they may be made responsible for works which they no longer recognize as their own.

"5. That such mutilation and alteration, with the retention of the authors' names, have been of late actually perpetrated by citizens of the United States: under which grievance, your petitioners have no redress. . . .

"6. That certain of your petitioners have recently made an effort in defence of their literary reputation and property, by declaring a respectable firm of English publishers in New York to be the sole authorized possessors and issuers of the works of the said petitioners; and by publishing in certain American newspapers, their authority to this effect.

"7. That the object of the said petitioners has been defeated by the act of certain persons, citizens of the United States, who have unjustly published, for their own advantage, the works sought to be thus protected; under which grievance your petitioners have, at present, no redress.

8. That American authors are injured by the non-existence of the desired law. While American publishers can provide themselves with works for publication by unjust appropriation, instead of by equitable purchase, they are under no inducement to afford to American authors a fair remuneration for their labours: under which grievance American authors have no redress but in sending over their works to England to be published, an expedient which has become an established practice with some of whom their country has most reason to be proud. The British address

9. That the American public is injured by the non-existence of the desired law. The American public suffers, not only from the discouragement afforded to native authors, as above stated, but from the uncertainty now existing as to whether the books presented to them as the works of British authors, are the actual and complete productions of the writers whose names they bear.

10. That your petitioners beg humbly to remind your Honours of the case of Walter Scott, as stated by an esteemed citizen of the United States, that while the works of this author, dear alike to your country and to ours, were read from Maine to Georgia, from the Atlantic to the Mississippi, he received no remuneration from the American public for his labours; that an equitable remuneration might have saved his life, and would, at least, have relieved its closing years from the burden of debts and destructive toils.

11. That your petitioners, deeply impressed with the conviction that the only firm ground of friendship between nations, is a strict regard to simple justice, earnestly pray that your Honours, the representatives of the United States in Congress assembled, will speedily use, in behalf of the authors of Great Britain,

your power "of securing to the authors the exclusive right to their respective writings."

Henry Clay report, 1837

The British address was referred to a select committee, whose members were Clay, Webster, Buchanan, Preston and Ewing, which reported favorably a bill for international copyright. The report took high ground in favor of the rights of authors:

"That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius, is incontestable; and that this property should be protected as effectually a any other property is, by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. . . . It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. . . . We should be all shocked if the law tolerated the least invasion of the rights of property, in the case of merchandise, whilst those which justly belong to the works of authors ar exposed to daily violation, without the possibility of their invoking the aid of the laws. . . . In principle, the committee perceive no objection to considering the republic of letters as one great community, and adopting a system of protection for literary property which should be common to all parts of it."

A prophecy of world union

The address of British authors and the Clay report called forth a little volume of "Remarks on literary property" by Philip H. Nicklin, a Philadelphia publisher, printed by his own firm of "law booksellers" in 1838, and dedicated to Henry C. Carey, which, though somewhat caustic in its criticisms of some of the arguments put forward by the British authors, heartily favored international copyright. The volume, in fact, contains a glowing prophecy of what

was realized in large measure in the convention of Berne a half century later, the more interesting as coming from an American publisher, who was perhaps first to realize in thought the world-wide possibilities of the movement then in its beginnings. He suggested that Congress should empower the President to appoint commissioners to meet in Europe with similar representatives from other nations "to negociate for the enactment of a *uniform* law of literary property, and the extension of its benefits to all civilised nations. It should be a new chapter of the *Jus Gentium*, and should be one law (*iisdem verbis*) for all the enacting nations, extending over their territories in the same manner as our law of copyright extends over the territories of our twenty-six sovereign states; so that an entry of copyright in the proper office of one nation should protect the author in all the others."

"Public opinion has made such progress in the various civilized nations, as would justify a great movement in favour of establishing a universal republic of letters; whose foundation shall be one just law of literary property embracing authors of all nations, and being operative both in peace and war. Besides the great impulse that would be given by such a law, to the improvement of literature and intellectual cultivation, the fellowship of interest thus created among the learned men throughout the world, would in time grow into a bond of national peace. Authors would soon consider themselves as fellow-citizens of a glorious republic, whose boundaries are the great circles of the terraqueous globe; and instead of lending their talents for the purpose of exasperating national prejudice into hostile feeling, to further the views of ambitious politicians, they would exert their best energies to cultivate charity among

"One just law"

the numerous branches of the Human family, to rub off those asperities which the faulty legislation of the dark ages has bequeathed to the present generation, and to extend the blessings of christianity to the ends of the earth."

Clay bills, 1837–42

The Clay report, presented February 16, 1837, was accompanied by a bill drawn by Clay, extending copyright to British and French authors for works thereafter published, on condition of the issue of an American edition simultaneously with the foreign edition or within one month after deposit of the title in America, but it never came to a final vote, though reintroduced by Clay in successive Congresses December 13, 1837, December 17, 1838, January 6, 1840, and January 6, 1842. In 1840, January 8, the bill was reported back from the Judiciary Committee without recommendation or approval. The bill was also introduced into the House of Representatives by John Robertson, July 7, 1838, and by J. L. Tillinghast, June 6, 1840, but here also there was no action.

Palmerston invitation, 1838

An invitation was extended by Lord Palmerston in 1838 for the coöperation of the American government in an international arrangement with Great Britain, but nothing came of it.

Efforts 1840–48

Dr. Francis Lieber, a well-known publicist, addressed to Senator Preston, in 1840, a letter "On international copyright," prepared in coöperation with George Palmer Putnam, and issued in pamphlet form by the house of Wiley & Putnam. Charles Dickens's tour in 1841 stimulated interest in the subject, and there were high hopes of some result. In 1843 Mr. Putnam procured the signatures of ninety-seven publishers, printers, and binders to a petition which was presented to Congress, setting forth that the absence of international copyright was "alike injurious to the business of publishing and to the best

interests of the people." A counter-memorial from Philadelphia objected that international copyright "would prevent the adaptation of English books to American wants." No result came from these petitions, nor from one presented in 1848 by William Cullen Bryant, John Jay, George P. Putnam, and others.

Everett treaty, 1853

In 1852 a petition for international copyright, signed by Washington Irving, James Fenimore Cooper and others, was presented to Congress; and in 1853 Edward Everett, then Secretary of State, negotiated through the American Minister in London, John F. Crampton, a treaty providing simply that authors entitled to copyright in one country should be entitled to it in the other, on the same conditions and for the same term. This treaty was laid before the Senate in a message from President Fillmore, February 18, 1853. The Committee on Foreign Relations of the Senate, through Charles Sumner, reported the Everett treaty favorably, but it was tabled in Committee of the Whole. Five New York publishers addressed a letter to Mr. Everett, supporting a convention, providing the work should be registered in the United States before publication abroad, issued here within thirty days after publication abroad, and wholly manufactured in this country. It was in this year that Henry C. Carey published his famous "Letters on international copyright," in which he held that ideas are the common property of society, and that copyright is therefore indefensible. Several remonstrances were also presented against the treaty from citizens of different states. The next year the amendatory article to the Everett treaty was laid before the Senate in a message from President Pierce of February 23, 1854, but no action resulted.

Morris bills, 1858–60

In the Thirty-fifth Congress in 1858, Edward J. Morris, of Pennsylvania, introduced into the House of Representatives a bill on the basis of remanufacture by an American publisher within thirty days of publication abroad, but it does not seem to have been considered, though it was reintroduced by him in 1860.

International Copyright Association, 1868

The matter slumbered until 1868 — after Dickens's second visit in 1867 — when a committee consisting of George P. Putnam, S. Irenæus Prime, Henry Ivison, James Parton, and Egbert Hazard issued an appeal for "justice to authors and artists," calling a meeting, which was held under the presidency of William Cullen Bryant, April 9, 1868. An International Copyright Association was then organized, with Mr. Bryant as president, George William Curtis as vice-president and E. C. Stedman as secretary, whose primary object was "to promote the enactment of a just and suitable international copyright law for the benefit of authors and artists in all parts of the world." A memorial to Congress, asking early attention for a bill "to secure in all parts of the world the right of authors," but making no recommendations in detail, was signed by one hundred and fifty-three persons, including one hundred and one authors and nineteen publishers.

Baldwin bill and report, 1868

In the Fortieth Congress, in accordance with instructions to the Committee on the Library, moved by Samuel M. Arnell of Tennessee, January 16, 1868, to report on international copyright "and the best means for the encouragement and advancement of cheap literature and the better protection of authors," — a bill was introduced in the House, February 21, by J. D. Baldwin of Massachusetts, which provided for copyright on foreign books wholly manufactured here and published by an American

citizen. The Committee's report said: "We are fully persuaded that it is not only expedient, but in a high degree important to the United States to establish such international copyright laws as will protect the rights of American authors in foreign countries and give similar protection to foreign authors in this country. It would be an act of national honor and justice in which we should find that justice is the wisest policy for nations and brings the richest reward." The bill was, however, recommitted and never more heard of.

Clarendon treaty, 1870

In 1870, what has since been known as the Clarendon treaty was proposed to the American government by Lord Clarendon on behalf of the British government, through Sir Edward Thornton, then British Minister at Washington. This was modeled on the treaties existing between Great Britain and other European nations, and provided that an author of either country should have full protection in the other country to the extent of its domestic law, on the sole condition of registration and deposit in the other country within three months after first publication in the country in which the work first appeared, the convention to continue in force for five years, and thence from year to year, unless twelve months' notice of termination were given. This was later criticised in Harper & Brothers' letter of November 25, 1878, as a scheme "more in the interest of British publishers than either of British or American authors," on the ground that British publishers would secure American with British copyright, and give no opportunity to American houses to issue works of English authors.

Cox bill and resolution, 1871

The next year the following resolution, offered by S. S. Cox, was passed by the House, December 18, 1871:

"*Resolved*, That the Committee on the Library be

directed to consider the question of an international copyright, and to report to this House what, in their judgment, would be the wisest plan, by treaty or law, to secure the property of authors in their works, without injury to other rights and interests; and if in their opinion Congressional legislation is the best, that they report a bill for that purpose."

Mr. Cox had himself presented in the Forty-second Congress, December 6, 1871, a bill for international copyright on a basis of reciprocity, providing foreign works should be wholly manufactured in the United States and published by American citizens, and be registered, deposited and arrangements for such publication made within three months of first publication in the foreign country. This bill was supported in Committee of the Whole by speeches from Archer Stevenson, Jr., of Maryland, and J. B. Storm, of Pennsylvania, but opposed by William D. Kelley, of Pennsylvania.

The Appleton proposal, 1872

Mr. Cox's resolution was acted upon in 1872 by the new Library Committee, which invited the coöperation of authors, publishers, and others interested in framing a bill. At meetings of New York publishers, January 23 and February 6, 1872, a bill prepared by W. H. Appleton and accepted by A. D. F. Randolph, Isaac E. Sheldon, and D. Van Nostrand, of a committee, was approved by a majority vote. It provided for copyright on foreign books issued under contract with an American publisher, "wholly the product of the mechanical industry of the United States," and registered within one month and published within three months from the foreign issue, stipulating that if a work were out of print for three months the copyright should lapse. This was in line with a letter printed by W. H. Appleton in the London *Times*, October, 1871, denying that there was any

disposition in the United States to withhold justice from English authors, but objecting to any "kind of legal saddle for the English publisher to ride his author into the American book-market"; in response to which Herbert Spencer, John Stuart Mill, Froude, Carlyle, and others had signed a memorial to Lord Granville expressing a willingness to accept a copyright on the condition of confining American copyright to American assigns of English authors, and excluding English publishers. Mr. Appleton's bill was opposed in a minority report by Edward Seymour, of the Scribner house, on the ground that it was "in no sense an international copyright law, but simply an act to protect American publishers"; that the desired "protection" could be evaded by English houses through an American partner; and that the act was objectionable in prohibiting stereos, in failing to provide for cyclopædias, and in enabling an American publisher to exclude revised editions.

A meeting of Philadelphia publishers, January 27, 1872, opposed international copyright altogether, in a memorial declaring that "thought, when given to the world, is, as light, free to all"; that copyright is a matter of municipal (domestic) law; that any foreigner could get American copyright by becoming an American citizen; and that "the good of the whole people and the safety of republican institutions" would be contravened by putting into the hands of foreign authors and "the great capitalists on the Atlantic seaboard" the power to make books high. Philadelphia protest, 1872

The Executive Committee of the Copyright Association met in New York, February 2, 1872, and put forward Charles Astor Bristed's bill securing, after two years from date of passage, to citizens of other countries granting reciprocity, all the rights of American citizens. The Bristed proposal, 1872

Kelley resolution, 1872

Probably as an outcome of the Philadelphia meeting, William D. Kelley, of Pennsylvania, introduced into the House, February 12, 1872, and caused to be referred to the Library Committee, the following resolution: "Whereas it is expedient to facilitate the reproduction here of foreign works of a higher character than that of those now generally reprinted in this country; and whereas it is in like manner desirable to facilitate the reproduction abroad of the works of our own authors; and whereas the grant of monopoly privileges, in case of reproduction here or elsewhere, must tend greatly to increase the cost of books, to limit their circulation, and to increase the already existing obstacles to the dissemination of knowledge: Therefore, *Resolved*, That the Joint Committee on the Library be, and it hereby is, instructed to inquire into the practicability of arrangements by means of which such reproduction, both here and abroad, may be facilitated, freed from the great disadvantages that must inevitably result from the grant of monopoly privileges such as are now claimed in behalf of foreign authors and domestic publishers."

Congressional hearings

The Library Committee gave several hearings on the subject, February 12 and later, and among other contributions to the discussion received a letter from Harper & Brothers taking ground that "any measure of international copyright was objectionable because it would add to the price of books, and thus interfere with the education of the people"; and a suggestion from John P. Morton, of Louisville, to permit general republication on payment of a ten per cent royalty to the foreign author. The same suggestion, providing for five per cent royalty, as brought forward by John Elderkin, was introduced, in a bill,

Beck-Sherman bill, 1872

February 21, 1872, by James B. Beck of Kentucky, in the House, and John Sherman of Ohio, in the Senate.

Morrill report, 1873

The Committee, in despair over these conflicting opinions, presented the celebrated Morrill report of February 7, 1873, Senator Lot M. Morrill being the chairman, including a tabular comparison of the prices of American and English books. It said that "there was no unanimity of opinion among those interested in the measure," and concluded:

"In view of the whole case, your committee are satisfied that no form of international copyright can fairly be urged upon Congress upon reasons of general equity, or of constitutional law; that the adoption of any plan for the purpose which has been laid before us would be of very doubtful advantage to American authors as a class, and would be not only an unquestionable and permanent injury to the manufacturing interests concerned in producing books, but a hindrance to the diffusion of knowledge among the people, and to the cause of universal education; that no plan for the protection of foreign authors has yet been devised which can unite the support of all or nearly all who profess to be favorable to the general object in view; and that, in the opinion of your committee, any project for an international copyright will be found upon mature deliberation to be inexpedient."

Banning bill, 1874

This was decidedly a damper to the cause, and the movement lapsed for some years, a bill submitted to the House on February 9, 1874, by Henry B. Banning of Ohio, extending to authors the protection given to inventors, on a basis of international reciprocity, attracting meanwhile little attention.

The Harper proposal and draft, 1878

The question rested until 1878, when, under date of November 25, Harper & Brothers addressed a letter to William M. Evarts, Secretary of State, suggesting that previous failures were due "to the fact that all such propositions have originated from one side only, and without prior joint consultation and intelligent

discussion," reiterating "that there was no disinclination on the part of American publishers to pay British authors the same as they do American authors," and that "American publishers simply wished to be assured that they should have the privilege of printing and publishing the books of British authors"; indicating "the likelihood of the acceptance by the United States of a treaty which should recognize the interests of all parties"; and proposing a conference or commission of eighteen Americans and Englishmen — three authors, three publishers and three publicists to be appointed by each side, by the American Secretary of State and the British Secretary for Foreign Affairs — which should consider and present the details of a treaty.

A suggested basis

They also presented, as a suggested basis of action, what came to be known as the "Harper draft," a modification of the Clarendon treaty, providing that there should be registration in both countries *before* publication in the country of origin; that international registration should be in the name of the author: if a *citizen* of the United States, at Stationers' Hall, London; if a *subject* of her Majesty, at the Library of Congress, Washington; and that "the author of any work of literature manufactured and published in the one country shall not be entitled to copyright in the other country unless such work shall be also manufactured and published therein, by a subject or citizen thereof, within three months after its original publication in the country of the author or proprietor; but this proviso shall not apply to paintings, engravings, sculptures, or other works of art; and the word 'manufacture' shall not be held to prohibit printing in one country from stereotype plates prepared in the other and imported for this purpose."

This draft was approved by fifty-two leading Amer-

ican authors, including Longfellow, Holmes, Emerson, and Whittier, in a memorial dated August, 1880. The American members of the International Copyright Committee, appointed by the Association for the Reform and Codification of the Law of Nations, John Jay, James Grant Wilson and Nathan Appleton, also memorialized the Secretary of State, under date of February 11, 1880, in favor of this general plan, specifying "within from one to three months" as the manufacturing limit. It was also approved by the great body of American publishers, although the Putnam, Scribner, Holt and Roberts firms in signing took exception to certain of the restrictions, especially to the time limit of three months. George Haven Putnam set forth the views of his house in a paper before the New York Free Trade Club, January 29, 1879, afterward printed as *Economic Monograph* no. XV., "International copyright considered in some of its relations to ethics and political economy." In this he suggested simultaneous registration in both countries, republication within six months, and restriction of copyright protection here for the first ten years of the term to books printed and bound in the United States and published by an American citizen.

Approval of the Harper draft

An interesting series of replies from American authors, publishers, etc., as to methods for international copyright, to queries from the *Publishers' Weekly* will be found in v. 15, commencing with no. 7, February 15, 1879.

The "Harper draft" was submitted in September, 1880, by James Russell Lowell, then American Minister at London, to Earl Granville, who replied, March, 1881, that the British government favored such a treaty, but considered an extension of the republication term to six months essential, and to twelve months much more equitable. In the same month

Granville negotiations, 1880

the International Literary Association adopted a report favoring an agreement, but protesting against the manufacturing clause and time limit. This position was also taken at several meetings of London publishers, and F. R. Daldy was sent to America to further the English view. Sir Edward Thornton, British Minister at Washington, was instructed to proceed to the consideration of the treaty, provided the term for reprint could be extended, and both President Garfield and Secretary Blaine were understood to favor the completion of a treaty. With the death of Garfield tne matter ended for the time.

Robinson and Collins bills, 1882–83

A bill dealing with the whole question of copyright, domestic and foreign, was introduced March 27, 1882, by W. E. Robinson of New York, and December 10, 1883, another copyright bill was introduced by P. A. Collins of Massachusetts, but neither emerged from the Committee on Patents, to which they were referred.

American Copyright League

The question came to the front again in 1884. A new copyright association, the American Copyright League, had been organized in 1883, chiefly through the efforts of George P. Lathrop, Edward Eggleston, and R. W. Gilder, and there was a general revival of interest in international copyright. On January 9, 1884,

Dorsheimer bill, 1884

William Dorsheimer, of New York, introduced into the House his bill for international copyright, which provided for the extension of copyright to citizens of countries granting reciprocal privileges, so soon as the President should issue his proclamation accepting such reciprocity, for twenty-five years, but terminable earlier on the death of the author. This bill was the occasion of a general discussion. The Copyright League addressed a letter to Mr. Dorsheimer urging the modification of the above limitations, and it was particularly pointed out that the confining of copyright to an author's lifetime would render literary

property most insecure. The League also addressed a letter to the Secretary of State, urging the completion of a treaty with Great Britain, to which F. T. Frelinghuysen replied, January 25, 1884, that while the negotiation as to the Harper draft had not been interrupted, he thought the object might be attained by a simple amendment to our present copyright law, based on reciprocity, after which a simple convention would suffice to put the amendment in force. Mr. Dorsheimer's bill was referred to the House Committee on the Judiciary, and reported favorably, with amendments extending the copyright term to twenty-eight years, without regard to the death of the author, with renewal for fourteen years. The amended bill also provided that such copyright should cease in case reciprocity was withdrawn by the other country; that there should be no copyright in works already published, and that the provisions of the domestic copyright law should, as far as applicable, extend also to foreign copyrights. On the 19th of February Mr. Dorsheimer moved to make his bill the special order for February 27, but his motion failed of the necessary two-thirds vote, 155 voting aye, 98 nay and 55 not voting. There was considerable opposition on the part of those who insisted upon the re-manufacture of foreign books in this country, and Mr. Dorsheimer privately expressed himself as willing to accept, although not willing to favor, amendments in that direction if they were necessary to insure the passage of the bill.

Criticisms and changes

A circular letter of inquiry sent out by the *Publishers' Weekly* early in 1884, showed a general desire on the part of American publishers in favor of international copyright. The r[illegible]es were summarized in v. 25 from March, 188[illegible]. Of fifty-five leading publishers who answered, fifty-two favored and

American publishers' sentiment

only three opposed international copyright. Out of these, twenty-eight advocated international copyright pure and simple; fourteen favored a manufacturing clause; the others did not reply on this point. Congress adjourned, however, without taking definite action.

Hawley bill, 1885

President Arthur, in his message of December, 1884, put himself on record as favoring copyright on the basis of reciprocity. A bill brought forward in the *Publishers' Weekly* of December 6, 1884, was intended by a form admitting of easy amendment, to facilitate the passage of some kind of bill extending the principle of copyright to citizens of foreign countries under limitations set forth in subsequent sections of the bill. The Dorsheimer bill was reintroduced by W. E. English of Indiana, January 5, 1885, and on January 6 Senator Hawley introduced a general bill into the Senate. This latter, which covered all copyright articles, was understood to be favored by the Copyright League; it extended copyright to citizens of foreign states, on a basis of reciprocity, for books or other works published after the passage of the bill, by repealing those parts of the Revised Statutes confining copyright to "citizens of the United States or residents therein." No action was taken, however, on either the Dorsheimer or the Hawley bill.

Chace bill, 1886

In his first annual message, 1885, President Cleveland referred favorably to the negotiations at Berne, and with the opening of the Forty-ninth Congress two bills were introduced into the Senate, that of Senator Hawley, December 7, 1885, being essentially his bill of the previous year, and that of Senator Chace, January 21, 1886, a new bill, based on a plan put forward some years previously by Henry C. Lea, and now supported by the Typographical Unions and other labor organizations. The Hawley bill was on a sim-

ple basis of reciprocity; the Chace bill required registry within fifteen days and deposit of the best *American* edition within six months from publication abroad, at a fee of $1, to be used in printing a list of copyright books for customs use, the prohibition of importations and the voiding of copyright when the American manufacturer abandons publication. The American Copyright League, of which James Russell Lowell was president and Edmund Clarence Stedman vice-president, favored the Hawley bill, which was practically a modification of the Dorsheimer bill, and it was introduced into the House by John Randolph Tucker of Virginia, January 6, 1886.

Congressional hearings, 1886

Hearings were held for four days by the Senate Committee on Patents on January 28, 29, February 12, and March 11, 1886, at which Mr. Lowell, Mr. Stedman, "Mark Twain" and others appeared on behalf of international copyright. A memorial signed by 144 American authors, was presented in the following terms: "The undersigned American citizens who earn their living in whole or in part by their pen, and who are put at disadvantage in their own country by the publication of foreign books without payment to the author, so that American books are undersold in the American market, to the detriment of American literature, urge the passage by Congress of an International Copyright Law, which will protect the rights of authors, and will enable American writers to ask from foreign nations the justice we shall then no longer deny on our own part." The memorial was presented to Congress in fac-simile of the signatures of the authors and was reproduced in that form in the Bowker-Solberg volume on copyright of 1886.

Mr. Lowell's epigram

It was at this time that Mr. Lowell wrote his famous quatrain on "International copyright," which presented effectively the fundamental argument:

"In vain we call old notions fudge,
And bend our conscience to our dealing;
The Ten Commandments will not budge,
And stealing will continue stealing."

On May 21, 1886, the Committee on Patents presented a report to the Senate, favoring the Chace bill, but no action resulted.

President Cleveland's second message, 1886

In President Cleveland's annual message December 6, 1886, at the opening of the second session, he called the attention of Congress to the fact that "the drift of sentiment in civilized communities toward full recognition of the rights of property in the creation of the human intellect has brought about the adoption by many important nations of an International Copyright Convention, which was signed at Berne 18th of September, 1885. . . . I trust the subject will receive at your hands the attention it deserves, and that the just claims of authors, so urgently pressed, will be duly heeded." But the Congress adjourned without heeding them.

Campaign of 1887

Senator Chace reintroduced his bill into the Fiftieth Congress, December 12, 1887. In the same month there was organized the American Publishers' Copyright League, with William H. Appleton as president and George Haven Putnam as secretary, and from that time forward the authors' and publishers' leagues acted in close coöperation. Copyright associations were formed in Boston, Chicago and elsewhere, to influence Congress and the public; Henry van Dyke, especially by his address on "The national sin of piracy," and other clergymen helped to emphasize the moral issue, and authors' readings held in New York, Washington and elsewhere brought the question widely to public notice and helped to raise funds for the campaign. During this period, R. U. Johnson, associate editor of the *Century* magazine, who had

been treasurer of the Authors' League, became its secretary, and throughout the campaigns ending in 1891 and 1909, had the working oar. The Typographical Unions, represented by John Louis Kennedy and James Welsh, gave support to the bill conditioned on the acceptance of the type-setting clause, and the opposition to it came chiefly from Gardiner G. Hubbard and certain legal representatives of unnamed clients.

Senate passage of Chace bill, 1888

The Chace bill, modified to require printing from type set or plates made within the United States and to prohibit the importation of foreign-made editions, passed the Senate, Senators Chace, Hawley, Hoar and O. H. Platt of Connecticut being foremost in its support, by vote of 35 to 10, May 9, 1888. It had been introduced into the House by W. C. P. Breckinridge of Kentucky, March 19, and favorably reported by the Judiciary Committee, April 21, 1888. A bill which had been introduced by Lloyd S. Bryce of New York, January 16, and referred to the Committee on Patents, was favorably reported by that Committee with amendment September 13, 1888. But the Mills tariff bill and other circumstances blocked the way, and the Fiftieth Congress adjourned without action by the House.

Bryce bill, 1888

President Harrison's message, 1889

President Harrison, in his first annual message, December 3, 1889, to the Fifty-first Congress, said, "The subject of an international copyright has been frequently commended to the attention of Congress by my predecessors. The enactment of such a law would be eminently wise and just." Senator Chace having resigned his seat, Senator O. H. Platt became chairman of the Committee on Patents and the chief advocate of the Chace bill, which he reintroduced December 4, 1889. In the House it was again introduced by Mr. Breckinridge on January 6, 1890, and

referred to the Judiciary Committee, which made a favorable report, prepared by G. E. Adams of Illinois February 15, 1890. It was also introduced on the same day by Benjamin Butterworth of Ohio, as a Republican, and referred to the Committee on Patents, of which he was chairman. A third bill was also introduced on January 6, by W. E. Simonds of Connecticut, amending the patent and trade-mark acts with an incidental reference to copyright. Mr. Simonds presented a favorable report from the Committee on Patents February 18, but no action was taken on this report. The main bill was, however, reported from the Judiciary Committee by Mr. Adams, and on motion of William McKinley of Ohio, was made the special order for May 2, when it was debated, with amendments introduced by Mr. Adams and defeated on the third reading by a vote of 99 to 125. The bill was reintroduced, however, by Mr. Simonds with the inclusion of a reciprocity clause, May 16, 1890, and on June 10 the Committee on Patents through Mr. Simonds presented a strong report with a substitute bill, essentially the same. The Simonds report set forth that aside from "practical reasons" for the bill, "it is a sufficient reason that an author has a natural exclusive right to the thing having a value in exchange which he produced by the labor of his brain and hand. No one denies and everyone admits that all men have certain natural rights which exist independently of all written statutes." And in respect to international protection, the report said "the United States of America must give in its adhesion to international copyright or stand as the literary Ishmael of the civilized world." The report is printed in full and a detailed account of the campaign for this bill is given in G. H. Putnam's "The question of copyright." On December 3, 1890, the bill was again

Simonds bill, 1890

Simonds report, 1890

voted upon by the House and received a vote of 139 to 95 on its final passage.

Senate debate, 1891

In the Senate there was a notable debate lasting six days, February 9, 12–14, 17–18, 1891, in which Senators Sherman and Carlisle championed an amendment permitting the importation of authorized foreign editions which was opposed by the Typographical Unions as violating the manufacturing clause, and by authors and publishers as a restriction on authors' rights of control. Senator Frye on February 9, 1891, advocated an amendment extending the manufacturing clause beyond books to include maps, charts, dramatic or musical compositions, engravings, cuts, prints, photographs, chromos and lithographs. With these and other amendments, the bill passed the Senate 36 to 14, February 18, 1891. On February 28, 1891, the House voted 128 to 64 non-concurrence in the Senate amendments, and a Conference Committee was appointed.

Passage of act of March 4, 1891

This first Conference Committee, reporting on March 2, 1891, disagreed on the Sherman amendment, and accepted the other Senate amendments; the report was accepted by the House, 139 to 90, on March 2, 1891. The Senate, on March 3, refused by a vote of 33 to 28 to recede from the Sherman amendment, and a second Conference Committee was appointed. This second Conference Committee modified the Sherman amendment, and after an all-night session the copyright bill was passed, 127 to 77, by the House, March 3, and was also passed, 27 to 18, by the Senate at half past two in the morning, March 4, 1891.

The bill as passed was in the form of amendments to the Revised Statutes, omitting the limitation to citizens or residents of the United States, confining copyright, in the case of a book, photograph, chromo or lithograph, to works of which the deposit copies

should be "printed from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawings on stone, made within the limits of the United States or from transfers made therefrom," and extending copyright to citizens of a foreign country only when such country protects American citizens "on substantially the same basis as its own citizens," or is a party to international arrangements, as determined by proclamation of the President.

Approval by President Harrison

The signature of President Harrison was promptly affixed before the close of the legislative day, and the United States at last, though in a restricted form, accepted international copyright after an exciting and dramatic contest, which began more than half a century before. The bill became effective July 1, 1891.

Review of the publishing situation

There had been a continuous growth in the United States, though displayed somewhat intermittently, of an active sentiment in favor of international copyright. For some years the question was less insistent, from the practical point of view, because of what was called "the courtesy of the trade," by which a publisher who was the first to reprint an English work was not disturbed by rival editions of that and of succeeding works by the same author. Under this custom, the leading American publishers voluntarily made payments to foreign authors, in many cases the same ten per cent paid to American authors, and reaching in one case of "outright" purchase of "advance sheets" $5000, though there was no protection of law for the purchase. American and English works then competed on much the same terms. In 1876 the cheap "quarto libraries" were started, reprinting an entire English novel, though on poor paper and often in dangerously poor type, for 10, 15, or 20 cents. They presently obtained the advantage, by regular

issue (one "library" at one time issuing a book daily, others weekly), of the low postal rates for periodicals, of two cents a pound, and thus obtained a further advantage over books by American authors. These quartos gradually gave way to the "pocket edition," in more convenient shape, but not always in better print, at 20 or 25 cents. The sales of corresponding American books had meanwhile definitely fallen.

Lack of unified policy

The history of the movements for international copyright in America shows that there had been no continuous and well-defined policy on the part of the government authorities, or of publishers, or of authors. While authors almost unanimously, and publishers generally, favored international copyright, the division lines as to method were not between authors and publishers, but between some authors and other authors, and between some publishers and other publishers. There were those, in both classes, who objected to any bill which did not acknowledge to the full the inherent rights of authors, by extending the provisions of domestic copyright to any author of any country, without regard to other circumstances. There were others, at the other extreme, who opposed international copyright unless it was restricted to books manufactured in this country, issued simultaneously with their publication abroad, and of which the importation of other than the American copies was absolutely prohibited. The act of 1891 was finally passed with the assent of the advocates of authors' rights who were willing to waive the abstract principle in favor of any moderate measure which should be at least a first step of recognition, and which might justify by its results, even to the opponents of international copyright, further steps of future progress.

Compromise of 1891

While the act of 1891 was unsatisfactory to the

Need of general revision

friends of copyright, who desired rather that the United States might grant unrestricted international copyright and become a signatory power in the convention of Berne, it was thought fair and right not to attempt broader legislation for some years. Copyright legislation had become, however, confused and uncertain in the multiplicity of statutes, and the need of revision was emphasized in annual and special reports by Thorvald Solberg, an expert in copyright and skilled bibliographer, who had been appointed Register of Copyrights on the creation of that office in 1897 with the approval of the Librarian of Congress, Herbert Putnam, who had been appointed in 1899. In 1903 the Register of Copyrights presented a special report on copyright legislation which was made part of the report of the Librarian of Congress for 1903, and accompanied by a list of all copyright statutes by the original states and by the United States, the text of the revised statutes with notations of later provisions and a list of foreign copyright laws in force, which three documents were also published as separate pamphlets.

Ad interim copyright act, 1905

In 1905, March 3, an act was passed granting *ad interim* protection for one year to works in a foreign language published in a foreign country, pending manufacture in America within one year of the original work or a translation thereof. This protection was conditioned on the deposit within thirty days from publication in a foreign country of a copy of the foreign edition bearing copyright notice and a reservation in the following form: "Published , 19 . Privilege of copyright in the United States reserved under the Act approved March 3, 1905, by ," — which was also to be printed on all copies of the foreign work sold or distributed in the United States.

Copyright conferences, 1905-06

On January 27, 1905, Senator Kittredge announced (in Senate Report 3380) that the Committee on Patents purposed to "attempt a codification of the copyright laws at the next session of the Congress" and in a letter to the Librarian of Congress suggested that he call a conference of the several classes interested in such codification. Accordingly on April 10, the Librarian of Congress announced such a conference, of which sessions were held at the City Club in New York, May 31 to June 2, and November 1 to 4, 1905, and in the Library of Congress, Washington, March 13 to 16, 1906. At these conferences, organizations representing authors, dramatic and musical as well as literary, artists, publishers, printers, lithographers, librarians, the legal profession and the public, participated through delegates, and discussed first a basic memorandum presented by the American (Authors) Copyright League and thereafter successive drafts of a copyright measure prepared by the Register of Copyrights. As a result of these discussions, presided over by Librarian Putnam, the final draft was prepared under the immediate direction of the Librarian of Congress, which became the basis of the bill "to amend and consolidate the acts respecting copyright" introduced into the Senate by Senator Kittredge (Senate bill 6380) and into the House by Chairman Frank D. Currier (H. R. bill 19853), May 31, 1906.

"Copyright in Congress, 1789-1904"

In connection with these conferences, a number of valuable documents were prepared by Register Solberg and published through the Copyright Office, among them a chronological record of "Copyright in Congress, 1789–1904," with bibliography, summarizing all Congressional proceedings in relation to copyright through the second session of the Fifty-eighth Congress.

President Roosevelt's message, 1905

Meantime President Roosevelt, in his annual message of December 5, 1905, to the Fifty-ninth Congress, had made strong recommendations in favor of copyright reform: "Our copyright laws urgently need revision. They are imperfect in definition, confused and inconsistent in expression; they omit provision for many articles which, under modern reproductive processes, are entitled to protection; they impose hardships upon the copyright proprietor which are not essential to the fair protection of the public; they are difficult for the courts to interpret and impossible for the Copyright Office to administer with satisfaction to the public. Attempts to improve them by amendment have been frequent, no less than twelve acts for the purpose having been passed since the Revised Statutes. To perfect them by further amendment seems impracticable. A complete revision of them is essential. Such a revision, to meet modern conditions, has been found necessary in Germany, Austria, Sweden and other foreign countries, and bills embodying it are pending in England and the Australian colonies. It has been urged here, and proposals for a commission to undertake it have, from time to time, been pressed upon the Congress. The inconveniences of the present conditions being so great, an attempt to frame appropriate legislation has been made by the Copyright Office, which has called conferences of the various interests especially and practically concerned with the operation of the copyright laws. It has secured from them suggestions as to the changes necessary; it has added from its own experience and investigations, and it has drafted a bill which embodies such of these changes and additions as, after full discussion and expert criticism, appeared to be sound and safe. In form this bill would replace the existing insufficient and inconsistent laws

by one general copyright statute. It will be presented to the Congress at the coming session. It deserves prompt consideration."

Congressional hearings, 1906-08

It was arranged that the two Committees on Patents of the Senate and House should hold joint sessions for public hearings on the copyright bill, and these hearings were held in the Senate reading room in the Library of Congress, the first June 6 to 9, 1906, the second December 7 to 11, 1906, the third March 26 to 28, 1908, of each of which full stenographic reports were printed for the Committees. At the hrst hearing the discussions were largely on the general principles of copyright and their special application to the right of musical composers to control mechanical reproduction of their works. Amendments proposed at this hearing were printed by the Copyright Office in two parts, and a third or supplementary part gave the comment of the Bar Associations' Committees. Register Solberg also printed as preliminary to the second hearing the copyright bill compared with copyright statutes then in force, and earlier United States enactments.

Kittredge-Currier reports, 1907

In 1907, at the second session of the Fifty-ninth Congress, the copyright measure was introduced by Senator Kittredge January 29, 1907 (Senate bill 8190), accompanied later by the majority report, February 5, 1907 (Senate report 6187), and a minority report, February 7, 1907 (Senate report 6.87; part 2); and by Chairman Currier January 29, 1907 (H. R. bill 25133), accompanied later by the majority report, January 30, 1907 (H. R. report 7083), and by a minority report, March 2, 1907 (H. R. report 7083, part 2). No action was taken at this session.

At the first session of the Sixtieth Congress, Senator Smoot, who had become Chairman of the Patents Committee on the retirement from it of Senator Kit-

Smoot-Currier, Kittredge-Barchfeld bills, 1907-08

tredge, introduced a majority bill December 16, 1907 (Senate bill 2499), and Senator Kittredge a minority bill December 18, 1907 (Senate bill 2900); and in the House, Chairman Currier introduced the majority bill December 2, 1907 (H. R. bill 243), and A. J. Barchfeld the minority bill January 6, 1908 (H. R. bill 11794). The Smoot-Currier bills, practically identical, were less favorable to authors, particularly in respect to mechanical reproductions of music, than the Kittredge-Barchfeld bills; and in a pamphlet "The copyright bills in comparison and compromise," prepared by R. R. Bowker in behalf of the American (Authors) Copyright League in March, 1908, the features of the several measures were compared and the views of the Copyright League set forth in a combined measure, with annotations. The "canned music" question, indeed, absorbed most of the time at the third hearing, in the stenographic report of which a combined index to the several hearings was printed.

Washburn, Sulzer, McCall, Currier bills, 1908

After the hearings, other bills were introduced into the first session of the Sixtieth Congress by C. G. Washburn May 4, 1908 (H. R. bill 21592), more fully representing authors' views; by Wm. Sulzer May 12, 1908 (H. R. bills 21984, 22071), embodying views of dramatic authors; by S. W. McCall May 12, 1908 (H. R. bill 22098), embodying an amendment to the manufacturing clause as phrased by the American (Authors) Copyright League, excepting from the manufacturing provision "the original text of a foreign work in a language other than English," and by Chairman Currier May 12, 1908 (H. R. bill 22183). But again no action was taken at this session.

At the short (second) session of the Sixtieth Congress the copyright bills were reintroduced in the House by Mr. Barchfeld December 19, 1908 (H. R. bill 24782), by Mr. Sulzer January 5, 1909 (H. R. bill

25162), by Mr. Washburn January 15, 1909 (H. R. bill 26282). On January 20, 1909, a fourth public hearing, specifically on "common law rights as applied to copyright," was given by the Copyright Subcommittee of the House Committee on Patents, to which had been referred the preparation of a final draft, which hearing was reported with the inclusion of a communication of Arthur Steuart, Esq., Chairman of the Copyright Committee of the American Bar Association, giving a careful analysis of the several common law rights possible as to copyright property. After this hearing there were further reintroductions of copyright bills by Mr. Washburn January 28, 1909 (H. R. bill 27310), by Chairman Currier February 15, 1909 (H. R. bill 28192), and in the Senate by Senator Smoot February 22, 1909 (Senate bill 9440).

Fourth Congressional hearing, 1909

The Currier bill was referred to the Committee of the Whole February 22, when a report (H. R. report 2222) was presented. On February 26, amendments were agreed to by the House Committee on Patents; on March 2 the bill had a further reading, and on March 3 was briefly discussed and passed by the House. Senator Smoot had reported to the Senate March 1, 1909, with a report from the Committee (Senate report 1108), and on March 3 the bill as passed by the House was brought before the Senate, briefly discussed, and passed. The exact votes were not recorded.

Passage of act of March 4, 1909

It had scarcely been hoped at the beginning of 1909 by the friends of copyright that the act could be passed during the short session, but the energy of Chairman Currier, complemented by Senator Smoot in the Senate, carried the bills through, and on March 4, the last day of the administration of President Roosevelt, himself an author of distinction and mem-

Approval by President Roosevelt

ber of the Authors Club, he had the satisfaction of signing, as one of his last acts, a copyright bill completely codifying the law of copyright and greatly broadening international copyright. The copyright code, as in force July 1, 1909, is printed with an index and with the regulations adopted by the U. S. Supreme Court, as Copyright Office Bulletin 14.

Code of 1909

The code of 1909 made the manufacturing clause more drastic, though freeing photographs from its provisions, by requiring in the case of books, periodicals, lithographs and photo-engravings that they should be completely manufactured within the United States, including printing and binding as well as type-setting, with requirement of affidavit from printer or publisher in the case of books; but made on the other hand a further approach to complete international copyright in freeing from the manufacturing clause "the original text of a book of foreign origin in a language or languages other than English," thus relieving a difficult situation which threatened retaliation and the rupture of copyright relations by Germany and other countries, and in extending protection to mechanical music reproductions on a reciprocal basis.

Hopes of future progress

The hopes of the friends of copyright will not, however, be fully realized until the manufacturing clause, with the affidavit provision, is repealed, and the United States enabled by Congress to join the family of civilized nations as a signatory power in the Berlin convention.

XX

COPYRIGHT THROUGHOUT THE BRITISH EMPIRE

COPYRIGHT in America has been so much modeled on English and English statutes, decisions and precedents, that the previous chapters have covered most of the points of copyright law in the United Kingdom. There are two essential points of difference, however, between the English and American systems. British copyright has depended essentially upon first publication, not upon citizenship; and registration and deposit, which are here a *sine qua non*, have there been necessary only (except in the case of works of art) previous to, and as a basis for, an infringement suit.

English and American systems

A book first published in the United Kingdom (England, Scotland, Wales, and Ireland) has been *ipso facto* copyright, under the act of 1842, throughout British dominions; and this protection was definitely extended, by the act of 1886, to a work first published elsewhere in the British dominions. This held whether the author were a natural-born or naturalized British subject, wherever resident; or a person who was at the time of publication on British soil, colonies included, and so "temporarily a subject of the Crown — bound by, subject to, and entitled to the benefit of the laws," even if he made a journey for this express purpose; or, probably but not certainly, an alien friend not resident in the United Kingdom nor in a country with which there was copyright reciprocity. Under the statute of Anne, it was decided by the Law Lords, in the case of Jefferys *v.* Boosey (overruling Boosey *v.* Jefferys), that a person not a British subject or resident was not entitled to copyright

First publication and residence

because of first publication in England, but the statute of 1842 was construed to alter this. In the ruling case under the last-named statute, Routledge *v.* Low, in 1868, Lords Cairns and Westbury laid down explicitly that first publication was the single necessity, and that copyright was not strengthened by residence; though Lord Cranworth objected and Lord Chelmsford doubted whether this was good law. It was because of this doubt that American authors had been accustomed to make a day's stay in Montreal on the date of English publication of their books. This decision was accepted by the law officers of the Crown and became in 1891 the basis for the reciprocal relations proclaimed by the President of the United States.

Variations in copyright terms

The copyright term in Great Britain has differed for the several subjects of copyright, under the divers acts as stated in previous chapters, the general term being for life and seven years or for forty-two years, whichever the longer. Registration at Stationers' Hall has been requisite only (except in the case of works of art) as preliminary to suit, and infringement previous to registration was punishable. Deposit of one copy in the British Museum has been required within a stated time from publication, but only on penalty of fine and not forfeiture of copyright, and the four university libraries might demand copies. Under the international copyright acts, registration and deposit at Stationers' Hall for transmission to the British Museum was requisite for foreign works; but this was made unnecessary by the adhesion of Great Britain to the International Copyright Union.

The new British code

The Copyright Act, 1911, as amended by the Lords, which became law (1 & 2 Geo. V. c. 46) on Crown approval December 16, 1911, provides a codification for the British Empire as comprehensive as

the American code. The act covers as Part I, Imperial copyright, Part II, International copyright, Part III, Supplemental provisions. The act extends throughout His Majesty's dominions, but is not to be in force in a self-governing dominion (Canada and Newfoundland, Australia and New Zealand, and South Africa) unless enacted by the legislature thereof, either in full or with modifications relating exclusively to procedure and remedies or necessary to adapt the act to the circumstances of the dominion, in case of which adoption the legislature may repeal the act or enact supplementary legislation with reference to works first published or whose authors are resident within the dominion. Thus the bill practically permits the self-governing colonies to legislate independently, each for itself within its domain. The act may also be extended by Orders in Council to English protectorates "and Cyprus." Its provisions are also made applicable (by Part II on international copyright) through Orders in Council to subjects or citizens of foreign countries, directly or through separate action by self-governing dominions, under conditions which practically cover countries within the International Copyright Union under the Berne-Berlin conventions, though these are not named in the act; and to countries having reciprocal relations, — with authority to the Crown to withdraw any benefits of the act from citizens of countries not giving reciprocal protection. This code is based largely upon previous British practice, though with considerable extension and improvement.

Scope and extent

Copyright under this code covers "every original literary, dramatic, musical, and artistic work," first published within the included parts of His Majesty's dominions, and in the case of an unpublished work, the author of which was "at the date of the making

of the work" a British subject or a resident domiciled within such included parts [or under protection through the international copyright provisions].

Publication

"A work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days," or such longer period as may be fixed by Order in Council. Publication is expressly distinguished from performance, exhibition or delivery.

Definition of copyright

Copyright is defined to mean "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever" or any translation thereof, to publish, perform, or deliver the work in public, to dramatize or novelize it, to make any record, roll, film or other contrivance by which it may be mechanically performed or delivered or to authorize any such acts. Architectural works of art are included as to design but not process or method.

Infringement and exceptions thereto

Infringement is comprehensively and sweepingly defined to cover any copying or colorable imitation of any copyright work or the doing by an unauthorized person of "anything the sole right to do which is by this Act conferred on the owner of the copyright." The code specifically excepts from the provisions against infringement (1) any "fair dealing" for private study, research, review or newspaper summary; (2) the use by an artist who has sold his copyright in a work of moulds, sketches, etc., except to repeat or imitate the design of that work; (3) the making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or (if not in the nature of architectural drawings or plans) of an architectural work of art; (4) the use in collections described and advertised as for school

use, of extracts from copyright works (not themselves published for the use of schools), not more than two from any one author, and not duplicated within five years by the same publisher; (5) the newspaper report of a public lecture, unless specifically prohibited by exhibited notice; and (6) the reading or recitation in public by one person of any reasonable extract.

Term

The copyright term is for the life of the author and fifty years after his death, with provision that after an author's death the Judicial Committee of the Privy Council may, on allegation of the withholding of the work, require grant of license to reproduce, publish or perform it. Posthumous works, works the property of the Crown, photographs and mechanical music reproductions, are protected for fifty years; but no specific term seems to be indicated for anonymous or pseudonymous works as such. Works of joint authorship are protected for fifty years after the death of the author who *first* dies, or during the life of the author who dies last, whichever the longer period, and such works may be protected by action of any one of the authors. Twenty-five years, or for existing works thirty years after an author's death, any person may under specified conditions publish a copyright work on payment of ten per cent royalty — following an Italian precedent. Compulsory license is also provided for mechanical music reproductions, in case the author permits any such reproduction — following the American provision. University copyrights are continued in perpetuity only for existing copyrights.

Ownership

The author of a work is the first owner of the copyright, except in the case of a work done on order or in the course of contract employment. The owner of a copyright may by an assignment in writing assign his rights wholly or partially, and either generally or as limited to any part of His Majesty's dominions, or

for the whole term of copyright or any part thereof, or license accordingly. But no assignment otherwise than by will shall be operative beyond twenty-five years from the death of the author, when the copyright reverts to his natural heirs, following Spanish precedent.

Registration provisions are altogether omitted from the new measure.

Deposit copies

Deposit is required at the British Museum within one month after publication, "of every book published in the United Kingdom" on penalty of fine not exceeding five pounds and the value of the book, and copies must also be supplied to the four university libraries, and for specific classes to the National Library of Wales, on demand — the "best" edition in the case of the British Museum, and that of which most copies are sold in the other cases.

Importation

Importation of "copies made out of the United Kingdom . . . which if made within the United Kingdom would infringe copyright," is prohibited, on notification in writing to the Commissioners of Customs (the Isle of Man being specifically excepted from this provision), and similar prohibition is authorized as to British possessions. The use in the section on infringement of the phrase "imports for sale or hire," taken from the act of 1842, involves a possible limitation of this prohibition which is discussed in the chapter on importation.

Remedies

The usual civil remedies are provided, actions being limited within three years from the infringement. If the real name of an author, or in the absence of such, the name of a publisher, is indicated on a work, that is *prima facie* evidence of copyright ownership in the prosecution of infringement. An infringer may be relieved from damages (but not from injunction) on proving innocence; architectural infringements may

not be enjoined after commencement of the structure, but are punishable by damages. On summary conviction any person who knowingly for sale or hire or for trade makes, sells or lets, distributes, exhibits, or imports infringing copies, shall be liable to a fine not exceeding forty shillings for each copy or fifty pounds for the same transaction, or in the case of a second offense, to imprisonment not exceeding two months; and similar provision is made as to infringing performance. The summary remedies in the musical copyright acts of 1902 and 1906 remain unrepealed.

General relations

The provisions of the code are extended to cover existing copyrights. Common law rights are specifically abrogated by provision confining the protection of an unpublished as well as a published work to statutory provisions.

Acts repealed

The measure repeals all existing enactments except sections seven and eight (modified) of the fine arts copyright act, 1862 (25 & 26 Vict. c. 68), which deal with fraudulent signature or marketing of art works and concern fraud rather than copyright, and the musical copyright acts of 1902 and 1906, providing summary remedies for piracy of musical works; and the provisions regarding copyrights of the customs and revenue acts are continued with modifications conforming them to this act.

The act does not apply to designs capable of being registered under the patents and designs act, 1907. Schedules of existing and corresponding rights and of enactments repealed are appended to the bill. The act is effective July 1, 1912, unless earlier made effective by Order in Council.

Changes from original bill

It may be noted that the new British measure had been much modified, — especially in the Committee stage, where efforts to reconcile conflicting interests

were chiefly effective,—since its introduction as a Government measure in 1910. In the earlier form it was provided that the contributor of an article or contribution, periodical articles included, might retain a specific copyright except as against the proprietor of a collective work, and that an article in a newspaper, not being a tale or serial story, might be reproduced in another newspaper in default of a notice expressly forbidding it, providing the source were duly acknowledged. University copyrights, new as well as old, it was then proposed should still be perpetual. Copyright, it was specifically provided, should not pass from an artist when he sells his original work except by agreement in writing, but subsequent transfers of the original work from an owner also of the copyright, should transfer the copyright — but this is probably taken as implied in the new law. Registration at Stationers' Hall was continued and made applicable to all classes of works, and though optional, it was practically necessitated by the ingenious provision that in the absence of such registration an infringer might plead ignorance and be freed from damages. The summary provisions of the musical copyright acts were extended to cover other works, and these acts it was therefore proposed to repeal. The compulsory license provision limiting musical copyright and certain provisions as to ownership and term were introduced in the Committee stage. The word "infringing" was substituted for "piratical" in Parliamentary debate to conciliate a supersensitive member. The compromises and modifications indicated brought the measure before Parliament as an "agreed upon" bill.

Isle of Man

The Isle of Man applies the copyright law of the United Kingdom, and has a supplementary law of 1907, applying British legislation on engravings and

prints, sculpture, paintings, etc., and musical compositions, quite up to date, embodying in the latter section the latest provisions as to summary proceedings in the protection of music — this being enacted by "the Deemsters and Keys in Tynwald assembled," as the tiny Manx parliament is quaintly called. The Channel Islands of Jersey and Guernsey also apply British copyright law by ordinances or local legislation in their respective domains.

Channel Islands

Great Britain was one of the original parties to the Berne convention and accepted the additional act, but not the interpretative declaration of Paris, and the passage of the new measure will permit adhesion to the Berlin convention. She has a special treaty with Austria-Hungary (1893), sometimes cited as the treaty of Vienna of 1893, and has been in reciprocal relation with the United States as a "proclaimed" country since July 1, 1891.

International relations

The British dominions outside of the United Kingdom and Ireland are, in general, under the like provisions of Imperial copyright law, including the law of 1842 and earlier unrepealed or subsequent acts, the colonial copyright act of 1847 and the international copyright act of 1886 being especially important. They are also generally included under British international relations embracing the Berne-Paris provisions of the International Copyright Union and the reciprocal relations with the United States, but with the exception that in the Austria-Hungary treaty, Canada, New South Wales and Tasmania (both now part of the Australian Commonwealth), and Cape Colony (now part of the Union of South Africa) are not parties, because these colonies did not exercise the right of ratification specifically reserved to individual colonies.

Colonial relations

The application of the Berne convention to the British possessions was upheld in an important

Judicial confirmation

Canadian decision, when in 1906 Justice Fortin, in Mary *v.* Hubert, in the Quebec Court of King's Bench, held that the British international copyright act in relation with the Berne convention protected a French work from Canadian reprint, though the author had not complied with specific Canadian requirements, — a most significant decision in defense of international copyright.

Local legislation

Under the colonial copyright act of 1847, which declared local legislation or decrees repugnant to the Imperial law to be null and void, local legislation consonant with Imperial acts was permitted, subject to approval by the Crown through Orders in Council, in which case prohibition of importation of foreign reprints might be suspended by Order in Council with regard to the particular colony. Under this act, local legislation with special provisions existed in British India and other colonies, as well as in the "self-governing dominions," which last now include Canada and Newfoundland, Australia and New Zealand, and South Africa, and which have somewhat greater powers of local legislation. Under these local provisions, the Imperial law still prevails, local legislation being concurrent but not necessarily co-terminous with it, as is particularly noticeable in Canada, where there has been more or less conflict between the Imperial and Dominion authorities. Local protection may thus be extended, for instance, to works not first published within the British possessions, or in a unionist country, but copyright cannot be denied to works thus first published; and the Crown disapproves or disallows laws or provisions construed by the Imperial authorities to be repugnant to Imperial law. More than a score of colonies have adopted local laws or ordinances, some of which have been disallowed by the Crown. The *status* of copyright in the several colo-

nies is thus indefinite and confusing, even to the best-informed English jurists, and can seldom be stated with certainty. Under the new British code, the "self-governing dominions" will have the right to accept the Imperial code, either completely or with adaptation to local judicial methods, or to legislate independently.

Canadian copyright history

In respect to the colonies now constituting the Dominion of Canada, before British copyright protection had been definitely extended to works first published outside the United Kingdom, Lower Canada in 1832, Canada (upper) in 1841 and Nova Scotia in 1847 had passed copyright statutes to protect authors of books first published in the respective provinces. On the passage of the Imperial act of 1847, authorizing the suspension of that portion of the act of 1842 which prohibited the importation of foreign reprints of British copyright works, as to any colony in which provision should be made by local legislation for protecting the rights of British authors, Orders in Council were passed for Nova Scotia and New Brunswick in 1848 and for Canada in 1850, suspending such prohibition, following satisfactory protection accorded by local acts in those years. These local acts provided for the collection of an impost on foreign reprints of works by British authors in favor of the author or copyright owner.

Dominion of Canada: early acts

In 1867 the British North America act (30 & 31 Victoria, c. 3) was passed, providing for the union of Canada and the other North American provinces (except Newfoundland) under the title of the Dominion of Canada, and section 91 of this act specified copyright among the subjects which were to be within the legislative authority of the Parliament of Canada. At the first session of the first Dominion Parliament in 1868, a general copyright act was accordingly

passed, which was followed in the same year by an act continuing the customs duty of 12½ per cent on foreign reprints of British copyright works, and an Imperial Order in Council was passed July 7, 1868, continuing Canada within the provisions of the foreign reprints act of 1847. The returns to British authors from this duty proved so small—only £1084 in ten years — that there was much dissatisfaction, and this impost was finally discontinued in 1895, whereupon the suspension under the Imperial act of 1847 of the prohibition of importation ceased to be in force in Canada and foreign reprints of British copyright works were again under the Imperial law prohibited.

Acts of 1875

In 1872 a new Canadian copyright act was passed, but it was disallowed by the Imperial authorities, whereupon, in 1875, the Parliament of Canada passed a new act, carefully drawn to avoid conflict with Imperial legislation. To remove any doubts as to its validity, the "Canada copyright act" of 1875 was passed by the British Parliament to authorize the royal assent. This Imperial act forbade the importation into the United Kingdom of colonial reprints, though authorized for the Canadian market by British authors (and therefore not piracies), of any work which might be copyrighted in Canada, and in which copyright subsisted in the United Kingdom. The Canadian act of 1875 then received the approval of the Crown, and as replaced and substantially re-enacted by the Revised Statutes of Canada, 1886 (c. 62), —which also included (as c. 37) the amendatory act of 1886, prohibiting the importation of "reprints of Canadian copyright works and reprints of British copyrighted works which have been also copyrighted in Canada," —is still in force, being now Revised Statutes, 1906, c. 70, pt. I, as the fundamental Canadian

copyright law, subject to amendments since passed and approved. The Imperial and Canadian laws of 1875, taken together, make it possible to issue in Canada cheaper reprints of British copyright works, by arrangement with the author or copyright owner, without interfering with the more costly English editions.

License acts disallowed

It should here be noted that the Canadian act of 1889, as amended by the Canadian act of 1895, constituting Part II of chapter 70 of the Revised Statutes, 1906, has never been approved and brought into force by proclamation of the Governor-General. The act of 1889, following the Imperial international copyright act of 1886, extended Canadian copyright on condition of registration with the Minister of Agriculture, and printing and publication or production in Canada within one month after publication or production elsewhere, and provided that the Minister of Agriculture might grant licenses, not exclusive, for the production of works not thus protected on an undertaking to pay to the author ten per cent royalty on the retail price, in which case importation of foreign-made (but not British) editions might be prohibited during the copyright period. The act of 1895 extended this license system to works which the copyright proprietor failed to keep in print in Canada, unless he should give satisfactory assurance of prompt re-issue. These acts, as noted, never became effective.

The Fisher act, 1900

In 1900 an amendment to the copyright act was passed which is sometimes referred to as the Fisher act. It provides that if a book, as to which there is subsisting Canadian copyright under the copyright act, has first been published in any part of the British dominions other than Canada, and the owner of the copyright has granted a license to reproduce in

Canada an edition of such book designed for sale in Canada only, the Minister of Agriculture may prohibit the importation into Canada, except with the written consent of the licensee, of any copies of such book printed elsewhere, excepting two copies each for the use of public or institution libraries. There is some question as to the compatibility of this act with Imperial law.

Minor acts

An act of 1887 had authorized the transfer from the Minister of Agriculture to the Minister of Trade and Commerce of the registration of industrial designs and trade-marks, but this transfer has never taken place. The acts of 1890 and 1891 provided for copyright suits in the Exchequer Court of Canada in the name of the Attorney-General or at the suit of any person interested. The act of 1895 also contained a provision adding to the two deposit copies required for Canada a third for deposit in the British Museum.

Short form of notice

Finally an act of 1908 substituted the short form of copyright notice, "Copyright, Canada, 19 , by A. B." This completes the history of Canadian copyright legislation.

Proposed Canadian copyright code, 1911

The copyright legislation of Canada will presently be replaced by a comprehensive code, utilizing the permission granted by the new Imperial copyright measure to self-governing dominions. The new bill, of which the original text, as submitted to Parliament April 26, 1911, is given in full in the appendix, will establish relations between the Dominion of Canada and the Imperial authority closely similar to those established by the Australian act of 1905, between that Commonwealth and the home government. It pushes still further the precedent of "protection to home industries" followed by American copyright legislation since 1891, and is a far more drastic measure, evidently in retaliation against the

United States and with preferential relations toward Great Britain in view. Americans can scarcely criticize, however, the logical application in Canada of legislation on this side of the border. Copyright is to "subsist in every original literary, dramatic, musical and artistic work the author of which was at the date of making the work a *bona fide* resident in Canada," not first published outside Canada (simultaneous publication being defined as within fourteen days), conditioned on registry before publication, and the manufacture of every copy within Canada. One registration of a periodical is to protect all future issues. Copyright it is proposed to define broadly, as in the new English bill, including the right "if the work is unpublished, to publish the work," thus bringing unpublished works within the statute law and probably excepting them from common law protection; and protection against mechanical music reproduction is also to be included. The term is to be for the life of the author and fifty years thereafter, with the new British proviso as to works of joint authorship, that the term is to be for the life of the author who dies first and fifty years thereafter, or the life of the author who dies last, whichever period is the longer. Assignment of copyright must be in accordance with the acts, and be registered. Importation of copies made out of the British dominions is prohibited. In case of a license for a Canadian edition of a book, copies printed elsewhere may be prohibited importation, except two copies for library use. Copyright may also be extended to foreign citizens under arrangements made by the governor in Council. British subjects resident elsewhere than in Canada may be brought under the act by Order in Council.

The Imperial and Canadian copyright laws, apparently a complexity of complexities, are construed with

Imperial and Canadian copyright

relation to each other and thus do not conflict. Each is good *pro tanto*. The Canadian copyright law permits any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an international copyright treaty with the United Kingdom, who is the author of a literary, scientific or artistic work, to obtain copyright in Canada for twenty-eight years, with a right of renewal for fourteen years to the author, if living, or to his widow or children, if he is dead, conditioned on re-registration within one year *after* the expiration of the original term, publication of a renewal notice in the Canadian Gazette and fulfillment of the obligations of original copyright. The requirements for obtaining domestic copyright in Canada are that the work shall be printed and published in Canada, shall be registered and three copies thereof deposited at the Department of Agriculture (Copyright Branch) before publication, and that each copy published shall bear the notice as cited above. In the case of paintings, drawings and sculpture, the original work may be protected by deposit of a written description instead of copies.

Requisites for domestic copyright

Imperial and local protection

Under the Imperial copyright act of 1886, providing that a book first published in any part of the British dominions shall have copyright throughout those dominions, works are protected in Canada under that act. Subjects or citizens of a country which has no international copyright relations with the United Kingdom may obtain copyright in Canada under the Canadian law by showing that they have British copyright in the work and complying with the other Canadian requirements. Copyright obtained under the Canadian copyright law, so far as it relates to books first published in the British dominions, is in addition to and concurrent though not co-terminous

with Imperial copyright. The Copyright Branch in the Department of Agriculture is in charge of the Registrar of Copyrights, Trade Marks and Designs, a post filled since 1906 by P. E. Ritchie, Esq. Canadian copyright may be obtained in a work although the Imperial copyright may have been lost by reason of first publication having been made outside of the British dominions or treaty relationship, the Canadian law providing that literary works may be protected when printed and published in Canada, whether they are so published for the first time or contemporaneously with or subsequently to publication elsewhere.

Additional local protection

Canadian copyright also affords additional protection and relief not granted by Imperial copyright, by provisions (1) that the importation into Canada of foreign reprints of Canadian copyright works is prohibited, and (2) that every person who knowingly prints, publishes, sells, or exposes for sale any piratical copy of a copyright work shall forfeit every such copy to the copyright owner and shall pay for every such copy found in his possession, printed, published or exposed for sale by him not more than one dollar and not less than ten cents, one half of which shall belong to the copyright owner.

Application for copyright

An applicant for Canadian copyright, either the proprietor or his authorized agent, whether domiciled in Canada or other British possessions or a citizen of a country having an international copyright treaty with Great Britain, should make application to the Minister of Agriculture (Copyright Branch), Ottawa, Canada, for which statutory forms are provided from that office, attested by two witnesses and accompanied by a fee of one dollar for copyright registration, or fifty cents in case of *interim* or temporary copyright, and three copies of the book (full

bound), map (mounted), etc., as printed and published in Canada, or written description of a work of art. A book must bear the statutory copyright notice, but a work of art the signature of the artist only. An author or his legal representative may obtain *interim* copyright pending publication or re-publication in Canada or temporary copyright during serial publication, by registering the designation or title of a work. Thus a citizen of the United States may protect his work in Canada through international copyright by first publication in the British dominions and also through Canadian copyright, with additional protection, by complying with the requirements of the Canadian law, which are in some respects closely parallel with those of the United States.

Newfoundland

In Newfoundland, always a separate colony and now a self-governing dominion separate from the Dominion of Canada, an act of 1849 for the protection of British authors was followed by an Order in Council of the same year extending to that colony the provisions of the Imperial act of 1847. It made provision, following the precedent of Canada, for a customs duty on foreign reprints of British copyright works, which provision was re-enacted in the Consolidated Statutes of 1872 as chapter 53 and again in the Consolidated Statutes of 1892 as chapter 111, the duty being at twenty per cent. In 1890 a copyright act was passed, which remains the fundamental copyright act of Newfoundland, as included in the Consolidated Statutes of 1892 as chapter 110, supplemented by chapter 111, as above indicated. These two chapters have been amended only by the act of 1898 placing copyrights, patents and trade marks under the jurisdiction of the Colonial Secretary, an officer provided for in the act, and the act of 1899 reducing the copy-

right fee of one dollar to twenty-five cents in the case of photographs. Copyright in Newfoundland is on the same general lines as in Canada, following in large part the precedent of the United States, and is for a term of twenty-eight years with renewal for fourteen years — local protection as distinguished from Imperial protection being given to works printed and published — or in the case of works of art, produced — within Newfoundland, on condition of registration with the Colonial Secretary and deposit with him of two copies of a printed work, bearing statutory copyright notice, or of the description of a work of art, — which work must bear the signature of the artist, — one of the two copies being for the use of the Legislative Library.

British West Indies, etc.

In the British West Indies, Jamaica has domestic legislation of 1887 under the Imperial act of 1886, for the British term, requiring the deposit at an office notified in the Jamaica *Gazette* of three copies within one month from publication — one for the British Museum, one for official use, and one for a designated public library. The Governor may declare one copy sufficient where deposit of three copies would inflict injury. Trinidad, under an ordinance of 1888, provides similarly for the deposit of three copies in the office of a Registrar of copying rights, with optional but not obligatory registration of playright. The minor British islands in the West Indies, the Bahamas, British Guiana and British Honduras, seem not to have provided local legislation, but remain exclusively under Imperial law.

Australian code of 1905

The copyright act, 1905, of the Commonwealth of Australia, assented to December 21, 1905, is a comprehensive code superseding previous copyright legislation by the several states formerly separate colonies, New South Wales, Victoria, Queensland, South

Australia, Western Australia and Tasmania, although it preserves the rights in existing copyrights taken out under the several state acts. International copyrights under acts of the Parliament of the United Kingdom and state copyrights may be registered under this act and then enforced throughout the Commonwealth. This act covers (Part III) literary, musical and dramatic copyright and separately (Part IV) artistic copyright. Part I, preliminary, deals with definitions, and Part II with administration. Part V deals with infringement, Part VI with international and state copyright, Part VII with registration and Part VIII with miscellaneous provisions. "The common law of England" is specifically applied to unpublished literary compositions. The Australian code is of course concurrent though not co-terminous with the Imperial law, and must be construed in consonance with it. It is admitted that artistic works are not protected in Australia under either Commonwealth or Imperial law unless "made in Australia," and this serious difficulty the Commonwealth authorities proposed to remedy by an amendatory act which was presented to the Commonwealth legislature in 1906 but was not then passed. To prevent importation of pirated works, written notice of the copyright and its term should be given to the Minister in Australia unless communicated to him by the Commissioners of Customs of the United Kingdom, from registry in London, through the lists periodically distributed.

General provisions

Copyright in a book covers the right, directly or by authorization, to copy, abridge, translate, dramatize or novelize, and in the case of a musical work "to make any new adaptation, transposition, arrangement, or setting of it, or of any part of it in any notation." "Copyright shall subsist in every book"

(including by definition a dramatic or musical work, when printed and published), "whether the author is a British subject or not, which has been printed from type set up in Australia, or plates made therefrom, or from plates or negatives made in Australia, in cases where type is not necessarily used, and has . . . been published in Australia before or simultaneously" (defined as within fourteen days) "with its first publication elsewhere"; and the copyright term is forty-two years from first publication in Australia or the life of the author or of the last surviving joint author and seven years thereafter, whichever the longer. Performing right and lecturing right subsist separately for a like period from first public performance or delivery in Australia simultaneously with first public performance or delivery elsewhere. But lecturing right ceases if a lecture is published as a book. The author is the first owner of copyright or performing right, except as employed for valuable consideration, and in the latter case may reprint an article from a periodical after one year. Copyright subsists in every artistic work "made in Australia," but the copyright of a portrait or photograph is with the person ordering it.

Dramatic and musical works

A dramatic work includes a libretto or lyrical work set to music or otherwise, "or other scenic or dramatic composition"; a musical work is defined as "any combination of melody and harmony, or either of them, printed, reduced to writing or otherwise graphically produced or reproduced" — which seems to omit mechanical reproductions.

Performing right

Copyright is a distinct and separable property from performing right or the ownership of an artistic work, and either right may be separately assigned under any conditions or limitations. Where a dramatic or musical work is published as a book,

notice of reservation of performing right must be printed thereon, in default of which the owner of the performing right cannot obtain damages from an infringer, but may obtain them from the owner of the copyright who has neglected after notice to print such reservation. The proprietor, tenant or occupier who permits a place to be used for an infringing performance shall be deemed an infringer. The owner of a performing right may himself issue notices in writing forbidding performance, disregard of which involves a specified fine.

Registration and license

Provision is made for a registrar and deputies, and for a general Copyright Office where shall be kept separate registers of literary copyrights, of fine art copyrights and of international and state copyrights. The owner of any copyright, performing or lecturing right may obtain registration by the deposit of two copies of the best edition of a book or one copy of an art work or photograph of it, and no suit can be maintained prior to such registration. In case, after the death of an author, the owner of the copyright or performing right withholds the work from the public, the Governor-General may grant a license for publication or performance.

New Zealand

New Zealand, now a separate self-governing dominion, provided when a British colony, — like the Australian colonies before their consolidation into the self-governing Commonwealth, — by an Ordinance of 1842 for a copyright term of twenty-eight years or life, whichever the longer, and has since passed special acts, covering specific classes, 1877 to 1903, but seemingly no general code. Photographs are protected for five years from the taking. Telegraph dispatches were protected by the electric lines act of 1884. Local registration seems to be provided only, and then optionally, for the protection of plays, for which

purpose application with a copy of the play should be made at the Registry of Copyrights, Wellington, and if the play is printed a copy deposited in the Library of the General Assembly; and summary jurisdiction, with power of fine and imprisonment, is then given to the magistrates. To prevent importation, notice may be filed with the Minister of Customs in New Zealand, or through the London commissioners, as in the case of Australia.

Australasia otherwise

In the other British islands of Australasia and the Pacific, Imperial copyright exclusively prevails, as a Fiji Islands' Ordinance of 1903, the only one passed in any of the smaller islands, was disallowed by the Crown.

British India

British India provided a general copyright act in 1847, in line with preceding Imperial legislation, and under the press copyright act of 1867, somewhat modified the British Imperial law, especially providing for deposit of three copies in an office to be designated from time to time in the official gazette, within one month from publication, and the printing on each copy of the printer's and publisher's names. Quarterly publication of such titles is provided for as part of the official gazette. The general term is as in Great Britain, for life and seven years or forty-two years, whichever is longer, with variations for particular classes of works. Ceylon, Mauritius and Hong Kong have the like term and also provide for three deposit copies. In all these cases one copy is retained by the Secretary of State of the colony, one put at the disposition of the Governor and Council, and one after registration deposited in a designated public library. Straits Settlement (Singapore) provides for registration without deposit, in the office of Colonial Secretary. To prevent importation into British India, specific notice may be filed directly with

the Collectors of Customs at Bombay, Madras and Calcutta as well as through the London customs.

South Africa South Africa, the latest of the British self-governing dominions as organized in 1910 into a Union, has not yet adopted a general copyright code, which it may do under the precedent of Australia or after passage of the new British copyright code, by acceptance of that code or by independent legislation. Meantime its copyright relations are those of the former separate colonies, as the Cape Colony, Natal and other English colonies, following in the main English precedent, and the Transvaal and other Dutch colonies, following Holland precedent, including a requirement for printing within the country as a pre-requisite for copyright.

Cape Colony The Cape Colony, under acts of 1873, 1880, 1888 and 1895, provided local copyright for life and five years or thirty years, whichever the longer, four copies of a book or printed play first published in the colony to be deposited for registration by the printer within one month from delivery from the press, for registration with the Registrar of Deeds, these copies to be transmitted to designated libraries. Telegraph dispatches in newspapers were protected by the act of 1880, for 120 hours. Lists of copyrighted works are printed in the government gazette and thus communicated to the colonial customs authorities.

Natal Natal, under acts of 1895, 1897 and 1898, provided local protection for the regular British term, two copies to be deposited with the Colonial Secretary for registration, within three months from publication. Messages by telegraph, pigeons and other special dispatch were protected by the act of 1895, for 72 hours. To protect a play, the title, if in manuscript, or a printed copy, must be registered precedent to local action. Probably failure to deposit in these colonies

does not forfeit copyright, and imperial provisions generally hold good.

Transvaal

The Transvaal, under local legislation of 1887, provided protection for fifty years from registration, receipt or for life, on condition of printing within the colony, and the deposit of three copies thus printed, within two months of publication, accompanied by the affidavit of the printer, without which formalities copyright was forfeited. A resolution of 1895 authorized waiver of the printing requirement in the case of countries having reciprocal relations. Reservation by printed notice was required to protect playright and right of translation; playright in a printed play was limited to ten years, but for an unpublished play was for life and thirty years. All these colonies, whether formerly British or Dutch, are probably now under Imperial copyright law, which would nullify local provisions incompatible with that law, pending the enactment of a South African general code.

West coast colonies

Sierra Leone and the neighboring British colonies on the west coast, as Gambia and the Gold Coast, are under imperial copyright law, and passed local ordinances under the provisions of the British act of 1886, Sierra Leone having provided by Ordinance of 1887 for copyright for the usual British term with deposit of three copies in an office to be designated in the Sierra Leone Royal *Gazette*, and the other colonies having similiar provisions.

Mediterranean islands

The Mediterranean islands of Malta and Cyprus, in addition to imperial copyright, have local ordinances providing respectively for registration in an office notified in the government gazette, and deposit of three copies, within one month from publication. Gibraltar seems to be only under Imperial copyright.

XXI

COPYRIGHT IN OTHER COUNTRIES

France

FRANCE has always been the most liberal of countries in giving copyright protection to foreign as well as native authors publishing within France, and copyright was perpetual up to the abrogation by the National Assembly in 1789 of all privileges previously granted. Though two acts regarding dramatic performances (*spectacles*) were passed in 1791, it was not till 1793 that the National Convention passed a general copyright act, which still remains the fundamental law of French copyright. The state still has copyright in perpetuity in works published by its order or by its agents, but not in private copyrights lapsing to the state for lack of heirs; copyrights otherwise, by the law of 1866, are for life and fifty years. Playright is protected without deposit, but the printer of a book or play is required to deposit two copies on penalty of fine but not forfeiture of copyright. No formalities are requisite, but to obtain a right of action, deposit of two copies of a book is required, at the Ministry of the Interior at Paris or at the Prefecture or town clerk's office if in the provinces, for which a receipt is given. More than a score of laws modifying the French copyright system have been passed, the latest being that of April 9, 1910, providing that transfer of a work of art does not involve the copyright.

France, which had in general extended the protection of domestic copyright to works published in France, whatever the nationality of the author, specifically protected, by the decree of 1852, from

republication (though not from performance) works published abroad, without regard to reciprocity, on compliance with the formalities of deposit previous to a suit for infringement. It early negotiated treaties with other countries, only those with England (since replaced by relations through the International Copyright Union) and Spain requiring deposit in those countries, while four of the countries which required registration permitted that it should be performed at their legations in Paris.

French foreign relations

France, as also its protectorate Tunis, became one of the original signatory powers of the Berne convention of 1886, adopted the Paris acts of 1896, and after some delay and discussion accepted the revised Berlin convention under the act of June 28, 1910, ratified by decree of September 2, 1910, with reservation as to works of applied design, as to which it maintained the stipulations of the previous conventions. It has treaties with Austria-Hungary (1866–1884), Holland (1855–1884), Montenegro (1902), Portugal (1866), and Roumania by an arrangement on the "most favored nation" basis (1907). It has also still existing treaties with Germany (1907), Italy (1884), and Spain (1880), among the unionist countries, on the "most favored nation" basis — former treaties with Great Britain and the Scandinavian countries having been superseded by International Copyright Union relations. It has been in reciprocal relations with the United States as a "proclaimed" country since July 1, 1891; and it has also treaties with the Latin American countries of Argentina (1897), and Paraguay (1900), both under the Montevideo convention, Bolivia (1887), Costa Rica (1896), Ecuador on the "most favored nation" basis (1898, 1905), Guatemala (1895), Mexico through a treaty of commerce on the "most favored nation" basis (1886),

and Salvador (1880), and one with Japan (1909) as to rights in China. Algiers and other colonies are under French law, and French precedent is followed by the protectorate Tunis, though as a separate power.

Belgium

Belgium, under the law of 1886, grants copyright and playright for life and fifty years, including translations and photographs, or for corporate and like works fifty years. No formalities are required except that corporate and posthumous works must be registered at the Ministry of Agriculture within six months from publication. Notice is required only to forbid reproduction of newspaper articles. Belgium is one of the original parties to the Berne convention, adopted the Paris acts and ratified on May 23, 1910, the Berlin convention. It has treaties with Austria (1910), Holland (1858), Portugal (1866), and Roumania (1910), as also with Germany (1907) and Spain (1880) — all save Austria and Portugal on the "most favored nation" basis; it has been in reciprocal relations with the United States as a "proclaimed" country since July 1, 1891, and as to mechanical music since June 14, 1911, and has also treaties with Mexico on the "most favored nation" basis (1895), and under the Montevideo convention with Argentina and Paraguay (1903).

Luxemburg

Luxemburg, under its law of 1898, very nearly a copy of the Belgian law, grants copyright and playright for life and fifty years. The right to translate is protected for ten years from the publication of the original work. Registration is required only for posthumous or official works to be made at the Office of the Government; and notice is required only to reserve playright or to forbid reprint of newspaper articles. Protection is provided against mechanical music reproductions. Luxemburg was an acceding party to the Berne convention, accepted the Paris acts and

ratified the Berlin convention July 14, 1910; it has had reciprocal relations with the United States as a "proclaimed" country since June 29, 1910, and as to mechanical music since June 14, 1911.

Holland

Holland, originally giving copyright in perpetuity under indefinite conditions, and later applying French law, is now under its law of 1881, the only country in Europe still requiring, in accordance with its ancient practice, printing and publication within the country. Two copies, so printed, must be deposited with the Department of Justice within a month from publication, and playright must be reserved on a printed work. The general term is for fifty years from the date of the certificate of deposit and through the life of the author, if he has not assigned his work, and for unprinted works, including oral addresses, life and thirty years. The protection for unprinted works covers playright and the right to translate, and protects any author domiciled within Holland or the Dutch Indies. For corporate and like works, the term is fifty years. The exclusive right to translate, must be reserved on the original work and exercised within three years; the translation is then protected for five years, provided it is printed within the country. Playright in a printed play lasts only ten years from deposit. Holland is not a party to any general convention, but it has a treaty with Belgium on the "most favored nation" basis (1858) and arrangements with France (1855–1884); and it has had reciprocal relations with the United States as a "proclaimed" country since November 20, 1899. The Dutch colonies, as in the East and West Indies and elsewhere, are generally included under Dutch law. A new copyright code presented by the government in 1910, omitting the printing requirement, has passed the first Chamber, and after it be-

comes law Holland, under a concurrent vote in 1911, is authorized to accede to the Berlin convention.

Germany: Copyright throughout the German Empire is now regulated for literary (impliedly including dramatic) and musical works and certain illustrations, by the act of 1901, — in which year there was also adopted an act regulating publishers' rights and contracts; and for works of figurative art and photographs by an act of 1907. An act of 1910 amends these in some particulars.

History These laws superseded entirely the previous acts, dating back to 1870, when the first imperial copyright act was passed after the realization of German unity under Emperor William I. The original act forming the Germanic confederation in 1815, had authorized the German Diet to protect authors' rights, and after futile decrees in 1832 and 1835, resolutions were passed in 1837 making protection effective for a minimum period of ten years throughout all the states which granted protection to authors. Prussia had meanwhile, under the King's Order in Council of 1827, arranged in 1827–29, reciprocal relations with thirty-three out of the thirty-eight states and free cities in the German confederation, and with Denmark for its German provinces, through which the citizens of other states enjoyed the same privileges as natives; and in 1833 the same reciprocal provisions were extended to cover Prussian provinces outside the federation. Many of the early copyright systems had not extended protection to an author's heirs, but in 1837 Prussia passed an improved law making the term life and thirty years and granting protection to citizens of foreign countries in the same proportion that works published in Prussia were therein protected. Thus, up to the time of the Empire, copyright was protected as a matter partly of federal and partly of state legislation.

Laws of 1901-07

Copyright under the imperial legislation of 1901–07 was granted for life and thirty years, and furthermore for posthumous works at least ten years from publication; and for anonymous, pseudonymous and corporate works, thirty years. Copyright in photographs is for ten years only, and in any event ceases ten years after the author's death. The copyright term is reckoned from the end of the calendar year of an author's death or of publication. In joint authorship, the term is from the death of the last surviving author. Playright is, inferentially, under like terms and conditions. The author of anonymous or pseudonymous works, on registering his name, may obtain protection for the full term. In works published in parts, the publication of the last part determines the copyright term. Corporate bodies (juridical persons) are recognized as authors; in composite works the originator of the work as a whole, or if no such editor is mentioned, then the publisher, is regarded as author; if a literary work is accompanied by music or by illustrations, the author of each part is regarded as originator of his separate work; in inseparable composite works, a partnership arrangement is recognized by the law. No formalities are required, but registration of the author's name on its disclosure in the case of an anonymous or pseudonymous book, may be made in the register to be kept by the Municipal Council of Leipzig for a fee of a mark and a half (36 cents) and expense of official publication originally in the *Börsenblatt*, but since a law of 1903 in the *Reichsanzeiger*. Translations, adaptations, etc., are protected as original works. Official documents, public speeches, etc., are not protected, and reproduction of newspaper articles, except those of a scientific, technical or recreative character, is permitted, unless reservation is made, on condition of

acknowledgment and that the meaning shall not be distorted. Extracts are permitted under specified limitations. Poems may be used as set to music unless distinctively intended for that purpose; and musical compositions, except operas and the like, may be played for charity purposes or by musical societies for members and their families.

Art provisions

In the case of a work of art, reproduction for personal use and gratuitously is permitted, but during an author's life only by photographic means; this permission authorizes only, as to a work of architecture, reproduction of exterior aspect and not of the work upon the ground. The person ordering a portrait is entitled to reproduce it, except on agreement to the contrary. Reproduction and exhibition are permitted of portraits in contemporary history or when accessories, as in a landscape or part of a procession or assemblage, or in the interest of art if not made to order, — provided this is not to the injury of the reputation of the original; or in the interest of justice or public safety. Reproductions of works standing permanently in public places are permitted, but these may not be affixed to a work of architecture.

Piracy

Piracy is punished by damages and a statutory fine, or imprisonment in case of intentional infringement, but proceedings must be commenced within three years. The law provides for committees of experts in the several states under regulations of the imperial government to act as arbiters or to advise the justices; and there is final appeal to the Supreme Court of the Empire.

Foreign citizens

The law protects all works of a subject of the German Empire and works of aliens, if published within the Empire before previous publication elsewhere, the latter clause a change from the former practice of protecting works by a foreigner if published by a

firm having a place of business or a branch within the Empire.

German foreign relations

Germany was a party to the Berne convention and to the Paris acts, and ratified July 12, 1910, the Berlin convention. This ratification was made possible by an act of May 22, 1910, modifying domestic copyright to conform with the provisions of the Berlin convention, and incidentally repealing and replacing sec. 22 of the law of 1901, regarding mechanical music reproduction, as fully stated in the chapter on that subject. On July 12, 1910, the Emperor promulgated an ordinance providing for the application of the law, and both the Berlin convention and this new law became effective September 9, 1910.

Germany has treaties outside the Union with Austria-Hungary (1899), has special treaties beyond the provisions of the Union on the "most favored nation" basis, made in 1907 with Belgium, France, and Italy, and has been a "proclaimed" country in reciprocal relations with the United States since January 15, 1892. By proclamation of December 8, 1910, reciprocal relations as to mechanical music reproductions were also proclaimed between Germany and the United States.

Austria-Hungary

In Austria-Hungary, the dual states of that empire have separate copyright as well as other legislative relations. Austrian domestic copyright is based on the law of 1895, as amended by that of 1907, and Hungarian on the law of 1884. Copyright in Austria is dependent on publication within the country and citizenship or reciprocal relations; in Hungary on publication by a Hungarian publisher and two years' residence in the case of foreign authors whose country is not in reciprocal relations. In Austria the general term is for life and thirty years, in Hungary life and fifty years, or for corporate, anonymous and like

works, thirty or fifty years respectively, unless the anonymous author discloses his identity. Registration, in Austria at the Ministry of Commerce, and in Hungary at the Ministry of Agriculture, is required only for anonymous and pseudonymous works, and in Hungary in other special cases, as plays. The right of translation must be reserved on the work, for specified languages or in general, and must be exercised within stated periods; notice is also required on photographs, and in Austria on musical works to protect performing right. Posthumous works, if published in the last five years of the thirty or fifty year term, are protected for five years from publication. Photographs are protected only for ten years in Austria and five years in Hungary. Collections of telegraph news, as printed in a newspaper, are protected in Hungary. Austria and Hungary have a treaty with each other (1907), and jointly with Great Britain (1893), Germany (1899), France (1866–1884) and Italy (1890), involving in the case of Hungary registration in Hungary as well as in the country of origin. Austria has also treaties with Belgium (1910), Denmark (1907), Roumania (1908), and Sweden (1908), and has been in reciprocal relations with the United States as a "proclaimed" country since December 9, 1907; Hungary is negotiating reciprocal relations with the United States, but has otherwise no separate treaties. Neither Austria nor Hungary is a unionist country.

Switzerland

Switzerland, under its federal constitution of 1874 and the law of 1883, provided copyright for life and thirty years or for corporate and like works thirty years, giving protection for the full term to translations if the right to translate is exercised within five years from publication. Photographs were protected for five years only. No formalities are required, though an author has the option of registering his

work, with the exception that registration in the Office of Intellectual Property is required within three months from publication for the protection of posthumous and official publications and photographs. Notice of reservation of playright is required on printed copies. Switzerland was an original party to the Berne convention, accepted the Paris acts and ratified the Berlin convention without reservation in 1910. It has had reciprocal relations with the United States as a "proclaimed" country since July 1, 1891, and included copyright in a treaty with Colombia (1908).

Scandinavian countries

The Scandinavian countries, Denmark, Norway and Sweden, in which last copyright was formerly perpetual, now grant protection for life and fifty years as the general term, or fifty years for corporate and like works, an anonymous author having the right to the full term on printing his name in a new edition or declaring it by registration. Photographs are protected for five years—in Norway for fifteen years. The right to translate into a Scandinavian language is protected for the full term; into other languages for the full term in Norway, but in Denmark and Sweden only for ten years from the end of the year of publication of the original work, with an addition in Denmark that a translation published within these ten years protects the author for the full term against unauthorized translation into that language. No formalities are requisite, but in Norway the printer is required, though default does not affect copyright, to deposit a copy with the university library in Christiania within a year of publication. Notice is required, however, on photographs, and except in Sweden, to reserve right of musical performance. Denmark, by two laws of 1911, requires deposit and registration of photographs. Sweden makes the exceptions that works of art are protected for life

and ten years and that playright is for life and thirty years, or for anonymous plays, only for five years, unless the author meantime discloses his identity. In Denmark and Norway right of recitation and in Sweden playright must be specifically reserved.

Scandinavian foreign relations

Denmark's domestic copyright is covered by laws of 1865, 1902, 1904, 1908 and 1911, Norway's by those of 1877, 1882, 1893, 1909 and 1910, and Sweden's by the general laws of 1897, codifying those of 1877, etc., respectively for literary, art and photographic works, and amendatory acts of 1904 and 1908. All three are unionist countries. Denmark remains under the Berne-Paris agreement, not having accepted the Berlin convention. Norway became party to the Berlin convention by ratification September 4, 1910, with reservations as to architectural works, in which it adheres to article IV of the Berne convention; as to newspaper and review articles, in which it adheres to article VII of the Berne convention; and as to the retroactive provision, in which it adheres to article XIV of the Berne convention. Sweden remains under the Berne convention and the interpretative declaration of Paris, not having accepted either the Paris additional act or the Berlin convention. Each Scandinavian country has a special copyright treaty with the other two (1877, 1879, 1881). Denmark has also a treaty with Austria (1907) and Sweden with Austria (1908). Denmark has had reciprocal relations with the United States as a "proclaimed" country since May 8, 1893, Norway since May 25, 1905, and as to mechanical music since June 14, 1911, and Sweden since June 1, 1911. A special law for Iceland, embodying in general the Danish provisions, was passed in 1905, and the Danish law may be taken as covering the other Danish colonies, as the Danish West Indies, in lack of special legislation.

Russia early gave, in 1828–30, enlightened protection to authors, providing for a term of life and twenty-five years, with an added ten years under specified circumstances, and protecting an author's copyright from seizure by his creditors and from passing from a bankrupt publisher except on fulfillment of the author's contract. Under the civil code of 1887, copyright was extended to life and fifty years, but playright was only nominally protected and the protection of translations was negatived by a decision that translations must be word for word. The new law sanctioned March 20, 1911, is a comprehensive and detailed code providing copyright for life and fifty years, except that certain collections are only protected for life and twenty-five years and periodicals for twenty-five years, photographs for ten years and translations on notice of reservation for ten years, the right to translate being exercised within five years from publication. Playright is protected, but on a musical work notice of protection must be printed. A photograph must bear notice of its purpose, date and author's name and domicile. Protection is accorded to all works published in Russia and works published by Russian subjects domiciled elsewhere; and provision is made for treaties on reciprocal conditions. The law treats also of relations between authors and publishers. Russia, though represented at Berlin, has as yet no international relations. **Russia**

Finland, formerly an independent grand duchy, protects copyright under its law of 1880 for a general term of life and fifty years, with exceptions as to photographs, etc., and with provisions as to translation into the Finnish and Scandinavian languages similar to those of Scandinavian countries. Other provisions are similar to those of Russia. It has no exterior copyright relations. **Finland**

Spain

Spain passed a general copyright code in 1879, which applied not only to the Peninsula, but *ultramar* to Cuba and the other colonies, and became a model for later legislation in several Spanish-American countries, under which code detailed regulations were promulgated in 1880. This code is enforced through the penal code of 1870 and the civil code of 1889. Ordinances from 1893 to 1910 deal with the regulations as to details. Spain grants copyright for life and eighty years on condition of registration by deposit of three signed copies with the Register of Intellectual Property in the Ministry of Agriculture, or in the provincial centres for registration, within one year from publication. In default of registry within the year, any one may publish the work for ten years; and if after the ten years the author fails to register within the ensuing (twelfth) year, the work falls into the public domain. Protection is given for an indefinite term to works issued by the state and, to the extent of their legal existence, those from corporate bodies. A work assigned within the life of the author, remains in the possession of the assignee during the full term unless there are natural heirs (*herederos forzosos*—"forced" or inalienable heirs), in which case the right reverts to such heirs twenty-five years after the death of the author, on registry of such right and proof of succession under the regulations accompanying the act. This, according to the official Spanish print, is for the remaining fifty-five years—not, as in a French version, for twenty-five years only. A musical work is protected with reference to other instruments and to other forms in a provision so broad that it is possibly applicable to mechanical music reproductions. Writings and telegrams inserted in periodicals may be reproduced unless this is expressly forbidden by notice at the title or at the end of the

article—a provision which implies the protection of articles and telegrams in case of such notice of reservation. Works not republished for twenty years fall into the public domain, except in the case of unprinted dramatic or musical works, — unless the proprietor shows that during such period he has kept copies on sale. The protection of domestic law is extended by the terms of the law to citizens of countries having reciprocal relations, without additional formalities.

Spanish foreign relations

Spain was one of the original parties to the Berne convention, accepted the Paris acts and adopted the Berlin convention without reservation, through ratification by the King September 5, 1910. Spain has treaties with Portugal as well as with Belgium, France and Italy, all four made in 1880 on the "most favored nation" basis; it has relations with the United States under treaties of 1895, 1898 (the peace treaty), and 1902, and as a "proclaimed" country since July 10, 1895; and has treaties also with Colombia (1885), Costa Rica (1893), Ecuador (1900), Guatemala (1893), Mexico (1903) and Salvador (1884), mostly on the "most favored nation" basis, and relations under the Montevideo convention with Argentina and Paraguay (1900).

Portugal

Portugal, under its civil code of 1867 and penal code of 1886, grants copyright for life and fifty years to its citizens and to foreigners whose countries grant reciprocal relations. The foreign author, to protect a translation of his work, which protection is for ten years only, must provide such translation within three years. Translations of non-copyright works by a native translator are protected for thirty years. Two copies must be deposited before publication at the Public Library, or in the case of dramatic and musical publication in the Royal Conservatory in Lisbon. Portugal as a republic acceded to the Berlin conven-

tion from March 29, 1911. It has additional relations with Italy (1906) and Spain on the "most favored nation" basis (1880); and reciprocal relations with the United States as a "proclaimed" country since July 20, 1893, and with Brazil (1889).

Italy

Italy grants copyright under its law of 1882, — codifying its original law of 1865 and the dramatic law of 1875, — as promulgated by royal decree September 19, 1882, to become effective in 1885, and its civil code of 1889. It assures full copyright for life or forty years, whichever the longer. After forty years from first publication or, if the author live beyond that date, after his death, a second term of forty years begins, in which any person, on duly declaring his intention, may republish a work, on condition of paying five per cent royalty to the copyright proprietor. The state may expropriate any work after the death of an author on paying to the proprietor a compensation named by three experts. Government and society publications are copyright only for twenty years. An author may reserve rights of translation for ten years. Playright is for eighty years. Three copies of the printed work should be deposited at the prefecture of the province within three months, in default of which, infringement previous to deposit cannot be punished; and if deposit is not made within ten years, the author is understood to waive his rights. With the deposit copy a declaration of reservation of rights should be filed, for publication in a semi-annual list in the official gazette. Notice is required to reserve rights in periodical contributions. A manuscript copy of an unpublished play should be submitted within three months from first performance for *visé*, which manuscript is then returned. By the law of 1910, as to legal deposit, three copies must be delivered to the *Procureur du Roi* in the district

of the printing establishment for transmission to the official libraries in Florence, Rome and the respective province; failure to make such deposit does not affect the copyright, but involves a fine. The laws, both of 1865 and 1882, extended copyright to foreign works, on relations of reciprocity, without treaty arrangements and without additional formalities.

Italian foreign relations

Italy was an original party to the Berne convention and accepted the Paris acts, but has yet to ratify the Berlin convention. It has treaties with Austria-Hungary (1890), Montenegro (1900), Portugal (1906), Roumania (1906), San Marino (1897); also special treaties with Spain (1880), France (1884), and Germany (1907), all on the "most favored nation" basis. It has had reciprocal relations with the United States as a "proclaimed" country since October 28, 1892, and has also treaties with Colombia (1892), with Cuba (1903) and Mexico (1890) on the "most favored nation" basis, and with Nicaragua (1906); and also under the Montevideo convention, relations with Argentina and Paraguay (1900).

San Marino

San Marino, the tiny state enclosed within Italy, has pledged itself by the copyright provisions in its treaty with Italy (1897) to protect all works protected in Italy, by application of the Italian law.

Monaco

Monaco, under laws of 1889 and 1896, provides copyright for life and fifty years with the peculiar provision that copyright on anonymous and pseudonymous works extends fifty years beyond the death of the publisher, who is reputed author. No formalities are required except notice of reservation in respect to articles in periodicals. Monaco acceded to the Berne convention, in 1889, accepted the Paris acts and ratified the Berlin convention without reservation, December 19, 1910.

Greece

Greece originally provided for copyright protection under its penal code of 1833, with a term of fifteen years subject to royal extension. By the law of 1867 the printer of a work was required to deposit with the National Library two copies within ten days of publication, failure involving a fine of at least ten drachmas, but not forfeiture of copyright; and to this requirement was added by the law of 1910 a third copy for the Library of Parliament and a fourth for the local public library, with authority to transmit through the post. A dramatic copyright law of 1909 specifically covers playright, making the term life and forty years and preventing modification of a play by an assignee. Greece has no international relations.

Montenegro

Montenegro, though it has no specific domestic copyright law, and only gives uncertain protection under its customary law and civil code of 1888, has treaties with France (1902) and Italy (1900). It had acceded to the Berne convention July 1, 1893, and accepted the Paris acts, but withdrew from the International Copyright Union April 1, 1900, "from motives of economy."

Roumania and other Balkan states

The Balkan states are led in copyright protection by Roumania, possibly owing to the influence of the literary queen "Carmen Sylva," which country, under the press law of 1862 and penal code of 1864, has protected copyright and playright, including probably translation, for life and ten years. Written registration is required at the Ministry of Instruction, and deposit of four copies was also required, though not on penalty of forfeiture of copyright. A later law, of 1904, repeals the deposit requirement. Roumania has copyright treaties with Belgium (1910), France (1907), these on the "most favored nation" basis, Austria (1908) and Italy (1906). Bulgaria and Servia seem to give no protection, except that accorded in Bulgaria

by its penal code of 1896, and have no international relations.

Turkey, which gave some protection to authors so far back as its penal code of 1857, passed in 1910 a new copyright code providing for books, drama and music a term of life and thirty years, in which last the children, widow or widower, the parents and the grandchildren or their descendants should benefit in equal shares; and for works of art, including architecture, a term of life and eighteen years. Posthumous works are protected from publication for the years above stated. Copyright includes right of translation, representation and adaptation; translations are protected, but the term extends only fifteen years after the death of the translator. The assignment of publishing right does not include playright unless specifically stated. Reprint of periodical articles, unless forbidden, and extracts from books "in case of urgency or to the end of public utility," may be made on acknowledgment of the source. Reprint of works out of print may be licensed by the Ministry of Public Instruction. Registration is requisite with deposit of three copies, in the case of reproduced works, with the Ministry of Public Instruction, at Constantinople, or in its provincial offices on written application and a fee of a quarter of a Turkish pound, for which a certificate is issued. An annual publication of the copyright entries is provided for. The law is not in terms confined to Turkish subjects, but it may by the nature of Turkish legislation apply only within the Turkish Empire, though there seems to be hope that Turkey may adhere to the Berlin convention. Turkey is otherwise without international relations. **Turkey**

Japan, the only oriental power which is a unionist country, adopted a general copyright code in 1899 (March 3, as applied by ordinances of June 27 and **Japan**

28), modifying a law of 1877, and in the same year (July 15) ratified the Berne-Paris agreements and became a member of the International Copyright Union. Amendatory acts were adopted in 1910, on June 14–15, broadening the scope to include architecture and providing as to details of registration. Under domestic legislation first publication in Japan is the only requisite for copyright, but registration must be made in the Ministry of the Interior before action for infringement can be brought, and by disclosure of name to obtain the full term for anonymous and pseudonymous works. Registrations are printed in the official gazette. Protection is for life and thirty years, or thirty years for anonymous, posthumous and corporate works. The right of translation is protected for ten years, and translations are protected for the full term; photographs for ten years only. Titles are protected in copyrighted works, but not general titles. Periodical contributions must be protected by notice. Japan accepted the convention of Berlin with reservations as to the exclusive right of translation, in which it adheres to Article V of the Berne convention as revised at Paris, and as to the public performance of musical works, in which it adheres to Article IX of the Berne convention. Japan has treaties with China (1903) and with the United States (November 10, 1905, "proclaimed" May 17, 1906), which, however, excepts translations, and also special treaties of August 11, 1908, covering Japanese protectorates in Korea and China.

Korea

Korea was formerly without copyright provisions, except as given by the above-named treaty and similar British provisions as to the consular court at Seoul, but since it has become practically a Japanese possession, it has been included by Japanese ordinance of 1908 under Japanese copyright law.

China promulgated, December 18, 1910, its first domestic copyright provisions, establishing a term of life and thirty years, on condition of registration by deposit of two copies at the Ministry of the Interior or corresponding provincial office, with a fee of five dollars. The protection does not include the exclusive right to translate foreign works into the Chinese language, although individual translations may be protected. Photographs, unless included in writings, are protected only for ten years from date of registration. These provisions require approval to be made effective. China has a treaty with Japan (1903) and one of like date (October 8, 1903) with the United States, effective from January 13, 1904, protecting for ten years books, maps, prints, or engravings, "especially prepared for the use and education of the Chinese people" or "translation into Chinese of any book," but Chinese subjects are to have liberty to make "original translations into Chinese," so that the treaty affords little protection. By treaty with Japan (August 11, 1908) Japan's copyright protection is extended where it has extra-territorial jurisdiction, as in Canton and other places in China. By British Orders in Council of 1899, 1907, copyright protection against infringement by a British subject may be afforded by the consular court at Shanghai to foreign as well as British suitors under specified conditions. China

Siam passed a literary copyright law in 1901, giving identical rights with those in any other property for life and seven years, or for forty-two years, whichever the longer, on the conditions of printing and publication within the country, registration within a year and deposit of four copies. Siam has no treaty relations, but works printed and first published there possibly would have the benefit of the law. British copyright protection is also extended through British consulates. Siam

Asia otherwise

Persia and other native-governed countries seem to have no copyright protection, although Persia was represented at the Berlin conference. Copyright provisions in British India, Ceylon and the other Asian colonies is covered in the preceding chapter on the British dominions. The Dutch East Indies have copyright protection under Dutch law, and Indo-China under French law. The Philippine Islands, like the Sandwich Islands (Hawaii), have copyright protection under United States law.

Tunis, etc.

Tunis, a protectorate of France but not a French colony, long the only unionist country in Africa, has domestic protection under its law of 1889, following in general that of France, with a term of life and fifty years. It was one of the original parties, as a separate power, to the treaty of Berne, accepted the Paris acts and ratified the Berlin convention with reservation, September 30, 1910, like France, as to works of applied design, in which it adheres to the stipulations of the previous convention; it has no other foreign relations. Algiers, a French colony, is under French law and international relations. Morocco and other native states seem to be without copyright protection.

Egypt

Egypt, under the protectorate of Great Britain but not a British possession technically, is without domestic legislation, except that its penal code of 1884–89 forbids piracy, and it is not included under British relations. But under a crude sort of customary law and this penal code, the courts enforce rights of foreigners as well as of natives by the protection of their works for an indefinite term. The rights of French citizens in plays and music have been enforced through the French consular court, and in recent years the mixed courts at Cairo and the Court of Appeal have exercised copyright jurisdiction, "under the principles of natural justice and the laws of

equity." In the leading case of the Société des gens de lettres *v.* Egyptian Gazette, in 1889, the Court of Appeal laid down the principle that "copyright is a veritable right of property founded on labor," and on this ground has upheld the right of literary, dramatic and musical authors and of artists to prevent reproduction.

Liberia

Liberia seems to have no domestic copyright law recorded, and probably protection, national and international, is under customary law without formalities. It was represented as an independent power at the Berne convention and signed the original convention, but never became a party to it by ratification; it, however, adopted the Berlin convention by ratification and is now a member of the International Copyright Union.

Africa otherwise

The Congo Free State seems to cover copyright offenses by its extradition treaties with Belgium (1898) and France (1899) to the extent of including in the list of offenses fraudulent application to any art object or work of literature or music, of the name of an author, or any distinctive sign adopted by him.

Copyright provision in South Africa, Sierra Leone and other British colonies is covered in the preceding chapter on the British dominions.

Latin America

In Latin America provision for copyright protection had generally been made by the several states, for various terms, in some cases in perpetuity, previous to a movement for international relationship which began with the Montevideo convention of 1889, for South American states only, reached a further step in the convention of Mexico City, 1902, was not substantially advanced by the amendatory treaty proposed at Rio de Janeiro, 1906, which never became practically operative anywhere, and culminated in the Buenos Aires convention of 1910, which

was ratified by the United States Senate February 16, 1911, but has yet to be ratified by the Latin countries. Five South American states are bound together under the Montevideo convention as ratified by Argentina (1894), Bolivia (1903), Paraguay (1889), Peru (1889), and Uruguay (1892).

The United States has relations with Mexico (1896), Costa Rica (1899), Cuba (1903), Chile (1896), and by ratification in 1908 of the Mexico convention of 1902, with Costa Rica, Guatemala, Honduras, Nicaragua, Salvador and possibly Dominican Republic, and will come into relations under the Buenos Aires convention of 1910, with any power ratifying that convention.

Mexico

Mexico, under the guarantees of property in its constitution of 1857, and the specific and elaborate copyright provisions of its civil code of 1871, as modified by that of 1884, grants copyright in perpetuity and playright for life and thirty years as the general term, with complicated modifications and exceptions. In the case of anonymous and pseudonymous works, rights in perpetuity are to the publisher and his successors, pending disclosure of the author, who must record his name in a sealed envelope. The right of translation is protected in perpetuity except for works of non-residents published abroad, then limited to ten years. Corporate works are protected for twenty-five and official publications for ten years only. Registration is required through application to the Minister of Public Education and deposit of two copies is obligatory, one in the National Library and one in the Public Archives. A third copy is usually expected for the Library of the Ministry. The right to copyright holds for ten years from publication. Reservation is required of right of translation and of other specified rights, by notice on the printed work. Protection is conditioned on residence, reciprocity or first publica-

tion within Mexico. Private letters may not be published without consent of both correspondents or their heirs, except for proof of right or in the public interest, or for the progress of science. Mexico does not seem to be a party to any convention, not even that of Mexico City, but has had reciprocal relations with the United States as a "proclaimed" country since February 27, 1896, and has treaties with the Dominican Republic (1890) and Ecuador (1888), and with Belgium (1895), France (1886), Italy (1890), and Spain (1903), all on the "most favored nation" basis. To obtain Mexican copyright, it seems necessary to execute a power of attorney, validated by a Mexican consul, to a representative in Mexico City for the registration and deposit at the Ministry.

Central American states: Costa Rica

Of the five nations of Central America, Costa Rica, under penal and civil codes of 1880 and 1888 and a copyright law of 1896, grants copyright, including playright, for life and fifty years, with provisions for return to heirs after twenty years and other variations after the Spanish model, on registration and deposit within a year of three copies of a printed work at the office of Public Libraries, on condition of residence or reciprocity. **Guatemala** Guatemala, under a decree of 1879, grants copyright for literary works in perpetuity on registration and deposit of four copies at the Ministry of Public Education to "inhabitants of the Republic," — with the curious provision that an assignee cannot prevent republication with "essential modifications" by the author. Right of translation must be reserved by notice. A sealed envelope with name of author must accompany an anonymous book. **Honduras** Honduras, under its constitution of 1894, has provisions in its civil and penal codes of 1898 guaranteeing to an author of a literary, scientific or artistic work the general property rights, pending passage of a copy-

right law and punishing fraud by "minor banish-

Nicaragua

ment." Nicaragua, under its civil code of 1904, grants copyright in perpetuity on registration and deposit of six copies with the Ministry of Agriculture. Right of translation must be reserved by notice.

Salvador

Salvador, under its constitution of 1886 and law of 1900, grants copyright on works published in Salvador for life and twenty-five years, or for corporate works fifty years from publication on deposit of one copy with the Minister of Agriculture before publication, with the exceptional provision that if the heirs renounce their rights or fail to make use of them within a year from the author's death, the work falls into the public domain; the translator of a Latin or Greek work is protected as an author, and the government may grant five-year licenses for the reprint with author's permission of "interesting works," presumably those published elsewhere.

Interstate and international relations

In 1894–95, and again in 1897–1901, interstate treaties, incidentally covering copyright, were negotiated; but interstate and international relations are now covered by the participation of the five nations, as well as the United States and the Dominican Republic, in the Mexico convention of 1902 and by the treaty of peace made by these five Central American states at Washington, December 20, 1907. There is some question under the treaty of 1907 whether protection is assured in each state to others than residents, but probably all citizens of the five states are protected throughout all. To secure protection under the convention of 1902, an American citizen should apply for an additional certificate from the U. S. Copyright Office for each country, which after validation by the State Department is sent with one deposit copy for each country to the respective American legations, through which official acknowledgment will be re-

turned. Costa Rica has had reciprocal relations with the United States as a "proclaimed" country since October 19, 1899, and has treaties with France (1896) and Spain (1893); Guatemala with France (1895) and Spain (1893), the latter on the "most favored nation" basis; Nicaragua with Italy (1906); and Salvador with France (1880) and Spain (1884).

Panama grants copyright under the constitution of 1904, which adopted and made part of Panaman law the Colombian copyright law of 1886, which is summarized in the paragraph on Colombia. The Canal Zone is under United States law through a War Department order of 1907. **Panama**

Cuba, which as a Spanish colony came under the Spanish act of 1879, has domestic protection under this act as applied by four military ordinances, 1900–1902, during the United States protectorate, and continued under its insular government. In the third ordinance, of June 13, 1901, it was provided that existing copyrights under the Spanish law of 1879 should be valid during their term, and also that copyright as well as patents granted by the United States shall have insular protection on deposit of a copy of the certificate. Registration is made at the Registry in the Department of State within one year of publication, accompanied, if a foreign work, by certificate of copyright in the country of origin, and deposit should be made of three copies for preservation in the National Library, the University and the Public Archives. On these conditions, under the military ordinance of 1900, authors of foreign scientific, artistic and literary works or their agents or representatives enjoy protection in the case of new works. Regulations of 1909 prescribe the forms of application for domestic and for foreign works. To claim Cuban copyright, an American should obtain an attested copy of the **Cuba**

copyright certificate and transmit this, with a power of attorney in Spanish validated by a Cuban consul, and three deposit copies, to a representative in Havana, who must deposit the certificate with an attested Spanish translation and the three copies at the Registry. Copyrights by Spanish subjects previous to the treaty of peace with the United States, ratified in 1899, remain valid by virtue of a specific article in the treaty. Cuba has been in reciprocal relations with the United States as a "proclaimed" country since November 17, 1903, and has a treaty with Italy (1903) on the "most favored nation" basis. It is reputed to have ratified the Pan American convention of 1902, but possibly only the industrial treaty.

Haiti

Haiti, which gave copyright protection as early as 1835, adopted in 1885 a copyright law with some unusual features. An author holds exclusive right during life; the widow through her life; the children for twenty years further, or other heirs, if there are no children surviving, for ten years. Unauthorized reprints are confiscated on the complaint of the proprietor of the copyright; and the author recovers from the reprinter the price of a thousand, or from a bookseller of two hundred copies, reckoned at the retail price of the author's edition. Deposit is required of five copies within twelve months from publication at the Department of the Interior. Haiti has the unique distinction in Latin America of being a unionist country; it was originally a party to the Berne convention, accepted the Paris acts and adopted the Berlin convention without reservation. It has no relations with the United States and no treaties.

Dominican Republic

The Dominican Republic provides copyright protection under its constitution of 1896, has a treaty with Mexico (1890) on the "most favored nation" basis, and ratified the Pan American convention

(though possibly only the industrial treaty) of 1902, June 15, 1907.

West Indian Colonies

Jamaica and the other British islands and colonies along the Atlantic and Caribbean seas have copyright protection under imperial and to some extent local laws, as already noted; Porto Rico is under the provisions of United States law and the Danish and Dutch West Indian colonies are under the respective laws of their nations.

Brazil

Brazil, under the constitution of 1891 and the law of 1898 and regulations of 1901, grants copyright for the general term inclusive of photographs, of fifty years from the first of January of the year of publication, with a term of ten years for the right of translation and playright. Posthumous works are protected within fifty years from the death of the author. Assignments are valid only for thirty years, after which copyright reverts to the author. Written application for registration is requisite at the National Library, and deposit of one copy of a printed book or play must be made there within two years. Reservation of royalty for playright must be made on a printed work. Protection is confined to a native or resident or a Portuguese author of a work written in Portuguese — the latter in accordance with a treaty of reciprocity with Portugal (1889), the only treaty.

Argentina

Argentina, which under its constitution of 1853 and civil code of 1869 protected an author's productions as general property, adopted in September, 1910, a copyright law, as an application of common law, providing for a term of life and ten years, or in the case of posthumous works twenty years from publication. Protection is comprehensive of all classes of intellectual property, and extends to all forms of use without special reservation. By Presidential decree of February 4, 1911, a Section of Library deposit was

established as a division of the National Library. Registration is required by deposit of two printed copies or of an identifying reproduction within fifteen days from publication for works published in the capital, or thirty days in the provinces, this including foreign works published within the country, publication meaning the offering for sale therein. The law specifically applies to authors of other countries with which Argentina has international relations, deposit in Buenos Aires being then not required where the formalities of the country of origin have been fulfilled. Argentina's international relations are dependent chiefly on the Montevideo convention of 1889, as ratified by Argentina with respect to Paraguay, Peru and Uruguay in 1894, Bolivia in 1903, and with respect to Belgium in 1903, France in 1896, Italy and Spain in 1900.

Paraguay and Uruguay

Paraguay and Uruguay, like Argentina, long protected intellectual property as general property. Paraguay's constitution of 1870 secures exclusive property to an author, and a new penal code, promulgated in 1910, assures copyright on all classes of intellectual property, on registration in the public registries with prescribed fees, and punishes piracy by fine of double the profit and imprisonment. Uruguay in its civil code of 1868 declared that the productions of talent or intellect are the property of their authors, to be regulated by special law, but no such law has been passed. Both countries have relations with the other South American states parties to the Montevideo convention of 1889; Paraguay has also the same relations as Argentina with the European countries above cited. The statement that Paraguay is a party to the Mexico City convention of 1902 seems a misapprehension arising from the fact that her representative signed *ad referendum*.

Chile, under the constitution of 1833 and law of 1834 and its civil code of 1855 and penal code of 1874, protects copyright including playright for a general term of life and five years thereafter, which may be extended an additional five years, except for playright, by action of the government, corporate works for forty and posthumous works for ten years. Deposit of three copies is required at the National Library in Santiago. Protection is extended to foreign works [first?] published in Chile; a Chilean-made edition of a work already published abroad may have protection for ten years. Chile has reciprocal relations with the United States as a "proclaimed" country since May 25, 1896; by a provision in the treaty respecting parcels post, piratical copies of works copyright in the country of destination are to be excluded. Chile ratified only the ineffective Rio convention of 1906. **Chile**

Peru, under its law of 1849 and the constitution of 1860 and penal code, grants copyright including playright for life and twenty years thereafter. Anonymous and pseudonymous works may be protected for the full term by deposit of the true name in a sealed envelope. Posthumous works are protected for thirty years. Deposit is required of one copy in the public library and one copy in the department Prefecture. Protection is probably confined to an inhabitant of Peru, but Peru has reciprocal relations under the Montevideo convention as ratified October 25, 1889, with Argentina, Bolivia, Paraguay and Uruguay. **Peru**

Bolivia, which protected intellectual property by its penal code of 1834, and later by a copyright law of 1879, adopted a brief copyright code, including playright, in 1909, providing a general term of life and thirty years, with the peculiar provision that the publisher of a work of unrecognized authorship **Bolivia**

hitherto unpublished may have protection for twenty years. Registration is required at the Ministry of Public Education and deposit of one copy of printed works must be made within one year of publication in the public libraries, in default of which the work falls into the public domain. Bolivia has reciprocal relations under the Montevideo convention as ratified November 5, 1903, with Argentina, Paraguay, Peru and Uruguay, and also international arrangements with France (1887).

Ecuador

Ecuador, under the constitution of 1884 and law of 1887, grants copyright for life and fifty years, and playright for life and twenty-five years. Anonymous and pseudonymous works are protected fifty years beyond the death of the publisher, unless the author meantime substitutes his name; posthumous works for twenty-five years. There are special provisions for terms of fifty years in the case of translations, adaptations, compilations, etc., and for twenty-five years for editions of works of undefined authorship. Registration is required with notice of reservation of playright within six months from publication or three months from performance of an unpublished play. Three copies of a printed work must be deposited with the registrar for the use of the Minister of Public Education, the National Library and the provincial library. Titles of periodicals are specified as copyrightable. Assignment must be registered to become operative. Protection is seemingly confined to a citizen of Ecuador, but it is expressly provided that a foreign author may assign right of translation or playright to a citizen of Ecuador, who may then prevent infringement. Ecuador has reciprocal relations with Mexico (1888), as also with France (1898, 1905) and Spain (1900), all on the "most favored nation" basis.

Colombia, under the Constitution and law of 1886, and the civil code of 1873 and penal code of 1890, protects copyright, including playright, for life and eighty years, and for the legal existence of a corporate body, with the provision as in Spain respecting natural heirs. Registration is required within a year from publication or performance, at the Ministry of Public Education, with deposit of three copies, one for the Ministry and two for the National Library. If a work is not registered within the year, it falls into the public domain for ten years, but can thereafter be protected by registration within the succeeding year. Non-Colombian authors seem not to enjoy protection of the right of translation for a work printed in a country of foreign language. Colombia has treaties with Spain (1885) on the "most favored nation" basis, Italy (1892) and Switzerland (1908). Colombia

Venezuela, under the law of 1894 and penal code of 1897, protects copyright including playright in perpetuity, the publisher being considered the author in the case of anonymous and pseudonymous works pending legal proof of the identity of the author. In posthumous works protection is in perpetuity to the heirs or assigns. The right is secured by request to the district governor or state president for the issue of a patent with registry of title and verbal oath that the work has not been previously published within Venezuela or elsewhere; the patent certificate must be printed on the back of the title-page, and must be published at least four times in the official gazette. Deposit must be made of six copies at the Registry, two copies going to the Minister of Agriculture for the National Library. Protection is not specifically confined to Venezuelans, and seems to depend on first publication, but assignment to a citizen of Venezuela may be desirable. Venezuela has no foreign relations. Venezuela

XXII

BUSINESS RELATIONS OF COPYRIGHT: AUTHOR AND PUBLISHER

Copyrights in their business relations

BUSINESS relations, founded on copyright, are chiefly those between author and publisher. These relations involve questions, not so much of copyright law in itself, as of the law of contract and other statutory and common law provisions. There has been more or less desire on the part of authors to include business relations within copyright statutes, and in fact the recommendations of the American (Authors) Copyright League to the initial copyright conference of 1905 covered several points of business law, as for instance the right of an author to recover possession of his work from the publisher in case the publisher failed to keep it in print, or the right to prevent assignment of publication rights to a publisher unsatisfactory to the author. It was, however, determined, both in the conferences and by the Congressional Committees, to omit as far as practicable from the copyright law all questions of business relationship, and to leave these to specific contracts between author and publisher or to the general provisions of law. The law, whether as to copyright or other matters, should afford a basis of certainty for business, but it cannot wisely interfere with freedom of contract between the parties to a business transaction.

The German publishing law of 1901

American and English statutes accordingly make no special regulation of the calling of publisher. Provision is, however, made in some continental countries for the regulation of publishing and publishers, as in Germany, where the law of June 19, 1901, passed coin-

cidently with the general copyright code, covers this field in remarkable detail. It provides that the author, during the continuance of the publishing contract within the copyright period, may not reproduce or distribute the work otherwise than through the publisher, except in translation, dramatization (or if a play, novelization) or elaboration of a musical work which is not merely a transposition or arrangement. The author is privileged to include his work in a collected edition twenty years after publication, or an article from a collective work after one year; and the publisher may not republish in such form under the contract. Unless otherwise specified, the publisher is entitled to print only one edition, if undefined one thousand copies, in addition to extra copies for replacing damaged copies and not more than five per cent free copies; destroyed copies may be replaced on notice to author. Opportunity for revision must be afforded to the author in new editions. Alterations are permitted to the author before reproduction and at his expense during the progress of the work, but he cannot be charged for alterations necessitated by new circumstances. The publisher may not make alterations or abbreviation of text or title, except those to which the author cannot fairly refuse consent.

Editions

Alterations

The publisher must issue the work in suitable form in accordance with the customs of the trade and the character of the book, and immediately after receipt of the complete work or completed separate part. The publisher must take measures to keep the book in stock. He is not bound to produce a new edition, but if on request from the author he fails to do so, the publishing right reverts to the author. The publisher may cancel the contract, if the purpose of a work no longer exists, on payment of remuneration to the

Issuance of work

author. Proof for correction must be furnished to the author.

Price and remuneration

The publisher may fix and reasonably reduce the price, but can raise it only with consent of the author. If remuneration is not specified, an equitable payment is required, and the remuneration is due on the delivery or on the appearance of the work, or if determined by sale, then yearly, with opportunity to the author to verify the account from the publisher's books. The author is entitled to free copies to the extent of one per cent of the edition, but not less than five nor more than fifteen, and to additional copies at the lowest trade price. The author is entitled to return of his manuscript after reproduction, if stipulated at the beginning.

Assignment

The publisher may assign, in the absence of agreement, but not for separate works; though for this last, consent cannot unreasonably be withheld and may be presumed if the author does not reply within two months to a demand; and the assignee becomes, jointly with the original publisher, liable to the author for future performance of the contract. When a contract is completed by the issue of specified editions or copies, the publisher is bound to notify the author, and if the contract is for a definite time, the publisher is not entitled to distribute remaining copies after that time. In case of delay in the contracted delivery of the work, the publisher, after a reasonable extension of time, may decline the work, unless delay involves only insignificant loss; and in case the work is not of stipulated quality, the publisher may also cancel the contract or require damages for non-fulfillment. The author has analogous rights as against the publisher.

Accidental destruction

If the work is accidentally destroyed after delivery to the publisher, the author is entitled to remuneration, but the contract terminates; but the author

must, if practicable, rewrite it for additional remuneration or may reproduce it gratuitously and require publication. Like rights may be enforced by either party in case of destruction for which the other is responsible. Delivery is implied when the publisher is placed in position to accept the work. If the author dies after delivery of part of his work, the publisher may maintain his rights in the part delivered on specified notice to heirs; and if the author is absolutely prevented from completing his work, the publisher has like right to the portion already prepared. The author may withdraw from his contract before reproduction of his work or a new edition is begun, if justified by unforeseen circumstances, on remuneration of publisher's expenses; but if he publishes elsewhere within a year, he must also pay damages for nonfulfillment of contract to the original publisher, unless the latter has declined to resume the contract.

Delivery

The relations of publisher in case of bankruptcy are specifically treated, and the regulations of the civil code and general legal principles are specifically applied to cancellation of publishing contracts. On a non-copyright work, an author must not conceal from the publisher that he cannot transfer exclusive right of publication; but the author must act toward the publisher as though the work were copyrighted, at least until six months after publication

Bankruptcy of publisher

Non-copyright work

The law is made applicable to articles in periodicals or portions of collective works. An article in a newspaper is at the disposal of the author immediately after publication; an article in other periodicals after one year, unless exclusive continuing right has been sold to the publisher. A publisher is free to make usual alterations in an unsigned article. The author of an article may cancel his contract and obtain remuneration in case it is not published within a year

Articles in periodicals

after delivery, but damages can be claimed only in case a time of publication has been named by the publisher. The author of a newspaper article has no claim to free copies or special terms. In the case of a work planned by the publisher, or a collaborative, supplementary or collective work commissioned by the publisher, the publisher is not bound to reproduce and distribute the work. The law is made applicable in case the contract with the publisher is made by another than the author. Appeal is authorized to the Supreme Court of the Empire.

It is impracticable to cite all the details of this extraordinarily detailed law, but the provisions summarized afford a remarkable conspectus of German practice on business questions possibly arising between author and publisher, useful in relation to American and English practice.

The publisher as merchant

The publisher is the merchant for the author, and the remuneration which he can pay to the author is limited by the price and sale which he can obtain from the book-buying public. The relation between author and publisher should be, as previously emphasized, most fully, clearly and specifically set forth in the initial contract. "Agreements between author and publishers," said Vice Chancellor Page Wood in 1857 in Reade *v.* Bentley, "assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties." The work may indeed be transferred "outright" without written contract, by the delivery of the manuscript and payment of a bargained sum, in which case the publisher becomes the proprietor and may take out the copyright in his own name or that of the author, can assign the

"Outright" transfer

work and treat it entirely as though his own, except that he cannot alter it to the detriment of the author's reputation. But even in "outright" sale, a specific contract is desirable and is indeed necessary if the author is to agree with the publisher to apply for renewal and include the added period in the term.

"Joint adventure"

More usually, the contract between author and publisher is on the basis of a specified royalty — usual in America, or "half profits," — more common in England, in which case the relation is not that of partnership but of a "joint adventure" terminable on notice unless it is made for a stated time, or for one or more editions, of a specified number of copies, or under other limiting conditions. In such case the expenses of publication may be borne by the publisher, or the author may pay for the plates or for the edition, and receive correspondingly larger return. Unless there is actual or constructive partnership, the publisher, and not the author, is liable for paper, printing, and like accounts. Or the publisher may be simply the agent of the author in manufacturing his book and selling for a stated commission. A contract of publication usually implies exclusive right, but an author may contract with several publishers under a license agreement; and on the compulsory license system, often miscalled the "royalty plan," he must permit any publisher, who will pay him the license royalty, to issue the work.

Risk and profit

It is by means of the profit on successful books that the publisher is able to take risks with new books and new authors. It has been said that of five books, three fail, one covers its cost, the fifth must pay a profit to cover the rest. The element of risk in the book business is, in fact, very large; if the author complains that his successful book ought not to pay for others' unsuccessful books, he can get over the difficulty by taking the risk himself.

Long price and "net" price

The publisher usually sells to the public through the retail trade at a stated retail price, which may be either long price, in which case the high price and large trade discount permit a discount to the public, or "net" price, a lower price with less discount, which the bookseller is expected to maintain. The practice of issuing books at "net" price is growing, in the belief that through this policy larger sales are made and the publisher's gains and the author's royalties fairly bal-

Equities

ance. On the average, the publisher probably gets less per volume than the author, and the system is essentially on an equitable basis. The publisher's larger returns come from the fact that he handles more books than any one author writes. The publisher has usually, in bargaining with the author, the advantage of larger experience and superior business ability, and of the fact that the author seeks him rather than he the author; but no law can better the author in these respects. As a matter of practice, the better publishing houses treat with new authors on the same basis as with old, through a standard form of contract.

The literary agent

The author sometimes employs the "literary agent" as an intermediary in finding a publisher, especially for a first book, and in making arrangements with the publisher, for which the agent expects a stated payment or a proportion of the author's returns. The advantages of such intermediaries are offset by many disadvantages, and the best publishing houses treat an author as liberally and fairly in direct as through intermediate relations. In any event, the contract should be made and signed directly between author and publisher, as a third-party contract, or a double contract between author and agent and agent and publisher, presents serious complication in the event of future differences. The agent should not be given any lien on future works by the author. The literary

agent cannot accept conditions or make sale beyond the authority given him by the author, and an innocent publisher may be held responsible for acts beyond that authority, as in the English case of Heinemann *v.* Smart Set Pub. Co.,in 1909, where the defendants had bought "serial rights" with leave to condense into one number, which the agent had no authority to grant.

Usual American contract

In the publishing contract usual in America, the author "grants and assigns" to the publishers the stated work, undertaking either to copyright it himself or authorizing the publishers to enter copyright in their name, or as his attorneys in his name. The contract usually includes all translations, abridgments, selections, dramatizations, etc., or specifically reserves those to the author, the publishers in the first case agreeing to share profits or otherwise remunerate the author on such special forms. The author is expected to guarantee that he is sole owner of the work and has full power to make the grant, that the work is not a violation of any other copyright and that it is free from scandalous or libelous matter.

Publishers' obligations

The publishers undertake to publish the work in such style as they deem best suited to its sale, at their own expense, unless the author contracts to pay for the plates or for other publishing costs, and usually agree to account for sales semi-yearly or yearly and to make payments within four months thereafter. The royalty is usually based on the trade-list (retail) price, on the cloth or ordinary binding, or the style of binding in which the largest number of copies shall have been sold. It is frequently stipulated that on paper-bound copies, or editions or copies for schools or subscription sale, or a foreign market, or otherwise sold at a reduced price, the royalty shall be reduced, and that on press and other free copies no royalty shall

be paid. When an author pays the cost of the edition or pays for making the plates, he may contract to pay a commission to the publisher and obtain the balance for himself, or he may contract for a larger percentage of return to him than the usual royalty percentage. The publishers are usually authorized to permit the printing of selections and to arrange for translations, etc., subject to the arrangement indicated above. The author is expected to pay for alterations either in full or above a stated sum, as fifty dollars, and to provide any index or like equipment if required.

Reversion of contract

Insurance is not usually required from the publishers, but in case of fire or loss, the publishers have the option of reproducing the work, and if they decline to do so, the contract usually provides for reconveyance of the copyright to the author and the termination of the agreement after the sale of copies remaining on hand. A publishing contract sometimes provides that after a specified time from date of publication, as two o· five years, if the publishers consider that the publ'c demand does not justify continuing publication, or for other reasons, they may offer to surrender their publishing rights on compensation for the plates, as at half cost, and remaining copies, as at cost, and if the author does not elect to accept this offer, then the publishers may sell copies on hand free from royalty and terminate the agreement, the copyright reverting to the author. The publishers are usually authorized, in their discretion, to protect the copyright by legal proceedings at their expense or at joint expense of publishers and author.

Scope of contract

The contract may be for the full term of copyright, with or without obligation on the part of the author to provide for renewal, or for a stated number of years and thereafter until terminated on stated notice, or it may be for a specified number of editions

or copies. It is often stipulated that on discontinuance, the author shall have the right to take over the plates at cost or half cost and remaining copies at cost, in default of which the publishers may sell copies free of royalty, — but not continue to use the plates. If the book contains illustrations not made originally for the work, the contract may provide that electrotypes of them shall be transferred to the author for use solely in connection with the work in case of reversion of the copyright to him. The contract is usually drawn subject to assignment by either party, but only as a whole; but the author may require that the work shall not be transferred, to another publisher or otherwise, without his consent.

Other works of author

The contract may also reserve to the author a right to discontinue the agreement in case the publishers elect not to publish other works, which he may offer to them, or it may bind the author to offer subsequent works to the same publishers. This keeps in view the ultimate publication of a uniform collected edition of the author's works, which may also be covered by a provision giving the author right to include his work in a collected edition after a stated time.

Standard contract

The above summary gives the pith of a standard form of contract which has been adopted, in more or less detail, by many American publishers, and is usually kept in printed form by them. Owing to the careful specifications in the American type of contract, there are fewer cases in the American than in the English court records referring to the relation between authors and publishers; and the English "half profits" custom naturally leaves many more open questions of law and equity.

Serial rights

Where there are serial rights to be considered, as in the case of a novel, the agreement between author and publisher should be very clear. If an author con-

tracts for a serial with periodical publishers who are also book publishers, that contract should state whether rights for book publication are involved or whether the author is left free to arrange for book publication independently. Conversely, where an author contracts for book publication, the contract should be explicit as to whether the author or the publishers shall exercise or arrange for serial publication, either before or after book publication.

Republication of periodical articles

Where an author furnishes an article or series of articles for a periodical, it should be made clear, by letter or contract, whether the periodical publisher also obtains the right to republish such articles in other shape or whether such right reverts to the author, and if so, how soon after publication of the periodical.

Foreign markets

In these days of increasing international relations, it is important that the author should have a clear understanding as to whether he retains the rights in other markets, whether in English speaking or foreign countries; or conveys them to the publishers as within the agreement, but to be separately accounted for; or assigns them as an integral part of the transaction. As between America and England, many publishing firms have branch houses or representatives in the other country or are in special relations with an independent firm therein. If the English market is conveyed, there should be a clear-cut understanding as to whether this includes the Canadian, Australian and South African rights. It is usual that a lower royalty is paid to the author on sheets sold for another than the home market.

Contract to do work

The contract of an author with a publisher that he *will* write a specified book or work, is not usually enforceable by the courts through specific performance, for the simple reason that a court has no means of com-

pelling an author to use his brain for a certain purpose, and the remedy against the author in this event is rather a suit for loss by failure to perform the contract, which loss is difficult to prove. If any remedy is to be provided, it should be stated in the contract as a specified penalty to be paid by the author, — a provision seldom included in publishing contracts. That an author may be held liable for a breach of contract if he declined without good cause to complete a work already partly delivered, was indicated in the early English case of Gale *v.* Leckie in 1817. An agreement to write a book may stand as an equitable assignment on the completion of the book, as was held in Ward, Lock & Co. *v.* Long, in 1906 in the Chancery Division by Justice Kekewich.

Contract not to write

An author who has contracted not to write on a stated subject or for other publishers, may be enjoined from such act. This was decided by early English precedents, as when in the case of Morris *v.* Colman, in 1812, Lord Chancellor Eldon held that Colman, in virtue of his contract to write plays for the Haymarket Theatre and for no other, could be restrained from furnishing plays to another theatre, though he could not be compelled to write plays; the same judge, in Clarke *v.* Price, held in 1819 that he could neither compel Price to continue to furnish Exchequer reports to the plaintiff publisher nor restrain him from furnishing such reports to another publisher, because the contract contained no specific provision to the latter effect. It is probable that the undertaking of an author not to prejudice the sale of his book by writing another of like subject, though under a different title, may be enforced even against a succeeding publisher who had no knowledge of that undertaking, as was indicated in Barfield *v.* Nicholsor in 1824. Thus publishers were granted equitable relief

against an author who had sold to other publishers modifications of an arithmetical series of which the copyright had been sold to the plaintiffs, in Wooster *v.* Crane in the U. S. Circuit Court of Appeals, in 1906. In Brooke *v.* Chitty, however, in 1831, Lord Brougham declined to restrain Chitty from writing a certain book, on the ground that the court could not act until there was actual printing and publication. The publisher, *vice versa*, cannot be restrained from publishing a rival work, even though it competes directly with a work already published or contracted for, unless that is distinctly forbidden in the contract with the first author.

Implied obligations

If a publisher prints without special agreement a manuscript submitted for approval, the courts will enforce reasonable payment; and in 1893, in Macdonald *v.* National Review, in an English county court, it was held that printer's proof sent by the publisher to the author, implied acceptance for publication. That the publisher may be held responsible for loss of a manuscript by the negligence of his employees, was held in Stone *v.* Long, in the King's Bench Division, by Master Chitty in 1903. An implied obligation to publish an accepted work was recognized in the Canadian case of Le Sueur *v.* Morang, where the Canadian Supreme Court affirmed in 1911 the decision that if a publisher withholds from publication a work of which he had bought the copyright "outright," the author might claim the work on return of the purchase money.

Contract personal and mutual

The contract between author and publisher is of a personal nature and therefore not assignable, in the absence of specific provision, except with consent of the other party. As it is with a particular author that a publisher contracts for a book, so an author contracts with a publisher of his choice and cannot be

Contract personal and mutual

required to accept another. This is especially true where, on a profit-sharing or royalty arrangement, the author relies on the skill of the publisher for his market. Where E. V. Lucas had arranged with Grant Richards to publish a work on half profit, it was held in the Chancery Division in 1905 by Justice Warrington in a suit against the publishers' trustee in bankruptcy, that the contract was terminated by bankruptcy and that Mr. Lucas on fair purchase of the remaining copies, might contract with another publisher. There is more question when the contract is for a specified sum; and where the copyright is assigned by outright purchase the rule would not hold good, for the publisher then becomes the copyright proprietor. But even when a publisher has bought a copyright "outright," he may not do the author the wrong of printing the work in such altered shape as to injure the author's reputation, as was held in 1832 in the English case of Archbold *v.* Sweet, where a third edition of Archbold's legal work printed "with very considerable additions," which the plaintiff showed to contain gross blunders, was enjoined. But when work is done, to be published under the name of another, the actual writer may not prevent alteration by the employer, as was decided in Cox *v.* Cox in 1853, by the Vice Chancellor. Such a personal contract cannot be transferred as a bankruptcy asset, and on the bankruptcy of the publisher the rights revert to the author, except that stock on hand may perhaps be sold to another, who may not, however, distribute it to the disadvantage of the author. The personal contract involves personal guarantee by each party to the other of good faith and coöperative support, and neither party may act to the disadvantage of the other. The author, during the continuance of a publishing contract, must not permit the use of his

work otherwise, to the prejudice of the original publisher, and the publisher must not sell copies to the injury of the future market of the author.

English development of this doctrine

This general doctrine was worked out in a chain of early English cases, the first of which was that of Sweet *v.* Cater, in 1841, where Vice Chancellor Shadwell decided that the plaintiff publisher who had contracted with Sir Edward Sugden to publish a tenth edition of 2500 copies of his legal work, could, until the specified copies were sold, prevent the publishing of another edition by the defendant publisher, despite any arrangements between the author and the latter. It was strongly upheld by Vice Chancellor Page Wood in the case of Stevens *v.* Benning, in 1854, affirmed on appeal by the Lords Justices, and Reade *v.* Bentley, in 1857. In the first case Forsyth contracted for the publication of his legal work, undertaking to make future revision for subsequent editions, with the publishing firm of the elder Benning, and on its bankruptcy, four hundred copies of the second edition were sold to Stevens & Norton, which firm sued to prevent the younger Benning from publishing a third edition as revised by Forsyth. The Vice Chancellor held that though the plaintiffs might presumably sell the copies, if done without disadvantage to the author, the original contract was not an assignment, but a personal contract which could not pass to the plaintiffs, and therefore denied an injunction. In the second case, where Charles Reade sought to resume his rights in "Peg Woffington" and "Christie Johnstone," from his publisher Bentley, after all expenses had been paid and profits on several editions accounted for, the Vice Chancellor held that the contract, as of a personal nature, could be terminated by the author when that did not involve loss to the other party. Copies printed to replace others destroyed by

fire were decided in the case of Blackwood *v.* Brewster, in 1860, in the Scotch Court of Session, not to constitute a new edition. In the later case of Hole *v.* Bradbury, in 1879, a joint author and the heir of a deceased joint author of "A little tour in Ireland" were adjudged by Justice Fry to be entitled to resume their rights and to recover the illustrations from publishers who had succeeded to the business of the original publishing firm.

Author's transfer to other publishers

In Warne *v.* Routledge, in 1874, where Mrs. Cook sought to transfer from one publisher to another without notice a book of which 44,000 copies had been printed and 42,000 sold, the plaintiff publisher sought to restrain the defendant from issuing a new edition until the remaining copies had been sold. Sir George Jessel, M. R., held that the right of publishing was an exclusive one for the time of the contract, though the word exclusive was not used, but that the author could provide for publication by another publisher immediately on terminating a contract, — a decision which has been criticized as not compatible with other decisions nor sound law.

Proprietary name

Where a proprietary name becomes identified with a publication, an assignment of the work may estop the person named from use of his name or advertisement of his service elsewhere, as in the English case of Ward *v.* Beeton, in 1875, where the originator of "Beeton's Christmas Annual," who had been dismissed by the publishers of that work, was restrained from advertising that he would edit a similar publication for another publisher. But the editor's name is not necessarily part of the title, and an editor may not restrain its omission from the title-page, as was held in the English case of Crookes *v.* Petter, in 1860.

It was decided in the English case of Howitt *v.* Hall, in 1862, by Vice Chancellor Page Wood, that where a

Copies remaining unsold

publisher had procured from an author the copyright for a limited term, in that case four years, he had the right to sell, after the expiration of the contract term, copies printed in good faith within the term, though the court indicated that if there had been an excessive printing of the work with the evident purpose of stocking up for sale after expiration of the contract, such course would not be permitted. This precedent indicates that a publisher would have the right to sell copies printed during the original term of copyright and remaining in stock, even if an author under the renewal provision of the American code exercised the right to make arrangements with another publisher for the renewal term. To like effect it was decided in the English case of Taylor *v.* Pillow, in 1869, by Vice Chancellor James, that a copyright proprietor assigning the copyright might thereafter dispose of copies of a song remaining unsold, in the absence of stipulations to the contrary. These questions are usually decided in advance in American publishing practice by provision in the contract between author and publisher that copies remaining unsold at the end of the contract term may be reclaimed by the author at a stated price — and some such provision is always desirable.

American confirmation

The same doctrine was upheld in the American case of Pulte *v.* Derby, in 1852, in the U. S. Circuit Court by Judge McLean, who held that where the contract for publishing a second edition provided that the publishers might print as many copies as they could sell, the publishers might make successive printings in that edition, and that the use of the words "third edition" on the title-page did not terminate the arrangement. The author could not meantime publish otherwise, but the publishers, who held legal title to the copyright within the terms of the contract, could

not exercise rights beyond the second edition, nor could they assign their rights.

Renewal term

American publishers usually expect the author to make a contract for the entire copyright period, and to make application in their behalf for the renewal term. It is true that the very large percentage of books lose their value long before the close of the original term, and that the percentage where renewal is desirable is very small.

It was a thought to which "Mark Twain's" mind often recurred that a long copyright term was not desirable, because so few books were of value at the end of one or two decades, and he frequently put forward a scheme for extending copyright from period to period, based on the issuance of a cheap edition under the author's sanction. This scheme, which he presented in some detail at the time of the Congressional copyright hearings, did not receive support from other students and advocates of copyright.

License not assignment

A contract giving publishers the "whole and exclusive right of publication," was decided *In re* Clinical Obstetrics by the Chancery Court, through Justice Warrington, in 1908, to be a personal contract and license, not an assignment of copyright, and the assignment entries were ordered to be expunged, in line with the decision in 1907 by the Court of Appeal in *Re* "The Liedertafel series" *et al.*

Author's and publisher's profits

The publication of a book involves many indirect expenses, in addition to the direct cost of manufacture, such as the share of general office expenses, the large item of advertising and the like. These are difficult to allot, and this helps to make the "half profits" system a fruitful occasion of disagreements. On this system or on the commission basis, the nature and proportion of these indirect charges should be clearly set forth in the publishing agreement. On a "half

profit" or similar plan, the publisher is not considered to be entitled to make his own profit on paper, printing, etc., but must account for these at the cost to him; and in any event the publishers' accounts must be fully open to the author. On the whole, the payment of royalty, on the usual American plan, is more satisfactory. The customary royalty is ten per cent, or in the case of authors of established reputation whose works have large sale, as high as fifteen or twenty per cent, when the publishers cover all expenses, except that on school books and "subscription" editions the royalty is usually five per cent. When an author pays for the plates or for the edition, the return is substantially higher, as fifteen or twenty per cent to the ordinary author. The royalty is usually reckoned on ordinary cloth binding, unless otherwise stated in the contract, and almost invariably not on copies printed, but on copies sold. A royalty on "all copies sold" was construed in the King's Bench Division by Justice Walton, in Neufeld *v.* Chapman in 1901, to cover all forms of publication, including royalty on a proportionate part of the sales price of a periodical.

The publisher's share

The publisher does not, as is sometimes assumed, get the other ninety per cent as profit; he gets the difference between the receipts from the trade or public on copies *actually sold* — averaging perhaps two thirds of the "retail price," on which the author's ten per cent (really thus fifteen per cent) is reckoned — and the cost of making the *entire edition* and of advertising and marketing the book. The author, in any event, gets a return proportioned to the success of his book. If its sales are small, the publisher makes a loss; if large, the publisher makes a profit increasing proportionately after the initial outlay for publication has been covered.

"Author's editions"

When an author arranges with a publisher or printer to issue a book at author's expense, such editions being usually known as "author's editions," great care should be taken to make such arrangements only with publishers or printers of known and high character and to base them on a complete and exact written contract, defining particularly the amount of commission or royalty to be paid by or to the author, or the expenses to be allowed before reckoning "half profits." Publishers of good repute make such arrangements in the case of books not likely to show adequate commercial profit, but there are publishers and printers who make a business of such transactions with authors without adequately providing to give the author the best possible market, and these cannot always be expected to deal fairly with him. Arrangements made directly between an author (or publisher) and a printer as such, are scarcely within the scope of this work, but it may be said briefly that a printer usually has a mechanic's lien on plates he has made or sheets he has printed (but not on plates used by him unless he has made them), until the bills are paid; and that he may not demand payment until the work has been completed, or in case of its destruction by fire or otherwise, previous to complete delivery, in the absence of contract obligation for advance or partial payment.

Printer's lien

Compulsory license system

The compulsory license system, often miscalled "the royalty plan,"—discussed in England in 1877 as the Farrer proposal and in America about 1890 as the Pearsall-Smith scheme,— is provided by legislation under which any publisher may publish a work without consent of the author provided he pays a royalty as specified or stipulated in the law, as ten or five per cent or a fixed sum per copy. This system has unfortunately been adopted in the new American code,

with reference to the mechanical reproduction of music, though with the saving clause that the author has complete right to forbid mechanical reproduction of his musical composition so long as he does not license any manufacturer. This American precedent has been followed as to mechanical music in recent legislation by Germany and other continental countries and in the modified British measure. The Italian copyright law has, however, a compulsory license provision for the second forty years of copyright, under which any publisher can issue a book on payment to the author of five per cent royalty; and the new British measure contains a like provision applicable twenty-five or thirty years after the author's death, on a basis of ten per cent royalty.

License payments

The American provision is for two cents for each roll, under elaborate regulations, as set forth in the chapter on mechanical music provisions. It is doubtful whether those regulations can be effectively applied, and indeed the whole provision may prove unconstitutional because of its interference with the right of sale or license involved in private property. The several substitutes for these regulations proposed and discussed, were rejected as even less desirable — as the proposal that the Copyright Office itself should undertake an elaborate system of accounting and guarantee to the author as practically a ward of the state, and another proposal for a system of stamps to be affixed to each copy published, supplied by the Copyright Office or the author and sold to the publisher, a system actually in practice in shoe manufacture under the royalty system of the McKay Shoe Manufacturing Company. The answer to all these schemes is that the author should be at liberty to make such arrangements, by contract with one publisher or with many, as he may please, and that a law to compel him

to adopt any one plan of marketing his wares would interfere with his freedom of choice and his natural return.

Saving through single publisher

The reason that an author chooses one publisher instead of many is the simple one that the original cost of making and advertising a book is in this way reduced to one outlay instead of multiplied in many, and that this cost is minimized by being distributed over the largest possible edition. It is the practice of any successful publisher to plan for such an edition as will command the widest sale, and so distribute the original cost over as many copies as possible, and when a copyright book proves to be of such general demand that different styles of editions can be sold, such editions are in fact made by the same publisher. The compulsory license system would only protect the public against the unwisdom of publishers, whose mistakes are presently corrected by business failure or by the transfer of his books by the author to more enterprising houses.

Copyrights in bankruptcy

Copyrights are specifically included, with patents and trade-marks, in the bankruptcy acts as assets which pass to the trustee, which applies to a bankrupt author as well as to other copyright proprietors, but as previously stated, this does not include the personal contract for the publication of an unassigned work. This last doctrine was fully upheld in the English case of Griffith *v.* Tower Pub. Co. & Moncrieff, in 1897, by Justice Stirling, where the liquidator of a corporation was enjoined from transferring a copyright direct to a publisher not acceptable to the author. A manuscript as such is a tangible asset in bankruptcy if of value in itself, but the right of the author to copyright or to publish his manuscript is a personal and not a property right, which therefore does not pass in case of bankruptcy, and a court would

probably not undertake to compel an author to realize the value of an unpublished work for the benefit of creditors by publication and copyright. Nor may a bankrupt author be compelled in bankruptcy process to complete his work, as was decided in 1841 in the English case of Gibson *v.* Carruthers.

Copyrights in taxation

Copyrights, like patents, are subject to the inheritance tax, as capitalized on the basis of income. In the appraisal of 1911 of the copyrights of Mrs. Mary Baker G. Eddy, author of "Science and health," and other Christian Science books, the valuation returned for tax p rposes reached $1,400,000, which is probably the largest valuation ever put upon the copyrights of any one author. The copyrights of the late Marion Crawford were appraised by the New York State tax authorities, in the same year, by valuing his last novel at the income during its first year of publication and his earlier novels at the income for three years passed. Neither method afforded a fair valuation, as a work may be dead after its first year, and the test by income through successive years would depend on whether sales were decreasing or increasing during the period. Standard school books are sometimes estimated as worth three years' income, but such a generalization would not apply in other cases. Each valuation, for tax or sales purposes, must depend upon the circumstances in each case. An inheritance or other tax on copyrights, which are intangible property, may fairly be questioned, in view of the uncertainty whether the legatees may realize any future return from the property.

XXIII

THE LITERATURE OF COPYRIGHT

Bibliographical materials

THE literature of copyright is extensive and its bibliography would now make a volume in itself. The bibliography of literary property prepared by Thorvald Solberg, now Register of Copyrights, for the Bowker-Solberg volume of 1886, occupying sixty pages, covered approximately fifteen hundred titles, besides analytical indexes to several periodicals. The bibliography to the present date, inclusive of that material, which Register Solberg has continued, would increase this record at least twofold. The copyright campaign resulting in the code of 1909 was especially prolific of drafts and bills, Congressional and other reports and private publications, of which "dry as dust" indication is given in the earlier chapter containing the record of that campaign. Nothing more can be attempted in this chapter than a brief glance over historical material and leading works.

Early history

The early history of copyright is to be traced only through incidental references in classical and medieval works. Among these may be instanced Montalembert's "Monks of the West" and Brown's "History of the printing press in Venice," previously cited. George Haven Putnam's work on "Books and their makers in the Middle Ages" (New York, Putnams, 1896–97, 8vo, 2 v., 459, 538 p.), though dealing chiefly with publishing relations, incidentally gives much information on the early history of printing privileges and copyrights proper. Several of the law book writers,

notably Copinger, summarize in some measure the early history of copyright.

Early American contributions

Perhaps the earliest American publication distinctively on copyright was the "Remarks on literary property," by Philip H. Nicklin, in 1838, in which he included as an appendix a reprint of Joseph Lowe's summary of copyright history and practice up to 1819, from the Encyclopædia Britannica supplement, and argued for longer, if not perpetual copyright for our own authors, on the plea that "charity begins at home," as well as for international copyright throughout a world-wide republic of letters. The later movements in America for international copyright brought out much writing, though largely in periodical articles and pamphlets, among the most noteworthy of which were Dr. Francis Lieber's letter "On international copyright," of 1840, Henry C. Carey's "Letters on international copyright," of 1853, and "The international copyright question considered," of 1872, George Haven Putnam's monograph on "International copyright," of 1878, and Richard Grant White's "American view of the copyright question," of 1880.

Later American pamphleteers

During the copyright campaign leading to the act of 1891, several pamphlets were issued on behalf of the American (Authors) Copyright League, notably Rev. Dr. Henry van Dyke's "National sin of piracy," of 1888, and Prof. Brander Matthews's "Cheap books and good books," on the texts of James Russell Lowell's epigram, "There is one thing better than a cheap book, and that is a book honestly come by," and George William Curtis's words, "Cheap books are good things, but cheapening the public conscience is a very bad thing," — which last paper is reprinted in Putnam's "Question of copyright."

The leading American law book writer has been

American treatises

Eaton S. Drone, later editor of the New York *Herald*, whose valuable "Treatise on the law of property in intellectual productions in Great Britain and the United States" (Boston, Little, Brown & Co., 1879, 8vo, 774 p.) covered comprehensively the general copyright legislation of 1870–74, and superseded the earlier standard American law book, George Ticknor Curtis's work of 1847, "Treatise on the law of copyright . . . as enacted and administered in England and America." The volume on "Copyright, its law and its literature," by R. R. Bowker and Thorvald Solberg (N. Y. *Publishers' Weekly*, 1886, 8vo, 136 p.), the latter furnishing the bibliography of copyright, included fac-simile of the autograph signatures in the memorial of American authors of 1885, and a reprint of Sir James Stephen's digest of British copyright law, as well as the revised statutes, constituting the copyright law of the United States at that time. "The question of copyright," by George Haven Putnam (N. Y., Putnams, 1891, 12mo, 412 p.), brought into one compilation many of the important documents and articles, including the text of the act of 1891. A valuable digest of "Copyright cases, 1891–1903," American and English, was compiled by Arthur S. Hamlin for the American Publishers Copyright League (N. Y., Putnams, 1904, 8vo, 237 p.).

Copyright Office publications

The most valuable series of current publications on copyright are those issued from the Library of Congress by the Copyright Office, under Register Solberg's administration. The most important of these series is that of Copyright Office *Bulletins* issued at irregular intervals, of which No. 14 presents the current copyright law and No. 15, issued in 1910, gives the "Rules and regulations for the registration of claims to copyright" under the new law. No. 3, as issued in a second edition in 1906, contains the full

text of "Copyright enactments of the United States, 1783–1906," and No. 8, issued in 1905, "Copyright in Congress, 1789–1904," contains a bibliographical and chronological record of all proceedings in Congress. Several bulletins were issued during the preparation of the law of 1909, of which the most important was No. 9, giving the "Provisions of the United States copyright laws with a summary of some parallel provisions of the laws of foreign countries." No. 5 covers copyright in England, presenting the full text of copyright acts from 1875 to 1902, including and supplementing Sir James Stephen's digest of British copyright law; No. 6, "Copyright in Canada and Newfoundland" up to 1903; No. 7, "Foreign copyright laws now in force" up to 1904; No. 11, "Copyright in Japan" up to 1906; and No. 13, the documents of the International Copyright Union, including the Berlin convention of 1908. Bulletins No. 1 and 2 cover the former copyright law and directions for registration under it. Many of these bulletins are already out of print. A minor series is that of *Information circulars*, of which forty-five have been published, many of them now out of date and superseded, covering from time to time current information as to laws, proclamations, treaties, etc., domestic and foreign, as well as opinions of the Attorneys-General, custom regulations and the like.

Labor report

A report on the effect of the international copyright law by the Commissioner of Labor, Carroll D. Wright, was presented to the Senate in 1901.

English contributions about 1840

Copyright literature in England is too extensive for more than brief reference here. "The great debate," led by Serjeant Talfourd on one side and Lord Macaulay on the other, is recorded in Hansard's Parliamentary Debates (third series, volume LVI of 1841), and the speeches of the two combatants are

reprinted in their respective works. John James Lowndes's "Historical sketch of the law of copyright" was printed in 1840, with especial reference to Serjeant Talfourd's bill, and contained an appendix on the state of copyright in foreign countries — America, France, Holland and Belgium, the German states, Russia, Denmark, Norway and Sweden, Spain, and the Two Sicilies. "A plea for perpetual copyright," by W. D. Christie, was also put forth in 1840. Carlyle's caustic "Petition on the copyright bill" is included in his "Critical and miscellaneous essays."

Later English contributions

Among the later noteworthy contributions to the subject were the caustic denunciation of international piracy by Charles Reade, the novelist, under the title "The eighth commandment," reprinted in America by Ticknor & Fields, in 1860; Matthew Arnold's *Fortnightly* article of 1880, on "Copyright," printed in the volume of his collected works containing his "Irish essays"; John Camden Hotten's seven letters on "Literary copyright," in a volume of 1871; and Walter Besant's volume "The pen and the book," of 1899, containing a special chapter on copyright and literary property by G. H. Thring, Secretary of the British Society of Authors. Herbert Spencer made several contributions to the subject, some of which were reprinted in his "Various fragments."

English legal treatises

There had been published, so early as 1823, the first edition of Richard Godson's "Practical treatise on the law of patents for inventions and of copyright," which was immediately translated into French and became the standard English work, being supplemented in 1832 with an abstract of the laws in foreign countries and republished in a second comprehensive edition in 1840 by Saunders & Benning, London; in 1844 this second edition, with a supplement covering the recent laws, was reissued by W.

Benning & Co., in an octavo of 700 pages, and in 1851 a separately published supplement by Peter Burke brought Godson's work up to that date. Another early English law book was Robert Maugham's "Treatise on the laws of literary property, comprising the statutes and cases; with an historical view and disquisitions," published by Longmans in 1828. The standard work of W. A. Copinger on "The law of copyright, in works of literature and art," first published in 1870 and re-issued in a fourth edition, as edited by J. M. Easton (London, Stevens & Haynes, 1904, 8vo, 1155 p.), includes as well as English and American decisions, chapters on international copyright and on copyright in foreign countries, with full text of English and many foreign statutes, and many legal forms. A work by J. H. Slater covered "The law relating to copyright and trade-marks" (London, Stevens, 1884, 8vo, 466 p.), in the form of a digest of the more important English and American decisions. The writer of the York Prize Essay of the University of Cambridge for 1882, T. E. Scrutton, rewrote and extended his work under the title of "The law of copyright," later continued into a fourth enlarged edition (London, Clowes, 1893, 4 ed., 8vo, 356 p.). B. A. Cohen published a compact study of "The law of copyright" in 1896.

Birrell's lectures

Augustine Birrell, as Quain Professor of law at University College, London, delivered a series of lectures in 1898, of which seven were printed in his delightfully readable little volume on "The law and history of copyright in books" (London, Cassell, 1899, 12mo, 328 p.).

MacGillivray's works

The latest English law-book writer is E. L. MacGillivray, whose "Treatise upon the law of copyright," British and American (London, Murray, 1902, 8vo, 439 p.) is extremely valuable as a case

digest, with foot-note references to cases. This was followed by a brief "Digest of the law of copyright," English only, prepared by the same writer for the Publishers Association of Great Britain and Ireland (London, Butterworth, 1906, 12mo, 106 p.). The same association has printed annually from 1901, a digest of "Copyright cases," which are collected in two volumes, for 1901–04 and 1905–10 inclusive, also edited by Mr. MacGillivray.

English special treatises

Special English treatises on specific classes of copyright protection are Colles and Hardy's "Playright and copyright in all countries" (London, Macmillan, 1906, 8vo, 275 p.); Edward Cutler's "Manual of musical copyright law" (London, Simpkin, Marshall, 1905, 8vo, 213 p.); Reginald Winslow's "The law of artistic copyright" (London, Clowes, 1883, 8vo, 215 p.); Edmunds and Bentwich's "The law of copyright in designs" (London, Sweet & Maxwell, 1908, 2 ed., 8vo, 488 p.); Knox and Hind's "Law of copyright in designs" (London, Reeves & Turner, 1899, 8vo, 264 p.); and William Briggs's comprehensive treatise on "The law of international copyright" (London, Stevens & Haynes, 1906, 8vo, 870 p.), the most important publication in English in its field.

Parliamentary and Commission reports

The Parliamentary papers giving reports of special commissions, referred to in previous chapters, constitute an important part of the English literature of copyright, the most notable being the report of the Royal Copyright Commission issued in 1878, with Sir James Stephen's digest of the law as then existing, and a supplementary blue book of evidence; the report of the Musical Copyright Committee appointed by the Home Department, of 1904; the report of the Law of Copyright Committee appointed by the President of the Board of Trade, of 1909,

with accompanying minutes of evidence; and the minutes of the Imperial Copyright Conference of 1909. The new copyright bill has been four times printed in progressive form — on its first introduction, July 26, 1910, on its reintroduction, March 30, 1911, as it emerged from committee, July 13, 1911, and as it went to the Lords, August 18, 1911.

The pending Canadian bill has been printed only as introduced April 26, 1911, but the government has supplied an accompanying memorandum comparing its provisions with existing law.

Cyclopædias and digests

The American and English law cyclopædias and digests also give references to copyright cases and decisions, some in special chapters, more or less comprehensive of recent copyright interpretations.

French works

The most recent authoritative French works on literary property are Eugène Pouillet's "Traité théorique et pratique de la propriété littéraire et artistique" (Paris, Marchal & Billard, 3d ed., 1908, 1028 p.); Gustave Huard's "Traité de la propriété intellectuelle, v. 1. Propriété littéraire et artistique" (Paris, Marchal & Billard, 1903, 400 p.), and A. Huard and Édouard Mack's "Répertoire de législation, de doctrine et de jurisprudence en matière de propriété littéraire et artistique" (Paris, Marchal & Billard, 1909, 740 p.). An earlier elaborate work is that of Claude Couhin, "La propriété industrielle, artistique et littéraire" (Paris, Larose, 1894), in three volumes.

German works

For Germany the text of the general copyright law of June 19, 1901, of the law relating to figurative arts and photographs of January 9, 1907, and the amendatory law including mechanical music reproductions, May 22, 1910, should be consulted. Otto Lindemann's "Das Urheberrecht an Werken der Literatur und der Tonkunst" (Berlin, Guttentag, 1910,

3d ed., 16mo, 155 p.) is a brief compilation of and comment on these laws of 1901 and 1910. The most recent and authoritative general works are Prof. Josef Kohler's "Urheberrecht an Schriftwerken und Verlagsrecht" (Stuttgart, F. Enke, 1907, 527 p.), though some of his statements of theory have given rise to criticism and dispute, and his "Kunstwerkrecht" (Stuttgart, Enke, 1908, 191 p.), Daude's "Die Reichsgesetze über das Urheberrecht an Werken der Literatur und Tonkunst und das Verlagsrecht" (Berlin, Guttentag, 1910, 293 p.), and Dr. Albert Osterrieth's "Das Urheberrecht an Werken der bildenden Künste und der Photographie" (Berlin, Heymann, 1907, 312 p.).

Early German contributions

In the early German literature of copyright should be noted the works of Pütter, sometimes called the father of the modern theory of property in intellectual productions. who wrote as early as 1764, an edition of whose "Beyträge zum Teutschen Staats- u. Fürsten-Rechte" was published in Göttingen in 1777; and the tractate of Immanuel Kant, "Von der Unrechtmässigkeit des Büchernachdrucks," which may be found in his collected works.

Italian works

The most important Italian work of recent issue is that of Eduardo Piola-Caselli, "Del diritto di autore" (Naples, E. Marghieri, 1907, 375 p.), and earlier works of standard character are Enrico Rosmini's "Legislazione e jurisprudenza sui diritti d'autore" (Milan, M. Hoepli, 1890, 671 p.), and Pietro Esperson, "De' diritti di autore sulle opere dell'ingegno ne' rapporti internazionali" (Torino, Unione tipografico-editrice, 1899, 278 p.).

Spanish compendium

A useful compendium of Spanish copyright law of 1879 *et seq.*, covering both the Peninsula and the *ultramar* colonies, was published in Havana by La Fropaganda Literaria, in 1890, as edited with an in-

teresting comparison of Spanish law with that of Great Britain and America by D. F. G. Garofalo y Morales.

International compilations

A most valuable compilation of the copyright laws and treaties of all countries, comprising a literal translation into German of about 250 acts, is "Gesetze über das Urheberrecht in allen Ländern," edited in a second edition by Prof. Ernest Röthlisberger (Leipzig, Hedeler, 1902, 418 p.), which was complemented by his summary of the domestic and international law of copyright in the different countries, "Der interne und der internationale Schutz des Urheberrechts," also in its second edition (Leipzig, Boersenverein der deutschen Buchhändler, 1904, 116 p.), comprising references or mentions covering fifty-seven countries and forty-nine colonies, especially the British colonies. With these should be mentioned "Recueil des conventions et traités concernant la propriété littéraire et artistique," published under the auspices of the Bureau of the International Copyright Union (Berne, Bureau de l'Union internationale, 1904, 8vo, 908 p.). These works are supplemented by the publication from month to month in the *Droit d'Auteur* of Berne, of which Prof. Röthlisberger is the editor, of new conventions, treaties, laws and other material, bringing world-information up to date.

APPENDIXES

I

UNITED STATES OF AMERICA: COPYRIGHT PROVISIONS

I. UNITED STATES COPYRIGHT CODE OF 1909

An Act to amend and consolidate the Acts respecting Copyright

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

Exclusive right to print, publish and vend

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

To translate, dramatize arrange and adapt, etc.

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

To deliver lectures, sermons, etc.

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

To represent dramatic works, or make record, or exhibit or perform, etc.

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

(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public

To perform music and make arrangement, setting, or record

performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced:

Act not retroactive.

Provided, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: *And provided further, and as a condition of extending the copyright control to such mechanical reproductions*, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit: *And provided further*, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office,

Music by foreign author

Control of mechanical musical reproduction

Royalty for use of music on records, etc.

Notice of use of music on records

License to use music on records

and any failure to file such notice shall be a complete defense to any suit, action, or proceeding for any infringement of such copyright.

Failure to pay royalties

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

Reproduction of music on coin-operated machines

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

Right at common law or in equity

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

Component parts of copyrightable work

SEC. 3. That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright.

Composite works or periodicals

The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act.

Works protected

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

Classification of copyright works

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

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

(b) Periodicals, including newspapers;

(c) Lectures, sermons, addresses, prepared for oral delivery;
(d) Dramatic or dramatico-musical compositions;
(e) Musical compositions;
(f) Maps;
(g) Works of art; models or designs for works of art;
(h) Reproductions of a work of art;
(i) Drawings or plastic works of a scientific or technical character;
(j) Photographs;
(k) Prints and pictorial illustrations:

Classification does not limit copyright

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

Compilations, abridgements, dramatizations, translations, new editions

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

Subsisting copyright not affected

Not subject-matter of copyright: works in public domain; government publications

SEC. 7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however* That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to au-

thorize any use or appropriation of such copyright material without the consent of the copyright proprietor.

Copyright to author or proprietor for terms specified in Act

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

Foreign authors

Alien authors domiciled in U. S.

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

Authors, when citizens of countries granting reciprocal rights

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

International agreement

Presidential proclamation

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

Publication with notice initiates copyright

SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad interim protection under section twenty-one of this Act.

Registration of copyright

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

Copyright certificate

Copyright protection of unpublished works: lectures, dramas, music, etc.

SEC. 11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies under sections twelve and thirteen of this Act where the work is later reproduced in copies for sale.

Deposit of copies after publication

Two complete copies of best edition

SEC. 12. That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.

Periodical contributions

Work not reproduced in copies for sale

No action for infringement until deposit of copies

Failure to deposit copies

SEC. 13. That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit

Register of copyrights may demand copies

of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

Fine $100 and retail price of 2 copies, best edition

Forfeiture of copyright

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

Postmaster's receipt

SEC. 15. That of the printed book or periodical specified in section five, subsections (a) and (b) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this Act.

Printed from type set within U. S.

Book in foreign language excepted

Lithographic or photo-engraving process

Printing and binding of the book

Illustrations in a book

Separate lithographs and photo-engravings

Books for blind excepted

Books in foreign languages excepted

Affidavit of American manufacture

SEC. 16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process,

Printing and binding of the book

that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within

Establishment where printing was done

the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process or print-

Date of publication

ing and binding were performed and the date of the completion of the printing of the book or the date of publication.

False affidavit, a misdemeanor; fine, $1,000 and forfeiture of copyright

SEC. 17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

Notice of copyright

SEC. 18. That the notice of copyright[1] required by section nine of this Act shall consist either of the word "Copyright" or the abbreviation "Copr." accompanied by the

[1] The Act of June 18, 1874, provides that the notice of copyright to be inscribed on each copy of a copyrighted work shall consist of the following words:

"Entered according to act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington"; or, . . . the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18— by A. B."

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

Notice on maps, copies of works of art, photographs, and prints

Notice on accessible portion

Notice on existing copyright works [See note below]

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

Notice of copyright on book

On periodical

One notice in each volume or periodical.

SEC. 20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer, who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay, innocently incurred, if the court, in its discretion, shall so direct.

Omission of notice by accident or mistake

Innocent infringement

Book published abroad in the English language

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

Ad interim copyright for 30 days

Extension to full term

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

Deposit of copies, filing of affidavit

Duration of copyright: 1st term, 28 years

Posthumous works, periodicals, cyclopædic or composite works

Renewal term 28 years

SEC. 23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any

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

Other copyrighted works, first term 28 years Renewal term 28 years; to author, widow, children, heirs or next of kin

Notice that renewal term is desired

Copyright ends in 28 years unless renewed

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

Extension of subsisting copyrights

Proprietor entitled to renewal for composite work

Renewal application

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

Infringement of copyright

(a) To an injunction restraining such infringement;

Injunction

(b) To pay to the copyright proprietor such damages as

Damages

the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in the case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty:

Proving sales

Newspaper reproduction of photograph; recovery, $50-$200

Maximum recovery, $5,000

Minimum recovery, $250

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

Painting, statue, or sculpture, $10 per copy

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

Other works, $1 per copy

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

Lectures, $50

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

Dramatic or musical works, $100 and $50

Other musical compositions, $10

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

Delivering up infringing articles

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices

Destruction

or other means for making such infringing copies as the court may order;

Infringement by mechanical instruments

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

Injunction may be granted

Recovery of royalty

Notice to proprietor of intention to use

Damages, three times amount provided

Temporary injunction

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

Rules for practice and procedure

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

Judgment enforcing remedies

SEC. 27. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing

Proceedings, injunction,

etc., may be united in one action

copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

Penalty for willful infringement

SEC. 28. That any person who willfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the court: *Provided, however*, That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit.

Oratorios, cantatas, etc. may be performed

False notice of copyright (penalty for)

SEC. 29. That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

Fraudulent removal of notice; fine $100–$1,000

Issuing, selling, or importing article bearing false notice; fine $100

Importation prohibited of articles bearing false notice and piratical copies

SEC. 30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

Prohibition of importation of books

SEC. 31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof

(although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is hereby, prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply:

Exceptions to prohibition

(a) To works in raised characters for the use of the blind;

Works for the blind

(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

Foreign newspapers or magazines

(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

Books in foreign languages

(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

Importation of authorized foreign books permitted

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

For individual use and not for sale

Second. When imported by the authority or for the use of the United States;

For the use of U. S.

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

For the use of societies, libraries, etc.

Libraries purchased en bloc

Books brought personally into U. S.

Imported copies not to be used to violate copyright

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale:

Provided, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

Seizure of unlawfully imported copies

SEC. 32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

Copies of authorized books imported may be returned

Secretary of Treasury and Postmaster-General to make rules to prevent unlawful importation

SEC. 33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department, or Post-Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

Jurisdiction of courts in copyright cases

SEC. 34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the circuit courts of the United States, the district court of any Territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

District in which suit may be brought

SEC. 35. That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

Injunctions may be granted

SEC. 36. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

Certified copy of papers filed

SEC. 37. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

Judgments, etc., may be reviewed on appeal or writ of error

SEC. 38. That the orders, judgments, or decrees of any court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

No criminal proceedings after three years

SEC. 39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

Full costs shall be allowed

SEC. 40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

Copyright distinct from property in material object

Transfer of any copy of copyrighted work permitted

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

Copyright may be assigned, mortgaged, or bequeathed

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

Assignment executed in foreign country to be acknowledged

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

Assignments to be recorded

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

Register of copyrights to record assignments

SEC. 45. That the register of copyright shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to

any person requesting the same a certified copy thereof under the said seal.

Assignee's name may be substituted in copyright notice

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

Copyright records

SEC. 47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

Register of copyrights and assistant register of copyrights

SEC. 48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

Register of copyrights to deposit and account for fees

SEC. 49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also

Shall make monthly report of fees

make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

Bond of register of copyrights

SEC. 50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

Annual report of register of copyrights

SEC. 51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

Seal of copyright office

SEC. 52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

Rules for the registration of copyrights

SEC. 53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act.

Record books

SEC. 54. That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

Entry of copyright

Certificate of registration

SEC. 55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the entry.

Certificate for book to state receipt of affidavit

In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed

form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

Certificate may be given to any person

Receipt for copies deposited

SEC. 56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration.

Index to copyright registrations

Catalogue of copyright entries

Catalogue cards

Catalogues and indexes prima facie evidence

SEC. 57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscrip-

Distribution of catalogue of copyright entries

Subscription price

Superintendent of Documents to receive subscriptions

tions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

Record books, etc., open to inspection

Copies may be taken of entries in record books

SEC. 58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

Disposition of copyright deposits

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

Preservation of copyright deposits

Disposal of copyright deposits

SEC. 60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which

relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it. **Manuscript copies to be preserved**

SEC. 61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: **Fees**

For the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: **Fee for registration**

Provided, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. **Fee for certificate**

For every additional certificate of registration made, fifty cents.

For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in section one, subsection (e), or for any copy of such assignment or license, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. **Fee for recording assignment** **Fee for copy of assignment**

For recording the notice of user or acquiescence specified in section one, subsection (e), twenty-five cents for each notice if not over fifty words, and an additional twenty-five cents for each additional one hundred words. **Fee for recording notice of user**

For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. **Fee for comparing assignment**

For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents. **Fee for recording renewal**

For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. **Fee for recording transfer**

For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such search: *Provided*, That **Fee for search**

Only one registration required

only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

Definitions: "date of publication"

SEC. 62. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire.

"Author"

Repealing clause

SEC. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall effect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Date of enforcement

SEC. 64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

APPROVED, MARCH 4, 1909.

2. PRESIDENT'S PROCLAMATIONS

By the President of the United States of America
A Proclamation

Whereas it is provided by the act of Congress of March 4, 1909, entitled "An act to amend and consolidate the acts respecting copyright," that the benefits of said act, excepting the benefits under section 1 (*e*) thereof, as to which special conditions are imposed, shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only upon certain conditions set forth in section 8 of said act, to wit:

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

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

And whereas it is also provided by said section that "The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time as the purposes of this act may require":

And whereas satisfactory evidence has been received that in Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland the law per-

mits and since July 1, 1909, has permitted to citizens of the United States the benefit of copyright on substantially the same basis as to citizens of those countries:

Now, therefore, I, William Howard Taft, President of the United States of America, do declare and proclaim that one of the alternative conditions specified in section 8, of the act of March 4, 1909, is now fulfilled, and since July 1, 1909, has continuously been fulfilled, in respect to the citizens or subjects of Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland, and that the citizens or subjects of the aforementioned countries are and since July 1, 1909, have been entitled to all the benefits of the said act other than the benefits under section 1 (*e*) thereof, as to which the inquiry is still pending.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this ninth day of April, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the
[SEAL.] United States of America the one hundred and thirty-fourth.

WM. H. TAFT.

By the President:
P. C. KNOX,
Secretary of State

Luxemburg was added by proclamation of June 29, 1910, and Sweden, May 26, 1911, to go into effect June 1, 1911.

A proclamation accepting reciprocal relations with Germany as to mechanical music reproductions was issued December 8, 1910. Similar proclamations under date of June 14, 1911, covered Belgium, Luxemburg and Norway.

3. UNITED STATES SUPREME COURT RULES

RULES ADOPTED BY THE SUPREME COURT OF THE UNITED STATES FOR PRACTICE AND PROCEDURE UNDER SECTION 25 OF AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING COPYRIGHT, APPROVED MARCH 4, 1909. TO GO INTO EFFECT JULY 1, 1909.

1. The existing rules of equity practice, so far as they may be applicable, shall be enforced in proceedings instituted under section twenty-five (25) of the act of March fourth, nineteen hundred and nine, entitled "An act to amend and consolidate the acts respecting copyright."

2. A copy of the alleged infringement of copyright, if actually made, and a copy of the work alleged to be infringed, should accompany the petition, or its absence be explained; except in cases of alleged infringement by the public performance of dramatic and dramatico-musical compositions, the delivery of lectures, sermons, addresses, and so forth, the infringement of copyright upon sculptures and other similar works and in any case where it is not feasible.

3. Upon the institution of any action, suit, or proceeding, or at any time thereafter, and before the entry of final judgment or decree therein, the plaintiff or complainant, or his authorized agent or attorney, may file with the clerk of any court given jurisdiction under section 34 of the act of March 4, 1909, an affidavit stating upon the best of his knowledge, information, and belief, the number and location, as near as may be, of the alleged infringing copies, records, plates, molds, matrices, etc., or other means for making the copies alleged to infringe the copyright, and the value of the same, and with such affidavit shall file with the clerk a bond executed by at least two sureties and approved by the court or a commissioner thereof.

4. Such bond shall bind the sureties in a specified sum, to be fixed by the court, but not less than twice the reasonable value of such infringing copies, plates, records, molds, matrices, or other means for making such infringing copies, and be conditioned for the prompt prosecution of the action, suit or proceeding; for the return of said articles to the defendant, if they or any of them are adjudged not to be infringements, or if the action abates, or is discontinued before they are returned to the defendant; and for the payment to the defendant of any damages which the court may award to him against the plaintiff or complainant. Upon the filing of said affidavit and bond, and the approval of said bond, the clerk shall issue a writ directed to the marshal of the district where the said infringing copies, plates, records, molds, matrices, etc., or other means of making such infringing copies shall be stated in said affidavit to be located, and generally to any marshal of the United States, directing the said marshal to forthwith seize and hold the same subject to the order of the court issuing said writ, or of the court of the district in which the seizure shall be made.

5. The marshal shall thereupon seize said articles or any smaller or larger part thereof he may then or thereafter find, using such force as may be reasonably necessary in the premises, and serve on the defendant a copy of the affidavit, writ, and bond by delivering the same to him personally, if he can be found within the district, of if he can not be found, to his agent, if any, or to the person from whose possession the articles are taken, or if the owner, agent, or such person can not be found within the district by leaving said copy at the usual place of abode of such owner or agent with a person of suitable age and discretion, or at the place where said articles are found, and shall make immediate return of such seizure, or attempted seizure, to the court. He shall also attach to said articles a tag or label stating the fact of such seizure and warning all persons from in any manner interfering therewith.

6. A marshal who has seized alleged infringing articles, shall retain them in his possession, keeping them in a secure place, subject to the order of the court.

7. Within three days after the articles are seized, and a copy of the affidavit, writ and bond are served as hereinbefore provided, the defendant shall serve upon the clerk a notice that he excepts to the amount of the penalty of the bond, or to the sureties of the plaintiff or complainant, or both, otherwise he shall be deemed to have waived all objection to the amount of the penalty of the bond and the sufficiency of the sureties thereon. If the court sustain the exceptions it may order a new bond to be executed by the plaintiff or complainant, or in default thereof within a time to be named by the court, the property to be returned to the defendant.

8. Within ten days after service of such notice, the attorney of the plaintiff or complainant shall serve upon the defendant or his attorney a notice of the justification of the sureties, and said sureties shall justify before the court or a judge thereof at the time therein stated.

9. The defendant, if he does not except to the amount of the penalty of the bond or the sufficiency of the sureties of the plaintiff or complainant, may make application to the court for the return to him of the articles seized, upon filing an affidavit stating all material facts and circumstances tending to show that the articles seized are not infringing copies, records, plates, molds, matrices, or means for making the copies alleged to infringe the copyright.

10. Thereupon the court in its discretion, and after such hearing as it may direct, may order such return upon the filing by the defendant of a bond executed by at least two sureties, binding them in a specified sum to be fixed in the discretion of the court, and conditioned for the delivery of said specified articles to abide the order of the court. The

plaintiff or complainant may require such sureties to justify within ten days of the filing of such bond.

11. Upon the granting of such application and the justification of the sureties on the bond, the marshal shall immediately deliver the articles seized to the defendant.

12. Any service required to be performed by any marshal may be performed by any deputy of such marshal.

13. For services in cases arising under this section, the marshal shall be entitled to the same fees as are allowed for similar services in other cases.

4. UNITED STATES COPYRIGHT OFFICE REGULATIONS

RULES AND REGULATIONS FOR THE REGISTRATION OF CLAIMS TO COPYRIGHT

1. Copyright under the act of Congress entitled: "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, is ordinarily secured by printing and publishing a copyrightable work with a notice of claim in the form prescribed by the statute. Registration can only be made *after* such publication, but the statute expressly provides, in certain cases, for registration of manuscript works.

Copyright under act

WHO MAY SECURE COPYRIGHT

2. The persons entitled by the act to copyright protection for their works are:

Persons entitled to copyright

(1) The *author* of the work, if he is:

(*a*) A citizen of the United States, or

(*b*) A resident alien domiciled in the United States at the time of the first publication of his work, or

(*c*) A citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation.

(2) The *proprietor* of a work. The word "proprietor" is here used to indicate a person who derives his title to the work from the author. If the author of the work should be a person who could not himself claim the benefit of the copyright act, the proprietor can not claim it.

(3) The *executors*, *administrators* or *assigns* of the above-mentioned author or proprietor.

3. After the publication of any work entitled to copyright, the claimant of copyright should register this claim in the Copyright Office. An action for infringement of

Copyright registration

copyright can not be maintained in court until the provisions with respect to the deposit of copies and registration of such work shall have been complied with.

A certificate of registration is issued to the applicant and duplicates thereof may be obtained on payment of the statutory fee of 50 cents.

SUBJECT-MATTER OF COPYRIGHT

Works subject to copyright

4. The act provides that no copyright shall subsist in the original text of any work published prior to July 1, 1909, which has not been already copyrighted in the United States (sec. 7).

Section 5 of the act divides the works for which copyright may be secured into eleven classes, as follows:

(*a*) *Books.* — This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term "book" as used in the law includes tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations, such as logarithmic tables, interest, cost, and wage tables, etc.; single poems, and the words of a song when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopædias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers.

Blank books, etc., not copyrightable

5. The term "book" can not be applied to —

Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and check books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions.

Directions on scales, or dials, or mathematical or other

instruments; puzzles; games; rebuses; labels; wrappers; formulæ on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles.

Advertisements or catalogues which merely set forth the names, prices, and places where articles are for sale.

Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books.

Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as "books" or as "prints" according to the nature of the copyrightable matter.

Periodicals

6. (*b*) *Periodicals.* — This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies, etc., which appear regularly at intervals of less than a year; and, generally, periodical publications which would be registered as second-class matter at the post-office.

Lectures, etc.

7. (*c*) *Lectures, sermons, addresses,* or similar productions, prepared for oral delivery.

Dramatic compositions, etc.

8. (*d*) *Dramatic and dramatico-musical compositions,* such as dramas, comedies, operas, operettas and similar works.

The designation "dramatic composition" does not include the following: Dances, ballets, or other choregraphic works; tableaux and moving picture shows; stage settings or mechanical devices by which dramatic effects are produced, or "stage business"; animal shows, sleight-of-hand performances, acrobatic or circus tricks of any kind; descriptions of moving pictures or of settings for the production of moving pictures. (These, however, when printed and published, are registrable as "books.")

Dramatico-musical compositions, etc.

9. *Dramatico-musical compositions* include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung.

Songs separately published

Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions.

Musical compositions

10. (*e*) *Musical compositions*, including other vocal and all instrumental compositions, with or without words.

But when the text is printed alone it should be registered as a "book," not as a "musical composition."

"Adaptations" and "arrangements" may be registered as "new works" under the provisions of section 6. Mere transpositions into different keys are not expressly provided for in the copyright act; but if published with copyright notice and copies are deposited with application, registration will be made.

Maps

11. (*f*) *Maps*. — This term includes all cartographical works, such as terrestrial maps, plats, marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence.

Works of art

12. (*g*) *Works of art*. — This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented.

Toys, games, etc.

No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles.

Reproductions of works of art

13. (*h*) *Reproductions of works of art*. — This term refers to such reproductions (engravings, woodcuts, etchings, casts, etc.) as contain in themselves an artistic element distinct from that of the original work of art which has been reproduced.

Drawings or plastic works

14. (*i*) *Drawings or plastic works of a scientific or technical character*. — This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, etc.

Photographs

15. (*j*) *Photographs*. — This term covers all positive prints from photographic negatives, including those from moving-picture films (the entire series being counted as a single photograph), but not photogravures, half tones, and other photo-engravings.

16. (*k*) ***Prints and pictorial illustrations.*** — This term comprises all printed pictures not included in the various other classes enumerated above. **Prints and pictorial illustrations**

Articles of utilitarian purpose do not become capable of copyright registration because they consist in part of pictures which in themselves are copyrightable, e. g., puzzles, games, rebuses, badges, buttons, buckles, pins, novelties of every description, or similar articles. **Articles for use not copyrightable**

Postal cards can not be copyrighted as such. The pictures thereon may be registered as "prints or pictorial illustrations" or as "photographs." Text matter on a postal card may be of such a character that it may be registered as a "book."

Mere ornamental scrolls, combinations of lines and colors, decorative borders, and similar designs, or ornamental letters or forms of type are not included in the designation "prints and pictorial illustrations." Trademarks can not be copyrighted nor registered in the Copyright Office.

HOW TO SECURE REGISTRATION

17. Copyright registration may be secured for: **Registrable works**

(1) Unpublished works.
(2) Published works.

UNPUBLISHED WORKS

Unpublished works are such as have not at the time of registration been printed or reproduced in copies for sale, or been publicly distributed. They include: (*a*) Lectures, sermons, addresses, or similar productions for oral delivery; (*b*) dramatic and musical compositions; (*c*) photographic prints; (*d*) works of art (paintings, drawings, and sculpture), and (*e*) plastic works.

In order to secure copyright in such unpublished works, the following steps are necessary:

18. (1) In the case of lectures, sermons, addresses, and dramatic and musical compositions, deposit one typewritten or manuscript copy of the work. **Registration of unpublished works**

This copy should be in convenient form, clean and legi-

ble, the leaves securely fastened together, and should bear the title of the work corresponding to that given in the application.

The entire work in each case should be deposited. It is not sufficient to deposit a mere outline or epitome, or, in the case of a play, a mere scenario or a scenario with the synopsis of the dialogue.

Unpublished photograph

19. (2) In the case of photographs, deposit one copy of a positive print of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

Photograph of work of art

20. (3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photographic reproduction.

In each case the deposited article should be accompanied by an application for registration and a money order for the amount of the statutory fee.

Reproduction of unpublished work

21. Any work which has been registered as an unpublished work, if reproduced in copies for sale or distribution, must be deposited a second time (two copies, accompanied by an application for registration and the statutory fee) in the same manner as is required in the case of works published in the first place.

PUBLISHED WORKS

DEPOSIT OF COPIES

Deposit of copies

22. After publication of the work with the copyright notice inscribed, two *complete* copies of the best edition of the work must be sent to the Copyright Office, with a proper application for registration correctly filled out and a money order for the amount of the legal fee.

The statute requires that the deposit of the copyright work shall be made "promptly," which has been defined as "without unnecessary delay." It is not essential, however, that the deposit be made on the very day of publication.

23. Published works are such as are printed or otherwise

produced and "placed on sale, sold, or publicly distributed" (*i. e.*, so that all persons who desire copies may obtain them without restriction or condition other than that imposed by the copyright law). Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication. Works intended for sale or general distribution must first be printed with the statutory form of copyright notice inscribed on every copy intended to be circulated. **Definition of "published work"**

NOTICE OF COPYRIGHT

24. The ordinary form of copyright notice for books, periodicals, dramatic and musical compositions is "Copyright, 19— (the year of publication), by A. B. (the name of the claimant)." The name of the claimant printed in the notice should be the real name of a living person, or his trade name if he always uses one (but not a pseudonym or pen name), or the name of the firm or corporation claiming to own the copyright. The copyright notice should not be printed in the name of one person *for the benefit of another*. The beneficiary's name should be printed in such cases. **Form of notice**

25. In the case of maps, photographs, reproductions of works of art, prints or pictorial illustrations, works of art, models or designs for works of art, and plastic works of a scientific or technical character, the notice may consist of the letter C, inclosed within a circle, thus (C), accompanied with the initials, monogram, mark, or symbol of the copyright proprietor. But in such cases the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work. **Short form of notice**

26. The prescribed notice must be affixed to each copy of the work published or offered for sale in the United States. But no notice is required in the case of foreign books printed abroad seeking *ad interim* protection in the United States, as provided in section 21 of the copyright act. **Notice upon each copy**

AMERICAN MANUFACTURE OF COPYRIGHT BOOKS

Works produced in United States

27. The following works must be manufactured in the United States in order to secure copyright:

(*a*) All "books" in the English language and books in any language by a citizen or domiciled resident of the United States must be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein or, if the text of such books be produced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States; and the printing of the text and binding of the book must be performed within the limits of the United States.

(*b*) All *illustrations* within a book produced by lithographic process or photo-engraving process and all *separate lithographs* or *photo-engravings* must be produced by lithographic or photo-engraving process wholly performed within the limits of the United States, except when the subjects represented in such illustrations in a book or such separate lithographs or photo-engravings "are located in a foreign country and illustrate a scientific work or reproduce a work of art."

Books by foreign authors

28. Books by foreign authors in any language other than English are not required to be printed in the United States.

Books printed abroad

In the case of books printed abroad in the English language an *ad interim* term of copyright of thirty days from registration made in the Copyright Office within thirty days after publication abroad may be secured; but in order to extend the copyright to the full term of protection, an edition of the work must be published in the United States within the thirty days *ad interim* term, printed or produced within the limits of the United States as required in section 15 of the copyright act.

APPLICATION FOR REGISTRATION

Application for registration

29. The application for copyright registration required to be sent with each work (see No. 20) must state the following facts, without which no registration can be made:

(1) The *name* and address of the claimant of copyright.
(2) The *nationality* of the author of the work.
(3) The *title* of the work.
(4) The name and address of person to whom certificate is to be sent.
(5) In the case of all *published* works the actual date (year, month, and day) when the work was published.

Name of author

30. In addition, it is desirable that the application should state for record the name of the author. If, however, the work is published anonymously or under a pseudonym and it is not desired to place on record the real name of the author, this may be omitted. In the case of works made for hire, the employer may be given as the author.

Nationality of author

By the nationality of the author is meant citizenship, not race; a person naturalized in the United States should be described as an American. An author, a citizen of a foreign country having no copyright relations with the United States, may secure copyright in this country, if at the time of publication of his work he is a permanent resident of the United States. The fact of such permanent residence in the United States should be expressly stated in the application. Care should be taken that the title of the work, the name of the author, and the name of the copyright claimant should be correctly stated in the application, and that they should agree exactly with the same statements made in the work itself.

APPLICATION FORMS

Application forms

31. The Copyright Office has issued the following application forms, which will be furnished on request, and should be used when applying for copyright registration:

A. Book by citizen or resident of the United States.

A¹. New ed. New edition of book by citizen or resident of the United States.

A for. Book by citizen or resident of a foreign country, but manufactured in the United States.

A². Edition printed in the United States of a book originally published abroad in the English language.

A³. Book by foreign author in foreign language.

A⁴. Ad interim. Book published abroad in the English language.

A⁵. Contribution to a newspaper or periodical.

B¹. Periodical. For registration of single issue.

B². Periodical. General application and deposit.

C. Lecture, sermon, or address.

D¹. Published dramatic composition.

D². Dramatic composition not reproduced for sale.

D³. Dramatico-musical composition.

E¹. Published musical composition.

E². Musical composition not reproduced for sale.

F. Published map.

G. Work of art (painting, drawing, or sculpture); or model or design for a work of art.

H. Reproduction of a work of art.

I. Drawing or plastic work of a scientific or technical character.

J¹. Photograph published for sale.

J². Photograph not reproduced for sale.

K. Print or pictorial illustration.

AFFIDAVIT OF MANUFACTURE

Affidavit for book

32. In the case of books by American authors and all books in the English language the application must be accompanied by an affidavit, showing the following facts:

(1) That the copies deposited have been printed from type set within the limits of the United States; or from plates made within the limits of the United States from type set therein; or if the text be produced by lithographic process or photo-engraving process, that such process was wholly performed within the limits of the United States. Stating, in either case, the place and the establishment where such work was done.

(2) That the printing of the text has been performed within the limits of the United States, showing the place and the name of the establishment doing the work.

(3) That the binding of such books has been performed within the limits of the United States, showing the place

and the name of the establishment where the work was done. This can be omitted if the work is unbound.

(4) That the completion of the printing of said book was on a stated day, or that the book was published on a given date.

Section 62 of the copyright act defines the date of publication as "the earliest date when copies of the first authorized edition *were placed on sale, sold, or publicly distributed* by the proprietor of the copyright or under his authority."

Date of publication

33. The affidavit may be made before any officer authorized to administer oaths within the United States who can affix his official seal to the instrument.

Affidavit must be under seal

The applicant and the officer administering the oath for such affidavit are specially requested to make sure that the instrument is properly executed, so as to avoid the delay of having it returned for amendment. Experience shows that among the common errors made by applicants are the following:

Errors by applicants

Failure to write in the "venue," that is, the name of the county and State, and to make sure that the notary's statement agrees.

Reciting a corporation or partnership as affiant. Oaths can be taken only by individuals.

Failure to state in what capacity the affiant takes the oath, whether as claimant, agent of the claimant, or printer. Where a corporation or firm is the claimant, the affiant should swear as agent.

Failure to state the *exact date* of publication or completion of printing. The month alone is insufficient.

Failure to sign the affidavit. The signature should correspond exactly with the name of the affiant stated at the beginning. Corporation or firm names must not appear in this place.

Failure to obtain signature of the notary after swearing to the contents.

Failure to obtain the seal of the notary.

Swearing before an officer not authorized to act in the place stated in the venue.

Variance between names and dates as stated in the affidavit and the application.

The affidavit must never be made before the day of publication.

By whom affidavit may be made

34. The affidavit may be made by: (1) The person claiming the copyright; or (2) his duly authorized agent or representative residing in the United States; or (3) the printer who has printed the book.

The person making the affidavit must state in which of the above-mentioned capacities he does so.

Book in foreign language

35. In the case of a foreign author applying for a book in a language other than English, no affidavit is required, as such books are not subject to the manufacturing clause.

In the case of a foreign author applying for a book in the English language, the same affidavit must be made as in that of an American author, except where a book is deposited for *ad interim* protection under section 21. In such cases the affidavit must be filed when the *ad interim* copyright is sought to be extended to the full term.

The affidavit is only required for BOOKS.

PERIODICALS (FORM B)

Periodicals

36. Application should be made in the same manner as for books, depositing two copies, but no affidavit is required.

Separate registration is necessary for each number of the periodical published with a notice of copyright, and can only be made after publication. It is not possible to register the title of the periodical in advance of publication.

CONTRIBUTIONS TO PERIODICALS (FORM A[5])

Contributions to periodicals

37. If special registration is requested for any contribution to a periodical, *one* copy of the number of the periodical in which the contribution appears should be deposited promptly after publication.

The entire copy should be sent; sending a mere clipping or a page containing the contribution does not comply with the statute.

The date of publication of a periodical is not necessarily

the date stated on the title-page. The application should state the day on which the issue is "first placed on sale, sold, or publicly distributed," which may be earlier or later than the date printed on the title-page.

AD INTERIM APPLICATIONS (FORM A[4])

Ad interim copyright

38. Where a book in the English language has been printed abroad, an *ad interim* copyright may be secured by depositing in the Copyright Office one complete copy of the foreign edition, with an application containing a request for the reservation and a money order for $1. Such applications should state: (1) Name and nationality of the author; (2) Name and nationality of the copyright claimant; (3) Exact date of original publication abroad.

The deposit must be made within thirty days from publication abroad. Whenever, within the thirty days' period of *ad interim* protection, an edition manufactured in the United States is published, and two copies are deposited, the copyright claim therein may be registered the same as any other book (Form A[2]).

MAILING APPLICATIONS AND COPIES

Address of mail matter

39. All mail matter intended for the Copyright Office should be addressed to the "Register of Copyrights, Library of Congress, Washington, D. C." No letters dealing with copyright matters should be addressed to individuals in the office.

Copyright matter designed for deposit in the Copyright Office will be transmitted by the postmaster free of charge when requested. The postmaster will also, when requested, give a receipt for matter so delivered to him for transmission.

No franking label is issued by the Copyright Office for this purpose.

FEES

Copyright fees

40. The fee required to be paid for copyright registration is $1, except that in case of photographs it is only 50 cents when no certificate of registration is desired.

Remittances

All remittances to the Copyright Office should be sent by money order or bank draft. Postage stamps should not be sent for fees or postage. Checks can not be accepted unless certified. Coin or currency inclosed in letter or packages if sent will be at the remitter's risk.

Publishers may for their own convenience deposit in the Copyright Office a sum of money in advance against which each registration will be charged.

ASSIGNMENTS OF COPYRIGHT

Assignments of copyright

41. When a copyright has been assigned the instrument in writing signed by the proprietor of the copyright may be filed in this office for record within six calendar months after its execution without the limits of the United States or three calendar months within the United States.

After having been recorded the original assignment will be returned to the sender with a sealed certificate of record attached.

Fee for recording assignment

42. The fee for recording and certifying an assignment is $1 up to 300 words; $2 from 300 to 1,000 words; and another dollar for each additional thousand words or fraction thereof over 300 words.

Name of assignee in claim

43. After the assignment has been duly recorded, the assignee may substitute his name for that of the assignor in the copyright notice on the work assigned. Such substitution or transfer of ownership will be indexed in this office upon request, at a cost of 10 cents for each work assigned.

NOTICE OF USER OF MUSICAL COMPOSITIONS

Notice of user of music

44. Whenever the owner of the copyright in a musical composition uses such music in phonographs himself or permits anyone else to do so, he must send a notice of such use by him or by any other person to the Copyright Office to be recorded.

Notice in absence of license

45. Whenever any person in the absence of a license intends to use a copyrighted musical composition upon the

parts of instruments serving to reproduce the same mechanically, the act requires that he shall serve notice of such intention upon the copyright proprietor and must also send a duplicate of such notice to the Copyright Office.

APPLICATION FOR THE RENEWAL OR EXTENSION OF SUBSISTING COPYRIGHTS

Renewals and extensions

46. Application for the renewal or extension of a subsisting copyright (except copyright of a composite work) may be filed within one year prior to the expiration of the existing term by:

(1) The author of the work if still living;

(2) The widow, widower, or children of the author if the author is not living.

(3) The author's executor, if such author, widow, widower, or children be not living;

(4) If the author, widow, widower, and children are all dead, and the author left no will, then the next of kin.

Renewal for composite work

47. If the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor is entitled to the privilege of renewal and extension.

Renewal fee

48. The fee for the recording of the renewal claim is 50 cents. Application for the renewal or extension of copyright can not be recorded in the name of an assignee nor in that of any person not expressly mentioned in section 24 of the act.

SEARCHES

Searches

49. Upon application to the Register of Copyrights search of the records, indexes, or deposits will be made for such information as they may contain relative to copyright claims. Persons desiring searches to be made should state clearly the nature of the work, its title, the name of the claimant of copyright and probable date of entry; in the case of an assignment, the name of the assignor or as-

signee or both, and the name of the copyright claimant and the title of the music referred to in case of notice of user.

Search fee

The statutory fee for searches is 50 cents for each full hour of time consumed in making such search.

AFFIDAVIT OF AMERICAN MANUFACTURE OF COPYRIGHT BOOK.

A[1]

Fill in the required statements to accord with the facts concerning the book named, and draw pen through such statements as are not intended to be made.

State of _____ } ss.
County of _____ }

Impression seal here

I, _____

_____, { being duly sworn, depose / do solemnly affirm } and say:

(1) That I am the person claiming copyright in the book named herein.

(2) That I am the duly authorized agent or representative residing in the United States of the claimant of copyright in the book named herein.

(3) That I am the printer of the book named herein.

I further depose and say that, in so far as required by the Act of March 4, 1909,

the BOOK ENTITLED _____

_____

of which two copies have been deposited, HAS BEEN PRINTED by _____

_____ at _____

from { type / plates made in the U. S. from type } set within the limits of the United States by _____ at _____;

that the printing of the text of the said book was completed on _____,

19___; that the said book was published on _____, 19___;
that the BINDING of the said book has been performed within the limits of the United States by _____ at _____.

(Signature) _____

Subscribed and { sworn to / affirmed } before me this _____ day of _____, 19___.

_____

Place seal at top of page

_____

[OVER]

A I

Name of claimant

Author and title

Leave all above these lines blank

a c. rec'd

Affidavit rec'd

Cl. A, XXc. No.

$ Cash No.

APPLICATION FOR COPYRIGHT — BOOK BY CITIZEN OR RESIDENT OF THE UNITED STATES.

REGISTER OF COPYRIGHTS, WASHINGTON, D. C. _____ Date.

Of the BOOK named herein, first published after June 30, 1909, TWO complete copies of the best edition published on the date stated herein are hereby deposited to secure copyright, accompanied by the AFFIDAVIT required by section 16 of the Act of March 4, 1909, that the book has been produced in accordance with the manufacturing provisions specified in section 15 of the said Act. $1 (statutory fee for registration) is also inclosed. The copyright is claimed by the undersigned:

Name and address of copyright claimant _____

Author or authors _____

If the work is anonymous or pseudonymous, it is not obligatory to state the name of the author

Title of book _____

_____vol._____ Price, $_____. Date of publication _____ [Must be exactly stated]
[Date when placed on sale, sold, or publicly distributed]

Send certificate of registration to _____

NOTE.— This form is to be used only for BOOKS by CITIZENS or RESIDENTS of the United States A separate application card must be used for each separate WORK. No registration can be made unless copies are accompanied with a properly filled-out application card, statutory fee, and the required AFFIDAVIT.

☞ Failure to deposit copies bars suit for infringement and, if deposit of copies is not made after "actual notice," involves a fine of $100, the payment of twice the value of the book, and the COPYRIGHT BECOMES VOID.

(OVER)

5. U. S. TREASURY AND POST OFFICE REGULATIONS

(T. D. 31754.)

TREASURY DEPARTMENT, *July* 17, 1911.

Collectors and other officers of the customs:

The following sections of the copyright law, approved March 4, 1909, effective July 1, 1909, together with the regulations made in pursuance thereof, are published for the information and guidance of customs officers and others concerned:

[Here follow secs. 15, 30, 31, 32, 33, 18, as given in preceding pages.]

The register of copyrights is required by this act to print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, which printed catalogues, as they are issued, will be distributed to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails.

REGULATIONS

Under the copyright act the following articles are prohibited importation:

1. Piratical copies of any work copyrighted in the United States. By the term "piratical" is meant the printing, reprinting, publishing, copying, or reproducing without authority of the copyright proprietor of any article legally copyrighted and on which the copyright is still in force.

2. Articles bearing a false notice of copyright when there is no existing copyright thereon in the United States.

3. Authorized foreign reprints of books by an American author copyrighted in the United States.

4. Authorized copies of any book copyrighted in the United States not produced in accordance with the manufacturing provisions of section 15 of the copyright act, except such as are exempted in the said section 15 and section 31 of the act.

All books on which there is an existing copyright in the United Staes are prohibited importation unless produced in accordance with the manufacturing provision of section 15, whether copyrighted under this act or previous acts. (Opinion of the Attorney General, T. D. 30136, Nov. 24, 1909.)

Copyrighted books produced in accordance with the manufacturing provisions of section 16 of the copyright act, when exported and rebound abroad may be admitted to entry on their return to the United States. (Opinion of the Attorney-General, T. D. 30414.)

As copyrighted books are required to be printed and bound in the United States, evidence should be required on entry that such books were exported in a bound condition and not as loose sheets, and that the printing and binding were both performed within the limits of the United States.

Imported articles found to bear a false notice of copyright will be detained and forfeiture proceedings instituted as provided in Schedule 32.

If satisfactory evidence is not produced to the collector that such imported books were produced in accordance with the manufacturing provisions of section 15, or are exempt therefrom, the books will be seized and forfeiture proceedings instituted as provided in section 32.

Forfeiture proceedings instituted under the copyright act will be conducted in the same manner as in case of merchandise seized for violation of the customs laws, section 32, *supra*. (Arts. 1266 to 1269, Customs Regulations, 1908.)

Authorized editions of copyright books imported through the mails or otherwise in violation of the copyright act may, under customs supervision, be returned to the country of exportation whenever it is shown in a written application to the satisfaction of the Secretary of the Treasury that such importation was not due to willful negligence or fraud. (Sec. 32, *supra*.)

In any case in which a customs officer is in doubt as to whether an article is prohibited importation under the copyright act the articles should be detained and the facts reported to the department for instruction.

FRANKLIN MACVEAGH, *Secretary*.

JOINT REGULATIONS

Governing treatment of letters and packages received in the mails from foreign countries containing or supposed to contain articles prohibited importation by the copyright act of March 4, 1909.

The "Joint regulations governing the treatment of dutiable and supposed dutiable articles received in the mails from foreign countries" are also applicable in the treatment of articles which contain or which are supposed to contain matter prohibited importation by the copyright act, except as hereinafter modified;

Unsealed correspondence and packages (registered and unregistered) of all kinds which upon examination prove to contain articles prohibited importation by the copyright act shall be retained by customs officers, who will notify the addressee of the facts of the case. If an application is not made within a reasonable time to the Secretary of the Treasury for permission to return such articles to the country of export, the customs officers shall take appropriate steps to forfeit the articles as provided in section 32 of the copyright act.

Sealed articles supposed to contain matter prohibited importation by the copyright act must be appropriately marked to indicate that fact at the exchange office of receipt. The same conditions shall apply in regard to the marking, opening, and disposition of such sealed articles by the addressee or authorized agent as are required in the case of the opening and treatment of sealed "Supposed liable to customs duty" pieces. If the customs officer finds an article contains matter prohibited importation by the copyright act, he shall notify the addressee of the facts through the postmaster at the office of delivery. If an application is not then made within a reasonable time to the Secretary of the Treasury for permission to return the article to the country of export, the customs officer shall take appropriate steps to forfeit the matter as provided in section 32 of the copyright act.

Receipt should be taken for articles submitted to customs officials as prohibited importation under the copy-

right law and proper record made on the Post Office records of the disposition of such articles as are not returned to be disposed of through the mails.

Notice of actual or contemplated illegal importations through the mails should be given to the Secretary of the Treasury or the Postmaster General. On receipt of such notices either by the Secretary of the Treasury or the Postmaster General instructions will be promptly issued.

FRANKLIN MACVEAGH,
Secretary of the Treasury.
FRANK H. HITCHCOCK,
Postmaster General.

II

BRITISH EMPIRE: COPYRIGHT PROVISIONS

6. BRITISH COPYRIGHT ACT, 1911

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO COPYRIGHT [16th December 1911.]

(2 GEORGE V, CHAPTER 46)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: —

PART I.

IMPERIAL COPYRIGHT.

Rights.

Copyright

1. — (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if —

(*a*) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(*b*) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right, —

(*a*) to produce, reproduce, perform, or publish any translation of the work;

(*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

(*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;

(*d*) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,

and to authorize any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

Infringement of copyright

2. — (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright: —

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of

any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work:

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art:

(iv) The publication in a collection, mainly composed of non-copyright matter, bonâ fide intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries:

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(*a*) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(*b*) distributes either for the purposes of trade or to such

an extent as to affect prejudicially the owner of the copyright; or

(*c*) by way of trade exhibits in public; or

(*d*) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

Term of copyright

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licences

4. If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit.

Ownership of copyright, &c.

5. — (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that —

(*a*) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and

(*b*) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to the United Kingdom or any self-

governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

Civil remedies for infringement of copyright

6. — (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then —

(*a*) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(*b*) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights of owner against persons possessing or dealing with infringing copies, &c.

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of innocent infringer from liability to pay damages, &c.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no

reasonable ground for suspecting that copyright subsisted in the work.

Restriction on remedies in the case of architecture

9. — (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

Limitation of actions

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Summary Remedies.

Penalties for dealing with infringing copies, &c.

11. — (1) If any person knowingly —

(*a*) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(*b*) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or

(*c*) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(*d*) by way of trade exhibits in public any infringing copy of any such work; or

(*e*) imports for sale or hire into the United Kingdom any infringing copy of any such work:

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his posses-

sion any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906. 2 Edw. 7. c. 15. 6 Edw. 7. c. 36.

Appeals to quarter sessions

12. Any person aggrieved by a summary conviction of an offence under the foregoing provisions of this Act may in England and Ireland appeal to a court of quarter sessions and in Scotland under and in terms of the Summary Jurisdiction (Scotland) Acts.

Extent of provisions as to summary remedies

13. The provisions of this Act with respect to summary remedies shall extend only to the United Kingdom.

Importation of Copies.

Importation of copies

14. — (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be included in the table of prohibitions and

39 & 40 Vict. c. 36.

restrictions contained in section forty-two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876: Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to Libraries.

Delivery of copies to British Museum and other libraries

15. — (1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depôt in London named in the demand a copy of the book for, or in accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin, and subject to the provisions of this section the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceed-

ing five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Special Provisions as to certain Works.

Works of joint authors

16.—(1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is

not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous works

17.—(1) In the case of a literary dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyrignt shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section three of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be prima facie proof of the copyright being with the owner of the manuscript.

Provisions as to Government publications

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Provisions as to mechanical instruments

19.—(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original

plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within the parts of His Majesty's dominions to which this Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves —

(*a*) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(*b*) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate herein-after mentioned:

Provided that —

(i) nothing in this provision shall authorize any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall —

(*a*) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent.; and

(*b*) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions: —

(*a*) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply:

(*b*) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances soid before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten:

(*c*) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives:

(*d*) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not

be construed as authorizing any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section:

(*e*) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived.

Provided that —

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

Provision as to political speeches

20. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provisions as to photographs

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such nega-

tive at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Provisions as to designs registrable under 7 Edw. 7. c. 29.

22. — (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2) General rules under section eighty-six of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works.

Existing works

24. — (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that —

(*a*) if the author of any work in which any such right as

is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either —

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the London Gazette and in two London newspapers:

(*b*) where any person has, before the twenty-sixth day

of July nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section nineteen subsections (7) and (8) and of section thirty-three of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Application to British Possessions.

Application of Act to British dominions

25. — (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the London Gazette that any self-governing dominion has passed legislation under which works, the authors

whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works. manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

Legislative powers of self-governing dominions

25.—(1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making

of the work, resident within the first-mentioned dominion, and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this subsection, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this subsection, the expression "a "dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

Power of Legislatures of British possessions to pass supplemental legislation

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

Application to protectorates

28. His Majesty may, by Order in Council, extend this Act to any territories under his protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends.

PART II.

INTERNATIONAL COPYRIGHT.

Power to extend Act to foreign works

29. — (1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply —

(*a*) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;

(*b*) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were British subjects;

(*c*) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

Provided that —

(i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country ha .nade, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I. of this Act;

(ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first pub-

lished in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(v) in applying the provision of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;

(vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886.

49 & 50 Vict. c. 33.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

Application of Part II. to British possessions

30. — (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in

Council to declare that such order and this Part of this Act do not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III.

SUPPLEMENTAL PROVISIONS.

Abrogation of common law rights

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Provisions as to Orders in Council

32. — (1) His Majesty in Council may make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every Order in Council made under this Act shall be published in the London Gazette and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

Saving of university copyright. 15 Geo. 3. c. 53

33. Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775, of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

Saving of compensation to certain libraries

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

Interpretation

35. — (1) In this Act, unless the context otherwise requires, —

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

"Work of sculpture" includes casts and models;

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography;

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means —

(*a*) an encyclopædia, dictionary, year book, or similar work;

(*b*) a newspaper, review, magazine, or similar periodical; and

(*c*) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

"Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act;

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument;

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

"Lecture" includes address, speech, and sermon;

"Self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a

work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part.

Repeal

36. Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part.

Short title and commencement

37. — (1) This Act may be cited as the Copyright Act, 1911.

(2) This Act shall come into operation —

(*a*) in the United Kingdom, on the first day of July nineteen hundred and twelve or such earlier date as may be fixed by Order in Council;

(*b*) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion;

(*c*) in the Channel Islands, at such date as may be fixed by the States of those islands respectively;

(*d*) in any other British possession to which this Act extends, on the proclamation thereof within the possession by the Governor.

FIRST SCHEDULE.

EXISTING RIGHTS.

EXISTING RIGHT.	SUBSTITUTED RIGHT.
(a) In the case of Works other than Dramatic and Musical Works.	
Copyright.	Copyright as defined by this Act.*
(b) In the case of Musical and Dramatic Works.	
Both copyright and performing right.	Copyright as defined by this Act.*
Copyright, but not performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings: —

"Copyright," in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work;

"Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

* In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would if this Act had not been passed have become entitled under section eighteen of the Copyright Act, 1842.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

SESSION AND CHAPTER.	SHORT TITLE.	EXTENT OF REPEAL.
8 Geo. 2. c. 13.	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. 3. c. 38.	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. 3. c. 53.	The Copyright Act, 1775.	The whole Act.
17 Geo. 3. c. 57.	The Prints Copyright Act, 1777.	The whole Act.
54 Geo. 3. c. 56.	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. 4. c. 15.	The Dramatic Copyright Act, 1833.	The whole Act.
5 & 6 Will. 4. c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. 4. c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. 4. c. 110.	The Copyright Act, 1836.	The whole Act.
5 & 6 Vict. c. 45.	The Copyright Act, 1842.	The whole Act.
7 & 8 Vict. c. 12.	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright Act, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Vict. c. 68.	The Fine Arts Copyright Act, 1862.	Sections one to six. In section eight the words "and pursuant "to any Act for the "protection of copy-"right engravings." Sections nine to twelve.
38 & 39 Vict. c. 12.	The International Copyright Act, 1875.	The whole Act.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Section forty-two, from "Books wherein" to "such copyright will expire." Sections forty-four, forty-five and one hundred and fifty-two.
45 & 46 Vict. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.

SESSION AND CHAPTER.	SHORT TITLE.	EXTENT OF REPEAL.
49 & 50 Vict. c. 33.	The International Copyright Act, 1886.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.
52 & 53 Vict. c. 42.	The Revenue Act, 1889.	Section one, from "Books first published" to "as provided in that section."
6 Edw. 7. c. 36.	The Musical Copyright Act, 1906.	In section three the words "and which has "been registered in ac- "cordance with the "provisions of the "Copyright Act, 1842, "or of the International "al Copyright Act, "1844, which registration may be effected notwithstanding "anything in the International Copyright Act, 1886."

6*a*. FINE ARTS COPYRIGHT ACT, 1862

repealed Sections]

(25 & 26 VICTORIA, CHAPTER 68)

Penalties on fraudulent Productions and Sales

VII. No Person shall do or cause to be done any or either of the following Acts; that is to say,

First, no Person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any Painting, Drawing, or Photograph, or the Negative thereof, any Name, Initials, or Monogram:

Secondly, no Person shall fraudulently sell, publish, exhibit, or dispose of, or offer for Sale, Exhibition, or Distribution, any Painting, Drawing, or Photograph, or Negative of a Photograph, having thereon the Name, Initials, or Monogram of a Person who did not execute or make such Work:

Thirdly, no Person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any Copy or colourable Imitation of any Painting, Drawing, or Photograph, or Negative of a Photograph, whether there shall be subsisting Copyright therein or not, as having been made or executed by the Author or Maker of the original Work from which such Copy or Imitation shall have been taken:

Fourthly, where the Author or Maker of any Painting, Drawing, or Photograph, or Negative of a Photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the Possession of such Work, if any Alteration shall afterwards be made therein by any other Person, by Addition or otherwise, no Person shall be at liberty, during the Life of the Author or Maker of such Work, without his Consent, to make or knowingly to sell [illegible]lish, or offer for Sale, such Work or any Copies of such Work so altered as aforesaid,

or of any Part thereof, as or for the unaltered Work of such Author or Maker:

Every Offender under this Section shall, upon Conviction, forfeit to the Person aggrieved a Sum not exceeding Ten Pounds, or not exceeding double the full Price, if any, at which all such Copies, Engravings, Imitations, or altered Works shall have been sold or offered for Sale; and all such Copies, Engravings, Imitations, or altered Works shall be forfeited to the Person, or the Assigns or legal Representatives of the Person, whose Name, Initials, or Monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered Work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the Penalties imposed by this Section shall not be incurred unless the Person whose Name, Initials, or Monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered Work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within Twenty Years next before the Time when the Offence may have been committed. **Penalties**

VIII. All pecuniary Penalties which shall be incurred, and all such unlawful Copies, Imitations, and all other Effects and Things as shall have been forfeited by Offenders, pursuant to this Act, may be recovered by the Person herein-before and in any such Acts as aforesaid empowered to recover the same respectively, and herein-after called the Complainant or the Complainer, as follows: **Recovery of pecuniary Penalties**

In England and Ireland, either by Action against the Party offending, or by summary Proceeding before any Two Justices having Jurisdiction where the Party offending resides: **In England and Ireland**

In Scotland by Action before the Court of Session in ordinary Form, or by summary Action before the Sheriff of the County where the Offence may be committed or the Offender resides, and any Judgment so to be pronounced by the Sheriff in such summary Application shall be final and conclusive, and not subject to Review by Suspension, Reduction, or otherwise. **In Scotland**

6*b*. MUSICAL (SUMMARY PROCEEDINGS) COPYRIGHT ACT, 1902

[*Unrepealed*]

(2 EDWARD VII., CHAPTER 15)

AN ACT TO AMEND THE LAW RELATING TO MUSICAL COPYRIGHT. [22d JULY, 1902.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Seizure, etc., of pirated copies

1. A court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may, by order, authorize a constable to seize such copies without warrant and to bring them before the court, and the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize copies on hawkers

2. If any person shall hawk, carry about, sell or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner.

On seizure of any such copies, they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit.

Definitions

3. "Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorise another person to

do all or any of the following things in respect of a musical work:

(1) To make copies by writing or otherwise of such musical work.

(2) To abridge such musical work.

(3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

Short title and commencement

4. This Act may be cited as The Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the first day of October one thousand nine hundred and two, and shall apply only to the United Kingdom.

6*c*. MUSICAL COPYRIGHT ACT, 1906

[*Unrepealed*]

(6 EDWARD VII., CHAPTER 36)

AN ACT TO AMEND THE LAW RELATING TO MUSICAL COPYRIGHT. [4TH AUGUST, 1906.]

A. D. 1906

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Penalty for being in possession of pirated music

1.—(1) Every person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale, any pirated copies of any musical work, or has in his possession any plates for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he proves that he acted innocently) be guilty of an offence punishable on summary conviction, and shall be liable to a fine not exceeding five pounds, and on a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding two months or to a fine not exceeding ten pounds: Provided that a person convicted of an offence under this Act who has not previously been convicted of such an offence, and who proves that the copies of the musical work in respect of which the offence was committed had printed on the title page thereof a name and address purporting to be that of the printer or publisher, shall not be liable to any penalty under this Act unless it is proved that the copies were to his knowledge pirated copies.

Constable may take into custody without warrant

(2) Any constable may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright in such work or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in

respect to such work, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars.

(3) A copy of every written authority addressed to a chief officer of police under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority.

(4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a court of quarter sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875. **38 & 39 Vict. c. 62**

Right of entry by police for execution of Act

2. — (1) If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the court may grant a search warrant authorising the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed.

(2) All copies of any musical work and plates seized under this section shall be brought before a court of summary jurisdiction, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies shall be forfeited and destroyed or otherwise dealt with as the court think fit.

Definitions:

3. In this Act —

The expression "pirated copies" means any copies of any musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work: **"Pirated copies"**

The expression "musical work" means a musical work in which there is a subsisting copyright: **"Musical work"**

The expression "plates" includes any stereotype or other **"Plates"**

plates, stones, matrices, transfers, or negatives used or intended to be used for printing or reproducing copies of any musical work: Provided that the expressions "pirated copies" and "plates" shall not, for the purposes of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made:

"Chief officer of police"

The expression "chief officer of police" —

(*a*) with respect to the City of London, means the Commissioner of City Police;

53 & 54 Vict. c. 45

(*b*) elsewhere in England has the same meaning as in the Police Act, 1890;

53 & 54 Vict. c. 67

(*c*) in Scotland has the same meaning as in the Police (Scotland) Act, 1890;

(*d*) in the police district of Dublin metropolis means either of the Commissioners of Police for the said district;

(*e*) elsewhere in Ireland means the District Inspector of the Royal Irish Constabulary:

"Court of summary jurisdiction"

The expression "court of summary jurisdiction" in Scotland means the sheriff or any magistrate of any royal, parliamentary, or police burgh officiating under the provisions of any local or general police Act.

Short title

4. This Act may be cited as the Musical Copyright Act, 1906.

7. CANADIAN COPYRIGHT MEASURE, 1911

An Act Respecting Copyright

1. This Act may be cited as *The Copyright Act, 1911*. **Short title**

INTERPRETATION

2. In this Act, unless the context otherwise requires, — **Definitions:**

"Minister" means the Minister of Agriculture; **"Minister"**

"Department" means the Department of Agriculture; **"Department"**

"legal representatives" includes heirs, executors, administrators and assigns, or other legal representatives; **"Legal representatives"**

"literary work" includes maps, charts, plans, and tables; **"Literary" and other works**

"dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

"literary work," "dramatic work" and "musical work" includes records, perforated rolls or other contrivances by means of which a work may be mechanically performed or delivered;

"artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art, and engravings and photographs;

"work of sculpture" includes casts and models;

"architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, but not in respect of the processes or methods of its construction;

"engravings" include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs; **"Engravings"**

"photograph" includes photo-lithograph and any work produced by any process analogous to photography; **"Photograph"**

"Cinematograph" "cinematograph" includes any work produced by any process analogous to cinematography;

"Pirated" "pirated," when applied to a copy of a work in which copyright subsists, means any copy made without the consent or acquiescence of the owner of the copyright, or imported contrary to this Act;

"Publication" "publication" means the issue of copies to the public and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art;

"Performance" "performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

"Delivery" "delivery," in relation to a lecture, includes delivery by means of any mechanical instrument;

"Plate" "plate" includes any stereotype or other plate, stone, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivance for the acoustic representation of the work are made or intended to be made;

"Lecture" "lecture" includes address, speech and sermon;

'Copyright" "copyright" means the sole right to produce or reproduce any original literary, dramatic, musical or artistic work or any substantial part thereof in any material form whatsoever and in any language; to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work; and shall include the sole right, —

(*a*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

(*b*) in the case of a novel or other non-dramatic work, to convert it into a dramatic work, either by way of multiplication of copies of by way of performance in public;

(*c*) in the case of a literary, dramatic or musical work, to make any record, perforated roll or other contrivance by means of which the work may be mechanically performed, and to authorize any such acts as aforesaid.

Publication, performance or delivery in public

(2.) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public or delivered in public without the consent or acquiescence of the person entitled to authorize its publication, performance in public or delivery in public.

Simultaneous publication

(3.) For the purposes of this Act a work shall be deemed to be first published in Canada, notwithstanding that it has been published simultaneously in some other country, unless the publication in Canada is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two countries if the time between the publication in one such country and the publication in the other country does not exceed fourteen days.

Copyright to bona fide resident

(4.) Where the making of a work has extended over a considerable period the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was, during any substantial part of that period, a bona fide resident of Canada.

CONDITIONS OF COPYRIGHT

Conditions of copyright in Canada

3. Subject to the provisions of this Act, copyright shall subsist in Canada for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work the author whereof was, at the date of the making of the work, a bona fide resident of Canada, but in no other works except so far as the protection conferred by this act is extended by order in council thereunder.

Notice of copyright —

(2.) Every copy of a work published in Canada shall be printed or made in Canada, and shall bear notice of copyright —

Of books, engravings, photographs, maps, etc.

(*a*) if the work is a book or other printed publication, on the title page or on the page immediately following; or,

(*b*) if the work is a literary work (other than a book, or other printed publication), or a musical work, engraving, photograph or cinematograph, on the face thereof; or,

(*c*) if the work is a volume of maps, charts, plans, tables, music, engravings or photographs, on the title page or first page thereof:

in the words "Copyright, Canada, 19—, by A. B."

Of paintings, sculpture, etc.

(3.) Every painting, drawing or work of sculpture published in Canada shall be made in Canada, and the signature of the author shall be notice of copyright.

INFRINGEMENT

Infringement of copyright

4. Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright; —

Exceptions

(i) any fair dealing with any work for the purposes of private study, research, criticism or review;

(ii) where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of the work;

(iii) the making of paintings, drawings, engravings or photographs of a work of sculpture or artistic craftsmanship, if situate in a public place or building, or the making of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;

(iv) the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by notice given either —

(*a*) orally, at the beginning of the lecture, or, if the lecture is one of a series of lectures given by the

same lecturer on the same subject at the same place, at the beginning of the first lecture of the series; or

(*b*) by a conspicuous written or printed notice affixed, before the lecture, or the first lecture of the series, is given, on the entrance doors of the building in which the lecture or series of lectures is given, or in a place near the lecturer.

(v) the representing of any scene or object, notwithstanding that there may be copyright in some other representation of such scene or object.

Infringement by sale, etc.

(2.) Copyright in a work shall also be deemed to be infringed by any person who sells or lets for hire, or exposes, offers or has in his possession for sale or hire, or distributes or exhibits in public, or imports for sale or hire into Canada, any work which to his knowledge infringes copyright or would infringe copyright if it had been made in Canada.

Infringement by public performance

(3.) Copyright in a work shall also be deemed to be infringed by any person who for private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he proves that he acted innocently.

TERM OF COPYRIGHT

Term of copyright

5. The term for which copyright shall subsist, shall, except as otherwise provided by this Act, be the life of the author and a period of fifty years after his death unless previously determined by first publication elsewhere than in Canada, except as otherwise provided by this Act, or by failure to comply with any other requirement of this Act.

LICENSES TO RE-PUBLISH

License to re-publish or perform work in public granted by Minister upon petition

6. If, at any time after a work has been published or performed in public, a petition is presented to the Minister by any person interested, alleging that, by reason of the withholding of the work from the public or of the price charged for copies of the work or for the right to perform the work in public, the reasonable requirements of the public with respect to the work are not satisfied, and praying for the grant of a license to reproduce the work or perform the

work in public, the Minister shall consider the petition, and of, after inquiry, he is satisfied that the allegations contained therein are correct, and if within a reasonable time no remedy is provided by the owner of the copyright, he may grant to the petitioner a license to reproduce or perform the work in public in Canada on such terms as respects price and paymen' of royalties to the owner of the copyright in the work, and otherwise, as the Minister thinks fit.

Appeal

(2.) Any decision of the Minister under this section shall be subject to appeal to the Exchequer Court of Canada, and the decision of that court shall be final.

Ownership of copyright

OWNERSHIP AND ASSIGNMENT OF COPYRIGHT

7. Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that —

(*a*) where in the case of an engraving, photograph or portrait the work was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement in writing to the contrary the person by whom the work was ordered shall be the first owner of the copyright;

(*b*) where the author was in the employment of some other person and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

Assignment of copyright

(2.) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to any particular place, and either for the whole term of the copyright or any part thereof, and may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.

(3.) Any grant of an interest in a copyright, either by assignment or license, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice unless such assignment or license is registered in the manner directed by this Act before the registering of the instrument under which the subsequent assignee or licensee claims. **Registration of assignment or license**

(4.) For the purposes of this Act as to registration, any grant of an interest in a copyright, either by way of assignment or license, shall be made in duplicate. **Duplicate copies**

(5.) Application for registration of a grant of any interest in a copyright, either by way of assignment or license, shall be made by production of both duplicates to the Department and payment of the prescribed fee. One duplicate shall be retained at the Department and the other shall be returned to the person depositing it, with a certificate of registration. **Application for registration**

(6.) Subject to the provisions of this Act the grant of an interest in a copyright, either by assignment or license, shall be void unless the assignee or licensee, at the time such grant is executed, satisfies the conditions conferring copyright prescribed by this Act. **Assignee or licensee must comply with Act**

CIVIL REMEDIES

8. Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are conferred by law. **Civil remedies for infringement of copyright**

(2.) The costs in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the court. **Costs**

9. All pirated copies of any work in which copyright subsists, and all plates used or intended to be used for the production of pirated copies of such work, shall be deemed to be the property of the owner of the copyright, who may take proceedings for the recovery of possession of such copies or in respect of the conversion thereof. **Rights of owner respecting pirated copies**

Remedies in the case of architecture

10. Where a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has commenced to be constructed, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

Limitation

(2.) Such of the other provisions of this Act as provide that a pirated copy shall be deemed the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

OFFENCES AND PENALTIES

Penalty for false entries

11. Every person who wilfully makes or causes to be made any false entry in any of the registry books hereinbefore mentioned, or who wilfully produces, or causes to be tendered in evidence, any paper which falsely purports to be a copy of an entry in any of the said books, is guilty of an indictable offence.

Limitation of action

12. No action or prosecution for the recovery of any penalty under this Act shall be commenced more than three years after the cause of action arises.

SUMMARY REMEDIES

Penalties for dealing with pirated copies

13. If any person —

(*a*) makes for sale or hire any pirated copy of a work in which copyright subsists; or,

(*b*) sells or lets for hire, or exposes, offers, or has in his possession for sale or hire any pirated copy of any such work; or,

(*c*) distributes or exhibits in public any pirated copy of any such work; or,

(*d*) imports for sale or hire into Canada any pirated copy of any such work:

he shall, unless he proves that he acted innocently, be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding twenty-five dollars for every copy dealt with in contravention of this section, but not exceeding two hundred dollars in respect of the

same transaction; or in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months:

Proviso as to certain cases

Provided that a person convicted of an offence under paragraph (*b*) of this subsection, who has not been previously convicted of any such offence and who proves that the copies of the work in respect of which the offence was committed had printed or marked thereon in some conspicuous place a name and address purporting to be that of the printer or publisher, shall not be liable to any penalty under this section unless it is proved that the copies were to his knowledge pirated copies.

Penalty for making or possessing plate of pirated copies.

(2.) If any person makes or has in his possession any plate for the purpose of making pirated copies of any work in which copyright subsists, or for private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall, unless he proves that he acted innocently, be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding two hundred dollars, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

Destruction of plate upon order of court

(3.) The court before which any such proceedings are taken may in addition order that all copies of the work or all plates in the possession of the offender, which appear to it to be pirated copies or plates for the purpose of making pirated copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

Seizure of pirated copies being hawked about or sold and arrest of offender

14. Where a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for believing that pirated copies of any work are being or about to be hawked or carried about, sold or offered for sale, it may issue an order authorising any constable or peace officer —

(*a*) to seize without further warrant any copies of the work which may be found being hawked or carried about, sold or offered for sale;

(*b*) to arrest without further warrant any person who in any street or public place sells or exposes or has in his possession for sale any pirated copies of the work, or who offers for sale any pirated copies of the work by personal canvass or by personally delivering advertisements or circulars.

Execution of order for seizure and arrest

(2.) Where such an order has been made the person on whose application it was made may send a copy thereof (certified to be a true copy by the clerk of the court which made the order) to the chief constable or deputy chief constable for any district within which the court has jurisdiction, and thereupon any constable or peace officer may seize any such copies and arrest any such person in accordance with the terms of the order.

Disposition of works seized

(3.) Where the constable or peace officer seizes any copies of a work in pursuance of such an order, he shall bring them before a court of summary jurisdiction, and that court, on proof that the copies are pirated, may order that they be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

Orders open to inspection

(4.) All copies of orders sent to a chief constable or deputy chief constable under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such order.

(5.) A single order under this section may be made extending to several works.

Scope of order

(6.) An order under this section shall not authorize —

(*a*) the arrest of any person selling or offering for sale; or,

(*b*) the seizure of copies of

Newspaper or periodical excepted

any newspaper or other periodical publication merely because it contains a pirated copy of a work, if such pirated copy is only an incidental feature and does not form a substantial part of the newspaper or periodical.

Search warrants

15. A court of summary jurisdiction may, if satisfied by information on oath that there is reasonable ground for believing that an offence punishable summarily under this Act

is being committed on any premises, grant a search warrant authorising the constable or peace officer named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening (and, if necessary, to use force in making such entry, whether by breaking open doors or otherwise) and to seize any copies of any work or any plates in respect of which he has reasonable ground for suspecting that an offence under this Act is being committed, and may, on proof that the copies or plates brought before the court in pursuance of the warrant are pirated copies or plates intended to be used for the purpose of making pirated copies, order that they be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

IMPORTATION OF COPIES

Importation of copies of copyright works

16. Except as otherwise provided by this Act copies made out of Canada of any work in which copyright subsists shall not be imported into Canada and shall be deemed to be included in Schedule C to *The Customs Tariff*, and that Schedule shall apply accordingly.

If copyright owner licenses reproduction in Canada, the Minister may prohibit importation of books printed elsewhere

17. If a book in which there is subsisting copyright has been published in any part of His Majesty's dominions, other than Canada, and if it is proved to the satisfaction of the Minister that the owner of the copyright has granted a license to reproduce in Canada, from movable or other types, or from stereotype plates, or from electroplates, or from lithograph stones, or by any process for facsimile reproduction, an edition or editions of such book designed for sale only in Canada, the Minister may, notwithstanding anything in this Act, by order under his hand prohibit the importation into Canada, except with the written consent of the licensee, of any copies of such book printed elsewhere: Provided that two such copies may be specially imported for the bona fide use of any public free library or any university or college library, or for the library of any duly incorporated institution or society for the use of the members of such institution or society.

Proviso

Suspension or revocation of prohibition

18. The Minister may at any time in like manner, by order under his hand, suspend or revoke such prohibition upon importation if it is proved to his satisfaction that —

(*a*) the license to reproduce in Canada has terminated or expired; or,

(*b*) the reasonable demand for the book in Canada is not sufficiently met without importation; or,

(*c*) the book is not, having regard to the demand therefor in Canada, being suitably printed or published; or,

(*d*) any other state of things exists on account of which it is not in the public interest to further prohibit importation.

Licensee to furnish copy of any edition if required

19. At any time after the importation of a book has been so prohibited, any person resident or being in Canada may apply either directly or through a book-seller or other agent, to the person so licensed to reproduce such book, for a copy of any edition of such book then on sale and reasonably obtainable in the United Kingdom or any other part of His Majesty's dominions and it shall thereupon be the duty of the person so licensed, as soon as reasonably may be, to import and sell such copy to the person so applying therefor, at the ordinary selling price of such copy in the United Kingdom, or such other part of His Majesty's dominions, with the duty and reasonable forwarding charges added.

Otherwise prohibition may be revoked

(2.) The failure or neglect, without lawful excuse, of the person so licensed to supply such copy within a reasonable time shall be a reason for which the Minister may, if he sees fit, suspend or revoke the prohibition upon importation.

Customs notified of prohibition

20. The Minister shall forthwith inform the Department of Customs of any order made by him under this Act.

Unlawful importation of books

Forfeiture

21. All books imported in contravention of any order, prohibiting such importation, made under the hand of the Minister, by the authority of this Act, may be seized by an officer of Customs, and shall be forfeited to the Crown and

destroyed; and any person importing, or causing or permitting the importation of any book in contravention of an order of the Minister shall, for each offence, be liable, upon summary conviction, to a penalty not exceeding one hundred dollars. Penalty

REGISTRATION

22. The Minister shall cause to be kept, at the Department, books to be called the Registers of Copyrights, in which shall be entered the names or titles of works and the names of authors, and such other particulars as may be prescribed. Registers of copyrights

(2.) The author or publisher of, or the owner of or other person interested in the copyright in, any work shall cause the particulars respecting the work to be entered in the register, before publication thereof or the performance or delivery thereof in public. Registration of particulars of work

(3.) In the case of an encyclopædia, newspaper, review, magazine or other periodical work, or work published in a series of books or parts, it shall not be necessary to make a separate entry for each number or part, but a single entry for the whole work shall suffice. Registration of serial publications

(4.) There shall also be kept at the Department such indexes of the registers established under this section as may be prescribed. Indexes of registers

(5.) The registers and indexes established under this section shall be in the prescribed form, and shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of or make extracts from any such register, and the Minister shall, if so required, give a copy of an entry in any such register certified by him to be a true copy, and any such certificate shall be prima facie evidence of the matters thereby certified. Registers and indexes in prescribed forms; Certified copies of entries

(6.) There shall be charged in respect of entries in registers the inspection of registers, taking copies of or making extracts from registers, and certificates under this section, the fees hereinafter prescribed. Fees

(7.) Any registration made under *The Copyright Act* shall have the same force and effect as if made under this Act. Prior registrations

Registration of temporary copyright in periodical works

23. Any literary work intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical in Canada, may be registered under this Act while it is so preliminarily published as a temporary copyright, if the title of the manuscript and a short analysis of the work are deposited at the Department with an application for registration in accordance with the prescribed form, and if every separate article so published is preceded by the words, "Registered in accordance with the Copyright Act, 1911:" Provided that the work, when published in book or pamphlet form, shall be subject, also, to the other requirements of this Act.

Anonymous publications

24. If a book is published anonymously, it shall be sufficient to enter it in the name of the first publisher thereof, either on behalf of the unnamed author or on behalf of such first publisher, as the case may be.

Application for registration

25. The application for the registration of a copyright or of a temporary copyright may be made in the name of the author or of his legal representatives, by any person purporting to be agent of such author or legal representatives.

Unauthorized assumption of agency

(2.) Any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any court of competent jurisdiction.

Deposit of application and copies of work in Department

26. Application for registration of a copyright shall be made in accordance with the prescribed form, and shall be deposited at the Department together with three copies of the work if it is a book, map, chart, musical composition, photograph, print, cut or engraving, and with a written description thereof if the work is a painting, drawing or a work of sculpture, and with one complete type-written copy thereof if the work is a dramatic work copies of which are not published.

Weekly list of registered works

27. The Minister shall cause to be transmitted to the Library of the Parliament of Canada and to the British Museum a weekly list of all works registered under this Act

together with one copy of each work deposited at the Department: Provided that the Minister may retain at the Department such copies of deposited works as appear in his opinion proper, but a copy of any work so retained shall be transmitted to the Library of Parliament of Canada or to the British Museum upon receipt of a demand in writing from the proper authority, such demand to be received by the Minister within six months after the date of registration of the work. Any copy of a work retained by the Minister as to which no demand is received within the time limited shall be returned to the owner of the copyright, or otherwise disposed of as to the Minister seems proper.

Copies transmitted and retained

SPECIAL PROVISIONS AS TO CERTAIN WORKS

28. In the case of a literary, dramatic or musical work or engraving which has not been published, nor, in the case of a dramatic or musical work been performed in public, nor, in the case of a lecture, been delivered in public, in the lifetime of the author, copyright shall, subject to the provisions of this Act as to first publication elsewhere than in Canada, subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter.

Copyright in posthumous works

29. In the case of a work of joint authorship copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer.

Works of joint authors

30. Where the work of an author is first published as an article or other contribution in a collective work (that is to say): —

Collective works

(*a*) an encyclopædia, dictionary, year book, or similar work;

(*b*) a newspaper, review, magazine, or other similar periodical;

(*c*) a work written in distinct parts by different authors;

and the proprietor of the collective work is not by virtue of

Respective rights of contributors and proprietors

this Act or any assignment thereunder the owner of the copyright in the article or contribution, then, subject to any agreement to the contrary, the owner of the copyright in each article or contribution shall retain his copyright therein, but the proprietor of the collective work shall at all times have the right of reproducing and authorising the reproduction of the work as a whole, and for a period of fifty years from the date of first publication of the collective work shall have the sole right of reproducing and authorising the reproduction of the work as a whole, and shall be entitled to the same remedies in respect of the infringement of the copyright in any part of the work as if he were the owner of the copyright.

Copyright in photographs, records and perforated rolls

31. The term for which copyright shall subsist in photographs, and in records, perforated rolls and other contrivances by means of which a work may be mechanically performed or delivered, shall be fifty years from the making of the negative or plate, and the person who was owner of the original negative or plate from which the photograph or other contrivance was directly or indirectly derived at the time when such negative or plate was made shall be deemed to be the author of the work, and where such owner is a body corporate the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Application of Act to registered designs

32. This Act shall not apply to designs capable of being registered under *The Trade Mark and Design Act*, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

Rules

(2.) General rules under section 39 of *The Trade Mark and Design Act*, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

EXISTING WORKS

Copyright in existing works, and substituted rights

33. Where any person is, immediately before the commencement of this Act, entitled to any such right in any work specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall as from that date be entitled to the substituted right set forth in the second column of that Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right or interest therein shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and the work had been one entitled to copyright thereunder: Provided that —

Proviso

Rights of author

(*a*) if the author of any work in which copyright subsists at the commencement of this Act has before that date assigned the copyright or granted any interest therein for the whole term of the copyright, then at the date when but for the passing of this Act the right would have expired the corresponding right conferred by this Act shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option (to be signified in writing not more than one year nor less than six months before the last-mentioned date) either —

Rights of assignee

Assignment for remainder of term

(i) to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or,

Reproduction on payment of royalties

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore on the payment of such royalties to the author as, failing agreement, may be determined by arbitration:

Prior proceedings not affected

(*b*) nothing in this section shall affect anything done before the commencement of this Act;

Existing rights saved

(*c*) where any person has, before the twenty-sixth day of April, nineteen hundred and eleven, taken any action or incurred any expenditure for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any right or interest arising from or in connection with such action or expenditure which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration;

Rights in records, perforated rolls and contrivarces

(*d*) the sole right of making and authorising the making of records, perforated rolls or other contrivances by means of which literary, dramatic or musical works may be mechanically performed shall not be enjoyed by the owner of the copyright in any literary, dramatic, or musical work for the mechanical performance of which any such contrivances have been lawfully made within His Majesty's dominions by any person before the twenty-sixth day of April, nineteen hundred and eleven;

Substituted rights acquired only under this Act

(*e*) where any person is, immediately before the commencement of this Act, entitled to any right in any work specified in the first column of the First Schedule to this Act or to any interest in such right, and such person does not satisfy the conditions conferring copyright laid down by this Act, he shall be entitled to no other right or interest, and such right shall subsist for the term for which it would have subsisted but for the passing of this Act.

Limitation of existing rights

(2.) Subject to the provisions of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under and in accordance with the provisions of this section.

IMPERIAL RECIPROCITY

Application of Act to works of authors resident in British dominions other than Canada

34. The Governor in Council may by order in council direct that this Act (except such part, if any, thereof as may be specified in the order and subject to such conditions and limitations as may be specified) shall apply to literary, dramatic, musical and artistic works the authors whereof were at the time of the making of the work bona fide residents in a part of His Majesty's dominions, other than Canada, to which the order relates, or British subjects resident elsewhere than in Canada:

Proviso

Provided that, before making an order in council under this section with respect to any part of His Majesty's dominions, the Governor in Council shall be satisfied that that part has made or has undertaken to make such provisions as it appears to the Governor in Council expedient to require for the protection of persons entitled to copyright under this Act.

INTERNATIONAL

Application of Act to works of residents in foreign countries

35. The Governor in Council may, by order in council, direct that this Act (except such parts thereof, if any, as may be specified in the order) shall apply to literary, dramatic, musical and artistic works the authors whereof were at the time of the making thereof subjects or citizens of or bona fide residents in a foreign country to which the order relates, and thereupon, subject to the provisions of this Act and of the order, this Act shall apply accordingly:

Proviso

Provided that —

(i) before making an order in council under this section the Governor in Council shall be satisfied that that foreign country has made or has undertaken to make such provisions as it appears to the Governor in Council expedient to require for the protection of works entitled to copyright under this Act;

(ii) the order in council may provide that the term of copyright within Canada shall not exceed that conferred by the law of the country to which the order relates;

(iii) the order in council may provide that the enjoyment

of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities as may be prescribed by the order;

(iv) in applying the provisions of this Act as to existing works the order in council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased.

Extent of order

(2.) An order in council under this section may extend to all the several countries named or described therein.

Evidence of foreign copyright

36. Where it is necessary to prove the existence in a foreign country to which an order in council under this Act applies of the copyright in any work, or the ownership of such right, an extract from a register, or a certificate, or other document stating the existence of such right, or the person who is the owner of such right, if authenticated by the official seal of a Minister of State of such foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all courts shall take judicial notice of every such official seal and signature as is in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

EVIDENCE

Certified copies as evidence

37. All copies or extracts certified by the Department shall be received in evidence without further proof and without production of the originals.

Validity of documents

38. All documents executed and accepted by the Minister shall be held valid, so far as relates to official proceedings under this Act.

FEES

39. The following fees shall be paid to the Minister before an application for any of the following purposes is received, that is to say: —

Registering a copyright	$1.00	Registration fees
Registering a temporary copyright	0.50	
Registering an assignment	1.00	
Certified copy of registration	0.50	
Registering any decision of a court of justice, for every folio of 100 words	0.50	
Certified copies of documents: —		Fees for Office copies
For first folio of one hundred words	0.25	
For every subsequent folio (fractions of or under one-half folio not being counted, and of one-half or more being counted)	0.10	

(2.) The said fees shall be in full of all services performed under this Act by the Minister or by any person employed by him. **Fees in full of all services**

(3.) All fees received under this Act shall be paid over to the Minister of Finance and shall form part of the Consolidated Revenue Fund of Canada. **Application**

(4.) No person shall be exempt from the payment of any fee or charge payable in respect of any services performed under this Act for such person. **No exemption from fees**

CLERICAL ERRORS NOT TO INVALIDATE

40. Clerical errors which occur in the framing or copying of an instrument drawn by any officer or employee in or of the Department shall not be construed as invalidating such instrument, but when discovered they may be corrected under the authority of the Minister. **Clerical errors may be corrected**

RULES AND REGULATIONS

41. The Minister may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms as appear to him necessary and expedient for the purposes of this Act; and such regulations and forms, circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act. **Rules, regulations and forms**

Abrogation of common law rights

42. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force.

Orders in Council

43. The Governor in Council may make orders for altering, revoking, or varying any order in council made under this Act, but any order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the order comes into operation, and shall provide for the protection of such rights and interests.

Publication

(2.) Every order in council made under this Act shal be published in *The Canada Gazette*, and shall be laid before

Laid before Parliament

Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

Repeal of certain enactments

44. Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are, so far as they are operative in Canada, hereby repealed to the extent specified in the third column of that Schedule.

Repeal

45. Chapter 70 of the Revised Statutes, 1906, and chapter 17 of the statutes of 1908, are repealed.

Commencement of Act

46. This Act shall come into force on a day to be named by proclamation of the Governor General.

FIRST SCHEDULE

EXISTING RIGHTS

EXISTING RIGHT	SUBSTITUTED RIGHT
(a) In the case of Works other than Dramatic and Musical Works.	
Copyright.	Copyright as defined by this Act.
(b) In the case of Musical and Dramatic Works.	
Both copyright and performing right.	Copyright as defined by this Act.
Copyright, but not performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings: —

"copyright," in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work;

"performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

SECOND SCHEDULE

ENACTMENTS REPEALED

SESSION AND CHAPTER	SHORT TITLE	EXTENT OF REPEAL
8 Geo. 2. c. 13.	The Engraving Copyright Act, 1734	The whole Act.
7 Geo. 3. c. 38.	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. 3. c. 53.	The Copyright Act, 1775.	Sections two, four and five.
17 Geo. 3. c. 57.	The Prints Copyright Act, 1777.	The whole Act.
54 Geo. 3. c. 56.	The Sculpture Copyright Act, 1814.	The whole Act.
3 Geo. 4. c. 15.	The Dramatic Copyright Act, 1833.	The whole Act.
5 & 6 Will. 4. c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. 4. c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. 4. c. 110.	The Copyright Act, 1836.	The whole Act.
5 & 6 Vict c. 45.	The Copyright Act, 1842.	The whole Act.
7 & 8 Vict. c. 12.	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Vict. c. 68.	The Fine Arts Copyright Act, 1862.	Sections one to six. In section eight the words "and pursuant "to any Act for the "protection of copy-"right engravings." Sections nine to twelve.
38 & 39 Vict. c. 12.	The International Copyright Act, 1875.	The whole Act.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Section forty-two, from "Books wherein" to "such copyright will "expire." Sections forty-four, forty-five and one hundred and fifty-two.

SESSION AND CHAPTER	SHORT TITLE	EXTENT OF REPEAL
45 & 46 Vict. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Vict. c. 33.	The International Copyright Act, 1886.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.
52 & 53 Vict. c. 42.	The Revenue Act, 1889.	Section one, from "Books first published" to "as provided in that section."
2 Edw. 7. c. 15.	The Musical (Summary Proceedings) Copyright Act, 1902.	The whole Act.
6 Edw. 7. c. 36.	The Musical Copyright Act, 1906.	The whole Act.

8. AUSTRALIAN COPYRIGHT ACT, 1905

(Assented to 21st December, 1905)

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia as follows: —

PART I. — PRELIMINARY

Short title

1. *Short Title.* — This Act may be cited as the Copyright Act, 1905.

Commencement

2. *Commencement.* — This Act shall commence on a day to be fixed by Proclamation.

Parts

3. *Parts.* — This Act is divided as follows: —

Part I. — Preliminary.
Part II. — Administration.
Part III. — Literary, Musical, and Dramatic Copyright.
Part IV. — Artistic Copyright.
Part V. — Infringement of Copyright.
Part VI. — International and State copyright.
Part VII. — Registration of Copyrights.
Part VIII. — Miscellaneous.

Interpretation

4. *Interpretation.* — In this Act, unless the contrary intention appears —

"Artistic work" includes —

(*a*) Any painting, drawing, or sculpture; and

(*b*) Any engraving, etching, print, lithograph, woodcut, photograph, or other work of art produced by any process, mechanical or otherwise, by which impressions or representations of works of art can be taken or multiplied:

"Author" includes the personal representatives of an author:

"Book" includes any book or volume, and any part or division of a book or volume, and any article in a book or volume, and any pamphlet, periodical, sheet of let-

terpress, sheet of music, map, chart, diagram, or plan separately published, and any illustration therein: Interpretation

"Dramatic work," in addition to being included in the definition of book, means any tragedy, comedy, play, drama, farce, burlesque, libretto, of an opera, entertainment, or other work of a like nature, whether set to music or otherwise, lyrical work set to music, or other scenic or dramatic composition:

"Lecture" includes a sermon:

"Musical work" in addition to being included in the definition of book, includes any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced:

"Periodical" means a review, magazine, newspaper, or other periodical work of a like nature:

"Pirated artistic work" means a reproduction of an artistic work made in any manner without the authority of the owner of the copyright in the artistic work:

"Pirated book" means a reproduction of a book made in any manner without the authority of the owner of the copyright in the book:

"Portrait" includes any work the principal object of which is the representation of a person by painting, drawing, engraving, photography, sculpture, or any form of art:

"Publish" and "Publication" in relation to a book refer to offer for sale or distribution, in each case with the privity of the author, so as to make the book accessible to the public:

"The Registrar" means the Registrar of Copyrights or a Deputy Registrar of Copyrights:

"State Copyright Act" means any State Act relating to the registration of the copyright or performing right, or lecturing right in books, or dramatic or musical works, or in artistic works, or fine art works, or in lectures.

5. *What is simultaneous publication or performance.* — For the purposes of this Act publication, performance, or

Simultaneous publication or performance

delivery in the Commonwealth shall be deemed to be simultaneous with publication, performance, or delivery elsewhere if the period between the publications, performances, or deliveries does not exceed fourteen days.

Blasphemous, etc., matter

6. *Blasphemous, &c., matter not protected.* — No copyright, performing right, or lecturing right shall subsist under this Act in any blasphemous, indecent, seditious, or libellous work or matter.

Application of common law

7. *Application of the Common Law.* — Subject to this and any other Acts of the Parliament, the Common Law of England relating to proprietary rights in unpublished literary compositions, shall after the commencement of this Act, apply throughout the Commonwealth.

State copyright acts

8. *State Copyright Acts not to apply to copyright under this Act.* — (1.) The State Copyright Acts so far as they relate to the copyright in any book, the performing right in any musical or dramatic work, the lecturing right in any lecture, or the copyright in any artistic or fine art work shall not apply to any book, dramatic or musical work, lecture, or artistic work in which copyright, performing right, or lecturing right, subsists under this Act.

Rights under state laws

Saving of rights under State laws. — (2.) Subject to Part II. of this Act, nothing in this Act shall affect the application of the laws in force in any State at the commencement of this Act to any copyright or other right in relation to books or dramatic or musical works or lectures or artistic or fine art works acquired under or protected by those laws before the commencement of this Act.

PART II. — ADMINISTRATION

Division I. — *The Registrar and the Copyright Office*

Registrar

9. *Registrar.* — (1.) There shall be a Registrar of Copyrights.

(2.) The Governor-General may appoint one or more Deputy Registrars of Copyrights who shall, subject to the control of the Registrar of Copyrights, have all the powers conferred by this Act on the Registrar.

10. *Copyright Office.* — For the purposes of this Act an

office shall be established which shall be called the Copyright Office. Copyright Office

11. *Seal of Copyright Office.* — There shall be a seal of the Copyright Office, and impressions thereof shall be judicially noticed. Seal

Division 2. — The Transfer of the Administration of the State Copyright Acts

12. *Transfer of administration.* — The Governor-General may, by proclamation, declare that, from and after a date specified in the proclamation, the administration of the State Copyright Acts of any State so far as they relate to the registration of the copyright in any book, the performing right in any musical or dramatic work, the lecturing right in any lecture, and the copyright in any artistic or fine art work, or to the registration of any assignment or grant of, or licence in relation to, any such right, shall be transferred to the Commonwealth and thereupon, so far as is necessary for the purposes of this section — Transfer of administration

(*a*) *Effect of transfer of administration. Cf. Patents Act,* 1903, *ss.* 18 *and* 19. — The State Copyright Acts of the State shall cease to be administered by the State, and shall thereafter be administered by the Commonwealth so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights, and the Registrar shall collect for the State all fees which become payable thereunder; and Effect of transfer

(*b*) all powers and functions under any State Copyright Act vested in the Governor of the State or in the Governor with the advice of the Executive Council of the State or in any Minister officer or authority of the State shall vest in the Governor-General or in the Governor-General in Council or in the Minister officer or authority exercising similar powers under the Commonwealth as the case requires or as is prescribed; and

(*c*) all records registers deeds and documents of the Copyright office of the State vested in or subject to

the control of the State shall, by force of this Act, be vested in and made subject to the control of the Commonwealth.

PART III. — LITERARY, MUSICAL, AND DRAMATIC COPYRIGHT

Copyright in books

13. *Copyright in books.* — (1.) The copyright in a book means the exclusive right to do, or authorize another person to do, all or any of the following things in respect of it: —

(*a*) To make copies of it:
(*b*) To abridge it:
(*c*) To translate it:
(*d*) In the case of a dramatic work, to convert it into a novel or other non-dramatic work:
(*e*) In the case of a novel or other non-dramatic work, to convert into a dramatic work: and
(*f*) In the case of a musical work, to make any new adaptation, transposition, arrangement, or setting of it, or of any part of it, in any notation.

(2.) Copyright shall subsist in every book, whether the author is a British subject or not, which has been printed from type set up in Australia, or plates made therefrom, or from plates or negatives made in Australia in cases where type is not necessarily used, and has, after the commencement of this Act, been published in Australia, before or simultaneously with its first publication elsewhere.

Performing right

14. *Performing right in dramatic and musical works.* — (1.) The performing right in a dramatic or musical work means the exclusive right to perform it, or authorise its performance in public.

(2.) Performing rights shall subsist in every dramatic or musical work, whether the author is a British subject or not, which has, after the commencement of this Act, been performed in public in Australia, before or simultaneously with its first performance in public elsewhere.

Lecturing right

15. *Lecturing right in lectures.* — (1.) The lecturing right in a lecture means the exclusive right to deliver it, or authorise its delivery, in public, and except as hereinafter provided, to report it.

(2.) Lecturing right shall subsist in every lecture, whether the author is a British subject or not, which has, after the commencement of this Act, been delivered in public in Australia, before or simultaneously with its first delivery in public elsewhere.

Commencement

16. *Commencement of copyright, performing right, and lecturing right.* — (1.) The copyright in a book shall begin with its first publication in Australia.

(2.) The performing right in a dramatic or musical work shall begin with its first performance in public in Australia.

(3.) The lecturing right in a lecture shall begin with its first delivery in public in Australia.

Term

17. *Term of copyright, performing right, and lecturing right.* — (1.) The copyright in a book, the performing right in a dramatic or musical work, and the lecturing right in a lecture, shall subsist for the term of forty-two years or for the author's life and seven years whichever shall last the longer.

(2.) Where the first publication of a book, the first performance in public of a musical or dramatic work, or the first delivery in public of a lecture takes place after the death of the author, the copyright, performing right, or lecturing right, as the case may be, shall subsist for the term of forty-two years.

(3.) Where a book or a dramatic or musical work is written by joint authors the copyright and the performing right shall subsist for the term of forty-two years or their joint lives and the life of the survivor of them, and seven years, whichever shall last the longer.

(4.) If a lecture is published as a book with the consent in writing of the owner of the lecturing right, the lecturing right shall cease.

Ownership

18. *Ownership in copyright, performing right, and lecturing right.* — (1.) The author of a book shall be the first owner of the copyright in the book.

(2.) The author of a dramatic work or musical work shall be the first owner of the performing right in the dramatic or musical work.

(3.) The author of a lecture shall be first owner of the lecturing right in the lecture.

Joint authors

19. *Ownership in the case of joint authors.* — Where there are joint authors of a book, or of a dramatic or musical work, or of a lecture, the copyright or the performing right, or the lecturing right, as the case may be, shall be the property of the authors.

Separate authors

20. *Separate authors.* — Where a book is written in distinct parts by separate authors and the name of each author is attached to the portion written by him, each author shall be entitled to copyright in the portion written by him in the same manner as if it were a separate book.

Encyclopædia and similar works

21. *Encyclopædia and similar works.* — The proprietor or projector of an encyclopædia or other similar permanent work of reference who employs some other person for valuable consideration in the composition of the whole or any part of the work shall be entitled to the copyright in the work in the same manner as if he were the author thereof.

Copyright in periodicals

22. *Copyright in articles published in periodicals.* — (1.) The author of any article, contributed for valuable consideration to and first published in a periodical, shall be entitled to copyright in the article as a separate work, but so that —

(*a*) he shall not be entitled to publish the article or authorise its publication until one year after the end of the year in which the article was first published and

(*b*) his right shall not exclude the right of the proprietor of the periodical under this section.

(2.) The proprietor of a periodical in which an article, which has been contributed for valuable consideration, is first published shall be entitled to copyright in the article, but so that —

(*a*) he shall not be entitled to publish the article or authorise its publication except in the periodical in its original form of publication, and

(*b*) his right shall not exclude the right of the author of the article, under this section.

23. *Copyright in articles published in periodicals without*

valuable consideration. — The author of any article contributed without valuable consideration to, and first published in, a periodical, shall be entitled to copyright in the article as a separate work. Articles without valuable consideration

24. *Copyright, &c., to be personal property.* — The copyright in a book, the performing right in a dramatic or musical work, and the lecturing right in a lecture shall be personal property, and shall be capable of assignment and of transmission by operation of law. Copyright, etc., personal property

25. *Copyright and other rights to be separate properties.* — The copyright in a book, and the performing right in a dramatic or musical work and the lecturing right in a lecture shall be deemed to be distinct properties for the purposes of ownership, assignment, licence, transmission, and all other purposes. Copyright and other rights separate property

26. *Assignment of copyright.* — The owner of the copyright in a book, or of the performing right in a dramatic or musical work, or of the lecturing right in a lecture, may assign his right either wholly or partially and either generally or limited to any particular place or period, and may grant any interest therein by licence; but an assignment or grant shall not be valid unless it is in writing signed by the owner of the right in respect of which it is made or granted. Assignment

27. *New editions.* — Any second or subsequent edition of a book containing material or substantial alterations or additions shall be deemed to be a new book, but so as not to prejudice the right of any person to reproduce a former edition of the book or any part thereof after the expiration of the copyright in the former edition. New editions

Provided that while the copyright in a book subsists no person, other than the owner of the copyright in the book or a person authorised by him, shall be entitled to publish a second or subsequent edition thereof.

28. *Making of abridgment, &c., for private use.* — Copyright in a book shall not be infringed by a person making an abridgment or translation of the book for his private use (unless he uses it publicly or allows it to be used publicly by some other person), or by a person making fair extracts from or otherwise fairly dealing with the contents of Abridgments, etc., for private use

the book for the purpose of a new work, or for the purposes of criticism, review, or refutation, or in the ordinary course of reporting scientific information.

Translations or abridgments

29. *Translations or abridgments.* — Where the author has parted with the copyright in his book and a translation or abridgment of the book is made with the consent of the owner of the copyright by some person other than the author, notice shall be given in the title-page of every copy of the translation or abridgment that it has been made by some person other than the author.

Failure of author to make translation

30. *Failure of author to make or cause translation of book.* — Where a translation of a book into a particular language is not made within ten years from the date of the publication of the book by the owner of the copyright or by some person by his authority —

(*a*) Any person desirous of translating the book into that language may make an application in writing to the Minister for permission so to do:

(*b*) The Minister may thereupon by notice in writing inform the owner of the copyright of such application and request him to make or cause to be made a translation of the book into that language within such time as the Minister deems reasonable or to show cause why such application should not be granted:

(*c*) If the owner of the copyright fails to comply with such notice the Minister may grant such application.

Copyright in translations

31. *Copyright in translations.* — Copyright shall subsist in a lawfully-produced translation or abridgment of a book in like manner as if it were an original work.

Reservation of performing right

32. *Notice of reservation of performing right.* — (1.) Where a dramatic or musical work is published as a book, and it is intended that the performing right is to be reserved, the owner of copyright, whether he has parted with the performing right or not, shall cause notice of the reservation of the performing right to be printed on the title page or in a conspicuous part of every copy of the book.

(2.) *Defendant's rights where no notice of reservation of performing right.* — Where —

(*a*) proceedings are taken for the infringement of the performing right in a dramatic or musical work published as a book, and — **Defendant's rights where no notice**

(*b*) the defendant proves to the satisfaction of the Court that he has in his possession a copy of the book containing the dramatic or musical work and that that copy was published with the consent of the owner of the copyright, and does not contain the notice required by this Act of the reservation of the performing right,

judgment may be given in his favor either with or without costs as the Court, in its discretion, thinks fit; but in any such case the owner of the performing right (if he is not the owner of the copyright) shall be entitled to recover from the owner of the copyright damages in respect of the injury he has incurred by the neglect of the owner of the copyright to cause due notice to be given of the reservation of the performing right.

33. *Report of lecture in a newspaper.* — (1.) Unless the reporting of a lecture is prohibited by a notice as in this section mentioned, the lecturing right in a lecture shall not be infringed by a report of the lecture in a newspaper. **Report of lecture**

(2.) The notice prohibiting the reporting of a lecture may be given —

(*a*) orally at the beginning of the lecture; or

(*b*) by a conspicuous written notice affixed, before the lecture is given, on the entrance doors of the building in which it is given or in a place in the room in which it is given.

(3.) When a series of lectures is intended to be given by the same lecturer on the same subject, one notice only need be given in respect of the whole series.

PART IV. — ARTISTIC COPYRIGHT

34. *Meaning of copyright.* — The copyright in an artistic work means the exclusive right of the owner of the copyright to reproduce or authorise another person to reproduce the artistic work, or any material part of it, in any manner, form, or size, in any material, or by any process, or for any purpose. **Artistic copyright**

35. *Copyright in artistic works.* — Copyright shall subsist in every artistic work whether the author is a British subject or not, which is made in Australia after the commencement of this Act.

Commencement and term

36. *Commencement and term of artistic copyright.* — The copyright in an artistic work shall begin with the making of the work, and shall subsist for the term of forty-two years or for the author's life and seven years whichever shall last the longer.

Ownership

37. *Ownership of copyright in artistic work.* — The author of an artistic work shall be the first owner of the copyright in the work.

Portraits

38. *Copyright in portraits.* — When an artistic work, being a portrait, is made to order for valuable consideration, the person to whose order it is made shall be entitled to the copyright therein as if he were the author thereof.

Photographs

39. *Copyright in photographs.* — (1.) When a photograph is made to order for valuable consideration the person to whose order it is made shall be entitled to the copyright therein as if he were the author thereof.

(2). Subject to sub-section (1) of this section, when a photograph is made by an employee on behalf of his employer the employer shall be deemed to be the author of the photograph.

Engravings and prints

40. *Engravings and prints.* — (1.) Subject to section thirty-four of this Act the engraver or other person who makes the plate or other instrument by which copies of an artistic work are multiplied shall be deemed to be the author of the copies produced by means of the plate or instrument.

(2.) When the plate or other instrument mentioned in this section is made by an employee on behalf of his employer the employer shall be deemed to be the author of the copies produced by means of the plate or instrument.

Sale of painting, etc.

41. *Copyright in case of sale of painting, statue, or bust.* (1.) — When the owner of the copyright in any artistic work being a painting, or a statue, bust, or other like work, disposes of such work for valuable consideration, but does

not assign the copyright therein, the owner of the copyright (except as in this section mentioned) may in the absence of any agreement in writing to the contrary make a replica of such work.

Right to make replicas

Right of author to make replicas of statues, etc., in public places. (2.) — When a statue, bust, or other like work, whether made to order or not, is placed or is intended to be placed in a street or other like public place, the author may, in the absence of any agreement to the contrary, make replicas thereof.

Personal property

42. *Artistic copyright is personal property.* — The copyright in an artistic work shall be personal property, and shall be capable of assignment and of transmission by operation of law.

Copyright and ownership

43. *Copyright and ownership in artistic works.* — The copyright in an artistic work and the ownership of the artistic work shall be deemed to be distinct properties for the purposes of ownership, assignment, licence, transmission, and all other purposes.

Assignment

44. *Assignment of copyright.* — The owner of the copyright in an artistic work may assign his right wholly or partially and either generally or limited to any particular place or period and may grant any interest therein by licence; but an assignment or grant shall not be valid unless it is in writing signed by the owner of the copyright.

PART V. — INFRINGEMENT OF COPYRIGHT

Infringement

45. *Infringement of rights under Act.* — If any person infringes any right conferred by this Act in respect of the right in a book, the performing right in dramatic or musical work, the lecturing right in a lecture, or the copyright in an artistic work, the owner of the right infringed may maintain an action for damages or penalties or profits, and for an injunction, or for any of those remedies.

Damages under performing or lecturing right

46. *Damages in case of performing right or lecturing right.* — In assessing the damages in respect of the infringement of the performing right in a dramatic or musical work or the lecturing right in a lecture, regard shall be had to the amount of profit made by the infringer by reason of the in-

fringement, and to the amount of actual damage incurred by the owner of the performing or lecturing right.

Objection to title

47. *Notice of objection to title.* — The plaintiff in any action for the infringement of a right conferred by this Act shall be presumed to be the owner of the right which he claims, unless the defendant in his pleadings in defence pleads that the defendant disputes the title of the plaintiff, and states the grounds on which the plea is founded, and the name of the person, if any, whom the defendant alleges to be the owner of the right.

Limitation of actions

48. *Limitation of actions.* (*Cf.* 5–6 *Vict. c.* 45, *s.* 26.) — No action for any infringement of copyright, performing right, or lecturing right under this Act shall be maintainable unless it is commenced within two years next after the infringement is committed.

Property in pirated works

49. *Property in pirated books or artistic work.* — All pirated books and all pirated artistic works shall be deemed to be the property of the owner of the copyright in the book or work and may, together with the plates, blocks, stone, matrix, negative, or thing, if any, from which they are printed or made, be recovered by him by action or other lawful method.

Penalties

50. *Penalties for dealing with pirated books.* — If any person —

(*a*) sells, or lets for hire, or exposes offers or keeps for sale or hire, any pirated book or any pirated artistic work; or

(*b*) distributes, or exhibits in public, any pirated book or any pirated artistic work; or

(*c*) imports into Australia any pirated book or any pirated artistic work,

he shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Five pounds for each copy of such pirated book or pirated artistic work dealt with in contravention of this section, and also to forfeit to the owner of the copyright every such copy so dealt with, and also to forfeit the plates, blocks, stone, matrix, negative, or thing, if any, from which the pirated book or pirated artistic work was printed or made.

Provided that the whole penalties inflicted on any one offender in respect of the same transaction shall not exceed Fifty pounds.

Provided also that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court at the hearing that he did not know, and could not with reasonable care have ascertained, that the book was a pirated book or the work was a pirated artistic work.

Liability as to theatre

51. *Liability in respect of use of theatre.* — Where a dramatic or musical work is performed in a theatre or other place in infringement of the performing right of the owner of that right, the proprietor tenant or occupier who permitted the theatre or place to be used for the performance shall be deemed to have infringed the performing right and shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Five pounds for each such offence and the court may, in addition to the penalty, order the defendant to pay to the owner of the performing right in respect of each such infringement a sum by way of damages to the amount of Ten pounds, or to such amount as the court deems equal to the profits made by the performance of the work, whichever sum is greater.

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court at the hearing that he did not know and could not with reasonable care have ascertained that the dramatic or musical work was performed in infringement of the performing right of the owner of that right.

Search warrant and seizure

52. *Search warrant and seizure of pirated copies.* — (1.) A justice of the peace may upon the application of the owner of the copyright in any book or in any artistic work or of the agent of such owner appointed in writing: —

(*a*) If satisfied by evidence that there is reasonable ground for believing that pirated books or pirated artistic works are being sold, or offered for sale — issue a warrant, in accordance with the form prescribed, authorising any constable to seize the pirated books or pirated artistic works and to bring them before a court of summary jurisdiction.

(*b*) If satisfied by evidence that there is reasonable ground for believing that pirated books or pirated artistic works are to be found in any house, shop, or other place — issue a warrant, in accordance with the form prescribed, authorising any constable to search between sunrise and sunset, the place where the pirated books are supposed to be, and to seize and bring them or any books or artistic works reasonably suspected to be pirated books or pirated artistic works before a court of summary jurisdiction.

(2.) A court of summary jurisdiction may, on proof that any books or artistic works brought before it in pursuance of this section are pirated books or pirated artistic works, order them to be destroyed or to be delivered up, subject to such conditions, if any, as the court thinks fit, to the owner of the copyright in the book or artistic work.

Delivery up of pirated works

53. *Power of owner of copyright to require delivery to him of pirated books and works.* —

(1.) The owner of the copyright in any book or artistic work, or the agent of such owner appointed in writing, may by notice, in accordance with the prescribed form, require any person to deliver up to him any pirated reproduction of the book or work, and every person to whom such notice has been given, and who has any pirated reproduction of the book or work in his possession or power, shall deliver up the pirated reproduction of the book or work in accordance with the notice.

Penalty: Ten Pounds.

(2.) A person shall not give any notice in accordance with this section without just cause.

Penalty: Twenty pounds.

(3.) In any prosecution under sub-section (2) of this section the defendant shall be deemed to have given the notice without just cause unless he proves, to the satisfaction of the court at the hearing, that at the time of giving the notice he was the owner of the copyright in the book or artistic work or was the agent of such owner appointed in writing, and had reasonable ground to believe that the per-

son to whom the notice was given had pirated reproductions of the book or work in his possession or power.

Power to forbid performance

54. — *Power of owner of performing right to forbid performance in infringement of his right.* — (1.) The owner of the performing right in a musical or dramatic work, or the agent of the owner appointed in writing, may, by notice in writing in accordance with the prescribed form, forbid the performance of the musical or dramatic work in infringement of his right, and require any person to refrain from performing or taking part in the performance of the musical or dramatic work, and every person to whom a notice has been given in accordance with this section shall refrain from performing or taking part in the performance of the musical or dramatic work specified in the notice in infringement of the performing right of such owner.

Penalty: Ten pounds.

(2.) A person shall not give any notice in pursuance of this section without just cause.

Penalty: Twenty pounds.

(3.) In any prosecution under sub-section (2) of this section, the defendant shall be deemed to have given the notice without just cause unless he proves, to the satisfaction of the court at the hearing, that at the time of giving the notice he was the owner of the performing right in the musical or dramatic work, or the agent of the owner appointed in writing, and had reasonable ground to believe that the person to whom the notice was given was about to perform or take part in the performance of the musical or dramatic work in infringement of the performing right of the owner.

False representations

55. *Penalty for false representations in notices.* — Any person, who in any notice given in pursuance of this Act, makes a representation, which is false in fact and which he knows to be false or does not believe to be true, that he is

(*a*) the owner of the copyright in any book or artistic work, or

(*b*) the owner of the performing right in a musical or dramatic work, or

(*c*) the agent of any such owner,

shall be guilty of an offence against this Act.

Penalty: Two years' imprisonment.

Request to police

56. *Request to police to seize pirated books and works.* — (1.) The owner of the copyright in any book or artistic work or the agent of such owner appointed in writing may, in accordance with the prescribed form, request that any pirated reproductions of the book or work be seized by the police, and may lodge the request at any police station.

(2.) Any police constable in the town or district in which the police station is situated (whether in the service of the Commonwealth or a State), may, at any time in the day time within seven days after the request was so lodged, seize all pirated reproductions of the book or work mentioned in the notice, and all reproductions of the book or work which he has reasonable ground to believe are pirated reproductions, found by him in the possession of any person other than the owner of the copyright in the book or work.

(3.) Every police constable who seizes any books or works in pursuance of this section shall forthwith bring all such books or works before a court of summary jurisdiction.

(4.) A court of summary jurisdiction may, on the application of any person interested, make such order for the disposal of the books or works as he thinks just.

(5.) A person shall not lodge any request at any police station in accordance with this section without just cause.

Penalty: Twenty pounds.

(6.) In any prosecution under sub-section (5) of this section the defendant shall be deemed to have lodged the request without just cause unless he proves, to the satisfaction of the court at the hearing, that at the time of lodging the request he was the owner of the copyright in the book or artistic work, or was the agent of such owner appointed in writing and had reasonable ground to believe that pirated reproductions of the book or work were being unlawfully sold, or let for hire, or exposed or offered or kept for sale or hire, or distributed, or exhibited in public, in the town or district in which the police station is situated.

57. *Application of penalties.* — Where proceedings for

any penalty under this Act are instituted by the owner of the copyright in any book or in any artistic work or by the owner of the artistic work, the penalty shall be paid to him by way of compensation for the injury he has sustained. In any other case the penalty shall be paid to the Consolidated Revenue Fund. Application of penalties

58. *Aiders and abettors.* — Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission of any offence against this Act, shall be deemed to have committed that offence, and shall be punishable accordingly. Aiders and abettors

59. *Limitation of actions in court of summary jurisdiction.* — Proceedings may be instituted in any court of summary jurisdiction for the recovery of any penalty under this Act, but no such proceedings shall be instituted after the expiration of six months from the date of the offence in respect of which the penalty is imposed. Limitation in court of summary jurisdiction

60. *Appeal from courts of summary jurisdiction.* — An appeal shall lie from any conviction or order (including any dismissal of any information, complaint, or application, of a court of summary jurisdiction, exercising jurisdiction with respect to any offence or matter under this Act, to the court and in the manner and time provided by the law of the State in which the proceedings were instituted in the case of appeals from courts of summary jurisdiction in that State. Appeal

61. *Importation of pirated works.* — (1.) The following goods are prohibited to be imported: — Importation of pirated works

(*a*) All pirated books in which copyright is subsisting in Australia (whether under this Act or otherwise): and

(*b*) All pirated artistic works in which copyright is subsisting in Australia (whether under this Act or otherwise).

(2.) All pirated books and pirated artistic works imported into Australia contrary to this section shall be forfeited and may be seized by any officer of Customs.

(3.) Subject to this Act the provisions of the Customs

Act, 1901, shall apply to the seizure and forfeiture of pirated books and artistic works under this section to the same extent as if they were prohibited imports under that Act.

(4.) The provisions of this section shall not apply to any book or artistic work unless the owner of the copyright therein or his agent has given written notice to the Minister of the existence of the copyright and of its term.

(5.) A notice given to the Commissioners of Customs of the United Kingdom, by the owner of the copyright or his agent, of the existence of the copyright in a book or artistic work and of its term, and communicated by the said Commissioners to the Minister shall be deemed to have been given by the owner to the Minister.

PART VI. — INTERNATIONAL AND STATE COPYRIGHT

Protection of international and state copyrights

62. *Protection in Australia of international and State copyright.* — The owner of any copyright or performing right in any literary, musical, or dramatic work or artistic work entitled to protection in Australia by virtue of any Act of the Parliament of the United Kingdom or entitled to protection in any State by virtue of any State Copyright Act in force at the commencement of this Act shall on obtaining a certificate of the registration of his copyright or performing right under this part of this Act have the same protection in the Commonwealth against the infringement of his copyright or performing right as the owner of any copyright or performing right under this Act.

Registration of international copyright

63. *Registration of international copyright.* — (1.) The owner of any copyright or performing right who desires to obtain the benefit of this part of this Act may, in manner and in accordance with the form prescribed, make application to the Registrar for the registration of his copyright or performing right.

(2.) —The Registrar may thereupon, and on being satisfied by proof of the prescribed particulars and on payment of the prescribed fee, register the copyright or performing right and issue to the applicant a certificate of registration in accordance with the prescribed form.

PART VII. — REGISTRATION OF COPYRIGHTS

64. *Copyright Registers.* — The following Registers of copyrights shall be kept by the Registrar at the Copyrights Office: — **Copyright registers**

The Register of Literary Copyrights.
The Register of Fine Arts Copyrights,
The Register of International and State Copyrights.

65. *Method of registration.* — The owner of any copyright performing right or lecturing right under this Act may obtain registration of his right in the manner prescribed. **Method of registration**

66. *Registration of assignments and transmissions.* — When any person becomes entitled to any copyright performing right or lecturing right under this Act by virtue of any assignment or transmission, or to any interest therein by licence, he may obtain registration of the assignment, transmission, or licence in the manner prescribed. **Registration of assignments and transmissions**

67. *How registration effected.* — The registration of any copyright performing right or lecturing right under this Act, or of any assignment or transmission thereof or of any interest therein by licence, shall be effected by entering in the proper register, the prescribed particulars relating to the right, assignment, transmission, or licence. **How registration effected**

68. *Trusts not registered.* — (1.) No notice of any trust expressed, implied, or constructive shall be entered in any Register of Copyrights under this Act or be receivable by the Registrar. **Trusts not registered**

(2.) Subject to this section, equities in respect of any copyright performing right or lecturing right under this Act may be enforced in the same manner as equities in respect of other personal property.

69. *Register to be evidence.* — Every Register of copyrights under this Act shall be *prima facie* evidence of the particulars entered therein and documents purporting to be copies of any entry therein or extracts therefrom certified by the Registrar and sealed with the seal of the Copyrights Office shall be admissible in evidence in all Federal or State courts without further proof or production of the originals. **Register to be evidence**

70. *Certified copies.* — Certified copies of entries in any

Certified copies

register under this Act or of extracts therefrom shall, on payment of the prescribed fee, be given to any person applying for them.

Inspection of register

71. *Inspection of register.* — Each register under this Act shall be open to public inspection at all convenient times on payment of the prescribed fee.

Correction of register

72. *Correction of register.* — The registrar may, in prescribed cases and subject to the prescribed conditions, amend or alter any register under this Act by —

(*a*) correcting any error in any name, address, or particular; and

(*b*) entering any prescribed memorandum or particular relating to copyright or other right under this Act.

Rectification of register by the court

73. *Rectification of register by the court.* — (1.) Subject to this Act the Supreme Court of any State or a judge thereof may, on the application of the Registrar or of any person aggrieved, order the rectification of any register under this Act by —

(*a*) the making of any entry wrongly omitted to be made in the register; or

(*b*) the expunging of any entry wrongly made in or remaining on the register; or

(*c*) the correction of any error or defect in the register.

(2.) An appeal shall lie to the High Court from any order for the rectification of any register made by a Supreme Court or a Judge under this section.

No suit before registration

74. *Owner cannot sue before registration.* — (1.) The owner of any copyright or performing right under this Act or of any interest therein by licence shall not be entitled to bring any action or suit or institute any proceedings for any infringement of the copyright or performing right unless such right or interest has been registered in pursuance of this Act.

(2.) When such right or interest has been registered the owner thereof may, subject to this Act, bring actions or suits or institute proceedings for infringements of the copyright or performing right, whether those infringements happened before or after the registration.

(3.) This section shall not affect the right of the owner

of the lecturing right in a lecture to bring actions or suits or institute proceedings for infringements of his lecturing right.

Deposit

75. *Delivery of books to registrar.* — (1.) Every person applying for the registration of the copyright in any book shall deliver to the Registrar two copies of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published and bound, sewed, or stitched together, and on the best paper on which the book is printed.

(2.) Every person applying for the registration of the copyright in any work of art shall deliver to the Registrar one copy of the work of art or a photograph of it.

(3.) The Registrar shall refuse to register the copyright in any book or work of art until subsections (1) and (2) of this section have been complied with.

(4.) One copy of each book delivered to the Registrar in pursuance of this section shall be forwarded by him to the librarian of the Parliament, and the other copy shall be retained by the Registrar, until otherwise prescribed.

False representation

76. *False representation to registrar. Patents Act*, 1903, *s.* 112. — No person shall wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this part of this Act, or to procure or influence the doing or omission of any thing in relation to this part of this Act or any matter thereunder.

Penalty: Three years' imprisonment.

PART VIII. — MISCELLANEOUS

Suppression of books

77. *Provision against suppression of books.* — If the Governor-General is satisfied that the owner of the copyright in any book, or of the performing right in any dramatic work or musical work, or of the lecturing right in any lecture, has refused, after the death of the author, to republish or allow republication of the book, or the public performance of the dramatic or musical work, or the publication as a book of the lecture, and that by reason thereof the book, dramatic work, musical work, or lecture is withheld from the public, he may grant any person applying for

it a licence to republish the book, or to perform the dramatic work, or musical work, or to publish the lecture as a book, in such manner and subject to such conditions as to the Governor-General seem fit.

Award of costs

78. *Power to award costs.* — In any action or proceeding taken in any court under this Act, the court shall have power to award costs at its discretion.

Regulations

79. *Regulations.* — The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, or for the conduct of any business relating to the Copyrights Office.

III

INTERNATIONAL COPYRIGHT UNION: CONVENTIONS

9. BERNE CONVENTION, 1886, with Paris amendments, 1896, *in italics* [omissions bracketed].	10. BERLIN CONVENTION, 1908, with references to parallel articles of Berne-Paris Convention.	
ARTICLE I	ARTICLE 1	
The contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works.	The contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works.	**Union to protect literary and artistic works**
ARTICLE IV	ARTICLE 2	
The expression "literary and artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.	The expression "literary and artistic works" includes all productions in the literary, scientific or artistic domain, whatever the mode or form of reproduction, such as: books, pamphlets and other writings; dramatic or dramatico-musical works; choreographic works and pantomimes, the stage directions ("*mise en scène*") of which are fixed in writing or otherwise; musical compositions with or without words; drawings, paintings, works of architecture and sculpture; engravings and lithographs; illustrations; geo-	**Definition of "literary and artistic works"**

PARIS II, 1

Works of architecture protected

(*a.*) *In the countries of the Union in which protection is accorded not only to architectural designs, but to the actual works of architecture, those works are admitted to the benefit of the provisions of the Convention of Berne and of the present additional act.*

PROTOCOL

Choregraphic works protected

2. As regards Article IX, it is agreed that those countries of the Union whose legislation implicitly includes choregraphic works amongst dramatico-musical works, expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective tribunals to decide.

ARTICLE VI

Translations, arrangements, and adaptations protected

Authorized translations are protected as original works. They consequently enjoy the protection stipulated in Articles II and III as regards their unauthorized reproduction in the counuries of the Union.

graphical charts; plans, sketches and plastic works relating to geography, topography, architecture, or the sciences.

Translations, adaptations, arrangements of music and other reproductions transformed from a literary or artistic work, as well as compilations from different works, are protected as original works without preju-

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

dice to the rights of the author of the original work. **New translations by other writers**

The contracting countries are pledged to secure protection in the case of the works mentioned above.

Works of art applied to industry are protected so far as the domestic legislation of each country allows. **Works of art applied to industry**

Protocol

1. As regards Article IV, it is agreed [that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.]

Article 3

The present Convention applies to photographic works and to works obtained by any process analogous to photography. The contracting countries are pledged to guarantee protection to such works. **Photographic works protected**

Paris II, 1

(*b.*) *Photographic works, and those obtained by similar processes, are admitted to the benefit of the provisions of these acts, in so far as the*

domestic legislation allows this to be done, and according to the measure of protection which it gives to similar national works.

[PROTOCOL I, PAR. 2]

Photograph of work of art protected

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention *and the additional act*, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights.

ARTICLE II

Authors to enjoy in countries of the Union the rights granted to natives

Authors of any one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works [whether published in one of those countries or unpublished], *either not published or published for the first time in one of those countries*, the rights which the respective laws do now or may hereafter grant to natives.

ARTICLE 4

Authors within the jurisdiction of one of the countries of the Union enjoy for their works, whether unpublished or published for the first time in one of the countries of the Union, such rights, in the countries other than the country of origin of the work, as the respective laws now accord or shall hereafter accord to natives, as well as the rights specially accorded by the present Convention.

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

[PARIS DECLARATION]

1. *By the terms of paragraph 2 of Article II of the Convention, the protection granted by the aforementioned Act depends solely on the accomplishment in the country of origin of the work of the conditions and formalities that may be prescribed by the legislation of that country. The same rule applies to the protection of the photographic works mentioned in No. 1 (b), of the modified "Protocole de Clôture."*

[ART. II, PAR. 3, 4]

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

No formalities required

The enjoyment and the exercise of such rights are not subject to any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the stipulations of the present Convention, the extent of the protection, as well as the means of redress guaranteed to the author to safeguard his rights, are regulated exclusively according to the legislation of the country where the protection is claimed.

[Conditions and formalities of country of origin]

Definition of country of origin

The following is considered as the country of origin of the work: for unpublished works, the country to which the author belongs; for published works, the country of first publication, and for works published simultaneously in

For unpublished works the country to which the author belongs is considered the country of origin of the work.

several countries of the Union, the country among them whose legislation grants the shortest term of protection. For works published simultaneously in a country outside of the Union and in a country within the Union, it is the latter country which is exclusively considered as the country of origin.

PARIS DECLARATION

Published works

2. By "published" works must be understood works actually issued to the public in one of the countries of the Union. Consequently, the representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, do not constitute publication in the sense of the aforementioned Acts.

By published works ("*œuvres publiées*") must be understood, according to the present Convention, works which have been issued ("*œuvres editées*"). The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art and the construction of a work of architecture do not constitute publication.

ARTICLE 5

Authors of countries of the Union first publishing in another country

Authors within the jurisdiction of one of the countries of the Union who publish their works for the first time in another country of the Union, have in this latter country the same rights as national authors.

ARTICLE III

[The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.]

Authors, not subjects of one of the countries of the Union, but who shall have published or caused to be published for the first time, their literary or artistic works in one of those countries, shall enjoy for those works the protection accorded by the Berne Convention, and by the present additional act.

[ART. II, PAR. 2]

The enjoyments of these rights . . . cannot exceed in the other countries the term of protection granted in the said country of origin.

ARTICLE 6

Authors not belonging to countries of the Union also protected if they first publish in a Union country

Authors not within the jurisdiction of any one of the countries of the Union, who publish for the first time their works in one of these countries, enjoy in that country the same rights as national authors, and in the other countries of the Union the rights accorded by the present Convention.

ARTICLE 7

Term of protection life and 50 years

The term of protection granted by the present Convention comprises the life of the author and fifty years after his death.

If not adopted, laws of country to govern term

In case this term, however, should not be adopted uniformly by all the countries of the Union, the duration of the protection shall be regulated by the law of the country where protection is claimed, and can not exceed the term granted in the country of origin of the work. The contracting countries will consequently

be required to apply the provision of the preceding paragraph only to the extent to which it agrees with their domestic law.

For photographic works and works obtained by a process analogous to photography, for posthumous works, or anonymous or pseudonymous works, the term of protection is regulated by the law of the country where protection is claimed, but this term may not exceed the term fixed in the country of origin of the work.

Term for photographic, posthumous, anonymous or pseudonymous works

[ART. II, ADD. PAR.]

Posthumous works are included amongst protected works.

ARTICLE V

Exclusive right of translation

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works [until the expiration of ten years from the publication of the original work in one of the countries of the Union] *during the whole duration of the right in the original work. But the exclusive right of translation shall cease to exist when the author shall not have made use of it within a period of ten years from the first publication of the origi-*

ARTICLE 8

Authors of unpublished works within the jurisdiction of one of the countries of the Union, and authors of works published for the first time in one of these countries enjoy in the other countries of the Union during the whole term of the right in the original work the exclusive right to make or to authorize the translation of their works.

nal work, by publishing or causing to be published in one of the countries of the Union, a translation in the language for which protection shall be claimed.

Works published in incomplete parts

For works published in incomplete parts ("livraisons") the period of ten years commences from the date of publication of the last part of the original work.

Works published in several volumes

For works composed of several volumes published at intervals, as well as for bulletins or collections ("cahiers") published by literary or scientific societies, or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered a separate work.

In the cases provided for by the present article, and for the calculation of the period of protection, the 31st of December of the year in which the work was published is admitted as the date of publication.

ARTICLE VII

Serial stories ("romans-feuilletons"), including novels, published in newspapers or periodicals of one of the countries of the Union, can-

ARTICLE 9

Serial stories (*romans-feuilletons*), novels and all other works, whether literary, scientific or artistic, whatever may be their sub-

Serials and other works in newspapers or periodicals protected

not be reproduced, in original or in translation, in the other countries, without the authorization of their authors or of their lawful representatives.

Reproduction of newspaper articles

[Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical.]

This applies equally to other articles in newspapers or periodicals, whenever the authors or publishers shall have expressly declared in the paper or periodical in which they may have published them, that they forbid their reproduction. For periodicals it is sufficient if the prohibition is made in a general way, at the beginning of each number.

In the absence of prohibition, reproduction will be permitted on condition of indicating the source.

This prohibition cannot in any case apply to articles

ject, published in newspapers or periodicals of one of the countries of the Union, may not be reproduced in the other countries without the consent of the authors.

With the exception of serial stories and of novels ("*des romans-feuilletons et des nouvelles*") any newspaper article may be reproduced by another newspaper if reproduction has not been expressly forbidden. The source, however, must be indicated. The confirmation of this obligation shall be determined by the legislation of the country where protection is claimed.

The protection of the present Convention does not

of political discussion, [or to the reproduction of news of the day or current topics,] *to the news of the day, or to current topics.*

apply to news of the day or to miscellaneous news having the character merely of press information.

News matter not protected

ARTICLE VIII

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

ARTICLE 10

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

Extracts from literary or artistic works

ARTICLE IX

The stipulations of Article II apply to the public representation of dramatic or dramatico-musical works whether such works be published or not.

ARTICLE 11

The stipulations of the present Convention apply to the public representation of dramatic or dramatico-musical works and to the public performance of musical works, whether these works are published or not.

Representation of dramatic or dramatico-musical works

Authors of dramatic or dramatico-musical works, or their lawful representatives, are, during the existence of their exclusive right of translation, equally protected against the unauthorized public representation of translations of their works.

Authors of dramatic or dramatico-musical works are protected, during the term of their copyright in the original work, against the unauthorized public representation of a translation of their works.

Representation of translations

Notice of prohibition of performance not required

The stipulations of Article II apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title page or commencement of the work that he forbids the public performance.

In order to enjoy the protection of this article, authors, in publishing their works, are not obliged to prohibit the public representation or public performance of them.

Article X

Adaptations, etc., considered as infringements

Unauthorized indirect appropriations of a literary or artistic work of various kinds such as adaptations, arrangements of music, etc., are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, or abridgements, so made as not to confer the character of a new original work.

Article 12

Unauthorized indirect appropriations of a literary or artistic work of various kinds such as adaptations, arrangements of music, transformations of a romance or novel or of a poem into a theatrical piece and vice versa, etc., are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of such work in the same form or in another form with non-essential alterations, or abridgements, so made as not to confer the character of a new original work.

Paris Declaration

3. *The transformation of a novel into a play, or of a play into a novel, comes under the stipulations of Article X.*

[ARTICLE X, PAR. 2]

It is agreed that, in the application of the present article, the tribunals of the various countries of the Union will, if there is occasion, take into account limitations of their respective laws.

PROTOCOL

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.

ARTICLE 13

Adaptation of musical works to mechanical instruments

Authors of musical works have the exclusive right to authorize: (1) the adaptation of these works to instruments serving to reproduce them mechanically; (2) the public performance of the same works by means of these instruments.

Each country to regulate for itself the manner in which Convention shall apply

The limitations and conditions relative to the application of this article shall be determined by the domestic legislation of each country in its own case; but all limitations and conditions of this nature shall have an effect strictly limited to the country which shall have adopted them.

Provision not retroactive

The provisions of paragraph 1 have no retroactive effect, and therefore are not applicable in a country of the Union to works which, in that coun-

try, shall have been lawfully adapted to mechanical instruments before the going into force of the present Convention.

Importation of mechanical musical appliances

The adaptations made by virtue of paragraphs 2 and 3 of this article and imported without the authorization of the parties interested into a country where they are not lawful, may be seized there.

ARTICLE 14

Right of reproduction by cinematograph protected

Authors of literary, scientific or artistic works have the exclusive right to authorize the reproduction and the public representation of their works by means of the cinematograph.

Cinematographic productions protected

Cinematographic productions are protected as literary or artistic works when by the arrangement of the stage effects or by the combination of incidents represented, the author shall have given to the work a personal and original character.

Without prejudice to the rights of the author in the original work, the reproduction by the cinematograph of a literary, scientific or artistic work is protected as an original work.

The preceding provisions apply to the reproduction or production obtained by any other process analogous to that of the cinematograph.

Also any analogous production

ARTICLE XI

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against piracies before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the

ARTICLE 15

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

Author's name on work as proof of authorship

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

Publisher of anonymous or pseudonymous works considered as representative of author

country of origin have been accomplished, as contemplated in Article II.

	ARTICLE XII	ARTICLE 16
Seizure of pirated copies	Pirated works may be seized [on importation into] *by the competent authorities of* those countries of the Union where the original work enjoys legal protection.	All infringing works may be seized by the competent authorities of the countries of the Union where the original work has a right to legal protection. Seizure may also be made in these countries of reproductions which come from a country where the copyright in the work has terminated, or where the work has not been protected.
Seizure to be made according to the laws of each country	The seizure shall take place conformably to the domestic law of each State.	The seizure shall take place conformably to the domestic law of each State.
	ARTICLE XIII	ARTICLE 17
Each government to exercise supervision	It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.	The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE XIV

Under the reserves and conditions to be determined by common agreement, the present Convention applies to all works which at the moment of its coming into force have not fallen into the public domain in the country of origin.

PROTOCOL

4. The common agreement alluded to in Article XIV of the Convention is established as follows:

The application of the Convention *and of the additional act* to works which have not fallen into the public domain *in the country of origin* at the time when [it comes] *these acts came* into force, shall operate according to the stipulations on this head which may be contained in special conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the

ARTICLE 18

Convention to apply to all works not in public domain

The present Convention applies to all works which, at the moment of its coming into force, have not fallen into the public domain of their country of origin because of the expiration of the term of protection.

But if a work by reason of the expiration of the term of protection which was previously secured for it has fallen into the public domain of the country where protection is claimed, such work will not be protected anew.

Special conventions and domestic legislation may govern

This principle will be applied in accordance with the stipulations to that effect contained in the special Conventions either existing or to be concluded between countries of the Union, and in default of such stipulations, its application will be regulated by each country in its own case.

respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV is to be applied.

Application to translation

The stipulations of Article XIV of *the Convention of Berne and of the present number of the "Protocole de Clôture" apply equally to the exclusive right of translation, as granted by the present additional act.*

Provisions to apply to new accessions

The above-mentioned temporary provisions are applicable in case of new accessions to the Union.

The preceding provisions apply equally in the case of new accessions to the Union and where the term of protection would be extended by the application of Article 7.

ARTICLE 19

More extensive rights may be granted by domestic legislation

The provisions of the present Convention do not prevent a claim for the application of more favorable provisions which may be enacted by the legislation of a country of the Union in favor of foreigners in general.

ARTICLE XV

More extensive rights may be secured by special treaties

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separ-

ARTICLE 20

The governments of the countries of the Union reserve the right to make between themselves special treaties, when these treaties

ate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

would confer upon authors more extended rights than those accorded by the Union, or when they contain other stipulations not conflicting with the present Convention. The provisions of existing treaties which answer the aforesaid conditions remain in force.

Additional Article

The Convention concluded this day in no wise affects the maintenance of existing conventions between the contracting States, provided always that such conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to the said Convention.

Convention not to affect existing conventions conferring more extended rights

Protocol

7. The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

Protocol integral part of Convention

	ARTICLE XVI	ARTICLE 21
Bureau of the International Union	An International Office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."	The International Office instituted under the name of "Bureau of the International Union for the Protection of Literary and Artistic Works" (*Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques*) is maintained.
Under control of Switzerland	This Office, of which the expenses will be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its direction. The functions of this Office are determined by common accord between the countries of the Union.	This Bureau is placed under the high authority of the Government of the Swiss Confederation, which controls its organization and supervises its working.
	PROTOCOL	
Organization	5. The organization of the International Office, established in virtue of Article XVI of the Convention, shall be fixed by a regulation which shall be drawn up by the Government of the Swiss Confederation.	
Language of Office to be French	The official language of the International Office will be French.	The official language of the International Office is French.

The International Office will collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will study questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different administrations, will edit a periodical publication in the French language treating questions which concern the Union. The governments of the countries of the Union reserve to themselves the faculty of authorizing, by common accord, the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Director of the Inter-

ARTICLE 22

Duties of International Office

The International Office collects all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It studies questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different administrations, edits a periodical publication in the French language treating questions which concern the Union. The governments of the countries of the Union reserve to themselves the faculty of authorizing, by common accord, the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

Will furnish information as to copyright

The International Office must always hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Director of the In-

Annual report of Director of International Bureau

national Bureau . . . will make an annual report on his administration, which shall be communicated to all the members of the Union.

ternational Bureau makes an annual report on his administration, which is communicated to all the members of the Union.

ARTICLE 23

Expenses of the International Office to be shared by contracting States

The expenses of the Office of the International Union shall be shared by the contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of sixty thousand francs a year. This sum may be increased by the decision of one of the Conferences provided for in Article XVII.

The expenses of the Office of the International Union are shared by the contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of sixty thousand francs a year. This sum may be increased by the decision of one of the Conferences provided for in Article 24.

Method of sharing expenses

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding States into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:

First class.....	25 units
Second class	20 units
Third class	15 units
Fourth class	10 units
Fifth class	5 units
Sixth class	3 units

These coefficients will be multiplied by the number of States of each class, and the total product thus obtained

The share of the total expense to be paid by each country is determined by the division of the contracting and acceding States into six classes, each of which contributes in the proportion of a certain number of units, viz.:

First class	25 units
Second class	20 units
Third class	15 units
Fourth class	10 units
Fifth class	5 units
Sixth class	3 units

These coefficients are multiplied by the number of States of each class, and the total product thus obtained

will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unity of expense.

Each State will declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unity of expense.

Each State will declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration prepares the budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account, which shall be communicated to all the other Administrations.

Swiss Administration to prepare the budget of the International Office, etc.

ARTICLE XVII

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, will be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

PROTOCOL

(5.) The Administration of the country where a Conference is about to be held,

ARTICLE 24

Revision of Convention

..e present Convention may be subjected to revision in order to introduce therein amendments calculated to perfect the system of the Union.

Future conferences

Questions of this kind, as well as those which are of interest to the Union in other respects, are considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is about to be held, prepares the programme of the same with the assistance

Country where a conference is to be held to prepare programme

will prepare the programme of the Conference with the assistance of the International Office.

Director of the International Office to participate

The Director of the International Office will attend the sittings of the Conferences, and will take part in the discussion without a deliberative voice.

of the International Office. The Director of the International Office attends the sittings of the Conferences, and takes part in the discussion without a deliberative voice.

[ART. XVII, PAR. 3]

Alterations of Convention must be by unanimous consent

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries comprising it.

No alteration in the present Convention is binding on the Union except by the unanimous consent of the countries comprising it.

PROTOCOL

Next Conference to be held at Paris

6. The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office.

ARTICLE XVIII

Accession of other countries

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede

ARTICLE 25

The States outside of the Union which assure legal protection of the rights which are the object of the present Convention, may accede to it upon their request.

thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

May substitute provisions of previous conventions

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. It may, however, indicate such provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, as it may be judged necessary to substitute provisionally, at least, for the corresponding provisions of the present Convention.

ARTICLE XIX

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their colonies of foreign possessions.

They may do this either by a general declaration comprehending all their colonies or possessions within the accession, or by specially naming those comprised therein, or by

ARTICLE 26

Accession for colonies or foreign possessions

The contracting countries have the right to accede at any time to the present Convention for their colonies or foreign possessions.

They may do this either by a general declaration comprehending all their colonies or possessions within the accession, or by specially naming those comprised therein, or by simply

simply indicating those which are excluded.

indicating those which are excluded.

This declaration shall be made known in writing to the Government of the Swiss Confederation, and by the latter to all the others.

Present Convention to replace Berne Convention and Paris Acts

ARTICLE 27

The present Convention shall replace, in the relations between the contracting States, the Convention of Berne of September 9, 1886, including the Additional Article and the Final Protocol of the same day, as well as the Additional Act, and the Interpretative Declaration of May 4, 1896. The conventional acts above-mentioned shall remain in force in the relations with the States which do not ratify the present Convention.

But Berne Convention remains in force between countries not signatory to present Convention

Signatory States may declare themselves bound by former Conventions upon certain points

The States signatory to the present Convention may, at the time of the exchange of ratifications, declare that they intend, upon such or such point, still to remain bound by the provisions of the Conventions to which they have previously subscribed.

ARTICLE XXI

ARTICLE 28

Convention to be ratified

The present Convention shall be ratified, and the

The present Convention shall be ratified, and the

ratifications exchanged at Berne, within the space of one year at the latest.

ratifications exchanged at Berlin, not later than the first of July, 1910.

PROTOCOL

7. It is agreed that, as regards the exchange of ratifications contemplated in Article XXI, each contracting party shall give a single instrument, which shall be deposited, with those of the other States, in the Government archives of the Swiss Confederation. Each party shall receive in exchange a copy of the *procès-verbal* of the exchange of ratifications, signed by the plenipotentiaries present.

Exchange of ratifications

Each contracting party shall send, for the exchange of ratifications, a single instrument, which shall be deposited, with those of the other countries, in the archives of the Government of the Swiss Confederation. Each party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries who shall have taken part therein.

ARTICLE XX

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an indefinite period until the termination of a year from the day on which it may have been denounced.

[Such denunciation shall be made to the Government authorized to receive accessions, and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the

ARTICLE 29

Convention to take effect three months after exchange of ratifications

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an indefinite period until the termination of a year from the day on which it may have been denounced.

Denunciation of Convention

other countries of the Union.]

This denunciation shall be addressed to the Government of the Swiss Confederation. It shall only take effect in respect of the country which shall have made it, the Convention remaining operative for the other countries of the Union.

This denunciation shall be addressed to the Government of the Swiss Confederation. It shall only take effect in respect of the country which shall have made it, the Convention remaining operative for the other countries of the Union.

PARIS III

Accession of other countries to Paris Acts

The countries of the Union which have not become parties to the present Additional Act and Declaration shall be allowed to accede thereto at any time, on their request to that effect. The same rule shall apply to the countries which may eventually accede either to the Convention of the 9th September, 1886, or to the Convention or to the Additional Act or to the Declaration of the 4th May, 1896. It shall be sufficient for the purpose if a notification is addressed in writing to the Swiss Federal Council, who will, in turn, notify this accession to the other Governments.

PARIS IV

Paris Acts to be ratified

The present Additional Act and Declaration shall have the same force and du-

ration as the Convention of the 9th September, 1886.

These shall be ratified, and the ratification shall be exchanged at Paris in the form adopted for that Convention, as soon as possible, and within a year at the latest.

Either shall come into force between the countries who have ratified it three months after this exchange.

ARTICLE 30

Adoption of term of life and 50 years to be notified

The States which introduce into their legislation the term of protection of fifty years,[a] provided for by Article 7, paragraph 1, of the present Convention, shall make it known to the Government of the Swiss Confederation by a written notification which shall be communicated at once by that Government to all the other countries of the Union.

Notice shall be given of renouncement of any reservations

It shall be the same for such States as shall renounce any reservations made by them in virtue of Articles 25, 26, and 27.

Signature

In testimony of which, the respective Plenipotentiaries have signed the pre-

[a] Article 7 provides for a general term of protection for life and fifty years.

Date of signing, November 13, 1908

sent Convention and have attached thereto their seals.

Done at Berlin, the thirteenth of November, one thousand nine hundred eight, in a single copy, which shall be deposited in the archives of the Government of the Swiss Confederation, and of which copies, properly certified, shall be sent through diplomatic channels to the contracting countries.

IV

PAN AMERICAN UNION: CONVENTIONS

II. MONTEVIDEO CONVENTION, 1889

TREATY ON LITERARY AND ARTISTIC COPYRIGHT ADOPTED JANUARY 11, 1889

ARTICLE 1

The contracting States promise to recognize and protect the rights of literary and artistic property, according to the provisions of the present treaty.

Union to protect literary and artistic property

ARTICLE 2

The author of any literary or artistic work, and his successors, shall enjoy in the contracting States the rights accorded him by the law of the State in which its original publication or production took place.

Authors shall enjoy rights secured in country of origin

ARTICLE 3

The author's right of ownership in a literary or artistic work shall comprise the right to dispose of it, to publish it, t_ convey it to another, to translate it or to authorize its translation, and to reproduce it in any form whatsoever.

Definition of copyright

ARTICLE 4

No State shall be obliged to recognize the right to literary or artistic property for a longer period than that allowed to authors who obtain the same right in that State. This period may be limited to that prescribed in the country where it originates, if such period be the shorter.

Term not to exceed that of country of origin

ARTICLE 3

By the expression literary or artistic works is understood all books, pamphlets, or other writings, dramatic or dra-

Definition of "literary and artistic work"

matico-musical works, chorographies, musical compositions with or without words, drawings, paintings, sculptures, engravings, photographs, lithographs, geographical maps, plans, sketches, and plastic works relating to geography, topography, architecture, or to the sciences in general; and finally every production in the field of literature or art which may be published in any way by printing or reproduction.

ARTICLE 6

Translation rights

The translators of works of which a copyright either does not exist or has expired, shall enjoy with respect to their translations the rights declared in Article 3, but they shall not prevent the publication of other translations of the same work.

ARTICLE 7

Newspaper articles

Newspaper articles may be reproduced upon quoting the publication from which they are taken. From this provision articles relating to the sciences or arts, and the reproduction of which shall have been prohibited by the authors are excepted.

ARTICLE 8

Addresses

Speeches pronounced or read in deliberative assemblies, before tribunals of justice, or in public meetings, may be published in the public press without any authorization whatsoever.

ARTICLE 9

Infringements defined

Under the head of illicit reproductions shall be classed all indirect, unauthorized appropriations of a literary or artistic work, which may be designated by different names as adaptations, arrangements, etc., etc., and which are no more than a reproduction without presenting the character of an original work.

ARTICLE 10

Authority recognized

The rights of authorship shall be allowed, in the absence of proof to the contrary, in favor of the persons whose names or pseudonyms shall be borne upon the literary or artistic works in question.

If the authors wish to withhold their names, they should

inform the editors t[illegible] the rights of authorship belong to them.

ARTICLE 11

Those who usurp the right of literary or artistic property shall be brought before the courts and tried according to the laws of the country in which the fraud may have been committed. **Each government to exercise supervision**

ARTICLE 12

The recognition of the right of ow[illegible]ership of literary and artistic works shall not prevent the contracting States from preventing by suitable legislation the reproduction, publication, circulation, representation, or exhibition of all works which may be considered contrary to good morals. **Immoral works**

ARTICLE 13

The simultaneous ratification of all the contracting nations shall not be necessary to the effectiveness of this treaty. Those who adopt it will communicate the fact to the Governments of the Argentine Republic and the Eastern Republic of Uruguay, who will inform the other contracting nations. This formality will take the place of an exchange. **Ratification**

ARTICLE 14

The exchange having been made in the manner prescribed in the foregoing article, this treaty shall remain in force for an indefinite period after that act. **Indefinite period**

ARTICLE 15

If any of the co[illegible]tracting nations should deem it advisable to be released from this treaty, or introduce modifications in it, said nation shall so inform the rest; but it shall not be released until two years after the date of notification, during which time measures will be taken to effect a new arrangement. **Withdrawals**

ARTICLE 16

The provisions of Article 13 are extended to all nations who, although not represented in this Congress, may desire to adopt the present treaty. **Adherences**

Signatories

The seven countries represented and whose delegates signed the Montevideo treaty were: Argentina, Bolivia, Brazil, Chile, Paraguay, Peru, Uruguay. But the convention was ratified only by Argentina, Paraguay, Uruguay, Peru and Boliva, and Brazil and Chile did not become participants. Participation of Belgium, France, Italy and Spain in this convention was accepted by Argentina and Paraguay, but apparently not by the other countries.

12. MEXICO CITY CONVENTION, 1902

CONVENTION TO PROTECT LITERARY AND ARTISTIC PROPERTY, SIGNED AT MEXICO, JANUARY 27, 1902

ARTICLE 1

Union to protect literary and artistic property

The signatory States constitute themselves into a Union for the purpose of recognizing and protecting the rights of literary and artistic property, in conformity with the stipulations of the present Convention.

ARTICLE 2

Definition of "literary and artistic works"

Under the term "literary and artistic works" are comprised books, manuscripts, pamphlets of all kinds, no matter what subject they may treat of and what may be the number of their pages; dramatic or melodramatic works; choral music and musical compositions, with or without words; designs, drawings, paintings, sculpture, engravings, photographic works; astronomical and geographical globes; plans, sketches, and plastic works, relating to geography or geology, topography or architecture, or any other science; and, finally, every production in the literary and artistic field which may be published by any method of impression or reproduction.

ARTICLE 3

Definition of copyright

The copyright to literary or artistic work consists in the exclusive right to dispose of the same, to publish, sell, and translate the same, or to authorize its translation, and to reproduce the same in any manner either entirely or partially.

Exclusive right of translation

The authors belonging to one of the signatory countries, or their assigns, shall enjoy in the other signatory countries and for the time stipulated in Article 5 the exclusive right to translate their works or to authorize their translation.

ARTICLE 4

Application for copyright and deposit of two copies

In order to obtain the recognition of the copyright of a work, it is indispensable that the author or his assigns or legitimate representative, shall address a petition to the official department which each Government may designate, claiming the recognition of such right, which petition must be accompanied by two copies of his work, said copies to remain in the proper department.

One additional copy to be deposited for each country

Copies and certificates of registration to be transmitted

If the author or his assigns should desire that this copyright be recognized in any other of the signatory countries, he shall attach to his petition a number of copies of his work equal to that of the countries he may therein designate. The said department shall distribute the copies mentioned among those countries, accompanied by a copy of the respective certificate, in order that the copyright of the author may be recognized by them.

Any omissions which the said department may incur in this respect shall not give the author or his assigns any rights to present claims against the State.

ARTICLE 5

Authors shall enjoy rights secured in country of origin for like term

The authors who belong to one of the signatory countries, or their assigns, shall enjoy in the other countries the rights which their respective laws at present grant, or in the future may grant, to their own citizens, but such right shall not exceed the term of protection granted in the country of its origin.

Works in parts or in several volumes

For the works composed of several volumes which are not published at the same time, as well as for bulletins or installments of publications of literary or scientific societies or of private parties, the term of property shall commence to be counted from the date of the publication of each volume, bulletin, or installment.

ARTICLE 6

Country of first publication country of origin

The country in which a work is first published shall be considered as the country of its origin, or, if such publication takes place simultaneously in several of the signatory countries, the one whose laws establish the shortest period

of protection shall be considered as the country of its origin.

ARTICLE 7

Translations protected

Lawful translations shall be protected in the same manner as original works. The translators of works in regard to which there exists no guaranteed right of property, or the right of which may have become extinguished, may secure the right of property for their translations, as established in Article 3, but they shall not prevent the publication of other translations of the same work.

ARTICLE 8

Newspaper articles

Newspaper articles may be reproduced, but the publication from which they are taken must be mentioned, and the name of the author given, if it should appear in the same.

ARTICLE 9

Works bearing names of authors or pseudonyms protected

Copyright shall be recognized in favor of the persons whose names or acknowledged pseudonyms are stated in the respective literary or artistic work or in the petition to which Article 4 of this Convention refers, excepting case of proof to the contrary.

ARTICLE 10

Addresses

Addresses delivered or read in deliberative assemblies, before the courts of justice, and in public meetings may be published in the newspaper press without any special authorization.

ARTICLE 11

Fragments of literary or artistic works

The reproduction in publications devoted to public instruction or chrestomathy of fragments of literary or artistic works confers no right of property, and may therefore be freely made in all the signatory countries.

ARTICLE 12

Infringement defined

All unauthorized indirect use of a literary or artistic work which does not present the character of an original work shall be considered as an unlawful reproduction.

It shall be considered in the same manner unlawful to reproduce in any form an entire work, or the greater part of the same, accompanied by notes or commentaries, under the pretext of literary criticism or of enlargement or completement of an original work.

ARTICLE 13

Fraudulent copies to be sequestrated, etc.

All fraudulent works shall be liable to sequestration in the signatory countries in which the original work may have the right of legal protection, without prejudice to the indemnity or punishments to which the falsifiers may be liable according to the laws of the country in which the fraud has been committed.

ARTICLE 14

Each Government to exercise supervision

Each one of the Governments of the signatory countries shall remain at liberty to permit, exercise vigilance over, or prohibit the circulation, representation and exposition of any work or production in respect to which the competent authorities shall have power to exercise such right.

ARTICLE 15

Convention to take effect three months after ratification

The present Convention shall take effect between the signatory States that ratify it, three months from the day they communicate their ratification to the Mexican Government, and shall remain in force among all of them until one year from the date it is denounced by any of said States. The notification of such denouncement shall be addressed to the Mexican Government and shall only have effect in so far as regards the country which has given it.

ARTICLE 16

Adherence of nations not represented at 2d Int. Am. Conference

The Governments of the signatory states, when approving the present Convention, shall declare whether they accept the adherence to the same by the nations which have had no representation in the Second International American Conference.

In testimony whereof the Plenipotentiaries and Dele-

gates sign the present Convention and set thereto the seal of the Second International American Conference.

Made in the City of Mexico, on the twenty-seventh day of January, nineteen hundred and two, in three copies written in Spanish, English, and French, respectively, which shall be deposited at the Department of Foreign Relations of the Government of the Mexican United States, so that certified copies thereof may be made, in order to send them through the diplomatic channel to the signatory States.

Signed at City of Mexico, Jan. 27, 1902

13. RIO DE JANEIRO CONVENTION, 1906

CONVENTION, SIGNED AT RIO DE JANEIRO, AUGUST 23, 1906, TO PROTECT PATENTS OF INVENTION, DRAWINGS AND INDUSTRIAL MODELS, TRADE-MARKS, AND LITERARY AND ARTISTIC PROPERTY

ARTICLE 1

Patents, trade-marks, copyrights

The subscribing nations adopt in regard to patents of invention, drawings and industrial models, trade-marks, and literary and artistic property the treaties subscribed at the Second International Conference of American States, held in Mexico on the 27th of January, 1902, with such modifications as are expressed in the present Convention.

ARTICLE 2

Union; Bureaus at Havana and Rio de Janeiro

A union is constituted of the nations of America, which will be rendered effective by means of two Bureaus, which will be maintained, one in the city of Havana and the other in that of Rio de Janeiro, each working closely with the other, to be styled Bureaus of the International American Union for the Protection of Intellectual and Industrial Property, and will have for their object the centralization of the registration of literary and artistic works, patents, trade-marks, drawings, models, etc., which will be registered, in each one of the signatory nations, according to the respective treaties and with a view to their validity and recognition by the others.

Registration optional

This international registration is entirely optional with persons interested, since they are free to apply, personally or through an attorney-in-fact, for registration in each one of the States in which they seek protection.

ARTICLE 3

Bureau at Havana

The Bureau established in the city of Havana will have charge of the registrations from the United States of

America, the United States of Mexico, Venezuela, Cuba, Haiti, San Domingo, San Salvador, Honduras, Nicaragua, Costa Rica, Guatemala, Panama, and Colombia.

Bureau at Rio de Janeiro

The Bureau established in the city of Rio de Janeiro will attend to the registrations coming from the republics of the United States of Brazil, Uruguay, Argentine Republic, Paraguay, Bolivia, Chile, Peru, and Ecuador.

ARTICLE 4

Bureaus to be considered as one

For the purpose of the legal unification of the registration, the two International Bureaus, which are divided merely with a view to greater facility of communication, are considered as one, and to this end it is established that (a) both shall have the same books and the same accounts kept under an identical system; (b) copies shall be transmitted monthly from one to the other, authenticated by the Governments in whose territories they have their seat, of all the registrations, communications, and other documents affecting the recognition of the rights of proprietors or authors.

ARTICLE 5

Copies of registrations to be transmitted

Each one of the Governments adhering to the Union will send at the end of each month to the proper Bureau, according to Art. 3, authenticated copies of all registrations of trade-marks, patents, drawings, models, etc., and copies of the literary and artistic works registered in them, as well as of all lapses, renunciations, transfers, and other alterations occurring in proprietary rights, according to the respective treaties and laws, in order that they may be sent out or distributed and notice given of them as the case may be by the International Bureau to those nations in direct correspondence therewith.

ARTICLE 6

Bureaus to transmit certificates

The registration or deposit of drawings, models, etc., made in the country of origin according to the national law of the same and transmitted by the respective administration to the International Bureau, shall be by such Bureau

laid before the other countries of the Union, by which it shall be given full faith and credit, except in the case provided for in Art. 9 of the Treaty on Patents, Trade-Marks, etc., of Mexico, and in case the requirements essential to the recognition of international property are lacking where literary or artistic works are involved according to the treaty thereon subscribed in Mexico.

Protection to be allowed or refused within one year

In order that the States forming the Union may accept or refuse the recognition of the rights granted in the country of origin, and for the further legal purposes of such recognition, such States shall be allowed a term of one year from the date of notification by the proper office for the purpose of so doing.

Notification in case protection is not allowed

In case patents, trade-marks, drawings, models, etc., or the right to literary or artistic works shall fail to obtain recognition on the part of any one of the offices of the States forming the Union, the International Bureau shall be made acquainted with the facts and reasons of the case in order that in its turn these facts may be transmitted by it to the office of origin and to the interested party, for proper action according to local law.

ARTICLE 7

Registration in country of origin to have same effect as registration in each country

Every registration or recognition of intellectual and industrial rights made in one of the countries of the Union and communicated to the others according to the form prescribed in the preceding articles shall have the same effect that would be produced if said registration or recognition had taken place in all of them, and every nullification or lapse of rights occurring in the country of origin and communicated in the same form to the others shall produce in them the same effect that it would produce in the former.

Term of protection, that of country of origin

The period of international protection derived from the registration shall be that recognized by the laws of the country where the rights originated or have been recognized; and if said laws do not provide for such matters or

If no term by law, then as specified

do not specify a fixed period, the respective periods shall be: for patents, 15 years; for trade-marks or commercial designs, models, and industrial drawings, 10 years; for liter-

ary and artistic works, 25 years, counting from the death of the author thereof. The first two periods may be renewed at will by giving the same form as in the case of the first registration.

Copyright, 25 years after death of author

ARTICLE 8

The International Bureaus for the protection of intellectual and industrial property shall be governed by identical regulations, formed with the concurrence of the Governments of the Republics of Cuba and Brazil and approved by all the others belonging to the Union. Their budgets, after being sanctioned by the said Governments, shall be defrayed by all of the subscribing Governments in the same proportion established for the International Bureau of American Republics at Washington, and in this particular they shall be placed under the control of those Governments within whose territories they are established.

Regulations to govern Bureaus

Expenses of Bureaus

To the tax on rights which the country of their origin collects for registration or deposit and other acts resulting from the recognition or guaranty of intellectual and industrial property, shall be added a fee of five dollars, American gold, which fee or the equivalent thereof in the currency of the country in which the payment is made shall be distributed in equal parts among the Governments in whose territory the International Bureaus shall be established, the sole object of this being to contribute to the maintenance of the said Bureaus.

Registration fee, $5 American gold

ARTICLE 9

In addition to the functions prescribed in the preceding articles, the International Bureaus shall have the following:

Functions of Bureaus:

1st. To collect information of all kinds regarding the protection of intellectual and industrial property and to publish and circulate the same among the countries of America at proper intervals;

1. To collect and publish information

2nd. To encourage the study of questions regarding th said subjects, to which end they may publish one or mor official reviews containing all documents forwarded to them by the offices of the subscribing countries;

2. May publish official reviews

3. To give notice of difficulties

3rd. To lay before the Governments of the Union any difficulties or obstacles that may arise in the efficacious application of the present Convention, and indicate means to correct or remove such difficulties or obstacles;

4. To originate and prepare for international conferences

4th. To help the Governments of the Union in the preparation of international conferences for the study and progress of legislation and intellectual and industrial properties, for alterations which it may be proper to introduce in the regulations of the Union or in the treaties in force on the said subject, and in case such conferences take place the directors of the Bureaus, not appointed to represent any countries, shall have a right to attend the meetings and express their opinions at them, but not to vote;

5. To make yearly report

5th. To present to the Governments of the countries where they shall have their seats a yearly report of their labors, which shall be communicated to all of the States of the Union;

6. To arrange for the exchange of publications, etc.

6th. To establish relations for the exchange of publications, informations and data conducive to the progress of the institution with similar bureaus, and institutions, and with scientific, literary, artistic, and industrial corporations of Europe and America;

7. To act as agent for each of the Governments concerned

7th. To coöperate as agent for each one of the Governments of the Union for the transaction of any business, the taking of any initiative, or the execution of any act conducive to further the ends of the present Convention with the offices of the other Governments.

ARTICLE 10

Registration required to replace provisions of treaties of 1902

The provisions contained in the Treaties of Mexico of January 27th, 1902, on patents of invention, drawings and industrial models, and commercial trade-marks, and on literary and artistic property, so far as regards the formalities of the registration or recognition of said rights in other countries than that of origin, shall be considered as replaced by the provisions of the present Convention as soon as one of the International Bureaus shall have been established, and only with regard to those States which have concurred in its constitution; in all other cases the said treaties shall

remain in force and the present Convention shall be considered additional thereto.

ARTICLE 11

Cuba and Brazil to organize Copyright Bureaus

The Governments of the Republics of Cuba and the United States of Brazil shall proceed with the organization of the International Bureaus upon the ratification of this Convention by at least two-thirds of the nations belonging to each group mentioned in Article 3. The simultaneous establishment of both Bureaus shall not be necessary; one only may be established if there be the number of adherent Governments provided above, the Government in which the Bureau has its seat being charged with taking the proper steps to secure this result, availing itself of the powers contained in the eighth article.

Bureau first established to be used until second is organized

In the event that one of the two offices referred to in this Convention shall have been established, the countries belonging to a group other than that to which the Bureau corresponds shall have the right to join it until the second Bureau shall be established. Upon the establishment of the second Bureau the first Bureau shall transmit to the same all the data referred to in Article 12.

ARTICLE 12

Adhesions to treaty to be communicated to Brazil

As regards the adhesion of the American nations to the present Convention, it will be communicated to the Government of the United States of Brazil, which will lay it before the others, these communications taking the place of an exchange of notes.

Brazil to notify Bureau of each adhesion

The Government of Brazil will also notify the International Bureau of this adhesion, and this Bureau will forward to the newly adhering State a complete statement of all the marks, patents, models, drawings, and literary and artistic works registered which at the time shall be under interna nal protection.

In testimony whereof the Plenipotentiaries and Delegates have signed the present Convention and affixed the seal of the Third International American Conference.

Made in the City of Rio de Janeiro the twenty-third day

Signed at Rio de Janeiro, Aug. 23, 1906

of August, nineteen hundred and six, in English, Portuguese, and Spanish, and deposited with the Secretary of Foreign Affairs of the United States of Brazil, in order that certified copies thereof be made and sent through diplomatic channels to the signatory States.

14. BUENOS AIRES CONVENTION, 1910

CONVENTION ON LITERARY AND ARTISTIC COPYRIGHT SIGNED AT BUENOS AIRES, AUGUST 11, 1910

ARTICLE 1

Union to protect literary and artistic property

The signatory States acknowledge and protect the rights of literary and artistic property in conformity with the stipulations of the present convention.

ARTICLE 2

Definition of "literary and artistic works"

In the expression "Literary and artistic works" are included books, writings, pamphlets of all kinds, whatever may be the subject of which they treat and whatever the number of their pages; dramatic or dramatico-musical works; choreographic and musical compositions, with or without words; drawings, paintings, sculpture, engravings; photographic works; astronomical or geographical globes; plans, sketches or plastic works relating to geography, geology or topography, architecture or any other science; and, finally, all productions that can be published by any means of impression or reproduction.

ARTICLE 3

Formalities

The acknowledgment of a copyright obtained in one State, in conformity with its laws, shall produce its effects of full right in all the other States without the necessity of complying with any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right.

ARTICLE 4

Definition of copyright

The copyright of a literary or artistic work includes for its author or assigns the exclusive power of disposing of the same, of publishing, assigning, translating, or authorizing

its translation and reproducing it in any form whether wholly or in part.

ARTICLE 5

Authorship recognized

The author of a protected work, except in case of proof to the contrary, shall be considered the person whose name or well-known nom de plun.e is indicated therein; consequently suit brought by such author or his representative against counterfeiters or violators shall be admitted by the courts of the signatory States.

ARTICLE 6

Authors to enjoy rights secured in country of origin for like term

The authors or their assigns, citizens or domiciled foreigners, shall enjoy in the signatory countries the rights that the respective laws accord, without those rights being allowed to exceed the term of protection granted in the country of origin.

Works in parts or in several volumes

For works comprising several volumes that are not published simultaneously, as well as for bulletins, or parts, or periodical publications, the term of the copyright will commence to run, with respect to each volume, bulletin, part, or periodical publication, from the respective date of its publication.

ARTICLE 7

Country of first publication country of origin

The country of origin of a work will be deemed that of its first publication in America, and if it shall have appeared simultaneously in several of the signatory countries, that which fixes the shortest period of protection.

ARTICLE 8

Subsequent editions non-copyright

A work which was not originally copyrighted shall not be entitled to copyright in subsequent editions.

ARTICLE 9

Translation protected

Authorized translations shall be protected in the same manner as original works.

Translators of works concerning which no right of guaranteed property exists, or the guaranteed copyright of which may have been extinguished, may obtain for their

translations the rights of property set forth in Article 3d but they shall not prevent the publication of other translations of the same work.

ARTICLE 10

Addresses or discourses delivered or read before deliberative assemblies, courts of justice, or at public meetings may be printed in the daily press without the necessity of any authorization, with due regard, however, to the provisions of the domestic legislation of each nation. **Addresses**

ARTICLE 11

Literary, scientific, or artistic writings, whatever may be their subjects, published in newspapers or magazines in any one of the countries of the Union, shall not be reproduced in the other countries without the consent of the authors. With the exception of the works mentioned, any article in a newspaper may be reprinted by others if it has not been expressly prohibited, but in every case the source from which it is taken must be cited. **Newspaper articles**

News and miscellaneous items published merely for general information do not enjoy protection under this convention. **Newspaper news**

ARTICLE 12

The reproduction of extracts from literary or artistic publications for the purpose of instruction or chrestomathy does not confer any right of property, and may, therefore, be freely made in all the signatory countries. **Fragments of literary or artistic works**

ARTICLE 13

The indirect appropriation of unauthorized parts of a literary or artistic work having no original character shall be deemed an illicit reproduction, in so far as affects civil liability. **Infringements defined**

The reproduction in any form of an entire work, or of the greater part thereof, accompanied by notes or commentaries under the pretext of literary criticism or amplification, or supplement to the original work, shall also be considered illicit.

ARTICLE 14

Fraudulent copies to be sequestrated, etc.

Every publication infringing a copyright may be confiscated in the signatory countries in which the original work had the right to be legally protected, without prejudice to the indemnities or penalties which the counterfeiters may have incurred according to the laws of the country in which the fraud may have been committed.

ARTICLE 15

Each government to exercise supervision

Each of the Governments of the signatory countries shall retain the right to permit, inspect, or prohibit the circulation, representation, or exhibition of works or productions, concerning which the proper authority may have to exercise that right.

ARTICLE 16

Convention to take effect three months after ratification

The present convention shall become operative between the signatory States which ratify it three months after they shall have communicated their ratification to the Argentine Government, and it shall remain in force among them until a year after the date, when it may be denounced. This denunciation shall be addressed to the Argentine Government and shall be without force except with respect to the country making it.

Signed at Buenos Aires Aug. 11, 1910

Made and signed in the city of Buenos Aires on the eleventh day of August in the year one thousand nine hundred and ten, in Spanish, English, Portuguese, and French, and deposited in the ministry of foreign affairs of the Argentine Republic, in order that certified copies be made for transmission to each one of the signatory nations through the appropriate diplomatic channels.

The convention was thus signed by representatives of twenty powers: the United States of America, Argentine Republic, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela.

CHRONOLOGICAL TABLE OF LAWS AND CASES, ENGLISH AND AMERICAN

This table gives in chronological order the statutes, with reference to their place in the statute books, and historical, leading and recent cases with the name of the court, of the judge presiding or giving the opinion, and the reference to the law reports, also an epitome of the point cited in the text, with page reference. It is not intended to cover minor cases, not settling any principle, and where a decision has been reversed on appeal, the case in the lower court may not be given unless some definite point was there settled. The usual law report abbreviations are employed; outside of these, Copinger refers to Copinger's "Law of Copyright," Copr. Cas. to the annual summary of copyright cases edited by McGillivray and published by the English Publishers Association, Hamlin Copr. C. & D. to Hamlin's "Copyright Cases and Decisions, 1891–1903," published for the American Publishers' Copyright League, *Times* to the London *Times* legal column, and *Pub. Week.* to the *Publishers' Weekly*, of New York. English and American cases can be distinguished by the name of the court, judge or report. Cases are entered alphabetically in the general index with references to the year and to the page of text.

1710 Act for the encouragement of learning — 8 Anne, c. 19

1735 Engraving copyright act — 8 Geo. II. c. 13

1735 Eyre *v.* Walker — Chancery — Jekyll, M. R., — 4 Bur. 2325

"The whole duty of man" protected at common law after statutory term, 24

1739 Prohibition of foreign reprints act — 12 Geo. II, c. 36

1740 Gyles *v.* Wilcox — Chancery — L. Hardwicke, — 2 Atk. 141

Condemning reprint "colorably shortened only," but not "a real and fair abridgment," 80

1741 Pope *v.* Curl — Chancery — L. C. Hardwicke, — 2 Atk. 342

Republication of letters enjoined, 92

1766 Engraving copyright act — 7 Geo. III, c. 38

1769 Millar *v.* Taylor — King's Bench — L. Mansfield, — 4 Bur. 2303

Thomson's "Seasons" protected at common law in perpetuity, 25

1774 "Newbery's case" — King's Bench — L. C. Apsley, — Lofft, 775

Abridgment involving understanding and skill "an allowable and meritorious work," 80

1774 Donaldson *v.* Becket — House of Lords — 2 Bro. P. C. 129

Thomson's "Seasons" — common law rights abrogated by Statute of Anne, 7, 25, 26, 41

1774 Thompson *v.* Stanhope — Chancery — Ld. Apsley, — Amb. 737

Publication prevented of letters, though a gift from author, 92

1775 [University] copyright act — 15 Geo. III, c. 53

1777 Prints copyright act — 17 Geo. III, c. 57

1783 U. S. Constitution — Art. I, § 8

1783–90 State copyright laws

1787 Copyright in designs act — 27 Geo. III, c. 38

1789 Copyright in designs act — 29 Geo. III, c. 19

1790 U. S. general copyright act

1794 Copyright in designs act — 34 Geo. III, c. 23

1798 Sculpture copyright act — 38 Geo. III, c. 71

1798 Beckford *v.* Hood — King's Bench — L. Kenyon, — 7 T. R. 620

Common law remedies also applied in statutory period, 27

1801 Act for the further encouragement of learning — 41 Geo. III, c. 107

1801 Cary *v.* Longman — King's Bench — L. Kenyon, — 1 East, 358

New added material to non-copyright book, protectable as such, 76

1802 U. S. Supplementary act (engravings, etc.)

1812 Morris *v.* Colman — Chancery — L. C. Eldon, — 18 Vesey, 437

Author under exclusive contract enjoined from furnishing plays elsewhere, 441

1814 Sculpture copyright act — 54 Geo. III, c. 56

1814 Amendatory copyright act, for printed books — 54 Geo. III, c. 156

1817 Gale *v.* Leckie — King's Bench — L. Ellenborough, — 2 Starkie, 107

Author liable for failure to complete work, 441

1817 Southey *v.* Sherwood — Chancery — L. Eldon, — 2 Meriv. 435

No copyright in immoral book. No right to hold what there was no right to sell, 86

1819 U. S. act extending jurisdiction of Circuit Courts

1819 Clarke *v.* Price — Chancery — L. C. Eldon, — 2 Wils. C. R. 157

Author cannot be compelled to write, 441

1824 Barfield *v.* Nicholson — Chancery — V. C. Leach, — 2 L. J. Ch. 90

Author may not prejudice sale through another book of like subject, 441

1825 Abernethy *v.* Hutchinson — Chancery — L. C. Eldon, — 3 L. J. (O. S.) Ch. 209

Unwritten lecture — oral delivery not publication, 90

1826 Mawman *v.* Tegg — Chancery — L. C. Eldon, — 2 Russ. 385

"Fair use" defined. Inseparable use of copyright material renders whole work an infringement, 256

1828 Clayton *v.* Stone — U. S. C. C. — J. Thompson, — 2 Paine, 382

Copyrightable property not determined by size, form or shape, but by subject-matter, 69

1831 U. S. general copyright act

1831 Brooke *v.* Chitty — Chancery — L. Brougham, — 2 Cooper (Cottenham), 216

Court cannot restrain book until there is actual printing and publication, 442

1832 Archbold *v.* Sweet King's Bench C. J. Tenterden, 5 Carr. & P. 219

Alterations by publisher not permitted to author's injury, 443

1833 Dramatic copyright act 3 & 4 Will. IV, c. 15

1834 U. S. supplementary act (assignment)

1834 Wheaton *v.* Peters U. S. Sup. Ct. J. McLean, 8 Pet. 591

U. S. Act of 1790 abrogates common law rights after publication, 40, 41; "There is no common law of the U. S.," 44; exact conformity with statute requisite, 149

1835 Lectures copyright act 5 & 6 Will. IV, c. 65

1836 Prints and engravings copyright act (Ireland) 6 & 7 Will. IV, c. 59

1836 Copyright act, library deposit copies 6 & 7 Will. IV, c. 110

1838 International copyright act 1 & 2 Vict. c. 59

1839 Copyright in designs (fabrics) act 2 Vict. c. 13

1839 Amendatory copyright act, for designs 2 Vict. c. 17

1840 Bell *v.* Locke [N. Y.] Chancery Chan. Walworth, 8 Paige, 74

Deceiving public by use of like title is an infringement, 83

1840 Dwight *v.* Appleton U. S. C. C. J. Thompson, 1 N. Y. Leg. Obs. 195

Copyright notice in succeeding volumes held unnecessary, 133

1841 Folsom *v.* Marsh U. S. Sup. Ct. J. Story, 2 Story, 100

Author of letters has sole right to copyright, 92; piracy if another's labor is substantially appropriated to injurious extent, 252

1841 Gibson *v.* Carruthers Exchequer 8 M. & W. 321

Author cannot on bankruptcy of publisher be required to complete work, 452

1841 Sweet *v.* Cater Chancery V. C. Shadwell, 5 Jur. 68

Publisher may prevent author from issuing competing edition, 444

1842 Copyright act 5 & 6 Vict. c. 45

1842 Customs act 5 & 6 Vict. c. 47

1842 Designs copyright act 5 & 6 Vict. c. 100

1843 Amendatory copyright act, for designs 6 & 7 Vict. c. 65

1843 Lennie *v.* Pillans Scotch Ct. Sess. L. P. Boyle, III Sc. Rev. R. 2, s. 171

Compilations of non-copyright material showing originality and labor, protected, 81

1844 International copyright act 7 & 8 Vict. c. 12

1844 Act to reduce duties on books and prints 7 & 8 Vict. c. 73

1846 Amendatory act for duties on books 9 & 10 Vict. c. 58

1846 U. S. act. Deposit of copies

1847 Colonial copyright act 10 & 11 Vict. c. 95

1847 Story's Executors U. S. C. C. J. McLean, 4 McLean, 306
v. Holcombe

Fair abridgment, by ruling precedents, not an invasion of literary property, 81

1848 Baker *v.* Taylor U. S. C. C. J. Betts, 2 Blatch. 82
Error of 1347 for 1846 in copyright notice invalidates copyright, 129

1848 Russell *v.* Smith Queen's Bench L. Denman, 12 Q. B. 217
Dramatic rendition of song without costume or scenery adjudged "dramatic piece," 176, 191; registration of dramatic piece optional in England, 189

1849 Albert, Prince, *v.* Strange Ct. App. V. C. Bruce, 2 De G. & Sm. 652
Common law protects until publication, 187; descriptive catalogue and exhibition of copies of unpublished art work infringements, 238

1850 Copyright in designs act 13 & 14 Vict. c. 104

1851 Protection of works. London international exhibition 14 Vict. c. 8

1852 International copyright act 15 & 16 Vict. c. 12

1852 Bogue *v.* Houlston Chancery V. C. Parker, 5 De G. & Sm. 267
Copyright extends to every part of a book, 76

1852 Little *v.* Gould U.S.C.C. App. J. Nelson, 2 Blatch. 362
State copyright owner in work of salaried law reporter, 98

1852 Pulte *v.* Derby U. S. C. C. J. McLean, 5 McLean, 328
Publishing contract for "edition," does not prohibit successive printings, 446

1853 Customs consolidation act 16 & 17 Vict. c. 107

1853 Cox *v.* Cox Chancery V. C. Wood, 11 Hare, 118
Writer may not prevent alterations made by employer, 443

1853 Stowe *v.* Thomas U. S. C. C. J. Grier, 2 Wall Jr. 547
No exclusive right of translation under early law, 77

1854 Jefferys *v.* Boosey House of Lords 4 H. L. C. 815
Definition of the two senses of copyright, 1, 2, 4; non-resident foreigner could not acquire copyright under act of 1710 by first publication in England, 108, 373

1854 Stevens *v.* Benning Chancery V. C. Wood, 1 Kay & J. 168
Contract for publication a personal contract not assignable without consent, 444

1855 Customs consolidation act. 18 & 19 Vict. c. 96

1855 U. S. Act. Deposits through mails free

1855 Stevens *v.* Benning Ct. App. Lds. J. Bruce & Turner, 6 De G. M. & G. 223
Affirming Stevens *v.* Benning.

1856 U. S. supplementary act (dramatic)

1858 Amendatory copyright act, for designs 21 & 22 Vict. c. 70

1858 Reade *v.* Bentley Chancery V. C. Wood, 4 K. & J. 656
Contract for publication a personal contract of "joint adventure" terminable by author if not to publisher's loss, 434, 444

1859 U. S. act. Place of deposit

1860 Blackwood *v.* Brewster Scotch Ct. Sess. 23 Sc. Sess. c. 2, s. 142
Reprints to replace destroyed copies do not constitute a new edition, 445

1860 Crookes v. Petter Rolls Ct. Romilly, M. R., 6 Jur. 1131
Editor's name not requisite part of title, 445
1860 Turner v. Robinson Irish Ct. Chanc. Smith, M. R., 10 Ir. Ch. R. 121
Exhibition, with restriction as to copying, not publication, 232
1860 Turner v. Robinson Ct. App. L. C. Brady, 10 Ir. Ch. R. 510
Liability under breach of contract, 232; Academy exhibition considered publication, 232
1861 Amendatory copyright act, for designs 24 & 25 Vict. c. 73
1861 Statute law revision act 24 & 25 Vict. c. 101
1861 U. S. act. Appeal for copyright cases to Supreme Court
1862 Fine arts copyright act 25 & 26 Vict. c. 68
1862 Boucicault v. Fox U. S. C. C. J. Shipman, 5 Blatch. 87
A man's intellectual productions his own, except under valid agreement with employer, 97
1862 Drury v. Ewing U. S. C. C. J. Leavitt, 1 Bond, 540
Diagram with directions for dress cutting adjudged "book," 69
1862 Howitt v. Hall Chancery V. C. Wood, 6 L. T. (N. S.) 348
Copies printed within term of contract may be sold after expiration, 445
1862 Reade v. Conquest Common Pleas C. J. Erle, 11 C. B. (N. S.) 478
Dramatization based on novelization, infringement of original play, 172
1863 Boucicault v. Delafield Chancery V. C. Wood, 1 H. & M. 597
First publication outside British Dominions under int. copr. act, forfeits playright, 184
1863 Hotten v. Arthur Chancery V. C. Wood, 1 H & M. 603
Catalogue of old books copyrightable, 73
1863 Tinsley v. Lacy Chancery V. C. Wood, 1 H. & M. 747
Printed dramatization enjoined as using substantial parts of novel, 173
1864 Low v. Routledge Chancery V. C. Kindersley, 33 L. J. (N. S.) Ch. 717
Inaccuracy in name of proprietor invalidates copyright entry, 128
1865 U. S. supplementary act (photographs)
1867 Statute law revision act 30 & 31 Vict. c. 59
1867 U. S. act. Penalty for failure to deposit
1867 Maxwell v. Hogg Chancery L. Cairns, 2 Ch. D. 307
Belgravia — Title not protectable until associated with a published work, 75, 84, 85
1868 Daly v. Palmer U. S. C. C. J. Blatchford, 6 Blatch. 256
Test of piracy defined, 175
1868 Routledge v. Low House of Lords L. R., 3 H. L. 100
Foreigner temporarily resident at first publication may acquire British copyright under act of 1842, 109; first publication probably single requisite for copyright, 109, 374

1869 Lawrence v. Dana U. S. C. C. J. Clifford, 4 Cliff. 1
An abridgment permitted as established by precedent, 81; new notice on new edition protects matter copyright in old edition, 134; "copying is not confined to literal repetition," 254

1869 Taylor v. Pillow Chancery V. C. James, L. R. 7 Eq. 418
Proprietor, after assigning copyright, may dispose of unsold copies, 446

1870 U. S. consolidation act

1870 Black v. Murray Scotch Ct. Sess. L. Inglis, IX Sc. Rev. R. 3, s. 443
New editions "enlarged and improved" copyrightable, 75

1871 Stannard v. Harrison Chancery V. C. Bacon, 24 L. T. (N. S.) 570
Right in map drawn to order vests in employer, 239

1872 Clark v. Bishop Exchequer C. B. Kelly, 25 L. T. (N. S.) 908
Song dramatically rendered protected as dramatic piece, 176

1872 Cobbett v. Woodward Chancery L. Romilly, L. R. 14 Eq. 407
No copyright in an advertisement, 73

1872 Osgood v. Allen U. S. C. C. J. Shepley, 1 Holmes, 185
"*Our Young Folks*" — a title not copyrightable as such, 82, 85

1872 Palmer v. DeWitt N. Y. Ct. App. J. Allen, 47 N. Y. 532
Performance of play not publication, 180

1873 U. S. act. Inclusion in Revised Statutes

1874 U. S. act. Notice, fees, etc.

1874 Isaacs v. Daly N. Y. Sup. Ct. J. Curtis, 7 Jones & Sp. 511
Title "Charity" cannot be monopolized, 82, 84

1874 Toole v. Young Queen's Bench C. J. Cockburn, 9 Q. B. 523
Right of dramatization not included under book copyright in England, 172

1874 Ward v. Beeton Chancery V. C. Malins, L. R. 19 Eq. 207
Proprietary name may not be used on competing publication, 445

1874 Warne v. Routledge Chancery Jessel, M. R., L. R. 18 Eq. 497
Right of publishing exclusive fortune of contract only, 445

1875 International copyright act 38 Vict. c. 12

1875 Canada copyright act 38 & 39 Vict. c. 53

1875 Amendatory copyright act for designs 38 & 39 Vict. c. 93

1875 Banks v. McDivitt U. S. C. C. J. Shipman, 13 Blatchf. 163
Test of piracy defined, 251

1875 Boucicault v. Hart U. S. C. C. J. Hunt, 13 Blatch. 37
Exact conformity with statute requisite, 149

1875 Parkinson v. Laselle U. S. C. C. J. Sawyer, 3 Sawyer, 330
Exact conformity with statute requisite, 149

1876 Customs law consolidation act 39 & 40 Vict. c. 36

1876 Boucicault *v.* Chatterton — Chancery — J. James, — 5 Ch. D. 267
Previous performance of "Shaughraun" in N. Y. forfeited play-right, 184

1876 Chatterton *v.* Cave — Ct. App. — C. J. Cockburn, — 46 L. J. (N. S.) C. L. 97
Rival dramatizations, utilizing not substantial added scenes, permitted, 174

1878 Chatterton *v.* Cave — House of Lords — 3 A. C. 483
Following decision of lower court.

1878 Weldon *v.* Dicks — Chancery — V. C. Malins, — 10 Ch. D. 247
Title "Trial and Triumph" protected as virtually trade-mark, 83

1879 U. S. act. Transmission through mails

1879 Hole *v.* Bradbury — Chancery — J. Fry, — 12 Ch. D. 886
Authors entitled to resume rights succeeding publishers, 445

1879 Kelly *v.* Byles — Chancery — V. C. Bacon, — 13 Ch. D. 682
Title "Post Office directory" not copyrightable. No resemblance of publications, 83

1880 Putnam *v.* Pollard — N. Y. Sup. Ct. — J. Beach, — N. Y. Daily Reg. O. 13 '80
State common law superseded by U. S. statute, 40

1881 Dicks *v.* Yates — Chancery — V. C. Bacon, — 18 Ch. D. 76
"Splendid misery" — title thrice used, common property, not protectable, 83

1882 Copyright (musical compositions) act — 45 & 46 Vict. c. 40

1882 U. S. act. Position of notice

1882 Cable *v.* Marks — Chancery — V. C. Bacon, — 47 L. T. (N. S.) 432
Shadow-trick perforated card, not copyrightable, 242

1882 Chappell *v.* Boosey — Chancery — J. North, — 21 Ch. D. 232
Publication as book before performance does not preclude performing rights, 183, 184

1882 Maple *v.* Junior Army & Navy Stores — Ct. App. — J. Jessel, — 21 Ch. D. 369
Illustrated advertising catalogue protected, 73

1883 Patents, designs, and trade marks act — 46 & 47 Vict. c. 57

1883 Clemens *v.* Belford — U. S. C. C. — J. Blodgett, — 14 F. R. 728
Right to publish involves right to state authorship, 98

1883 Thomas *v.* Lennon — U. S. C. C. — J. Lowell, — 14 F. R. 849
Unpublished oratorio infringed by orchestral score from non-copyright piano arrangement, 187

1884 Burrow-Giles Litn. Co. *v.* Sarony — U. S. Sup. Ct. — J. Miller, — 111 U. S. 53
"Writings" construed to cover photographs, 67, 240; N. Sarony (for Napoleon Sarony) sufficing as name, 129

1884 Estes *v.* Williams — U. S. C. C. — J. Wheeler, — 21 F. R. 189
"Chatterbox" — title restrained from use on juveniles of like general character, 83.

1884 Duck *v.* Bates Ct. App. Brett, M. R., 13 Q. B. 843
Amateur performance not for profit not a public representation, 186

1884 Nicols *v.* Pitman Chancery J. Kay, 26 Ch. D. 374
Indirect copying by short-hand characters an infringement, 254

1886 International copyright act 49 & 50 Vict. c. 33

1886 Aronson *v.* Fleckenstein U. S. C. C. J. Blodgett, 28 F. R. 75
Title of drama protected under common law, 192

1886 Harper *v.* Shoppell U. S. C. C. J. Wallace, 23 Blatch. 431
Unprinted electrotype did not infringe copyright, 235

1886 Holloway *v.* Bradley U. S. C. C. J. Butler, *Pub. Week.* 30 : 223
Publisher may affix material to copyright book, 100

1886 Monaghan *v.* Taylor Queen's Bench L. C. J. Coleridge, 2 T. L. R. 685
Proprietor of music hall liable for infringement by singer, 193

1887 Estes *v.* Worthington U. S. C. C. J. Shipman, 31 F. R. 154
Title "Chatterbox" protected as trade-mark against simulating publication of differing contents, 84, 261

1887 Harper *v.* Franklin Sq. Lib. Co. U. S. C. C. J. Waite, *Pub. Week.* 31: 372
Trade-mark rights in name "Franklin Square library" protected, 262

1888 Copyright (musical compositions) act 51 & 52 Vict. c. 17

1888 Patents, designs and trade marks act 51 & 52 Vict. c. 50

1888 Callaghan *v.* Myers U. S. Sup. Ct. J. Blatchford, 128 U. S. 617
1866 for 1867 does not invalidate copyright notice, 130

1888 Gottsberger *v.* Estes U. S. C. C. J. Colt, 33 F. R. 381
Publication before deposit voided copyright (under old law), 136

1888 Mitchell & Miller *v.* White & Allen N. Y. Sup. Ct. *Pub. Week.* 34 : 586
"Life" — misleading use of title enjoined, 84

1888 Munro *v.* Beadle N. Y. Sup. Ct. J. Ingraham, 18 St. R. 278
"Sleuth" as a dictionary word not protectable, 262

1888 Munro *v.* Smith N. Y. Sup. Ct. J. O'Brien, 18 St. R. 279
Use of name "Sleuth" when misleading the public actionable, 262

1888 Schumacher *v.* Wogram U. S. C. C. J. Wallace, 35 F. R. 210
Copyright probably voided by too early date in notice, 130; picture intended for cigar label not copyrightable, but trade-mark, 237

1888 Warne *v.* Seebohm Chancery J. Stirling, 39 Ch. D. 73
Dramatization quoting beyond fair use infringement of novel, 173

1889 Revenue act 52 & 53 Vict. c. 42

1889 Beere *v.* Ellis Queen's Bench B. Pollock, 5 T. L. R. 330
Rival dramatisation enjoined, because added features were infringed, 173

1889 Cate *v.* Devon Chancery J. North, 40 Ch. D. 500
Indirect copying from newspaper reprint held infringement, 254

1889 Everson *v.* Young D. C. Sup. Ct. J. Cole, 26 W. L. R. 546
Blank book not copyrightable, 72; librarian of Congress not discretionary officer, 72, 96

1889 Gilmore *v.* Anderson U. S. C. C. J. Wheeler, 38 F. R. 846
Common use of non-copyright material or work on same subject not infringement, 255

1890 Munro *v.* Beadle N.Y. App.Div. J. Macomber, 55 Hun 312
"Sleuth" properly subject of trade-mark, 262

1890 Munro *v.* Smith U. S. C. C. J. Shipman, 42 F. R. 266
Illustration picturing "Old Sleuth" not infringement, 262

1890 Schlesinger *v.* Bedford Chancery J. Kekewich, 63 L. T. (N. S.) 762
Independent and "essentially different" dramatization permitted despite author's own dramatization, 173

1890 Schlesinger *v.* Turner Chancery J. Kekewich, 63 L. T. (N. S.) 764
Plays substantially similar an infringement, 173

1891 U. S. amendatory (inter. copr.) act

1891 Munro *v.* Tousey N.Y.Ct. App. J. Gray, 129 N. Y. 38
Name "Sleuth" not protectable, 262

1891 Black *v.* Ehrich U. S. C. C. J. Wallace, 44 F. R. 793
Title "Encylcopaedia Britannica" not protected when public is not misled, 261

1891 Dodd *v.* Smith Penn. Sup. Ct. *Per curiam*, 144 Pa. St. 340
derselling by rebinds of paper-covered edition not enjoinable, 263

1891 Falk *v.* Brett Lith. Co. U. S. C. C. J. Wheeler, 48 F. R. 678
Posing for photograph justifies copyright by photographer. — Reversed lithograph infringement, 241

1891 Falk *v.* Gast U. S. C. C. J. Coxe, 48 F. R. 262
Copyright not forfeited by omission of notice on remounting of photographs by another than proprietor, 236; posing for photograph justifies copyright by photographer, 241

1891 Fishburn *v.* Hollingshead Chancery J. Stirling, [1891] 2 Ch. 371
Registration and deposit requisite except under international copyright act, 313

1892 Duck *v.* Mayen Queen's Bench J. Day, 8 T. L. R. 339
Limitation of specific license for drama enforced, 190

1892 Fishel *v.* Lueckel U. S. C. C. J. Townsend, 53 F. R. 499
Appropriation of part of a work an infringement, 244

1892 Fuller *v.* Bemis U. S. C. C. J. Lacombe, 50 F. R. 926
Skirt dance not a dramatic composition, 177

1892 Lamb *v.* Evans Ct. App. L. J. Lindley, [1893], 1 Ch. 218
Copyright in sheet of advertisements upheld, 74

1892 Lee *v.* Gibbings Chancery J. Kekewich, 8 T. L. R. 773
Injury to author's repute question of libel not of copyright, 274

1892 Lucas *v.* Williams Ct. App. L. Esher, L. R. [1892] 2 Q. B. 113
Photograph of engraving infringes original painting, 243, 274

1892 Walter *v.* Steinkopff Chancery J. North, [1892] 3 Ch. 489
Copyright in form of news protectable, 89, 259. Copying two-fifths of newspaper article, "unfair use," 259

1892 Daly *v.* Webster U. S. C. C. App. J. Lacombe, 56 F. R. 483
Infringement by single situation from dramatic work, 191; change of sub-title after copyrighting immaterial, 192

1893 U. S. enabling act (deposit)

1893 Black *v.* Allen U. S. C. C. J. Townsend, 56 F. R. 764
Inclusion of copyright material in non-copyright work does not vitiate copyright, 261; copyright may be transferred to foreign owner, 261; variation from registered title on use in cyclopædia immaterial, 261

1893 Falk *v.* Donaldson U. S. C. C. J. Townsend, 57 F. R. 32
Differences in lithographic reproduction of photograph not a defense, 244

1893 Falk *v.* Gast U.S. C.C. App. J. Shipman, 54 F. R. 890
Miniature samples not a publication of picture. Affirming Falk *v.* Gast, 235

1893 Falk *v.* Heffron U. S. C. C. J. Wheeler, 56 F. R. 299
"Sheets" defined — copyright law must be strictly construed as to forfeiture and penalties, 271

1893 French *v.* Day et al. Queen's Bench J. Kennedy, 9 T. L. R. 548
Proprietor, not manager, of theatre responsible defendant, 193

1893 Hanfstaengl *v.* Holloway Queen's Bench J. Charles, [1893] 2 Q. B. 1
Registration and deposit not requisite, 313

1893 Macdonald *v.* National Review West. Co. Ct. Copinger 782
Printers' proof sent by publisher to author implies acceptance of ms., 442

1893 Reichardt *v.* Sapte Queen's Bench J. Hawkins, [1893] 2 Q. B. 308
Similar play previously written but later performed cannot be enjoined, 187

1894 Drummond *v.* Altemus — U. S. C. C. — J. Dallas, — 60 F. R. 338
Author may restrain under common law imperfect reports of lectures, 264

1894 Ellis *v.* Ogden — Queen's Bench — J. Collins, — 11 T. L. R. 50
Right in photographs not paid for belongs to photographer, 239

1894 French *v.* Kreling — U. S. C. C. — J. Hawley, — 63 F. R. 621
Printing of libretto for sole use of singers not publication, 181

1894 Gilbert *v.* Star — Chancery — J. Chitty, — 11 T. L. R. 4
Newspaper report of play under rehearsal forbidden under common law, 186

1894 Hanfstaengl *v.* American Tobacco Co. — Ct. App. — L. Esher, — [1895] 1 Q. B. 347
Registration and deposit in England not necessary for foreign work, 313

1894 Hanfstaengl *v.* Baines — House of Lords — [1895] A. C. 20
Tableaux not infringement of pictures — "Design" does not cover *tableaux*, 242

1894 Henderson *v.* Tompkins — U. S. C. C. — J. Putnam, — 60 F. R. 758
Literary merit not requisite, 177

1894 Press Pub. Co. *v.* Falk — U. S. C. C. — J. Wheeler, — 59 F. R. 324
Proprietorship of gratuitous photograph of actress remains with photographer, 238

1894 Social Register Assoc. *v.* Howard — U. S. C. C. — J. Green, — 60 F. R. 270
Similar title enjoined as unfair competition, 262

1894 Springer *v.* Falk — U.S.C.C. App. — J. Lacombe, — 59 F. R. 707
Composite photograph from two copyrighted portraits held an infringement, 244

1894 Werckmeister *v.* Springer — U. S. C. C. — J. Townsend, — 63 F. R. 808
Copyright does not pass with sale of painting, 234; illustration of picture in exhibition catalogue not publication, 234

1894 Littleton *v.* Ditson — U. S. C. C. — J. Colt, — 62 F. R. 597
Music sheets excepted from manufacturing provisions, 167

1894 West Pub. Co. *v.* Lawyers' Pub. Co. — U. S. C. C. — J. Coxe, — 64 F. R. 360
Only proved "instances of piracy" in law digest enjoined, 258

1895 U. S. act. Government documents not copyrightable

1895 U. S. act. Penalties for infringement of photographs, etc.

1895–1905 State dramatic laws

1895 Ditson *v.* Littleton — U. S. C. C. App. — *Per curiam*, — 67 F. R. 905
Affirming Littleton *v.* Ditson

1895 Bolton *v.* Aldin Queen's Bench J. Grantham, 65 L. J. Q. B. 120
Drawing remade from photograph infringement, 241

1895 Chicago Dollar Directory Co. *v.* Chicago Dir. Co. U. S. C. C. App. J. Baker, 65 F. R. 463
Quantity of common errors evidence of infringement in compilation, 257

1895 Ellis *v.* Marshall Queen's Bench J. Charles, 11 T. L. R. 522
Right in photograph paid for vests in sitter, 239

1895 Exchange Tel. Co. *v.* Gregory Queen's Bench L. Esher, M. R., [1896] 1 Q. B. 147
Information furnished to subscribers protected, 89

1895 Fuller *v.* Blackpool Winter Gardens Co. Ct. of App. L. Esher, M. R., [1895] 2 Q. B. 429
Song in costume but without dramatic action, not dramatic piece, 176

1895 Harper *v.* Ganthony U. S. C. C. J. Lacombe, Hamlin Copr. C. & D. 138
"Trilby" — monologues in costume following plot, a dramatic infringement, 82, 171

1895 Harper *v.* Ranous U. S. C. C. J. Lacombe, 67 F. R. 904
Right of dramatization of "Trilby" included in copyright of novel, 170

1895 Keeler *v.* Standard Folding Bed Co. U. S. Sup. Ct. J. Shiras, 157 U. S. 659
Sale of patented article absolute and complete unless restricted by contract, 54

1895 Snow *v.* Mast U. S. C . C. J. Sage, 65 F. R. 995
Abbreviation of date ('94 for 1894) in copyright notice permitted, 130

1895 Wheeler *v.* Cobbey U. S. C. C. J. Shiras, 70 F. R. 487
Damages dependent on forfeiture, within statutory 2 years, 272

1896 Webster *v.* Daly U. S. Sup. Ct. J. Fuller, 163 U. S. 155
Affirming Daly *v.* Webster

1896 Gabriel *v.* McCabe U. S. C. C. J. Grosscup, 74 F. R. 743
License of song for a collection permits use in conbination or abridgment of such collection, 82, 256.

1896 Griffith *v.* Tower Chancery J. Stirling, L. R. [1897] 1 Ch. 21
Publishing agreement not transferable as bankruptcy asset, 451

1896 Guggenheim *v.* Leng Queen's Bench J. Cave, 12 T. L. R. 491
Printing illustration as separate supplement infringement, as outside licensed use, 236

1896 Ladd *v.* Oxnard U. S. C. C. J. Putnam, 75 F. R. 703
Leasing a book to subscribers is publication, 53

1896 Mead *v.* West Pub. Co. U. S. C. C. J. Lochren, 80 F. R. 380
Use from copyright book of non-copyright material not infringement, 257

1896 Mott *v.* Clow U. S. C. C. J. Grosscup, 72 F. R. 168
Illustrations in trade catalogue being "mere advertisements" not copyrightable, 237

1896 Pierce & Bushnell Co. *v.* Werckmeister U. S. C. C. App. J. Colt, 72 F. R. 54
Exhibition without copyright notice considered publication, 233

1896 Pitt Pitts *v.* George Ct. App. J. Lindley, [1896] 2 Ch. 866
Importation of foreign edition prohibited under British copyright, 292; "proprietor" means owner of British copyright, 292, (296)

1896 Press Pub. Co. *v.* Monroe U. S. C. C. App. J. Lacombe, 73 F. R. 196
Publication without author's consent does not divest him of any rights, 45; broad interpretation of author's rights, 48

1896 Tree *v.* Bowkett, Chancery J. Kekewich, 74 L. T. (N. S.) 77
"Trilby" — rival dramatization, copying added scenes enjoined, 174

1897 U. S. act. Appointment of Register of Copyrights

1897 U. S. act. Penalty for false claim of copyright

1897 U. S. act. Unauthorized representation

1897 Hoyt *v.* Bates U. S. C. C. J. Putnam, 81 F. R. 641
Ownership of copyright property is question for state courts, 268

1897 Morrison *v.* Pettibone U. S. C. C. J. Seaman, 87 F. R. 330
Uncompleted reproductions not exact copies and not forfeitable, 272

1897 Osgood *v.* Aloe U. S. C. C. J. Adams, 83 F. R. 470
Omission of name vitiates copyright notice though given in imprint, 128

1897 West Pub. Co. *v.* Lawyers' Pub. Co. U. S. C. C. App. J. Lacombe, 79 F. R. 756
Whole law digest enjoined, although only parts were infringements, 258

1898 Bolton *v.* London Exhibitions Queen's Bench J. Mathew, 14 T. L. R. 550
Employer, giving to engraver only "general idea," not party liable for infringement, 240; lithograph outline from copyright picture, though with other details, held infringement, 244; parties ordering poster held not punishable for infringement by lithographer without their knowledge, 253

1898 Broder *v.* Zeno Mauvais U. S. C. C. J. Morrow, 88 F. R. 74
Indecent song not copyrightable— melody protected, 86

1898 Jewellers' Merc. Agency *v.* Jeweller's Wkly Pub. Co. N. Y. Ct. App. C. J. Parker, 155 N. Y. 241
Leasing a book to subscribers is publication, 53

1898 Miles *v.* Amer. News Co. — U. S. C. C. — J. Lacombe, — Hamlin Copr. C. & D. 29

Specific license for limited use of illustrations enforced, 236

1898 Mallory *v.* Mackaye — U. S. C. C. — J. Wheeler, — 86 F. R. 122

Employer entitled to copyright in dramatic works written under salary, 188

1899 Mackaye *v.* Mallory — U. S. C. C. App. — J. Wallace, — 92 F. R. 749

"Modifying" Mallory *v.* Mackaye, but upholding right of employer

1899 Bennett *v.* Carr — U.S. C. C. App. — J. Thomas, — 96 F. R. 213

Copyright invalidated (under old law) by failure to deposit written description of picture, 236

1899 Boosey *v.* Whight — Ct. App. — J. Lindley, — [1900] 1 Ch. 122

Perforated music roll not "copy" of sheet music, 208; marginal directions neither music nor literary composition, 208

1899 Brady *v.* Daly — U. S. Sup. Ct. — J. Peckham, — 175 U. S. 148

Single situation protected as integral part of drama, 191; damages, not penalty, under copyright statute, 272

1899 Daly *v.* Walrath — N. Y. App. Div. — J. Bartlett, — 40 App. Div. 220

Prior printing abroad forfeits American dramatic rights, 181

1899 Green *v.* Irish Independent — Irish Ct. of App. — L. J. Fitz-Gibbon, — [1899] 1 Ir. Rep. 386

Newspaper liable for infringement, though without knowledge, copyr. illustration printed as advertisement, 236, 253

1899 Holmes *v.* Hurst — U. S. Sup. Ct. — J. Brown, — 174 U. S. 82

Copyright protects intellectual production of author, not merely the particular form. "Book" not confined to bound volume, 67

1899 McDonald *v.* Hearst — U. S. C. C. — J. De Haven, — 95 F. R. 656

Employer cannot be held to penal responsibility for act of agent, 271

1899 Maxwell *v.* Goodwin — U. S. C. C. — J. Seaman, — 93 F. R. 665

Playright in unpublished work, inherent under common law, 187

1899 Murphy *v.* Christian Press Assoc. — N. Y. App. Div. — J. Cullen, — 38 N. Y. App. Div. 426

Decision against restraint of trade not applicable to copyright monopolies, 50

1900 U. S. act. Hawaii and Porto Rico protection

1900 Bennett *v.* Boston Traveler Co. — U. S. C. C. App. — J. Colt, — 101 F. R. 445

Suit must be brought under general copyright of newspaper, when portion is not specifically copyrighted, 272

1900 Dielman *v.* White — U. S. C. C. — J. Lowell, — 102 F. R. 892

Contract with U. S. Govt. failed to reserve copyright on designs, 234

1900 Maloney *v.* Foote U. S. C. C. J. Pardee, 101 F. R. 264
No infringement by acts before copyrighting, 274

1900 Monarch Bk. Co. *v.* Neil U. S. C. C. J. Grosscup, Hamlin Copr. C. & D. 30
Copies of copyrighted modifications of non-copyright pictures enjoined, 244

1900 Snow *v.* Laird U. S. C. C. App. J. Woods, 98 F. R. 813
Slight alteration on non-copyrighted photograph does not justify copyright, 245

1900 Walter *v.* Lane House of Lords [1900] A. C. 539
Reports of Rosebery's speeches — no literary merit or labor need be shown to secure copyright, 68

1900 Falk *v.* Curtis Pub. Co. U. S. C. C. J. Dallas, 100 F. R. 77
"Person" includes partnerships and corporations, 273

1901 Falk *v.* Curtis Pub. Co. U. S. C. C. App. J. Buffington, 107 F. R. 126
Suit for penalties cannot precede forfeiture, 273. — Affirming Falk *v.* Curtis Pub. Co.

1901 Child *v.* N. Y. Times Co. U. S. C. C. J. Hazel, 110 F. R. 527
No penalty where copies are not literally "found in possession," 272

1901 Doan, *et al. v.* Amer. Bk. Co. U. S. C. C. App. J. Jenkins, 105 F. R. 772
Rebound second-hand copies no infringement, but must be distinctly marked, 263

1901 Marshall *v.* Bull Ct. App. L. J. Collins, 85 L. T. 77
Illustrations protected as part of book, 238; sale of electrotypes does not transfer copyright, 238

1901 Neufeld *v.* Chapman King's Bench J. Walton, *Times* O. 31, '01
"All copies sold" includes periodical publication, 448

1901 Nicholls *v.* Parker King's Bench J. Wright, 17 T. L. R. 482
Specific license for use of illustration in specified periodical upheld, despite "custom of the trade," 236

1901 Stern *v.* Rosey D. C. C. App. J. Shepard, 17 App. Dist. Col. 562
Mechanical reproduction of copyrighted songs not preventable, 205

1901 Trengrouse *v.* "Sol" Syndicate Chancery C. J. Alverstone, *Times* S. 26, '01
Whole work infringement though less than a page pirated, 254

1901 Western Union *v.* Call Pub. Co. U. S. Sup. Ct. J. Brewer, 181 U. S. 92
When common law in states is in conflict, U. S. courts will enforce that of England, 44

1901 **Hegeman v. Springer** — U. S. C. C. App. J. Wheeler, — 110 F. R. 374

Seizure without prior demand authorized, 274

1902 **Musical (summary proceedings) copyright act** — 2 Edw. VII, c. 15

1902 **Amer. Press Assoc. v. Daily Story Pub. Co.** — U. S. C. C. App. J. Jenkins, — 120 F. R. 766

Innocent copying from reprint lacking copyright notice an infringement, 253

1902 **Britain v. Hanks** — King's Bench — J. Wright, — 86 L. T. 765

Toy soldiers, artistically modeled, copyrightable as sculpture, 247

1902 **Fraser v. Yack** — U. S. C. C. App. J. Jenkins, — 116 F. R. 285

"Little Minister" — Foreigner, prior to 1891, could transfer advance sheets only, not right to copyright, 110

1902 **Herne v. Liebler** — N. Y. App. Div. — J. Ingraham, — 73 App. Div. 194

Sub-license under limited lease of unpublished drama prevented under common law, 187

1902 **Mifflin v. Dutton** — U. S. Sup. Ct. — J. Brown, — 174 U. S. 82

In joint authorship duplicate copyrights under different names not permissible, 102

1902 **National Tel. News Co. v. Western Union** — U. S. C. C. App. J. Grosscup, — 119 F. R. 294

News on ticker taps not copyrightable but unfair use enjoinable, 89

1902 **Patterson v. Ogilvie** — U. S. C. C. — J. Lacombe, — 119 F. R. 451

Variance of sub-title immaterial, 192; damages not barred by limitation as penalties, 273

1903 **Graves v. Gorrie** — Privy Council — Ld. Lindley, — 89 L. T. 111

Fine arts copyright act, 1862, does not protect outside United Kingdon, 246

1903 **Hegeman v. Springer** — U. S. Sup. Ct. — *Per curiam*, — 189 U. S. 505

Affirming Hegeman v. Springer

1903 **Barnes v. Miner** — U. S. C. C. — J. Ray, — 122 F. R. 480

Combination of songs, costume and cinematograph not a dramatic composition, 175

1903 **Bleistein v. Donaldson** — U. S. Sup. Ct. — J. Holmes, — 188 U. S. 239

Copyright can be entered in trading name instead of legal name, 102; circus posters protected — "A picture is none the less a subject of copyright that it is used for an advertisement," 237

1903 **Bloom v. Nixon** — U. S. C. C. — J. McPherson, — 125 F. R. 977

Parody, including quotation, not infringement, 190

1903 **Champney v. Haag** — U. S. C. C. — J. McPherson, — 121 F. R. 944

Photograph from a photograph construed as infringement of photograph, and not of original painting, 243, 274

1903 Cleland *v.* Thayer U. S. C. C. App. J. Caldwell, 121 F. R. 71
Original photograph of uncopyrighted or uncopyrightable subject protected, 241

1903 Dodge *v.* Allied Arts N. Y. Sup. Ct. J. McCall, Hamlin Copr. C. & D. 115
Artist can prevent alterations of paintings done on commission, 245

1903 Edison *v.* Lubin U. S. C. C. App. J. Buffington, 122 F. R. 240
Entire moving-picture film one photograph protected by single notice, 242

1903 Frohman *v.* Weber N. Y. Sup. Ct. J. Clarke, Hamlin Copr. C. & D. 151
Use of names of characters in plays not infringement 192

1903 Kipling *v.* Putnam U. S. C. C. App. J. Coxe, 120 F. R. 631
Changed binding of copyright work permissible, 263; elephant's head design not distinctive trade-mark, 263; no similarity to constitute unfair competition, 263

1903 Lawrence & Bullen House of Lords [1904] L. R. App. C. 17
v. Aflalo
Proprietor of encyclopædia "stood in the shoes" of writers as copyright proprietor, 99

1903 Lorimer *v.* Boston Mass. Sup. Ct. J. Morton, *Pub. Week.* 63:1386
Herald
Burlesqued title in newspaper articles not enjoinable, 264

1903 Moore *v.* Edwardes King's Bench L. C. J. Alverstone, *Times* Mr. 3, '03
Use of scenario from rejected ms. for unauthorized work punished, 176

1903 Nethersole *v.* Bell Chancery J. Farwell, *Times* Jl. 4, 31, '03
Rival dramatization as modified from other version enjoined, 174

1903 Rinehart *v.* Smith U. S. C. C. J. McPherson, 121 F. R. 148
Replevin not the proper form of copyright suit, 273

1903 Stone *v.* Long, King's Bench Master Chitty, Copr. Cas. '01–'04, 66
Publisher responsible for loss of ms. by employee's negligence, 442

1903 Thompson Co. *v.* U. S. C. C. App. J. Coxe, 122 F. R. 922
Amer. Law Book Co.
Use of list of cases, made from copyright digest, as guide to reports not infringement, 258; "equity will not protect a pirate from infringements of his piratical work," 258

1903 Victor Talking U. S. C. C. App. J. Baker, 123 F. R. 424
Mach. Co. *v.* The Fair
Patent as a monopoly, 50

1903 Wagner *v.* Conried U. S. C. C. J. Lacombe, 125 F. R. 798
Previous printing abroad forfeits American playright in music, 181

1903 **Wright v. Eisle** — **N. Y. App. Div.** — **J. Woodward,** — 86 App. Div. 356

Filing of architectural plans in public office constitutes publication, 242

1904 U. S. act. **Protection of works, Louisiana Purchase Exposition**

1904 **Bisel v. Welsh** — U. S. C. C. — J. Holland, — 131 F. R. 564

Repetition of errors evidence of author's infringement of his own earlier work, 257

1904 Encyclopædia Brit- U. S. C. C. — J. Lacombe, — *Pub. Week.* 55:1458
tanica Co. *v.* Tribune Assoc.

Condensations of copyright articles from cyclopædia enjoined, 261

1904 Gannet *v.* Rupert — U. S. C. C. App. — J. Coxe, — *Pub. Week.* 55:69

"Comfort" as title of periodical protected as common law trade-mark, 84; court should arrest pirate before he makes off with plunder, 274

1904 Straus *v.* Amer. Pub. Assoc. — N. Y. Ct. App. — C. J. Parker, — 177 N. Y. 473

Agreements to restrict prices legal on copyright books; contrary to statute on non-copyright books, 57

1905 U. S. act. *Ad interim* protection

1905 U. S. trade-mark act

1905 Fraser *v.* Edwardes — King's Bench — J. Darling, *Times* Mr. 23–30, '05

Use of scenario from rejected ms. for unauthorized work punished, 176

1905 Harper *v.* Donohue — U. S. C. C. — J. Sanborn — 144 F. R. 491

Analysis of author's rights, 47; omission of notice on foreign-made edition does not vitiate Amer. copyright, 133

1905 Hills *v.* Hoover — U. S. C. C. — J. Holland, — 136 F. R. 701

Additional words in copyright notice harmless superfluity, 128

1905 Lucas *v.* Moncrieff — Chancery — J. Warrington — 21 T. L. R. 683

Publishing agreement released by bankruptcy of publisher, 443

1905 Sampson & Mur- U. S. C. C. App. — J. Putnam, — 140 F. R. 539
dock Co. *v.* Seaver Radford

Verification from rival directory beyond fair use, 255

1905 Slingsby *v.* Bradford Co. — Chancery — J. Warrington, [1905] W. N. 122

Copying of fraudulent material not punishable in equity, 258

1906 Musical copyright act — 6 Edw. VII; c. 36

1906 U. S. trade-mark act

1906 Burk *v.* Johnson — U. S. C. C. App. — J. Adams, — 146 F. R. 209

Copyright cannot protect schemes or method of doing business, 61

1906 Davis *v.* Benjamin — Chancery — J. Eady, L. R. [1906] 2 Ch. 491

Sheet of advertising illustrations held a book, 73

1906 Donohue *v.* Harper — U. S. C. C. App. — *Per curiam*, — 146 F. R. 1023

Affirming decision in Harper *v.* Donohue

1906 Hartford Printing Co. v. Hartford Directory Co. — U. S. C. C. — J. Platt, — 146 F. R. 332; 148 F. R. 470
Gross receipts less cost awarded as damages, for wholesale copying, 275

1906 Macmillan v. Dent — Ct. App. — J. Vaughan, — [1907] 1 Ch. 107
Charles Lamb letters — copyright separate from material object, 92

1906 Rex v. Willets — Com. Serj. — *Times* Ja. 20, '06
Criminal sentences in conspiracy of cheap music pirates, 277

1906 Ward, Lock & Co. v. Long — Chancery — J. Kekewich, L. R. — [1906] 2 Ch. 550
Agreement to write a book assignable after completion of book, 441

1906 White-Smith v. Apollo — U. S. C. C. App. — *Per curiam*, — 147 F. R. 226
Perforated roll not copy in fact of staff notation, 204

1906 Wooster v. Crane — U. S. C. C. App. — J. Van Devanter, — 147 F. R. 515
Author restrained from selling modification of copyright work previously assigned, 442

1907 Patents and designs act — 7 Edw. VII. c. 29

1907 American Tobacco Co. v. Werckmeister — U. S. Sup. Ct. — J. Day, — 207 U. S. 284
Exhibition with restriction as to copying, not publication, 232, 235

1907 Bracken v. Rosenthal — U S. C. C. — J. Kohlsaat, — 151 F. R. 136
Photograph infringes copyright in statuary, 243

1907 Dutton v. Cupples & Leon — N. Y. App. Div. — J. Scott, — Pub. Week. 71: 630
Imitation of style of series unfair competition, 263

1907 Jude's "Liedertafel" case — Ct. App. — C. J. Alverstone, — L. R. [1907] 1 Ch. 651
Assignment expunged from record, 447

1907 Philip v. Pennell — Chancery — J. Kekewich, — L. R. [1907] 2 Ch. 577
Publication permitted of biographical information from receivers of letters, 92

1907 Merriam v. Ogilvie — U. S. C. C. — J. Colt, — 149 F. R. 858
Use of name "Webster" not restrainable except where public is misled, 261

1908 Merriam v. Ogilvie — U. S. C. C. App. — J. Aldrich, — 159 F. R. 638
Affirming Merriam v. Ogilvie

1908 White-Smith v. Apollo — U. S. Sup. Ct. — J. Day, — 209 U. S. 1
Records not copies or publications of copyright music, 54, 204.
Affirming White-Smith v. Apollo

1908 Bamforth v. Douglas Post Card Co. — U. S. C. C. — J. McPherson, — 158 F. R. 355

Unfair competition not restrainable if copyrightable work is not copyrighted, 264

1908 Bobbs-Merrill Co. v. Straus — U. S. Sup. Ct. — J. Day, — 210 U. S. 339

Restriction of price not enforceable in connection with copyright notice, 55, 57

1908 Clinical Obstetrics, *in re* — Chancery — J. Warrington, — Copr. Cas. '05–'10, 176

"Exclusive right of publication" a license, not assignment, 447; assignment record expunged, 447.

1908 Globe Newspaper Co. v. Walker — U. S. Sup. Ct. — J. Day, — 210 U. S. 356

No damages outside statutory protection where no copies were found in possession, 272

1908 Jones v. Amer. Law Bk. Co. — N. Y. App. Div. — J. Houghton, — 125 App. Div. 519

Denying right of author to have name appended to cyclopædic contribution, 100

1908 Karno v. Pathé Frères — King's Bench — J. Jelf, — 99 L. T. 114

Moving pictures not infringement, 177

1908 Landa v. Greenberg — Chancery — J. Eve — 24 T. L. R. 441

Nom de plume of settled use protected outside copyright or trade-mark, 99

1908 Mansell v. Valley Printing Co. — Ct. App. — Cozens-Hardy, M. R. — L. R. [1908] 2 Ch. 441

Common law concurrent with statutory protection of unpublished works, 61

1908 Royal Sales Co. v. Gaynor — U. S. C. C. — J. Ward, — 164 F. R. 207

Monogram not copyrightable, 70

1908 Sarpy v. Holland — Ct. App. — Cozens-Hardy, M. R., — L. R. [1908] 2 Ch. 198

Copyright reservation in foreign language sufficing, 313; no formalities requisite under international copyright, 313

1908 Scribner v. Straus — U. S. Sup. Ct. — J. Day, — 210 U. S. 352

Agreement to restrict prices not proven by notice on bills, etc., 55

1908 Share Certificate Book, *in re* — Div. Ct. — J. Bigham, — Copr. Cas. '05–'10, 173

False entry expunged from registry, 150

1908 Straus v. American Publishers' Association — N. Y. App. Div. — J. Gray, — 127 App. D. 936

Agreements to restrict price legal on copyright books, 57; dissenting opinion, 57

1908 Tate *v.* Fullbrook Ct. App. L. J. Vaughan Williams, L. R. [1908] 1 K. B. 821
Writer of dialogue sole author of musical sketch in England, 176

1908 United Dictionary Co. *v.* Merriam U. S. Sup. Ct. J. Holmes, 208 U. S. 260
Omission of notice on foreign-made edition sold only for use there does not vitiate Amer. copyright, 134

1908 Dam *v.* Kirke La Shelle Co. U. S. C. C. J. Hazel, 166 F. R. 589
Reassignment to author of copyright in periodical contribution, 101; right of dramatization included in copyright of story, 171; full profits awarded as damages, 171

1908 Harper *v.* Kalem U. S. C. C. J. Lacombe,
Copyright notice in book protects illustrations against moving picture reproduction, 77

1909 U. S. Copyright code

1909 Banks Law Pub. Co. *v.* Lawyers Co-operative Pub. Co. U. S. C. C. App. *Per curiam*, 169 F. R. 386
Affirming that arrangement of cases in sequence, pagination, etc., are not protectable details, 259

1909 Bong *v.* Campbell Art Co. U. S. Sup. Ct. J. McKenna, 214 U. S. 236
Citizen of an unproclaimed country cannot indirectly obtain American copyright, 110

1909 Bosselman *v.* Richardson U. S. C. C. App. J. Ward, 174 F. R. 622
Copyright claimant other than author must prove his claims, 107

1909 Caliga *v.* Inter-Ocean Newsp. Co. U. S. Sup. Ct. J. Day, 215 U. S. 182
Re-copyright on finishing picture invalid, 231

1909 Chicago Tribune *v.* Ill. Printing & Pub. Co. U. S. C. C. J. Grosscup, *Pub. Week.* 76 : 643, 957
Peary letters — copyright in newspaper letter as book upheld, 103

1909 N. Y. Times *v.* Press Pub. Co. *et al.* U. S. C. C. J. Hand, *Pub. Week.* 76 : 643, 957
Peary letters — agreement for newspaper letters did not authorize copyright as book, 103

1909 Consolidated Gas Co. U. S. Sup. Ct. J. Peckham, 212 U. S. 19
State has sovereign power to limit prices — in case of public franchise corporation, 207

1909 Freeman *v.* Trade Register U. S. C. C. J. Donworth, 173 F. R. 419
Copyright notice on editorial page invalid, 131

1909 Frohman *v.* Ferris Ill. Sup. Ct. J. Farmer, 238 Ill. Rep. 430
Performance of play not publication, 181

1909 Glaser *v.* St. Elmo Co. U. S. C. C. J. Holt, 175 F. R. 276

Title of novel, out of copyright, not protectable in drama, 192

1909 Green *v.* Luby U. S. C. C. J. Noyes, 177 F. R. 287

Error in classification does not invalidate copyright, 136

1909 Harper *v.* Kalem U. S. C. C. App. J. Ward, 169 F. R. 61

Moving pictures may infringe book copyright, 176, 242; both speech and action not necessary in dramatic performances, 176; illustrations as such do not infringe book copyright, 237

1909 Heinemann *v.* Smart Set Pub. Co. Chancery J. Parker, *Times*, Jl. 15, '09

Innocent publisher responsible for acts beyond authority given to literary agent, 437

1909 Hervieu *v.* Ogilvie U. S. C. C. J. Martin, 169 F. R. 978

Printed drama not subject to manufacturing provisions as "book," 155, 168

1909 Hunter *v.* Clifford West. Co. Ct. J. Lush, *Times* N. 12. '09

Right to copyright lapsed on work of art sold without registration, 247

1909 Karno *v.* Pathé Frères Ct. App. L. J. Vaughan Williams, 100 L. T. 260

Exhibitor, not manufacturer of film, responsible party, 177

1909 Saake *v.* Lederer U. S. C. C. App. J. Buffington, 174 F. R. 135

License to perform does not imply authority to copyright, 107

1909 Scholz *v.* Amasis Ct. App. L. C. J. Farwell, *Times* My. 19, '09

Only substantial copying of written dialogue infringes drama in England, 176

1910 Dam *v.* Kirke La Shelle Co. U. S. C. C. App. J. Noyes, 175 F. R. 902

Following decision in lower court

1910 De Jonge *v.* Breuker & Kessler U. S. C. C. J. McPherson, 182 F. R. 150

Artistic designs for cover paper copyrightable, 237; separable designs must have separate copyright notices, 242; subject cannot be protected both under copyright and trade-mark acts, 237

1910 Eliot & Collier *v.* Jones, *et al.* N. Y. Sup. Ct. J. Newburger, 120 N. Y. Supp. 989

Use of "Dr. Eliot's five-foot shelf" prohibited as involving deception, 85

1910 Ellis *v.* Hurst N. Y. Sup. Ct. J. Greenbaum, 128 N. Y. Supp. 144

Use of an author's real name on pseudonymous non-copyright works not restrainable, 98

1910 Gilbert *v.* Workman Chancery J. Neville, *Times* Ja. 19, '10
Interpolation of song without consent of author of opera enjoined, 100

1910 Hein *v.* Harris U. S. C. C. J. Hand, 175 F. R. 875
Musical copyright infringed by transposition, 170
Affirmed in same year by U. S. C. C. App.

1910 Larby *v.* Love King's Bench J. Bucknill, Copr. Cas. '05–'10, 291
Upholds prohibition against underselling in bill of sale, 57

1910 Monckton *v.* Gramophone Co. Chancery J. Joyce, *Times* D. 6, '10
Common law cannot protect after publication, 62

1910 Park & Pollard *v.* Kellerstrass U. S. C. C. J. Philips, 181 F. R. 431
Whole work enjoined where infringing parts were inseparable, 258

1910 Press Assoc. *v.* Reporting Agency Chancery J. Warrington, *Times* D. 8, '10
Election returns protected against "unfair competition," 89

1910 Record & Guide Co. *v.* Bromley U. S. C. C. J. McPherson, 175 F. R. 156
Omission of date vitiates copyright notice though given on same page, 128; substitution of name in copyright notice without authority of law voids copyright, 136

1910 Rex *v.* Bokenham Cent. Crim. Ct. Com. Serj., *Times* Jl. 22, '10
Piracy from surreptitiously obtained copies of poems punished by imprisonment, 277

1910 Stern *v.* Remick U. S. C. C. J. Hand, 175 F. R. 282
Sale of single copy held to constitute publication, 127; use of Roman for Arabic numerals in copyright notice immaterial, 130

1910 West Pub. Co. *v.* Thompson Co. U. S. C. C. App. J. Ward, 176 F. R. 833
One copyright notice suffices to cover earlier copyrights of parts, 132; list made to run down cases permissible, but extensive copying from digest an infringement, 259

1910 White-Smith *v.* Goff U. S. C. C. J. Brown, 180 F. R. 256
Renewal personal to author or heirs only, except possibly in case of work assigned before publication, 116

1911 Copyright act 1 & 2 Geo. V c. 46

1911 Shepard *v.* Taylor U. S. C. C. J. Hazel, 185 F. R. 941
Common errors *prima facie* proof of infringement, 258

1911 White *v.* Bender U. S. C. C. J. Ray, 185 F. R. 921
Citations may be utilized for verification, but bodily transfer is infringement, 257

INDEX

Leading references are **in black face** figures. References to statutes are designated by § (without prefix referring to the American code, with preceding E referring to the new British code, C to Canadian measure and Au. to Australian code), International Copyright Union conventions by I, and Pan American conventions by P; those to U. S. Copyright Office Rules and Regulations are preceded by R. The page numeration also indicates character of reference, pp. 1–41 covering historical portion; pp. 42–310, specific subject chapters, chiefly American and British; pp. 311–372, international copyright; pp. 373–429, copyright in other countries, pp. 430–462; business relations and literature. Law cases are followed by date, serving as reference to chronological table.

INDEX

Abandonment, 121.
Abernethy *v.* Hutchinson (1825), 90.
Abridgment, 64, 80, 82, 145, 199, 255, 392; § 6, 468; R. § 18, 500; Au. § 13, 584; § 28, 587; § 29, 588; I. 614.
Account books, noncopr., 71; R. § 5, 496.
Accounts. *See* Damages.
Acrobatic tricks noncopr., 163; R. § 8, 497.
Actions. *See* Suits.
Acts of Parliament, Crown copr., 123.
Ad interim copr. *See* Interim copr.
Adamnan, 9.
Adams, G. E., 362.
Adaptation, 12, 30, 42, 45, 64, 113, 163, 170, 197, 199, 210, 243, 319, 326, 328, 392, 403, 405; § 1 (b), 465; § 6, 468; R. § 10, 498; Au. § 13, 584; I. 604, 614, 615; P. 634, 651.
Additions, 75, 77, 174; P. 651; by publisher, 100. *See also* Editions, new.
Addresses. *See* Oral work.
Administrator, 95, 102, 104; § 8, 469; R. § 2, 495; C. § 2, 555. *See also* Heir.
Advertisements, 69, 71, 73, 236, 237; R. § 5, 496; C. § 14, 564.
Advertising labels, 223; novelties, 72, 223, 224; R. § 12, 498; § 16, 499.
Æolian Co., 204.
Affidavit of manufacture, 88, 136, 138, 139, 154, 158, 167, 229, 303, 397, 511; § 16, 472; § 17, 472; § 55, 484; R. § 32, 504; § 33, 505; § 34, 506; § 35, 506; false, 121, 126, 144, 158; § 17, 472.
Agent, 286; literary, 435. *See also* Publisher.
Agreements. *See* Contract.
Alaska, 39, 108, 270; § 34, 481.
Albert, Prince. *See* Prince.
Aldus, 13, 14.
Algiers, 400, 418.
Alien. *See* Foreign author.
Almanacs, 21, 38.
Alterations, 75, 100, 101, 174, 199, 243, 252, 254, 414, 433, 438; E. § 19 (2), 530, (7) 532; P. 651. *See also* Editions, new.
America. *See* United States, Canada, Latin America, Pan American, names of countries, etc.
Amer. (Authors) Copr. League, 118, 156, 214, 356, 358, 359, 361, 367, 370, 430, 454.
Amer. Bar Assoc., 46, 371.
Amer. Book Co. *v.* Doan (1901), 263.
Amer. Book Co., importation case, 285.
Amer. Dramatists Club, 194.
Amer. Press Assoc. *v.* Daily Story Pub. Co. (1902), 253.
Amer. Publishers' Assoc., 55.
Amer. Publishers' Copr. League, 360, 455.
Amer. Tobacco Co. *See* Werckmeister.
Amsterdam Literary Congress (1883), 314.
Animal shows, noncopr., 163; R. § 8, 497
Anne, Statute of (1710), 6, 23, 24, 28, 34, 35, 108, 125, 265, 373.
Annotations, 69.
Annulment of copr. entry, 121.
Anonymous and pseudonymous works, 87, 98, 101, 113, 115, 120, 122, 124, 129, 137, 319, 328, 333, 511; § 23, 474; R. § 24, 501; § 30, 503; C. § 24, 568; in other countries, 151, 319, 328, 329, 403–29; I. 610, 617; P. 634, 650.
Antwerp literary congress (1885), 314.
Appeal in copr. cases, 36, 269, 272, 404, 434; § 38, 481; E. § 12, 525, 552; C. § 6 (2), 560.
Appleton, Nathan, 355.
Appleton proposal (1872), 350.
Appleton, W: H., 360.
Application, 16, 63, 95, 96, 120, 136–39, 389; § 5, 467; R. § 29, 502; § 30, 503; § 31, 503; § 38, 507; § 39, 507; C. § 7 (5) 561; § 25, 568; forms, 139, 168, 227, 229, 511; R. § 31, 503; for renewal and extension, 115, 116; § 23, 474; § 24, 475; R. § 46, 509; P. 638.
Appraisal of copyrights, 452.
Appraisers, Bd. of Gen., 292.
Apsley, Ld. Chancellor, 80.
Archbold *v.* Sweet (1832), 443.

Architectural drawings, 224, 243, 248–50, 318, 326, 332, 336; R. § 14, 498; I. 603, 604; P. 634, 637, 649.
Architecture, works of, 33, 242, 248–50, 277, 321, 326, 327, 375, 376, 404, 415, 416; E. § 1, § 2, 518; § 9, 524; § 35, 542; C. § 2, 555; § 4, 558; § 10, 562; I. 603, 604, 608. *See also* Sculpture.
Areopagitica, Milton's, 22.
Argentina, 62, 317, 323, 331, 332, 425, 636, 643, 652.
Ariosto, 14.
Armarium, 8.
Arnell, S: M., 348.
Arnold, Matthew, 457.
Aronson *v.* Fleckensteiu (1886), 192.
Arrangement, 42, 43, 45, 64, 73, 81, 163, 169, 188, 197, 202, 209, 319, 326, 392; § 1 (b), 465; § 1 (e), 466; § 6, 468; R. § 10, 498; C. § 2, 555; Au. § 13, 584; I. 604, 614, 615; P. 634, 651.
Arrangement of material, copr. in, 69, 73, 256.
Arthur, President, 358.
Articles. *See* Periodical contribution.
Artist. *See* Artistic work, Author.
Artistic copr., 222–50. *See also* Artistic work.
Artistic copr. society, 32.
Artistic craftsmanship, 376; E. § 2 (1), 519; § 35 (1), 542; C. 2, 555; § 4, 558.
Artistic work, 37, 222–50, 375, 387, 388; Au. §§ 34–44, 589–91; I. 603; P. 633, 637, 642, 649; classification and definition, 61, 63, 172, 198, 223, 318, 326, 332, 336, 393; § 5 (g), 468; R. § 12, 498; E. § 1, 517; § 35, 542; C. § 2, 555; Au. § 4, 580; § 34, 589; I. 603, 616; P. 633, 637, 649; duties, 288; exhibition, 224, 231, 234, 250, 322, 327; E. § 1 (3), 518; C. § 2, 556; I. 608; formalities, 127, 140, 150, 225–30, 235, 388; § 18, 472; R. § 25, 501; C. § 3, 557, § 26, 568; infringement, 238; § 25 (b), 476; I. 614; P. 634, 639, 651; manufacturing provisions, 156, 160, 228, 246, 391, 392, 393; § 15, 471; C. § 3, 557; Au. § 35, 590; material property, 222, 228, 234, 398; in other countries, 151, 247–50, 398–429; photographs of, I. 606; publication, 234; special rights, 42, 46, 223, 264, 376; § 1 (b), 465; E. § 1 (2), § 2, 518; C. § 2, 556; § 4, 558; I. 613; P. 639, 651; term, 230, 245–49, 374–429; unpublished works, 86, 119, 144, 225, 226, 230; § 11, 470; R. §§ 17–21, 499–500. *See also* Alterations, Architecture, Engravings, Photographs, Reproductions, Sculpture, etc.
Assets, copyrights as, 451.
Assignment of contract, 432, 441, 443, 444, 447; of copyright, 47, 60, 61, 98, 101, 104, 110, 113, 123, 135, 189, 228, 234, 261, 295, 306, 377, 393, 434; §§ 41–44, 482; § 46, 483; § 61, 487; R. §§ 41–43, 508; E. § 5, 521; § 19, 532; § 24, 535; C. § 7, 560; § 30, 569; § 33, 571; Au. §§ 24–26, 587; §§ 42–43, 591; of renewal rights, 104, 106, 116; R. § 48, 509; record of, 36, 49, 105, 189, 306, 387, 428; §§ 43–45, 482; § 61, 487; R. §§ 41–42, 508; E. § 5, 521; C. § 7 (3), 560; Au. § 66, 599; reversion of, 123, 378, 410, 425, 429; E. § 4, 522; C. § 33, 571.
Assigns, 24, 35, 50, 92, 95, 106, 113, 114, 116, 123, 318, 321, 410, 414, 415, 425, 429; § 8, 469; R. § 2, 495, § 48, 509; E. § 5 (3), 522; C. § 2, 555; § 7 (6), 561; § 33, 571; Au. § 4, 580; I. 606; P. 637, 649.
Assistant Register of Copyrights, 297, 300, 302; § 48, 483.
Assoc. for reform and codification of law of nations, 355.
Assoc. littéraire et artistique internationale, 32, 209, 314, 356.
Astrological charts noncopr., 223; R. § 11, 498.
Attorney-General, opinions, 104, 116, 143, 159, 212, 229, 284, 285, 287, 291, 309, 337, 456, 514.
Aulic council, 11.
Australia, 113, 152, 160, 168, 188, 189, 197, 246, 295, 310, 321, 375, 382, 391–94; E. § 35 (1), 543; code of 1905, 391–94, text of, 580–602, *i. e.* preliminary, Au. §§ 1–8, 580–82; administration, Au. §§ 9–12, 582–84; literary, musical and dramatic copr, Au. §§ 13–33, 584–89; artistic copr., Au. §§ 34–44, 589–91; infringement, Au. §§ 45–61, 591–98; international and state copr., Au. §§ 62–63, 598; registration, Au.

§§ 64–76, 598–601; miscellaneous, Au. §§ 77–79, 601–02.
Austria, 112, 123, 197, 316, 340, **405**, 489. *See also* Hungary.
Author, 7, 8, 35, **95–113**, 149, 162, 214, 218, 318, 321, 326, 327, 333; E. §§ 1–5, 517–522; § 6, (3) 523; § 24, 536; I. 606, 608, 609; P. 633, 637, 649; definition, 66; § 62, 488; R. § 30, 503; Au. § 4, 580; first owner, 95, 113, 247, 393; E. § 5, 521; Au. § 18, 586; § 37, 591; name, 11, 98, 100, 129, 151, 277, 319, 329, 333, 337, 427; R. § 30, 503; E. § 6 (3), 522; C. § 25, 568; I. 617; P. 634, 639, 650; relations with publisher, 402, 409, **430–52**; reputation of, 243, 245, 264, 275. *See also* Anonymous and pseudonymous, Consent, Contract, Corporate works, Employer, Foreign author, Joint authors, Owner, Proprietc , Residence, Rights, etc.
Authors Club, 372.
Authorized copies prohibited importation, 279, 280, 513; § 31, 478.

Badges noncopr., 224; R. § 16, 499.
Bahamas, 391.
Baker *v.* Taylor (1848), 129.
Baldwin, J. D., bill and rpt. (1868), 348.
Balkan states, 414.
Ballet. *Sce* Choregraphic works.
Bamforth *v.* Douglas Post Card Co. (1908), 264.
Bands, musical, 206; § 25 (e), 477.
Bank deposit books, noncopr. 71; R. § 5, 496.
Bankruptcy, 47, 409, 433, 443, **451**.
Banks *v.* McDivitt (1875), 251.
Banks Law Book Co. *v.* Lawyers Co-op. Pub. Co. (1909), 259.
Banishment, 422.
Banning, H. B., bill (1874), 353.
Barbaro, 13.
Barchfeld, A. J., bill (1908), 370.
Barfield *v.* Nicholson (1824), 441.
Barnes *v.* Miner (1903), 175.
Barrie, J. M., 110.
Basel, 11, 12.
Beaconsfield, memoir of, 90.
Beck, J. B., bill (1872), 352.
Beckford *v.* Hood (1798), 27.
Beere *v.* Ellis (1889), 173.
Belgium, 111, 124, 198, 316, 317, 318, 320, 322, 323, 330, 331, 340, **400**, 489, 636; mechanical music, **213**, 340, 398, 490.
Belgravia case, 75, 84, 85.
Bell's Life, 83.
Bell *v.* Locke (1840), 83.
Ben Hur cases, 77, 176, 237, 242.
Benaliis, 14.
Bennett *v.* Boston Traveler Co. (1900), 272.
Bennett *v.* Carr (1899), 236.
Benziger Brothers, importation, 159, 283.
Bequest, copr. subject to, 104; § 42, 482. *See also* Assignment.
Bergne, Sir H: 325.
Berlin conference, 323–25; convention, 62, 94, 118, 152, 199, 209, 250, 296, 323, **326–30**, 372, 415, 456; text of, 603–32. *See also* International conventions.
Berlin Photographic Co. *See* Werckmeister.
Berne conferences, 314, 316, 317, 358, 360; convention, 31, 185, 209, 248, 296, 312, 313, **318**, 320, 329, 375, 381, 456; prophecy of, 345; text of, 603–32. *See also* International conventions, Paris acts.
Besant, Walter, 31, 457.
Bible, 21, 96, 123.
Bibliographie Universelle, 83.
Bibliography of copr., 453–62.
Bills in Congress, 344–71. *See also* Names of Congressmen.
Binding, affidavit of Amer., 153, 155. **511**; § 15, 471; § 16, 472; R. § 27, 502; § 32, 504.
Bindings, importation, 121, 159, 283, 287, 291.
Birrell, Augustine, 51, 458.
Bisel *v.* Welsh (1904), 257.
Bizet's "Carmen," case, 120, 188.
Black *v.* Allen (1893), 261.
Black *v.* Ehrich (1891), 261.
Black *v.* Murray (1870), 75.
Blackstone, 2, 6, 81.
Blackwood *v.* Brewster (1860), 445.
Blaine, Secretary, 356.
Blank book, 69, 70, 71, 72; R. § 5, 496.
Blank forms, 69, 70, 72.
Blasphemous works. *See* Immoral.
Blatchford, J., 175.
Bleistein *v.* Donaldson (1903), 102, 237.

Blind, works for, 154, 279, 280; § 15, 471; § 31, 478.
Bloom *v.* Nixon (1903), 190.
Blue-book (1878), 30, 459 (1909), 32, 459.
Board of Trade, regulations, E. § 3, 520; § 15 (5), 527; § 19 (3), 531.
Bodleian Library. *See* University deposit.
Bobbs-Merrill *v.* Straus (1908), 55, 56.
Bogue *v.* Houlston (1852), 76.
Bolivia, 331, 332, 336, **427**, 636, 643.
Bolton *v.* Aldin (1895), 241.
Bolton *v.* London Exhibitions (1898), 240, 244, 253.
Bond of Register of Copyrights, 299, 303; § 50, 484.
Bong *v.* Campbell Art Co. (1909), 110.
Book, 63, 76, 326, 332, 392; § 5(a), 467; Au. § 13, 585; I. 603; P. 633, 639, 651; application form, 139, 512; catalog of copr. entries, 300; definition, **68–72**; R. § 4, 496; E § 15(7), 527; Au. § 4, 580; duties on, 288, 291; early English restriction, 19, 20; importation, 279–96; § 31 (d), 479; interim protection, 146; § 9, 469; § 21, 474; R. § 28, 502; R. § 35, 506; notice, 127, 130, 131; § 9, 469; § 18, 472; § 19, 473; C. § 3 (2), 557; registration, 132, 306; § 61, 487; E. § 15, 527; C. § 22, 567; § 26, 568. *See also* Importation, Literary work, Manufacture, etc.
Book of Common Prayer, 21, 123.
Bookseller. *See* Publisher.
Book-fairs, German, 11, 13, 15.
Boosey *v.* Jefferys. *See* Jefferys *v.* Boosey.
Boosey *v.* Whight (1899), 208.
Bosselman *v.* Richardson (1909), 107.
Börsenblatt, 403.
Boucicault *v.* Chatterton (1876), 184.
Boucicault *v.* Delafield (1863), 184.
Boucicault *v.* Fox (1862), 97.
Boucicault *v.* Hart (1875), 149.
Bowker, R: R., 214, 370, 455.
Bowker-Solberg volume, 359, 453.
Bracken *v.* Rosenthal (1907), 243.
Braddon, Miss, 83, 173.
Brady, 191.
Brady *v.* Daly (1899), 191, 272.
Brazil, 124, 152, 198, 201, 248, 331, 335, 336, **425**, 636, 642, 652.
Breckinridge, W: C. P., bill (1888, '89), 361.
Briggs, W: 459.
Bristed, C: Astor, bill (1872), 351.
Britain *v.* Hanks (1902), 247.
British copr., early protection, 6, 19–23, 24; laws, 24–34, 456; scope, 61; subject-matter, 68, 78, 90, 94; translations, 78; lectures, 91; ownership, 96, 108; assignment, 106, 190; residence, 108; term, 25, 121, 124, 188, 374; formalities, 125, 150, 189, 310, 373–74; publication, 49, 109, 373, 376, 377; patent proviso, 161; dramatic and musical, 171, 174, 178, 181–85, 189, 190, **195**, 550–54; performance as publication, 181, 184; mechanical reproduction, 208; artistic, 246, 548–49; exhibition as publication, 232; remedies, 277; importation, 18, 292; registration, 189, 310; international, 31, 32, 108, 111, 184, 311, 316, 317, 318, 320, 323, 330, 374, 375, 381; authors' address, 341; Palmerston invitation, 346; Clarendon treaty, 349, 354; Granville negotiations, 355; literature, 456–60; new code, 32, 61, 93, 90, 91, 94, 109, 113, 122, 151, 172, 178, 184, 189, 190, 193, 197, 208, 242, 247, 246, 277, 293, **374–80**; text of, 517–47, *i.e.* rights, E. § 1–5, 517–22; civil remedies, E. § 6–10, 522–24; summary remedies, E. § 11–13, 524–25; importation, E. § 14, 525; delivery to libraries, E. § 15, 527; special provisions, E. § 16–24, 528–36; application to British possessions, E. § 25–28, 536–38; international copr. E. § 29–30, 539–41; supplemental provisions, E. § 31–37, 541–44; schedules, E. 545–47; unrepealed acts, 548–54. *See also* Australia, Canada, Newfoundland, New Zealand, South Africa, India, etc.; British Museum, Crown, Stationers Hall, University; Designs, Patents; *also* specific subjects.
British Empire, 24–34, **373–97**. *See also* British copr.
British Guiana, 391.
British Honduras, 391.
British Museum, deposit, 122, 150, 310, 312, 374, 378, 386, 391; E. § 15, 527; C. § 27, 568.
British possessions (colonies, dominions),

380–97; term, 119, 188, 246; formalities, 151; manufacturing provisions, 160, 168; dramatic and musical works, 168, 189, 190; importation, 294; copyright offices, 310; international 31, 381. *See also* British copr., *also* individual names.
British Soc. of Authors, 31, 457.
British West Indies, 391.
Broder *v.* Zeno Mauvais (1898), 86.
Brooke *v.* Chitty (1831), 442.
Brooklyn Photogravure Co., 244.
Brown, H. F., 16.
Brussels literary congress (1884), 314.
Bryant, W: C., 347, 348.
Bryce, Lloyd S., bill (1888), 361.
Buckles noncopr., 224; R. § 16, 499.
Buckley, S: 29.
Buda-Pesth, telephone newspaper, 217.
Buenos Aires conference, 332, 336; convention, 113, 152, 201, 250, 296, 332, 336, 337, 419; text of, 649–652. *See also* International conventions, Pan Amer. Union and names of countries.
Buildings. *See* Architecture.
Bulgaria, 414.
Bullen *v.* Aflalo (1903), 99.
Bulwer-Lytton's act (1833), 182.
Bureau of Int. Copr. Union, 319, 329, 330; I. 622; Pan Amer., 335, 336; P. 642–647.
Burk *v.* Johnson (1906), 61.
Burke, P: 457.
Burlesque, 190; Au. § 4, 582.
Burlesqued title, 264.
Burrow-Giles Lith. Co. *v.* Sarony (1884), 67, 129, 240.
Business relations, 430–52.
Buttons noncopr., 224; R. § 16, 499.
Butterworth, Benjamin, bill (1890), 362.

Cable *v.* Marks (1882), 242.
Calculations, mathematical, 70.
Calendars, 38, 69, 71; R. § 5, 496.
California copr. legislation, 39, 194.
Caliga *v.* Inter-Ocean Newspaper Co. (1909), 231.
Callaghan *v.* Myers (1888), 130.
Cambridge. *See* University deposit.
Canada, 119, 151, 160, 168, 188–90, 246, 294, 310, 321, 375, 381, 382, 383–90, 460; E. § 35 (1), 543; laws, 295, 383–86, 456; code of 1911, 386–88, text of, 555–79, *i.e.*, interpretation, C. § 25, 55; conditions of copr., C. § 3, 557; infringement, C. § 4, 558; term, C. § 5, 559: license to re-publish, C. § 6, 559; ownership and assignment, C. § 7, 560; civil remedies, C. §§ 8–10, 561–62; offences and penalties, C. §§ 11–12, 562; summary remedies, C. §§ 13–15, 562–65; importation, C. §§16–21, 565–67; registration, C. §§22–27, 567–69; special provisions, C. §§ 28–32, 569–70; existing works, C. §§ 33–157; imperial reciprocity, C. § 34, 573; international, C. §§ 35–36, 573–74; evidence, C. §§ 37–38, 574; fees, C. § 39, 574; clerical errors, C. § 40, 575; rules and regulations, C. §§ 41–46, 575–76; schedules, 577–79.
Canada copr. [imperial] act (1875), 30, 382, 384.
Canada Gazette, 388, C. § 43, 576.
Canal Zone, 39, 423. *See also* Panama.
Canned music. *See* Mechanical reproduction.
Cantatas, 60, 164, 166; § 28, 478.
Cape Colony, 381, 396. *See also* South African Union.
Card copr., 70; R. § 4, 496.
Carey, H: C., 3, 344, 347, 454.
Carlisle, Senator, 363.
Carlyle, T: 351, 457.
Carmen case (1905), 120, 188.
Carnegie, Andrew, 331.
Cartographical works. *See* Maps.
Cary *v.* Longman (1801), 76.
Castellazzo, 14.
Casts. *See* Reproduction, Sculpture.
Catalogue of British Museum, 310; of U. S. copr. entries, 299–301, 304–06; § 56, 485; § 57, 485; § 60, 486; cards, 301.
Catalogues, 69, 71, 73, 234, 237; R. § 4, § 5, 496.
Cate *v.* Devon (1889), 254.
Celtes, 11.
Censorship, 10, 15, 199.
Central Amer., 421–23.
Certificates, 10, 16, 72, 119, 126, 136, 140, 168, 230, 303, 307, 309, 319, 335; § 10, 469; § 55, 484; § 61, 487; R. § 3, 495; C. § 7 (5), 561; Au. § 69, § 70, 599; I. 617; P. 644.

Ceylon, 395.
Chace, Senator, bills (1886–88), 358, 360, 361.
Champney v. Haag (1903), 243, 274.
Channel Islands, 381; E. § 37, 544.
Chappell v. Boosey (1882), 183, 184.
Characters in plays, 170, 175, 192.
Charitable purpose. *See* Performance.
Charles II, 22.
Charles V, 10.
Charles IX., 18.
Charts. *See* Maps.
Chatterbox cases, 84, 261.
Chatterton v. Cave (1876), 174.
Check books, noncopr., 71; R. § 5, 496.
Chicago Dollar Directory case (1895), 257.
Chicago Tribune v. Ill. Pr. & Pub. Co. (1909), 103.
Child v. N. Y. Times Co. (1001), 272.
Children. *See* Heirs.
Chile, 112, 323, 331, 332, 345, 427, 489, 636, 643, 652.
China, 112, 201, 323, 340, 417.
Chippewa Indians, 41.
Choregraphic works, 162, 177, 198, 320, 326, 336; R. § 8, 497; E. § 35, 542; C. § 2, 555; I. 603, 604; P. 634, 649.
Chrestomathies, 334, 337; I. 613; P. 639, 651. *See also* Collections.
Christie, W. D., 457.
Chromos. *See* Lithographs.
Chronology, copyrightable, 69.
Church control, 17; texts, 12.
Cicero, 8.
Cinematograph. *See* Moving pictures.
Circulars, 71; R. § 4, 496; C. § 14, 564.
Circulars, Copyright Office, 456.
Circus posters, 237, 244.
Circus tricks noncopr., 163; R. § 8, 497.
Citations. *See* Law reports.
Citizens, intending, 109. *See also* Foreign, Residence.
Citizenship defined, R. § 30, 503.
City Club conferences, 367.
Civil remedies. *See* Remedies.
Claim of copr. *See* Application, Notice.
Claimant of copr., 95, 96, 136, 137, 304; § 55, 484; R. § 29, § 30, 503.
Clarendon treaty, 349, 354.
Clark v. Bishop (1872), 176.
Clarke v. Price (1819), 441.
Classic times, 8.
Classification of copr., 63, 64, 136, 168; § 5, 467.
Clay, H: 341; bills and rpt. (1837–42), 344, 346.
Clayton v. Stone (1828), 69.
Cleland v. Thayer (1903), 241.
Clemens, S. L., 98, 99, 359, 447.
Clemens v. Belford (1883), 98.
Cleveland, President, 358, 360.
Clifford, J., 254.
Clinical Obstetrics, *in re* (1908), 447.
Cobbett v. Woodward (1872), 73.
Code of 1909, 39, 372; text of, 465–88.
Codeca, 14.
Codes, telegraphic, 70.
Cohen, B. A., 458.
Coin-operated machines, 204; § 1 (e), 466.
Collaboration. *See* Joint author.
Collections, 69, 81, 377, 406, 409, 431, 434; E. § 2, 519. *See also* Chrestomathies.
Collective work. *See* Composite works.
Colles & Hardy, 171, 459.
Collins, P. A., bill (1883), 356.
Colombia, 124, 152, 198, 323, 332, 429, 643, 652.
Colonial copr. act, 29, 293, 379, 380, 381, 382.
Combinations, copr. in, 69, 73, 82, 224; R. § 16, 499; C. § 2, 555.
Commission, Royal Copr., 30, 122, 183, 459.
Committee of experts, 404. *See also* Congressional.
Common law, 2, 4, 5, 6, 7, 9, 23, 24, 26, 34, 40, 42, 43, 44, 46, 59, 61, 62, 86, 90, 91, 92, 95, 119, 178, 182, 186, 187, 192, 225, 261, 277, 379, 387, 392, 425; § 2, 467; E. § 31, 541; C. § 42, 576, 577; Au. § 7, 583.
Competition. *See* Unfair competition.
Compilations, 63, 64, 69, 71, 81, 255, 256, 257, 326, 428; § 5(a), 467; § 6, 468; R. § 4, 496; I. 604.
Component parts, 64, 74, 76; § 3, 467.
Composer. *See* Author, Music.
Composite works, 63, 64, 76, 81, 100, 104, 106, 113–116, 120, 132, 403; § 3, 467; § 5 (a), 467; § 23, 474; § 24, 475; R. § 47, 509;

E. § 5, 522; § 24, 534; § 35, 542; C. § 30, 569; Au. § 20, 587; importation, 286. *See also* Cyclopædic works.
Compulsory license. *See* License.
Condensations, 261, 275. *See also* Abridgment.
Conferences, copr., 32, 316, 367, 430, 460. *See also* Congressional Committees, Inter. copr.
Congo Free State, 419.
Congress, Constitutional authorization, 7, 35.
Congressional Committees, 117, 119, 242; foreign relations, 347; judiciary, 357, 361, 362; library, 348, 350, 352; patents, 202, 204, 295, 356, 360, 361, 362, 367, 369, 371; whole, 347, 350, 371.
Congressional hearings, 202, 204, 214, 296, 352, 359, 369, 448.
Connecticut copr. legislation, 35, 40, 194.
Consent of author or proprietor, 5, 15, 22, 45, 52, 59, 65, 88, 91, 93, 100, 120, 127, 198, 279, 386, 432; § 2, 467; § 6, 468; § 11 (2), 525; § 62, 488; E. § 35 (2), 543, 551; C. § 2 (2), 557; § 13, 563; Au. § 29, 588.
Consolidated Gas Co. case (1909), 207.
Constitutional provision, 7, 34, 35, 51, 66, 67, 114, 180, 218.
Constitutionality, music royalty, 52, 207.
Construction. *See* Architecture, works of.
Contract, 10, 48, 49, 53, 54, 57, 60, 78, 87, 90, 97, 98, 101, 103, 106, 117, 118, 186, 187, 188, 232, 234, 409, 430–52; E. § 5, 521; standard, 438.
Contracts, forms of, noncopr., 71; R. § 5, 496.
Contributions. *See* Periodical contribution.
Control of sale, 54, 60.
Conventions. *See* Treaties, International, Pan Amer. Union, Berne, Paris, Berlin, Montevideo, Mexico City, Rio de Janeiro, Buenos Aires.
Cooper, J. F., 347.
Copies. *See* Authorized copies.
Copinger, W. A., 6, 80, 454, 458.
"Copy," 1.
Copy, right to, 1, 10. 42, 45, 53, 163, 392; § 1(a), 465; Au. § 13, 584.
Copy of a copy, 243.
Copyright, definition of, 1, 2, 42–62, 333, 376, 387, 392, 419; E. § 1 (2), 518, 545; C. § 2, 556, 577; Au. § 13, 584; P. 633, 637, 649.
Copyright deposits, 54, 55, 136, 298, 299, 305, 306, 309; § 59, 60, 486; R. § 49, 509; C. § 27, 568. *See also* Deposit.
Copyright Office, 130, 297–310; § 47–61, 483–87; in British Empire, 310, 373–97; C. § 2, 555; § 22, 567; § 27, 568; Au. § 9–11, 562–83; in other countries, 310, 398–429; publications, 40, 72, 195, 300, 304, 366, 367, 372, 455. *See also* Regulations, Seal.
Copyright records, 95, 298, 302, 305, 309; § 47, 483; § 54, 484; § 58, 486; R. § 49, 509; C. § 22, 567; Au. § 64–76, 509–601. *See also* Registers.
Corporate work, 102, 104, 106, 115, 122, 398–429; § 23, 474; E. § 19, 529; § 21, 533; C. § 31, 570.
Corporation, 102, 129, 157, 273; § 23, 474; R. § 24, 501; § 33, 505; E. § 19, 529; § 21, 533; C. § 31, 570.
Corson, Levi, H. 38.
Cost tables, 70; R. § 4, 496.
Costa Rica, 112, 152, 316, 317, 332, 334, 336, 340, 420, 421, 423, 489, 643, 652.
Costs, legal, 276; § 40, 482; E. § 6 (2), 523; C. § 8, 561; Au. § 78, 602.
Couhin, Claude, 460.
Country of origin, 152, 313, 318, 319, 327, 328, 329, 333; I. 606, 607, 609, 610, 612, 618, 619; P. 638, 643, 644, 650. *See also* First publication.
Coupons, noncopr., 70, 71; R. § 5, 496.
Courier Lith. Co. case, 102.
Court jurisdiction, 36, 260, 269, 270, 271, 319; § 26, 477; § 34, § 35, 481; E. § 12, 525, 549, 552, 553; C. § 14, 563; § 15, 564; Au. § 59–60, 597; § 79, 602; I. 609, 618; P. 635, 640, 652; consular, 62, 201, 417, 418.
Courtesy of the trade, 8, 10, 364.
Cox *v.* Cox (1853), 443.
Cox, S. S. bill (1871), 350.
Crampton, John F., 347.
Crasso, 14.
Credit-rating books, 53, 70.

Criticism, 259, 264, 334, 376; E. § 2 (1), 518; C. § 4, 558; Au. § 28, 588; P. 640, 651.
Crookes v. Petter (1860), 445.
Crown, copr., 21, 49, 123, 377; E. § 18, 529.
Cuba, 112, 124, 334, 335, 340, 410, 423, 642, 652.
Currier, Frank D., bills (1908–9), 367, 369, 370, 371.
Curtis, G: Ticknor, 80, 455.
Curtis, G: W: 348, 454.
Custom of the trade, 236, 259, 364.
Customs, American, 291; duties, 288; regulations, 279, 282, 513; British, 29, 292; Consolidation Act (1876), 30, 33, 293; E. § 14 (6), 526; duties, 384, 390; C. § 16, 565; notification, 293–295, 310, 378, 392, 395, 396; E. § 14, 525; C. § 20, 566; Au. § 61, 598. *See also* Importation.
Cuts. *See* Engravings.
Cyclopædic works, 63, 71, 81, 99, 115, 122, 188, 287, 460; § 5 (a), 467; § 23, 474; R. § 4, 496; E. § 15, 527; § 35, 542; C. § 22, 567; § 30, 569; Au. § 20, 586. *See also* Composite works, Encyclopædia.
Cylinders. *See* Mechanical instruments.
Cyprus, 375, 397; E. § 28, 538.

Daldy, F. R., 356.
Daly v. Brady (1899), 191.
Daly v. Palmer (1868), 175.
Daly v. Walrath (1899), 181.
Daly v. Webster (1892), 191, 192.
Dam v. Kirke La Shelle Co. (1908, 1910), 101, 171.
Damages, 26, 57, 195, 200, 206, 245, 265, 272, 274, 378, 389, 404; § 25 (b), 476; § 25 (e), 477; E. § 6, 522; § 8, 523; C. § 8, 561; Au. § 46, 591. *See also* Penalties.
Dances. *See* Choregraphic works.
Danish West Indies. *See* Denmark.
Date. *See* Notice, Publication.
Daude, 461.
Davis, J. Howlett, 220.
Davis v. Benjamin (1906), 73.
Day, Justice, 56.
De Jonge v. Breuker & Kessler (1910), 237, 242.
Death. *See* Heirs, Joint authorship, Term.
Deception. *See* Fraud, Intent.
Decorative borders, 224; R. § 16, 499.
Dedication, multiplying copies not, 4. *See also* Public domain, Publication.
Definitions in laws, § 62, 488; E. § 35, 542; C. § 2, 555; Au. § 4, 580. *See also* specific subjects.
Deliver, right to, 42, 45, 59, 61, 91, 376, 393; § 1 (c), 465; E. § 1, 518; C. § 2, 556; Au. § 15, 584. *See also* Oral work.
Delivery. *See* Deposit, Forfeiture, Oral work, Publication.
Denmark, 111, 124, 197, 200, 248, 321, 323, 330, 340, 402, 407.
Deposit copies, 142, 166, 226, 305, 306; § 11, § 12, 470; § 59, § 60, 486; R. § 3, 495; § 18, 499; § 22, 500; failure to, 36, 121, 142, 144, 150, 152, 199, 396, 407, 429; § 13, 470; history, 15–18, 22, 24, 27, 28, 36, 37; in British Empire, 150, 189, 373, 378, 383–97; E. § 15, 527; § 29, 539; C. § 26, § 27, 568; Au. § 75, 601; in mails, 36, 145; R. § 39, 507; in other countries, 151, 399–429; insufficient, 145; R. § 18, 500; interim, 146, 366; § 21, 474; R. § 38, 507; Pan Amer. 333, P. 638, 643; periodical contribution, 138, 143; § 12, 470; precedent to suit, 24, 399, 416; Au. § 74, 600; receipts for, 136, 145, 303; § 14, 471; § 55, 484; R. § 39, 507; unpublished works, 86, 143, 144, 166, 225, 226; § 11, § 12, 470; R. § 18, 499; § 19, 500. *See also* Copyright deposits, Library.
Descriptions as deposit, 70, 114, 162, 236, 238, 388, 390, 391; R. § 4, 496; § 8, 497; C. § 26, 568.
Designs, 27, 29, 33, 36, 42, 46, 63, 70, 76, 93, 127, 223–26, 229, 242, 248, 376, 386; § 1 (b), 465; § 5 (g), 468; § 18, 472; R. § 14, 498; § 20, 500; E. § 22, 534; C. § 32, 570; I. 603; P. 637; acts, 27, 29, 189.
Destruction of infringing copies, 11, 266, 268, 277, 279, 282, 283; § 25 (d), 476; § 32, 480; E. § 9, 524; § 11, 525, 550; C. § 10, 562; § 13, 563; § 14 (3), 564; § 21, 566; Au. § 52, 593; § 56, 596; accidental, 432, 438, 444, 449.
Diagrams, 69, 223; R. § 11, 498; Au. § 4, 581.
Dialects, translation into other, 42, 58, 407, 409; § 1 (b), 465.

Dialogue in drama, 171, 173, 175, 176, 191.
Diaries, blank, noncopr., 71; R. § 5, 496.
Dickens, C: 346, 348.
Dicks *v.* Yates (1881), 83.
Dictionaries, 69; E. § 35, 542; C. § 30, 569.
Dielman *v.* White (1900), 234.
Digests. *See* Law digests.
Directions, noncopr., 71, 208; R. § 5, 496.
Directories, 63, 69, 71, 81, 255, 257, 274, 275, § 5 (a), 467; R. § 4, 496.
Disks. *See* Mechanical instruments.
Distribution. *See* Publication.
Doan *v.* Amer. Book Co. (1901), 263.
Documents, legal, copr., 72; public, noncopr. 72; § 7, 468. *See also* Government publications.
Dodd *v.* Smith (1891), 263.
Dodge *v.* Allied Arts Co. (1903), 245.
Dolls, noncopr., 72, 223; R. § 12, 498.
Domicile. *See* Residence.
Dominican Republic, 62, 124, 332, 334, 424, 643, 652.
Donaldson *v.* Becket (1774), 7, 25, 41.
Dorsheimer, Wm., bill (1884), 356, 357.
Dramatic work, 162–201, 375, 387; E. § 1, 517; C. § 3, 557; classification and definition, 63, 162, 175, 318, 326, 332, 393; § 5 (d), 468; R. § 8, 497; E. § 35, 542; C. § 2, 555; Au. § 4, 580; I. 603; P. 633, 637, 649; acts, 27, 30, 37, 39, 182, 398; excepted from manufacturing clause, 70, 155, 167; R. § 4, 496; formalities, 86, 119, 127, 139, 144, 150, 166, 168, 189, 393, 396, 406; § 11, 470; § 18, 472; R. § 18, 499; C. § 26, 568; Au. § 13, § 14, 584, § 32, 588; infringement, 195, 266, 267, 394; § 25 (b), 476; E. § 2 (3) 520; Au. § 46, 591; § 51, 593; manufacture, 168; performance, 59, 165, 183, 185, 319, 322, 327, 394; R. § 23, 500; E. § 1 (3), 518, § 2 (3), 520; I. 608; prior publication, 183, 185; special rights, 42, 43, 45, 61, 63, 162, 163, 169, 197, 322, 376; § 1 (b), 465; E. § 1, 517, 518; C. § 2, 556; Au. § 13, 14, 584; I. 613, 614; unpublished, 119, 186. *See also* License, Mechanical reproduction, Performance.
Dramatico-musical works, 70, 155, 139, 162–201, 319, 322, 326, 327; § 5 (d), 468; R. § 8, § 9, 497; I. 603, 604, 608, 613; P. 633, 649; infringement, 195, 266, 267, 476; § 25 (b), 476; § 28. *See also* Dramatic, Mechanical reprod ction, Musical.
Dramatize, right to, 42, 45, 47, 58, 61, 63, 163, 169, 170–72; 322, 376, 392; 398–429, § 1 (b), 465; E. § 1, 518; C. § 2, 556; Au. § 13, 584; I. 614.
Dramatization, 64, 170, 172, 174, 176, 328, 398–429, 431; § 1 (b), 465; § 6, 468; C. § 2, 556; I. 614.
Drawings, 8, 29, 37, 64, 223, 224, 229, 242, 246, 247, 248, 250, 326, 332, 376, 388; § 5 (i), 468; § 18, 472; R. § 11, § 12, § 14, 498; E. § 2, 518, § 35, 542; C. § 2, 555; § 4, 558; Au. § 4, 580; I. 603; P. 634, 637, 649. *See also* Artistic work.
Droit d'Auteur, 330, 462.
Drone, Eaton S., 41, 69, 76, 77, 80, 95, 455.
Drummond *v.* Altemus (1894), 264.
Drury *v.* Ewing (1862), 69.
Dublin University. *See* University deposit.
Duck *v.* Bates (1884), 186.
Duck *v.* Mayen (1892), 190.
Dumb show, E. § 35 (1), 542.
Duration of copr., 114–124. *See* Term.
Dürer, Albert, 11, 12.
Dutch colonies, 401. *See also* Holland.
Duties. *See* Customs.
Dutton *v.* Cupples & Leon (1907), 263.
Dwight *v.* Appleton (1840), 133.

Easton, J. M., 458.
Écrivains, 10.
Ecuador, 94, 323, 332, 428, 643, 652.
Eddy, Mrs. Mary Baker G., 452.
Edinburgh University. *See* University deposit.
Edison, 216, 221.
Edison *v.* Lubin (1903), 242.
Édition partagée, 46.
Editions, new, 65, 75, 83, 134, 139, 170, 312, 445; § 6, 468; E. § 15 (7), 527; Au. § 27, 587; publishing, 431, 445, 446.
Editor. *See* Author, Proprietor.
Edmunds & Bentwich, 459.
Education, works for, 12, 60, 164, 264, 275, 279, 281, 290, 334, 337, 377; § 28, § 31, 478; E. § 2, 518; I. 613; P. 639, 651.
Eggleston, E: 356.

Egypt, 62, 124, 201, 418.
Elderkin, J., 352.
Eldon, Ld. Chancellor, 256.
Election reports, 89.
Electrotype, 235.
Eliot *v.* Jones (1910), 85.
Ellis *v.* Hurst (1910), 98.
Ellis *v.* Marshall (1895), 239.
Ellis *v.* Ogden (1894), 239.
Embroideries noncopr., 72, 223; R. § 12, 498.
Employer, 78, 80, 95, 97, 99, 104, 111, 115, 137, 188, 193, 238, 271, 378, 393, 404, 443; § 23, 474; § 62, 488; R. § 30, 503; E. § 5, 521; C. § 4 (2), 559; § 7, 560; § 13, 562; Au. § 21, 587; §§ 38–40, 591. *See also* Author, Proprietor.
Encyclopædia Britannica, 454. *See also* Cyclopædic works.
Encyclopædia Britannica Co. *v.* Tribune Assoc. (1904), 261; other cases, 261.
Engineering work, designs for, 224; R. § 14, 498.
England. *See* British.
English, W. E., bill (1885), 358.
Engraver as author, 239; Au. § 40, 590. *See also* Author.
Engravings, 11, 14, 36, 67, 73, 76, 113, 150, 223, 234, 240, 244, 247, 248, 250, 288, 315, 326, 332, 376; R. § 13, 498; E. § 1 (3), § 2, 518; § 5, 521; C. § 2, 555, § 3 (2), 557; § 4, 558; § 7, 560; § 26, 568; Au. § 4, 580; I. 603; P. 634, 637, 649; copr. acts, 27, 28, 36, 238, 240, 246. *See also* Prints; Photo-engravings.
Enoch *v.* *Société des phonographes et gramophones* (1903), 212.
Entertainment. *See* Dramatic work.
Entry. *See* Application, Registration.
Epitome. *See* Abridgment.
Equity, principles of, 44, 86, 100, 178, 253, 258; § 2, 467. *See also* Common law.
Errors in affidavit, 157; R. § 33, 505; in copr. notice, 128; common proof by, *see* Infringement.
Esperson, Pietro, 461.
Estes *v.* Williams (1884), 83.
Estes *v.* Worthington (1887), 84, 261.
Etchings. *See* Engravings.
Evarts, W. M., 50, 353.
Everett, E: 347.
Everson *v.* Young (1889), 72, 96.
Evidence, certified, C. § 36, § 37, 574; *prima facie*, 83, 100, 137, 150, 300, 304, 305, 378; § 55, 484; § 56, 485; E. § 6, 523; § 17, 529; Au. § 69, 599. *See also* Certificate, Name.
Exchange of copr. deposits, 298, 305; § 59, 486.
Exchange Telegraph *v.* Gregory (1895), 89.
Execution, copr. not subject to, 47. *See also* Bankruptcy.
Executor of author, 23, 95, 102, 104, 115, 116; § 8, 469; § 23, 474; § 24, 475; R. § 2, 495; § 46, 509; C. § 2, 555. *See also* Heirs.
Exhibition, 42, 45, 222, 224, 231, 235, 238, 239, 250, 322, 327, 376, 404; E. § 1 (3), 518; § 11, 524; C. § 2, 556; § 4, 559; § 11, 524; I. 608, 618; P. 640, 652. *See also* Artistic work.
Existing copr., 116, 319, 320, 329, 377; § 24, 475; E. § 3, 520; § 19 (7), 532, (8), 533; § 29, 539, 545; C. § 33, 571, 577; I. 619, 620. *See also* Extension, Rights, Schedules.
Expositions, exhibits at, 29, 38.
Extension of copr., 116, 117, 140, 141; § 23, 475; § 24, 475; § 61, 487; R. § 46–48, 509. *See also* Renewal, Term.
Extracts, use of, 198, 211, 264, 319, 328, 334, 337, 377, 404, 438; E. § 2, 519; I. 613; P. 639, 651. *See also* Quotation.
Extraterritorial notice, 133.
Eyre *v.* Walker (1735), 24.

Fabrics, woven, noncopr., 72, 223; R. § 12, 498.
Failure to deposit, translate, etc. *See* Deposit, Translate, etc.
"Fair use," 91, 173, 174, 190, 251–64; Au. § 28, 587; P. 640, 651. *See also* Infringement, Quotation.
Falk *v.* Brett (1891), 241.
Falk *v.* Curtis Pub. Co. (1900), 273.
Falk *v.* Donaldson Lith. Co. (1893), 244.
Falk *v.* Gast (1891, '93), 235, 236, 241.
Falk *v.* Heffron (1893), 271.
False affidavit, entry, notice. *See* Affidavit, etc.
Farce. *See* Dramatic work.
Farrer license plan, 51, 449.

Fees, 141, 147, 207, 241, 299, 302, 306, 309, 389, 391, 403; § 49, 483; § 61, 487; R. § 3, 496; § 38, § 40, 507; § 42, § 43, 508; § 48, 509; § 49, 510; C. § 7, 561; § 22, 567; § 39, 574; Au. § 63, 598; § 70, 599; § 71, 600; P. 645.
Felice, Fra, of Prato, 17.
Fell, Bishop, 19.
Fiji Islands, 395.
Fillmore, President, 347.
Film. *See* Moving pictures.
Fine arts copr. act, 29, 33, 240, 246, 378, 548.
Fines. *See* Penalties.
Finland, 200, 409.
Finnian *v.* Columba (567), 9.
First publication, 16, 108, 109, 120, 127, 150, 151, 182, 184, 185, 199, 200, 321, 327, 373, 375, 388, 393, 416, 418; R. § 2, 495; E. § 1, 517; § 3, 520; § 17, 529; § 23, 534; § 26 (3), 537; § 27, 538; § 29, 539; § 35 (3), 543; C. § 5, 559; Au. § 5, 581; §§ 13–15, 584; I. 609, 610; P. 638, 650. *See also* Simultaneous publication.
Fishburn *v.* Hollingshead (1891), 313.
Fishel *v.* Lueckel (1892), 244.
Fisher Act (1900), 295, 385.
Florence, 17.
"Fly by night" dramatic companies, 194, 269.
Folders, 71; R. § 4, 92.
Folsom *v.* Marsh (18. ·), 92, 252.
Foreign assignment, 105; § 43, 482; R. § 41, 508.
Foreign author, 19, 37, 79, 107–12, 138, 139, 373, 375, 387, 388, 389, 390, 404; § 8, 469; R. § 2, 495; § 29, 502; § 30, 503; § 35, 506; E. § 29, 539; C. § 35, 573; Au. § 62, § 63, 598; I. 609, 620; P 638, 650. *See also* Residence.
Foreign countries copr., 398–429; scope, 62; subject-matter, 94; ownership, 113; term, 124; formalities, 151, 313; manufacturing provisions, 160; dramatic and musical works, 178, 197, 199; mechanical reproduction, 210–14; artistic work, 248; importation, 295; copr. office, 310; international conventions, 111, 311–40, 489. *See also* International, Pan Amer., names of countries and conspectus preceding contents.
Foreign laws, list of, 366, 456; reprints act, 27, 29, 294; subjects (artistic), 154, 156; 228; § 15, 471; R. § 27, 502.
Foreign texts, exc. from manuf. clause, 156, 284; § 15, 471.
Foreign works (in U. S.), 29, 30, 79, 133, 138, 139, 146–50, 153, 154, 156, 202, 228, 278–96; § 1 (e), 465; § 15, 471; § 31 (c), 479, 513–16; R. § 28, 502; § 38, 507. *See also* Interim, Residence.
Forfeiture of copr., 15, 121, 131, 132, 144, 150, 152, 158, 196, 235, 245; § 13, 470; § 17, 472; § 32, 480. *See also* Seizure.
Formalities, 35, 39, 125–52, 166–68, 178, 189, 236, 313, 511, 512; §§ 9–22, 469–474; R. §§ 17–48, 499–509; British, 29, 150, 373–397; E. § 15, 527; § 29 (1), 539; C. § 3, 557; §§ 22–27, 567–569; § 35, 573; Au. §§ 64–76, 599–601; in other countries, 16, 18, 21, 146, 150–52, 199, 398–429; I. 606, 611, 613, 617; P. 649. *See specifically* Affidavit, Application, Assignment, Certificate, Deposit, Fees, Notice, Publication, Registration, etc.; *also* Artistic work, Book, Dramatic work, Musical works, etc.
Forms, C. § 41, 575. *See also* Application.
Forms copr., 69, 70; R. § 4, 496; noncopr. 71, 72; R. § 5, 496.
Formulæ, noncopr., 71; R. § 5, 496.
Fragments not depositable, 143. *See also* Extracts, Parts, Quotation.
France, 62, 111, 118, 124, 151, 248, 295, 310, 316–23, 330, 331, 340, 398, 460, 489; history, 10, 17, 114, 311, 312, 398; mechanical reproduction, 212.
Francis I, 18.
Frankfort, 11, 12, 13.
Franking labels, 145; R. § 39, 507.
Franklin Square Library, 262.
Fraser *v.* Edwardes (1905), 176.
Fraser *v.* Yack (1902), 110.
Fraud, 11, 84, 85, 87, 100, 135, 260, 422. *See also* Affidavit, Imitation, Intent, Notice, etc.
Fraudulent works. *See* Seizure.
Frederick III, 11.
Free transmission. *See* Mails.

Freeman v. Trade Register (1909), 131.
Frelinghuysen, F. T., 357.
French colonies. *See* France.
French v. Day, Gregory, *et al.* (1893), 193.
French v. Kreling (1894), 181.
Frohman v. Ferris (1909), 181.
Frohman v. Weber (1903), 192.
Froude, Jas. A., 351.
Frye, Senator. 363.
Fuller v. Bemis (1892), 177.
Fuller v. Blackpool Winter Gardens Co. (1895), 176.
Fust, 10.

Gabriel v. McCabe (1896), 82, 256.
Gaius, decision of, 8.
Gale v. Leckie (1817), 441.
Gambia, 397.
Games, noncopr., 71, 72, 223, 224; R. § 5, 496; § 12, 498; § 16, 499.
Gannet v. Rupert (1904), 84, 274.
Garfield, President, 255, 356.
Garments, noncopr., 72, 223; R. § 12, 498.
Garofalo y Morales, D. F. G., 462.
Gazetteers, 63, 69, 71, 81; § 5 (a), 467; R. § 4, 496.
Geographical work. *See* Maps.
Georgia copr. legislation, 35.
Georgian period, 27.
Germany, 112, 124, 151, 161, 198, 199, 295, 296, 316–20, 322, 323, 330, 340, 368, 402, 460, 489; history, 10, 311, 312, 402; mechanical reproduction, 210, 340, 490; publishing law, 430.
Gibraltar, 397.
Gibson v. Carruthers (1841), 452.
Gilbert v. *Star* (1894), 186.
Gilbert v. Workman (1910), 100.
Gilder, R: W., 356.
Gilmore v. Anderson (1889), 255.
Giustiniani, 14.
Glaser v. St. Elmo Co. (1909), 192.
Glassware noncorp., 72, 223; R. § 12, 498.
Globe Newspaper Co. v. Walker (1908), 272.
Globes, 333; P. 637, 649.
Gorlson, R: 457.
Gold Coast, 397.
Gottsberger v. Estes (1888), 136.
Gounod's "Redemption" case, 187.
Government publications, 12, 37, 65, 98, 123, 377, 398, 403, 407, 410, 412, 420; § 7, 468; E. § 18, 529.
Governmental libraries, transfer to, 306; § 59, 486. *See also* Library.
Gramophone. *See* Mechanical instruments.
Grant, 2, 10, 11, 13, 27, 38, 46, 48, 49, 189, 190, 204, 256, 377, 437; § 42, 482; E. § 5, 521; § 24, 535; C. § 7, 560. *See also* Assignment, License.
Granville, Lord, 351, 355.
Gratuitous circulation 53, 404. *See also* Performance.
Graves v. Gorrie (1903), 246.
Great Britain. *See* British.
Greece, 124, 152, 323, 414.
Green v. *Irish Independent* (1899), 236, 253.
Green v. Luby (1909), 136.
Griffith v. Tower (1896), 451.
Guatemala, 112, 124, 323, 332, 334, 336, 340, 421, 643, 652.
Guernsey. *See* Channel Islands.
Guggenheim v. Leng (1896), 236.
Guide books copr., 69.
Guilds, 9, 15, 21.
Gyles v. Wilcox (1740). *See* Hale case, 80.

Haiti, 124, 316, 317, 318, 320, 322, 330, 332, 424, 643, 652.
Hale's "Pleas of the crown" case, 80.
Hale, E: Everett, 41, 118.
Half-tones, 224; R. § 15, 498.
Hamlin, Arthur S., 455.
Hanfstaengl v. Amer. Tobacco Co. (1894), 313.
Hanfstaengl v. Baines (1894), 242.
Hanfstaengl v. Holloway (1893), 313.
Hansard's Parliamentary debates, 456.
Hardwicke, Ld., 80.
Harmony. *See* Musical work.
Harper v. Donohue (1905), 47, 133.
Harper v. Franklin Sq. Lib. Co. (1887), 262.
Harper v. Ganthony (1895), 82, 171.
Harper v. Kalem Co. (1908, '09, '11), 77, 176, 237, 242.
Harper v. Ranous (1895), 170.
Harper v. Shoppell (1886), 235.
Harper proposals, 349, 352, 353, 355, 357.
Harrison, President, 361, 364.

Hartford Printing Co. *v.* Hartford Dir. Co. (1906), 275.
Havana. *See* Bureaus, Pan Amer.
Hawaii, 38, 39, 108, 270; § 34, 481.
Hawkers, protection against, E. 550, 551.
Hawkesworth's "Voyages" case, 81.
Hawley, Senator, bill (1885), 358, 361.
Hazard, Egbert, 348.
Hearings. *See* Congressional hearings.
Hegeman *v.* Springer (1901), 274.
Hein *v.* Harris (1910), 170.
Heinemann *v.* Smart Set Pub. Co. (1909), 437.
Heirs, 11, 14, 27, 36, 46, 49, 102, 104, 113, 114, 115, 116, 123, 124, 378, 402, 410, 422, 429, 433, 452; § 23, 474; § 24, 475; R. § 46, 509; E. § 5 (2), 521; C. § 2, 555; § 25, 568; Au. § 4, 580. *See also* Administrator, Executor, Renewal, Term.
Helmuth, W: Tod, private copr. grant, 38.
Henderson *v.* Tompkins (1894), 177.
Henry II, III, 18.
Henry VIII, 19, 20, 21.
Herndon, private copr. grant, 38.
Herne *v.* Liebler (1902), 187.
Hervieu *v.* Ogilvie (1909), 155, 168.
Hills *v.* Hoover (1905), 128.
Hire, work for. *See* Employer.
History of copr., § 41, 311–429, 453–62; America, 35–41, 341–72; British, 19–34, 373–97; early, 8–23; in other countries, 308–429; international, 311–429; literature, 453–62.
Hoar, Senator, 361.
Hogarth, 27.
Hole *v.* Bradbury (1879), 445.
Holland, 17, 112, 124, 152, 160, 200, 316, 317, 323, 401.
Holloway *v.* Bradley (1886), 100.
Holmes *v.* Hurst (1899), 67.
Homer, 8.
Honduras, 62, 112, 124, 317, 332, 334, 340, 421, 643, 652.
Hong Kong, 395.
Horace, 8.
Hotten, J: Camden, 457.
Hotten *v.* Arthur (1863), 73.
Howard, Bronson, 194.
Howitt *v.* Hall (1862), 445.
Hoyt *v.* Bates (1897), 268.
Hroswitha, 11.
Huard & Mack, 460.
Huard, Gustave, 460.
Hubbard, Gardiner G., 361.
Hungary, 124, 198, 200, 405.
Hunter *v.* Clifford (1909), 247.

Ideas, copying of, 176, 187, 240, 257.
Ignorance. *See* Infringement, Innocent.
Illustrations, 64, 73, 77, 127, 131, 138, 140, 153, 154, 156, 223, 224, 225, 228, 230, 235, 236, 237, 248, 250, 402, 403, 439; § 5 (k), 468; § 15, 471; § 18, 472; R. § 16, 499; § 25, 501; § 27, 502; Au. § 4, 580; I. 603. *See also* Artistic, Engravings, etc.
Imitation, 11, 12, 30, 84, 190, 254, 260, 263, 264, 286, 376; E. § 2, 519; § 35 (1), 543. *See also* Adaptations, Infringement.
Immoral and seditious works, 86; Au. § 6, 582; P. 635.
Imperial Copr. Conference, 32, 460; jurisdiction, 12. *See also* British.
Impersonal works. *See* Corporate work, Government publications, etc.
Importation, 278–96; foreign practice, 295; foreign rebinding, 159, 287, 514; forfeiture 279, 282, 283; § 32, 480; Au. § 61, 597; I. 618; in British Empire, 24, 27, 31, 292–95, 310, 378, 383–87, 389, 392, 395; E. § 2 (2), 520; § 14, 525; § 25 (2), 536; § 35, 543; C. § 2, 556; § 4, 559; § 13, 562; § 16–21, 565–67; § 35, 573; Au. § 50, 592; § 61, 597; innocent, 286; library, 279, 281, 290, 293, 387; § 31 (d), 479; C. § 17, 565; manufacturing provisions, 156, 159, 283, 284; on annulment of copr., 121; periodicals, 88, 286; permitted exceptions, 156, 186, 229, 279, 281, 289, 290, 291; § 31, 478; postcards, 229; prohibition of, 12, 13, 18, 19, 21, 31, 134, 135, 278–96, 389, 513; § 30, 31, 478; § 33, 480; E. § 14, 525; C. § 21, 566; Au. § 50, 592; § 61, 597; I. 616; regulations, 279, 282, 513; § 33, 480; re-importation, 229; retroactive effect, 283; return of copies, 279, 282, 514, 515; § 32, 480; tariff, 288, 291; translations, 80, 288; C. § 35, 573.
Imprint date, 129; "Venetia" protected, 16.

Imprisonment. *See* Punishment.
Incidents, combination of, 170, 178, 186, 191; E. § 35 (1), 542.
Incunabula, 10.
Indecent matter. *See* Immoral works.
Index expurgatorius, 17, 160.
Index of registrations, 300, 304; § 56, 485; C. § 22, 567.
India, 248, 321, 382, **395**.
Indians, American, 41.
Indo-China. *See* France.
Industrial art, works, 93, 223, 326, 386; R. § 12, 498; C. § 32, 570; I. 605. *See also* Designs, Trade-mark.
Infringement, 5, 16, 18, 21, 22, 23, **251–64**, 376, 380, 404; E. § 2, 518; § 35, 543, 547, 551, 553; C. § 2, 556; § 4, § 5, 558; § 30, 569; Au. § 4, 581; § 28, 587; § 45–61, 591–98; *I.* 614; *P.* 634, 635, 639, 651; piratical work, newspaper or periodical, C. § 14 (6), 564; artistic, 245, 266, 267, 378; § 25, (b), 476; E. § 9, 523; Au. § 45, 591; dramatic, 172–74, 190–92, 195, 241, 266, 267; § 25 (b), 476; E. § 2, 520; C. § 4, 559; Au. § 32, 588; § 45, 591; § 51, 593; indirect, 243, 254; innocent, 130, 378; § 20, 473; E. § 2 (2), (3), 520; § 8, 523; C. § 4 (3), 559; § 13, 562; Au. § 50, 592; § 51, 593; musical, 192, 195, 206, 266, 267, 268; § 25 (b), 476, (e), 477; E. § 19 (2), 530, 551–54; Au. § 45, 591; § 51, 593; oral work, 266, 267; § 25 (b), 476; E. § 20, 533; Au. § 45, 591; party liable, 193, 240, 253, 394; E. § 2 (3), 520; § 6 (3), 522; C. § 4, 559; Au. § 51, 593; previous to formalities, 143, 275; § 12, 470; R. § 3, 495; Au. § 74, 600; proof by common errors, 257; remedies and procedure, 195, 206, 245, **265–77**, 404; §§ 25–28, 475–78; E. §§ 6–10, 522–24; §§ 11–13, 524–25, 548; C. §§ 8–15, 561–65; Au. §§ 45–61, 591–98; I. 618; separation of inf. parts, 256. *See also* Destruction, Importation, Intent, Knowledge, Remedies, Seizure, Suits; *also* Chronological table of cases.
Inglis, Ld. President, 75.
Inherent right, 4, 5. *See also* Common Law.
Injunction, 11, 46, 130, 194, 195, 196, 206, 245, **266–68**, 271; § 20, 473; § 25, (a), (e), 475, 477; § 27, 477; § 36, § 37, 481; E. § 6, 512; § 9, 524; C. § 8, 561.
Inkus, 11.
Innocence. *See* Infringement, Knowledge.
Inspection of records, 305; § 58, 486.
Instruments noncopr., 72, 223; R. § 12, 498. *See also* Mechanical instruments.
Insurance policy, copr., 72.
Intent, in infringement, 60, 85, 135, 195, **252**, 260, 275, 276; § 28, § 29, 478. *See also* Fraud, Infringement, Knowledge.
Interest tables copr., 70; R. § 4, 496.
Interim copr., 38, 126, **135**, 138, 139, **146**, 154, 155, 366; § 9, 469; § 15, 471; § 21, 22, 474; R. § 26, 501; § 28, 502; § 35, 506; § 38, 507. *See also* Temporary copr.
International conventions, **311–40**; Berne (1886), 318; Paris (1896), 321; Berlin (1908), 326; Montevideo, 331; Mexico City, 332; Rio de Janeiro, 334; Buenos Aires, 336; texts, 603–52; scope, 62; subject-matter, 94; term, 118, 124, 188; formalities, 152; dramatic and musical works, 197, 198, 201; mechanical reproduction, 209, 221; artistic work, 248; infringement, 255; importation, 296; reservations, 185, **323**, 330, 375, 381, 399, 408, 415, 416. *See also* names of cities.
International copr., 17, 107, **341–72**; § 8, 469; R. § 2, 495; E. § 23, 534; § 29, 539; § 30, 540; C. § 35, 573; Au. § 62, § 63, 598; acts, 28, 29, 30, 31, 37, 109, 184, 246, 292, 311, 312, 313, **341–64**, 373, 379, 381, 383, 386, 388; literature, 330, 454, 456, 461; proclamations, 111, 202, 213, 214, 212, 339, 489; prophecy, 344; trade-mark, 84; translations, 79. *See also* Interim, International conventions, names of cities, names of countries.
International Copr. Assoc., 348, 351. *See also* Amer. copr. leagues.
International Copr. Union. *See* Internat. conventions.
International lit. assocs., 356.
International lit. and art. assoc. *See* Assoc.
International literary congresses. *See* Assoc., also names of cities.
Interpretation. *See* Definition.
Interstate Commerce Commission, 207.

Inventors. *See* Author.
Ireland, E. § 12, 525, 549, 552; prints and engravings act, 28. *See also* British.
Irving, Washington, 83, 347.
Isaacs *v.* Daly (1874), 82, 84.
Isle of Man, 294, 378, 380; E. § 14 (6), 526.
Italy, 13, 111, 124, 152, 199, 213, 310, 316–18, 320, 322, 323, 330, 331, 340, 377, 412, 450, 461, 489, 636.
Ivison, H: 348.

Jamaica, 391.
Japan, 112, 124, 321, 323, 330, 340, 415, 417, 456.
Jay, J: 347, 355.
Jefferys *v.* Boosey (1854), 1, 4, 108, 373.
Jekyll, Sir Joseph, 24.
Jersey. *See* Channel Islands.
Jewellers' Merc. Ag. *v.* Jewellers' W'kly Pub. Co. (1898), 53.
Johnson, R. U., 360.
Joint authors, 101, 113, 120, 122, 188, 189, 377, 387, 403; E. § 16, 528; § 17, 529; C. § 29, 569; Au. § 17, 585; § 19, 586.
Jones, Judson, 38.
Jones *v.* Amer. Law Book Co. (1905, '08), 100.
Jude's "Liedertafel" case (1907), 447.
Judicial Committee, 123, E. § 4, 521.
Judiciary committee. *See* Congressional Committees.
Jurisdiction. *See* Court.
Justinian, Code of, 8.

Kant, Immanuel, 461.
Karno *v.* Pathé Frères (1908–9), 177.
Keeler *v.* Standard Folding Bed Co. (1895), 54.
Kelley, W: D., 350, 352.
Kelly *v.* Byles (1879), 83.
Kennedy, J: Louis, 361.
Kent, Chancellor, 5.
Kessler, 10.
"Key of Heaven" importation, 159.
Kindersley, Vice-Chancellor (1852), 75.
Kipling *v.* Putnam (1903), 263.
Kittredge, Senator, bills (1906–8), 367, 369, 370.
Knowledge, 60, 195, 196, 236, 252, 275, 277, 286, 379, 389, 441; § 28, 478; E. § 2 (2), (3), 520; § 8, 523; § 11, 524. *See also* Intent.
Knox & Hind, 459.
Koberger, 10.
Kohler, Josef, 461.
Korea, 112, 416.

Labels, 37, 64, 69, 223, 233, 237, 309.
Labor copr. rpt., 456.
Laces noncopr., 72, 223; R. § 12, 498.
Laches. *See also* Forfeiture, Notice, omission.
Lacombe, J., 177.
Ladd *v.* Oxnard (1896), 53.
Lamb, C: letters, 92.
Lamb *v.* Evans (1892), 74.
Landa *v.* Greenberg (1908), 99.
Landscapes not map., 223; R. § 11, 498. *See also* Artistic work.
Languages. *See* Translate, Translations.
Larby *v.* Love (1910), 57.
Larceny. *See* Infringement.
Lathrop, G: P., 356.
Latin Amer., 419. *See also* Pan Amer. Union and names of countries.
Law reports and digests, 40, 98, 257, 441, 460. *See also* Chronological table of cases.
Lawfully obtained copies, 60; § 41, 482.
Lawrence *v.* Dana (1869), 81, 134, 254.
Lawrence & Bullen *v.* Aflalo (1903) 99.
Laws. *See* Copr. Office publications, *also* British, U. S. and names of other countries.
Lea, H: C., 358.
Leaflets copr., 70; R. § 4, 496.
Lease, right to, 46, 48, 49, 53.
Leases, 71; R. § 5, 496.
Lecture. *See* Oral work.
Lectures copr. act (1835), 28.
Lee *v.* Gibbings (1892), 274.
Leech, J: illustrations by, 8, 98.
Legal documents, 72.
Legal representatives. *See* Administrators, Executor, Heirs, etc.
Leipzig book-fair, 11, 13; tribunals, 211.
Lend, right to, 46, 48, 49.
Lennie *v.* Pillans (1843), 81.
Leo X, 17.

Letter-file indexes, noncopr., 70.
Letters, 4, 91, 94, 421.
Letters of the King, 18.
Letters, ornamental, noncopr., 224; R. § 16, 499.
Letters patent, 10.
Liability. *See* Infringement, Proprietor.
Libel, 100, 275, 437. *See also* Reputation.
Libelous. *See* Immoral works.
Liberia, 62, 124, 318, 320, 323, 330, 419.
Libraires, 10; *jurées*, 10, 15, 17.
Librarian of Congress, 37, 72, 96, 296, 297, 299, 302, 303, 305, 306, 367; § 48, § 49, 483; § 51, 484, § 59, § 60, 486.
Librarium, 8.
Library compensation, E. § 34, 541; deposits, 16, 18, 306; § 59, 486; C. § 27, 568; importation, 279, 281, 288, 290, 293, 386, 387; § 31 (d), 479; C. § 17, 565; loans, 60, 164; § 28, 478. *See also* Importation, Universities.
Library of Congress, 36, 144, 289, 298, 305, 367, 369; § 13, 470; § 59, 486; of Parliament, C. § 27, 568.
Library Committee. *See* Congressional Committees.
Librettos, 71, 121, 180, 181, 188, 393; R. § 4, 496; Au. § 4, 581.
License, right to, 46, 48, 61, 113, 123, 190; 236; E. § 5, 521; Au. § 25, 587; § 43, 591.
License, 51, 61, 211, 377, 387, 422, 425, 450, 451; E. § 4, 451; § 16, 528, § 29, 540; C. § 6, 559; § 7, 561; § 17, 565; § 19, 566; early printers', 11, 21; limitation of, 82, 190, 236, 253, 256; mechanical reproduction, 52, 202, 206, 207, 208, 268, 377, 450; § 1 (e), 465; § 25 (e), 477; R. § 44, 45, 508; E. § 19, 529; sub-license, 187; registration, C. § 7 (3), 560; Au. § 66, 599. *See also* Assignment, Royalty.
Licensing acts, 21, 22, 385.
Lieber, Dr. Francis, 346, 454.
"Liedertafel series" *in re* (1907), 447.
Lien, printer's, 449.
Life, case, 84.
Limitation, 6, 14, 21, 44, 46, 48, 49, 53, 199, 235, 236, 393; E. § 3, 520; § 4, 521; § 19 (7), 532, (8) 533; C. § 33, 571; I. 615; actions, 122, 270, 272, 273, 378, 404; § 39, 481; § E. 10, 524; C. § 10, § 12, 562; Au. § 48, 592; § 59, 597; assignment, 61, 82, 113, 377, 378; E. § 5, 521; § 24, 534; C. § 7, 560; § 33, 571; sale, 47, 54, 60. *See also* "Fair use," License, Price, Term.
Lindemann, Otto, 460.
Lisbon literary congress (1880), 314.
Lists copr., 69, 70.
Literary and general copr., 35–161; property, early, 8, 15, 18.
Literary work, definitions, 70, 94, 198, 318, 326, 375, 387, 388; R. § 4, 496; E. § 35, 542; C. § 2, 555; I. 603; P. 633, 637, 642, 649. *See also* Book and specific references under Application, Affidavit, Certificate, etc.
Literature of copr., 453–462.
Lithographs, 138, 139, 144, 153, 156, 228, 244, 247, 248, 250, 326; § 15, 471; § 16, 472; R. § 27, 502; E. § 35, 542; C. § 2, 555; Au. § 4, 580; I. 603; P. 634.
Little *v.* Gould (1852), 98.
Littleton *v.* Ditson (1894), 167.
Living pictures. *See Tableaux; also* Moving pictures.
Logarithmic tables copr., 70; R. § 4, 496.
London *Gazette*; E. § 24, 535; § 25, 536; § 32, 541; international exbibition, 29; *Journal*, 83; literary congress (1879, 1890), 209, 314.
Long Parliament, 21.
Lords, House of, decision, 25, 26.
Lorimer *v.* Boston Herald (1903), 264.
Louis XII, XIV, 18.
Louisiana copr. legislation, 39, 194; Purchase Exposition, 38.
Low *v.* Routledge (1864), 128.
Lowe, Joseph, 454.
Lowell, J. R., 355, 359, 454.
Lowndes, J: James, 18, 19, 456.
Lucas *v.* Moncrieff (1905), 443.
Lucas *v.* Williams (1892), 243, 274.
Luckombe, 251.
Luther, 12.
Luxemburg, 112, 198, 200, 214, 248, 321–23, 330, 340, 400, 490.
Lyrical work, 393; Au. § 4, 581. *See also* Dramatico-musical work.

Macaulay, 28, 456.
McCall, S. W., bill (1908), 156, 370.
McDonald *v.* Hearst (1899), 271.
Macdonald *v.* National Review (1893), 442.
MacGillivray, E. L., 181, 252, 458.
Mackaye's "Hazel Kirke," 188.
McKay Shoe Mfg. Co. license, 451.
McKinley, W: 308, 362.
Macmillan *v.* Dent (1906), 92.
M'Vickar, Dr., 341.
Macy cases, 55.
Madison, President, 33, 35.
Magazine. *See* Periodical.
Mails, importation, 279, 282, **515**, § 33, 480; loss in, of deposit copies, 145; transmission, 36, 37, 142, 145, 515; § 14, 471; R. § 39, 507.
Mallory *v.* Mackaye (1898), 188.
Maloney *v.* Foote (1900), 274.
Malta, 397.
Mansell *v.* Valley Printing Co. (1908), 61.
Manufacturing provisions, 39, 79, **88**, 144, 148, **153–61**, 228, 285, 341–72; § 12, 470; § 15, 471; § 16, 472; R. § 27, 502; § 32–35, 504–06; affidavit, 137, 139, **156**, 304, 512; § 16, 472; § 55, 484; R. § 32–35, 504–6; "boomerang" effect, 286; exceptions, 146, 153, 154, **155**, 167, 228, 284, 513; § 15, 471; § 31, 478; R. § 27, § 28, 502; § 32, 504; § 35, 506; importation, 80, 147, **159**, 279, 280, 283, 287, 513; § 31, 478; in British Empire, 152, 160, 161, 168, 385, 387–93; E. § 25 (2), 537; C. § 3 (2), 557; Au. § 13, 584; § 35, 590; in other countries, 14, 16, 17, 20, 62, 152, 160, 397, 401, 417. *See also* Annulment.
Manufacture, right to, 46, 48, 49.
Manuscript, 4, 9, 42, 45, 90, **91**, 94, 95, 102, 106, **116**, 163, 179, 181, **186**, 199, **218**, 299, 306, 332, 412, 432, 434, 451; § 1 (d), 465; § 60, 486; R. § 18, 499; E. § 17, 529; P. 637. *See also* Unpublished work.
Manx. *See* Isle of Man.
Maple *v.* Junior Army & Navy Stores (1882), 73.
Maps, 57, 63, 69, 70, **223**, 239, 247, **248**, 250, 255, 288, 326, 333; § 5 f. 468; § 18, 472; R. § 4, 496; § 11, 498; § 25, 501; E. § 15 (7), 527; C. § 2, 555; § 3, 557; § 26, 568; Au. § 4, 581; I. 603; P. 634, 637, 649; application card, 140, 229; R. § 31, 504.
Mark Twain. *See* Clemens, S. L.
Marshall *v.* Bull (1901), 238.
Martial, 8.
Mary *v.* Hubert (1906), 382.
Maryland copr. legislation, 35.
Massachusetts copr. legislation, 35, 39, 194; "written ballot," 66.
Massenet and Puccini *v.* *Compagnie générale des phonographes, et al.* (1904), 213.
Masses, performance of, 60, 164; § 28, 478.
Material object, separate right in, 8, 60, 92, 98, 222, **228**, 231, 234, 247, 393, 396, 398; § 41, 482; Au. § 41, 590.
Mathematical tables copr., 69, 70; R. § 4, 496.
Matrices, 266, 268, 270; § 25 (d), 476; § 27, 477; E. § 35, 543; C. § 2, 556.
Matthews, Brander, 454.
Maugnam, Robert, 458.
Mauritius, 395.
Mawman *v.* Tegg (1826), 256.
Maximilian I, 11.
Maxwell *v.* Goodwin (1899), 187.
Maxwell *v.* Hogg (1867), 75, 84, 85.
Mead *v.* West Pub. Co. (1896), 257.
Mechanical instruments, 42, 45, 53, 54, 163, 191, **202–221**, 268, 376, 377, 387; § 1 (d), 465; § 25 (e), 477; E. § 1 (2), 518; § 19, 529; § 35, 543; C. § 2, 556; § 31, 570, § 33, 571; I. 616.
Mechanical reproduction, 43, 62, 164, 169, **202–21**, 320, 328; § 1 (e), 465; § 25(e), 477; R. § 44; § 45, 408; I. 615, 616; application form, 140, 207; arguments for control, 214; dramatic and dramatico-musical works, 165; hearings on, 202, 204, 214, 369, 370; in British Empire, 33, 61, 178, 208, 376, 377, 387; E. § 1, 518; § 19, 529; § 35, 543; C. § 2, 555; § 33, 571; Au. § 4, 580; in other countries, 112, 209, 212, 213, 214, 340, 400, 408, 490; notice of user, 203, 206, 207, 208, 307, § 1 (e), 465; § 25 (e), 477; § 61, 487; R. § 44, § 45, 508; E. § 19, 530; reciprocity, 112, 202, 212, 340, 490; § 1 (e), 465; royalties, 202, 204, 206, **207**, 211; § 1 (e), 465; § 25 (e), 477; E. § 19, 530. *See also* License.

Mechanical stage devices, 162; R. § 8, 497.
Melody, 43, 164, 169, 170, 198, 202, 393; § 1 (e), 465; Au. § 4, 581. *See also* Musical work.
Memorandum books, noncopr., 71; R. § 5, 496.
Memorial. *See* Petitions.
Merit, literary or artistic, 14, 68, 69, 73, 175, 177, 229, 237, 240, 432. *See also* Originality.
Merriam cases, 134, 261.
Messages. *See* Pigeons, Telegraph.
Messages, Presidential, 361, 368.
Methods noncopr., 54, 70, 247, 376; E. § 35, 542; C. § 2, 555.
Mexico, 112, 124, 198, 323, 332, 420, 643, 652.
Mexico City conference, 331; convention, 112, 332, 419, 422; text of, 637–41. *See also* International, Pan-Amer. Union and names of countries.
Michigan copr. legislation, 40, 194.
Mifflin *v.* Dutton (1902), 102.
Milan literary congress (1892), 209.
Miles *v.* American News Co. (1898), 236.
Mill, J: Stuart, 351.
Millar *v.* Taylor (1769), 25.
Milton, 22.
Minnesota copr. legislation, 39, 194.
Misleading use. *See* Fraud, Intent.
Mitchell & Miller *v.* White & Allen (1888), 84.
Model of artistic work, 43, 63, 93, 127, 223–26, 242; § 1 (b), 465; § 5 (g), 468; R. § 14, 498; § 20, 500; § 25, 501; E. § 2, 518; § 35, 542; C. § 2, 555; § 4, 558. *See also* Artistic work, Sculpture.
Modification. *See* Alteration.
Molds, 266, 268, 270, 376; § 25 (d), 476; § 27, 477; E. § 2, 518; § 35, 543; C. § 4, 558.
Monaco, 214, 321, 322, 323, 330, 413.
Monaghan *v.* Taylor (1886), 193.
Monarch Book Co. *v.* Neil (1900), 244.
Monastic copyists, 8.
Monckton *v.* Graniophone Co. (1910), 62.
Monkswell bill, 31.
Monograms, 70; § 18, 472.
Monologues, 171.
Monopoly copr., 13, 50, 54, 255.
Monroe-Smith Amendment, 117.
Montalembert, 9, 453.
Montenegro, 62, 124, 321, 322, 414.
Montevideo congress, 331; convention, 331, 419; text of, 633–36. *See also* International, Pan Amer. Union and names of countries.
Moore, T:, 341.
Moore *v.* Edwardes (1903), 176.
Morocco, 418.
Morrill rpt. (1873), 353.
Morris *v.* Coleman (1812), 441.
Morris, E: J., bills (1858–60), 348.
Morrison *v.* Pettibone (1897), 272.
Mortgage, right to, 46, 48; § 42, 482.
Morton, J: P., 352.
Mosaics, 234.
Mott *v.* Clow (1896), 237.
Moving pictures, 71, 77, 163, 175, 176, 178, 211, 224, 241, 242, 328, 376; R. § 4, 496; § 8, 497; § 15, 498; E. § 1, 518; § 35, 542; C. § 2, 555; § 3 (2), 557; I. 618.
Munro *v.* Beadle (1888), 262.
Munro *v.* Smith (1890), 262.
Murphy *v.* Christian Press Assoc. (1899), 50.
Musical work, 14, 162–201, 202–21, 296, 375, 387; E. § 1, 517; C. § 3, 557; classification and definition, 63, 162, 318, 326, 332, 393; § 5 (e), 468; R. § 9, 497; § 10, 498; E. 550–52; C. § 2, 555; Au. § 4, 580; I. 603; P. 633, 634, 637, 649; acts, 31, 32, 36, 37, 182, 193, 195, 208, 379, 550, 552; E. § 11 (4), 525, 547; duties, 288; excepted from manufacturing clause, 167; formalities, 86, 119, 127, 139, 144, 151, 166, 168, 189, 206, 393, 406, 407, 409; § 11, 470; § 18, 472; § 19, 473; § 25 (e), 477; R. § 18, 499; § 44, 45, 508; C. § 3, 557; § 26, 568; Au. § 13, § 14, 584; § 32, 588; I. 614; infringement, 195, 266, 268, 394; § 25 (b), 476; E. § 11 (4), 525, 549, 551; Au. § 46, 591; § 51, 593; manufacture, 168; performance, 59, 165, 183, 185, 322, 327, 394, 404; R. § 23, 500; E. § 1 (3), 518; Au. § 14, 584; I. 606; prior publication, 182, 185; special rights, 42, 43, 45, 162, 163, 164, 169, 198, 202, 392; § 1 (e), 465; E. § 1, 517, 518; C. § 2, 556, 577; Au. § 13, 14, 584; I. 613.

See also Adaptation, Arrangement, Dramatico-musical, License, Mechanical, Notation, Term, Transcription, etc.
Musical copr. Committees, 32, 196, 459.
Music sheet, *see* Sheet.

Name, author's right in, 98, 100, 333; P. 639; as proof, 152, 200, 241, 319, 329, 333, 336, 378; E. § 6, 523; I. 617; P. 634, 639, 650; in application, 420, 421, 437; R. § 29, 502; § 30, 503; in copr. notice, 105, 128, 129, 135. *See also* Application, Author, Evidence, Notice.
Natal. 306. *See also* South African Union.
National Assembly, French, 18, 114, 398.
Nat. Tel. News Co. *v.* West Union Tel. Co. (1902), 89.
Nationality. *See* Foreign author, Residence.
Negatives, 36, 123, 239, 240, 245, 247, 248, 393; E. § 35, 543; C. § 2, 556; § 31, 570; Au. § 13, 584. *See also* Photograph.
Netherlands. *See* Holland.
Nethersole *v.* Bell (1903), 174.
Neufchâtel, literary congress (1891), 209.
Neufeld *v.* Chapman (1901), 448.
New Brunswick, 383.
New editions. *See* Editions, new.
New Hampshire copr. legislation, 35, 39, 194.
New Jersey copr. legislation, 35, 39, 194.
New South Wales, excepted in Brit. treaty, 381. *See also* Australia.
N. Y. Press Pub. Co. *v.* Falk (1894), 238.
N. Y. State legislation, 35, 39, 40, 194, 239; copr. vested in, 98.
New Zealand, 375, 382, 394; E. § 35, 543.
Newbery's case (1774). *See* Hawkesworth case, 81.
Newfoundland, 119, 151, 152, 160, 168, 188–90, 246, 321, 375, 382, 390; E. § 35, 543; laws, 456.
News, 89, 103, 259, 264, 319, 328, 337, 406; I. 613; P. 651. *See also* Telegraph.
Newspaper, 63, 87, 90, 131, 245, 266, 267, 279, 280, 328, 337; § 5 (b), 467; § 19, 473; § 31 (b), 479; R. § 6, 497; E. § 15, 527; § 35, 543; C. § 14 (6), 564; § 22, 567, § 30, 569; Au. § 4, 581; I. 611; P. 651; reports, 68, 70, 91, 103, 183, 264, 376, 377; E. § 2, 519; § 20, 533; C. § 4, 558; P. 634, 639, 651. *See* News, Periodical, Photographs.
Next of kin. *See* Heirs.
Nicaragua, 112, 124, 198, 323, 332, 334, 336, 340, 422, 423, 643, 652.
Nicholls *v.* Parker (1901), 236.
Nicklin, Philip H., 344, 454.
Nicols *v.* Pitman (1884), 254.
Nigro, Joanes, 13.
Nigrus, Peter, 10.
Non-copyright matter, 65, 76, 81, 241, 255, 257, 261, 288, 433; E. § 2, 519.
North Carolina copr. legislation, 35.
Norway, 112, 124, 197, 200, 248, 316, 317, 321, 323, 330, 340, 407.
Notation, musical, 43, 45, 164, 169, 170, 202, 217, 392; § 1 (e), 465; Au. § 13, 584.
Notes by hearer, 90.
Notice copr., 36, 74, 121, 125, 126, 127–36, 150; § 9, 469; R. § 22, § 23, 500; § 26, 501; C. § 3 (2), 557; artistic work, 225, 227, 230, 232, 235, 242; collections, 81; date, 129; 133, 230; dramatic and musical works, 166; early, 19; false, 77, 134, 135, 142, 148, 276, 279, 280, 513; § 29, § 30, 478; Au. § 55, 595; foreign works, 133, 146, 155, 366; form, 127, 131, 166, 225; § 18, 472; R. § 24, § 25, 501; before 1909, 36, 37, 128; in British Empire, 150, 151, 373–97; in other countries, 400–29; *interim* works, 126, 135, 147, 148; § 9, 469; § 22, 474; R. § 26, 501; C. § 23, 568; name, 127, 129, 166; § 18, 472; R. § 24, § 25, 501; substitution of name, 105, 135; § 46, 483; R. § 43, 508; omission of, 118, 121, 130, 134, 146, 230, 234, 235, 236, 253, § 20, 473; penalty for removal, 134, 276; § 29, 478; periodicals, 88, 130, 131, 319, 328, 400, 403; § 19, 473; I. 612; position, 37, 130, 131, 132, 166; § 19, 473; C. § 3 (2), 577; pseudonymous work, R. § 24, 501; renewals, 118; separate volumes, 132; successive editions, 134; translations, 78, 397.
Notice of authorization; Au. § 29, 588; of reproduction, 123; E. § 3, 520; of reservation, 201, 313, 412; oral work, 29, 200, 264, 377, 397, 398–429; E. § 2 (1), 519; C. § 4, 558; Au. § 33, 589; performance, 150, 182,

183, 195, 199, 200, 319, 394, 397; Au. § 32, 588; I. 614; to prohibit importation; E. § 14 (1), 525 (5) 526. *See also* Customs.
Notice of user. *See* Mechanical reproduction.
Nova Scotia, 383.
Novelization, 42, 61, 169, 172, 322, 328, 375, 431; § 1 (b), 465; E. § 1 (2), 518; C. § 2, 556; Au. § 13, 584; I. 614.
Novelties noncopr., 72, 223, 224; R. § 12, 498; § 16, 499.

Official publications. *See* Government publications.
Ohio copr. legislation, 39, 194.
Ojibwa Indians copr., 41.
"Old sleuth" cases, 262.
Omission of notice. *See* Notice.
Omissions from musical works, E. § 19 (2), 530 (7), 532. *See also* Alterations.
Opera, 162, 163, 166, 168, 182, 196, 404; R. § 8, § 9, 497.
Operettas, 162, 163; R. § 8, § 9, 497.
Oral work (addresses, lectures, sermons, etc.), 42, 59, 61, 63, 67, 70, 90, 333, 337, 377, 393, 403; § 1 (c), 465; § 5 (c), 468; R. § 7, 497; E. § 1 (2), 518; § 17, 529, § 20, 533; § 35, 543; C. § 2, 556, 557; Au. § 4, 581; § 15, 584; § 25, 587; § 33, 589; I. 612; P. 634, 639, 651; assignable, Au. § 24, § 26, 587; deposit, 86, 144; § 11, 470; R. § 18, 499; infringement, 264, 266, 267; § 25 (b), 476; Au. § 45, § 46, 591; mechanical reproduction, E. § 35, 543; C. § 2, 556; notice, 91, 151, 264, 377; E. § 2, 519; C. § 4, 558; Au. § 33, 589; publication, 91; E. § 1 (3), 518; Au. § 15, § 16, § 17; registration, 91, 139; Au. § 66, 599; § 74, 600; terms, 119, 401. *See also* Newspaper reports.
Orange Free State, 160. *See also* South African Union.
Oratorios, 59, 164, 166, 168; § 28, 478. *See also* Dramatico-musical work, Musical work.
Orchestral work, 169, 187. *See also* Musical work.
Order, works on. *See* Employer.
Orders in Council, 31, 379; E. § 23, 534; § 26, 537; § 28, 538; § 29, 539; § 30, 540; § 32, 541; § 35 (3), 543; C. § 43, 576.
Ordinances de Moulins, 18.
Ordnance surveys, 123.
Oregon copr. legislation, 39, 194.
Origin, country of. *See* Country of origin.
Originality, 68, 81. *See also* Merit.
Ornamental letters or scrolls noncopr., 224; R. § 16, 499.
Osgood *v.* Allen (1872), 82, 85.
Osgood *v.* Aloe (1897), 128.
Össler, Dr. Jacob, 11.
Osterrieth, Albert, 461.
Our Young Folks case, 82.
Outright sale, 106, 116, 117, 118, 364, 434, 442.
Owner, rights of, 45, 46; E. § 7, 523; § 9, 524; § 21, 533; C. § 9, 561. *See also* Author, Corporation, Proprietor.
Ownership of copr., 3, 5, 50, 95–113, 238, 269, 318, 327, 333, 336, 377, 378, 393, 437, 577; § 8, 469; § 62, 488; R. § 2, 495; E. § 5, 521; § 6 (3), 522; § 16, 529; § 17 (2), 529; § 29, 539; C. § 7, 560; § 30, 569; § 36, 574; Au. § 18, 585, § 19, 586, § 25, 587, § 43, 591; I. 606–09; P. 633, 637, 638, 650.
Oxford Univ. Press, 121.
Oxford University. *See* University deposit.

Page. *See* Sheet.
Paintings, 29, 37, 223, 228, 229, 232, 234, 238, 246, 247, 248, 250, 274, 326, 332; R. § 12, 498; E. § 35, 542; C. § 2, 555; Au. § 4, 580; I. 603; P. 634, 637, 649; formalities, 150, 388; § 26, 568; in pubic place, 264, 376; E. § 2 (1), 519; C. § 4, 558; infringement, § 25 (b), 245, 266, 267; § 25 (b), 476; reproduction by *tableaux*, 242. *See also* Artistic work, Material object.
Palmer *v.* DeWitt (1872), 180.
Palmerston, Ld., 346.
Palsgrave, J: 21.
Pamphlets, 70, 290, 326, 332; R. § 4, 496; E. § 15, 527; C. § 23, 568; Au. § 4, 580; I. 603; P. 633, 637, 649.
Pan Amer. Union, conferences, 331, 334, 336; conventions, 112, 152, 250, 332–37; texts of, 633–652. *See also* International conventions and names of cities.
Panama, 124, 152, 423. *See also* Canal Zone.
Pandects, 17.

Pantomimes, 175, 198, 326; I. 603.
Papal grants, 17.
Pappa Alesio, 16.
Paraguay, 124, 317, 331, 332, 426.
Paris acts, 185, 197, 209, 249, 296, 321, 322; I. 628; text, 603–631; conference (1896), 209, 321; literary congress (1878), 314. *See also* International conv., University.
Park & Pollard *v.* Kellerstrass (1910), 258.
Parke, Baron, 2, 4.
Parkinson *v.* Laselle (1875), 149.
Parliament, acts of, 24–34, early petitions to, 23. *See also* British Empire.
Parliamentary papers, 459.
Parody, 190.
Partnerships, 273, 286, 403, 435; R. § 33, 505. *See also* Joint Authors.
Parton, James, 348.
Parts of work, 64, 76, 87, 90, 92, 131, 132, 143, 145, 173, 243, 257, 287, 318, 403; § 3, 467; E. § 35, 543; C. § 22, 567; Au. § 4, 580; § 20, 586; I. 611, P. 650. *See also* Composite, Extracts, Quotation.
Passages permitted in collections, E. § 2 (1), 519. *See also* Extracts, Fair use, Quotations.
Passing off. *See* Fraud, Intent.
Patents, 12, 14, 18, 21, 54, 93, 161; acts, 33, 161, 379; E. § 22, 534; commissioner of, 96, 308, 309; registration as, 37, 223, 310. *See also* Congressional Committees, Congressional hearings.
Patterns, 93; chart, noncopr., 70.
Patterson *v.* Ogilvie (1902), 192, 273.
Payne tariff, 288.
Pearsall-Smith licensing plan, 51, 204, 449.
Peary cases, 89, 102.
Peckham, Justice, 273.
Penal provisions, 275. *See also* Punishment.
Penalties, 15, 19, 22, 24, 36, 272, 273; E. 549; Au. § 57, 596; failure to deposit, 36, 143, 150–52, 374, 378; § 13, 470; E. § 15 (6), 527; false affidavit, 158; § 17, 472; false entry, notice, etc., 37, 134, 276; § 29, 478; C. § 11, 562; Au. § 55, 595; infringement, 6, 12, 13, 16, 37, 195, 196, 272, 276, 379, 389; E. § 28, 478; § 9 (2), 524; § 11, 524, 547, 551; C. § 13, 562; Au. § 50–54, 592–595. *See also* Damages, Punishment, Remedies.
Pennsylvania copr. legislation, 35, 39, 194.
Pentateuch, 14.
Perforated music-rolls. *See* Mechanical Instruments.
Perform, right to. *See* Playright.
Performance, 67, 177, 379; E. § 2 (3), 520; § 11 (2), 524; § 35 (2), 543, 545; C. § 4 (3), 559; § 13 (2), 563; Au. § 16, 585; and publication, 180–85, 197, 376; E. § 1 (3), 518; C. § 2, 556; I. 608; assignment, 189; E. § 24 (1), 534; gratuitous or for profit, 43, 45, 59, 164, 165, 186, 190, 199, 202, 275, 404; § 1(e), 465; § 28, 478; permissive, 60, 164, 404; § 28, 478; registration, 184. *See also* Dramatic, Dramatico-musical work, Notice, Playright, Publication, Representation.
Periodicals, 63, 64, 76, 87, 90, 148; § 3, § 5 (b), 467; R. § 6, 497; E. § 35, 542; C. § 30, 569; Au. § 4, 580; copr. catalogue of, 300; copyrightable by numbers, 88; R. § 36, 506; P. 650; formalities, 131, 138, 139, 143, 387, 410; § 12, 470; § 19, 473; R. § 36, 506; E. § 15 (7), 527; C. § 22, 567; importation, 286; § 31 (b), 479; manufacturing provision, 88, 143, 153, 154, 286; § 12, 470; § 15, 471; R. § 36, 506; pirated material in, C. § 14 (6), 564; renewal, 115; § 23, 474. *See also* Composite work, Newspaper, Notice, Title.
Periodical contribution, 64, 71, 76, 87, 99, 148, 319, 328, 398, 435; § 3, 467; R. § 4, 496; E. 545; C. § 30, 569; Au. § 4, 580; § 22, § 23, 586; I. 611, 612; P. 634, 639, 651; formalities, 28, 100, 122, 131, 138, 139, 142, 143; § 12, 470; R. § 37, 506; in other countries, 398–429; renewal, 104, 115; § 23, 474; republication, 393, 433, Au. § 22, 586. *See also* Composite work, Parts, Serial publication, Term.
Perpetuity, copr. in, 13, 18, 25, 26, 123, 124, 183, 377, 398, 401, 407, 420–22, 429.
Persia, 323, 418.
Personal use. *See* Private use.
Peru, 110, 294, 323, 331, 332, 427, 636, 643, 652.

Petitions, 23, 341, 346, 347, 348, 351, 355, 359, 455. *See also* License.
Philip *v.* Pennell (1907), 92.
Philippine Islands, 39, 108, 270, 418; § 34, 481.
Phonograph. *See* Mechanical reproduction.
Photo-engravings, 138, 139, 144, 153, 155, 156, 226, 228, 229; § 15, 471; § 16, 472; R. § 19, 500; § 27, 502.
Photo-lithograph, E. § 35, 542; C. § 2, 555.
Photographs, 30, 36, 37, 64, 113, 219, 223, 224, 226, 228, 229, 240, 243, 245, 250, 274, 320, 326, 328, 332, 336, 377, 393; § 5 (j), 468; R. § 15, 498; § 19, 500; E. § 35, 542; C. § 2, 555; Au. § 4, 580; I. 605; P. 634, 637, 649; alterations, 244; as publication; E. § 1(3), 518; duties, 288; formalities, 127, 140, 141, 144, 150, 152, 225, 226, 227, 241, 307, 391, 406, 407, 409; § 11, 470; § 18, 472; § 61, 487; R. § 19, § 20, 500, § 25, 501; § 40, 507; C. § 3 (2), 557; § 26, 568; in other countries, 248, 398–429; in public place, 264, 376; E. § 2 (1), 518; C. § 4, 558; infringement, 37, 243, 245, 266, 267; § 25 (b), 476; on order, 238; E. § 5 (1), 521; C. § 7, 560; Au. § 39, 590; special term, 122, 247, 248, 328, 377, 394, 403, 406, 407, 409, 416, 417; E. § 21, 533; C. § 31, 570; I. 606, 610. *See also* Artistic work, Negatives.
Pictorial illustrations. *See* Illustrations.
Pierce & Bushnell Co. *v.* Werckmeister (1896), 233.
Pierce, President, 347.
Pigeons, messages, 396.
Pins noncopr., 224; R. § 16, 499.
Piola-Caselli, Eduardo, 461.
Piracy, Pirated copies. *See* Infringement.
Pitt Pitts *v.* George (1896), 292, 296.
Place of notice. *See* Notice.
Place, public. *See* Public place.
Plans, 70, 247, 248, 326; E. § 2, 518; § 15 (7), 527; C. § 2, 555; § 3 (2), 557; § 4, 558; Au. § 4, 580; I. 604; P. 634. *See also* Architectural drawings.
Plastic work. *See* Sculpture.
Plates, 153, 266, 268, 270, 393; § 15, 471; § 25 (d), 476; § 27, 477; R. § 27, 502; E. § 5 (1), 521; § 7, 523; § 11 (2), 524; § 35, 543, 552; C. § 2, 556; § 9, 561; § 13 (2), 563; § 31, 570; Au. § 13, 584. *See also* Mechanical instruments.
Plats, 223; R. § 11, 498.
Platt, O. H., 50, 278; bill (1889), 361.
Playing cards, 242.
Playright, 8, 36, 42, 45, 61, 162–202, 319, 328, 376, 393, 459; § 1 (d), (e), 465; E. § 1 (2), 518, 545; C. § 2, 556, 577; Au. § 14, 584; § 16, 585; § 25, 587; I.614; assignable, Au. § 24; § 26, 587; formalities, 195, 301, 394, 397; Au. § 32, 588; § 65, 599; I. 614; infringement, 190–94; Au. § 45, § 46, 591; in other countries, 197, 398–429; state protection, 39, 194. *See also* Dramatic, Dramatico-musical, Infringement, License, Mechanical reproduction, Performance.
Poems, 58, 70, 81, 404; R. § 4, 496; I. 614.
Police powers, 319, 334, 337; I. 618; P. 640, 652. *See also* Court.
Political speeches. *See* Oral work.
Pope *v.* Curl (1741), 92.
Porto Rico, 39, 108, 270, 425; § 34, 481.
Portraits, 113, 238, 244, 248, 393, 404; E. § 5, 521; C. § 7, 560; Au. § 4, 581; § 38, 590.
Portugal, 111, 124, 323, 340, 411, 490.
Possession, copies found in, 273. *See also* Damages, Seizure.
Post card, 224, 229, 289; R. § 16, 499.
"Post Office Directory." *See* Kelly *v.* Byles.
Post Office regulations, 279, 282, 515; § 33, 480.
Posters. *See* Circus posters.
Posthumous works, 92, 102, 104, 113, 115, 122, 152, 321, 328, 377; § 23, 474; E. § 17, 529; C. § 28, 569; Au. § 17, 585; I. 610; in other countries, 398–429.
Postmaster-General. *See* Mails, Post Office.
Pouillet, Eugène, 460.
Practice, rules of U. S. Supreme Court, 266, 268, 491; § 25, 477.
Prefaces, 71; R. § 5, 496.
President. *See* Proclamations and names of Presidents.
Press Assoc. *v.* Reporting Agency (1910), 89.
Press Pub. Co. *v.* Falk (1894) 238.

Press Pub. Co. v. Monroe (1896), 45, 48.
Preston, Senator, 344, 346.
Price-list copr., 88.
Price limitation, 14, 15, 17, 24, 27, 46, 49, 55, 57, 207; C. § 6, 559.
Prima facie evidence. *See* Evidence.
Prime, S. Irenæus, 348.
Prince Albert v. Strange (1849), 187, 238.
Print, right to, 42, 45, 163; § 1 (a), 465.
Printer's lien, 449; privileges, 10–17, 19, 20, 21.
Printing, early, 10–23. *See also* Manufacturing provisions.
Prints, 64, 127, 223, 224, 226, 309; § 5 (k), 468; § 18, 472; R. § 16, 499; § 25, 501; E. § 35, 542; C. § 2, 555; § 26, 568; Au. § 4, 580; § 40, 590; [goods] acts (1787, 1789, 1794), 27, 246; (Ireland) act, 28, 246.
Private copr. acts, 27, 38.
Private performance. *See* Performance.
Private use, 259, importation for, 281, 290, 293, 294; § 31 (d); E. § 11, 524; C. § 13, 562; reproduction for 264, 376, 404; E. § 2, 518; C. § 4, 558.
Privately printed works, 53.
Privileges. *See* Printers.
Procedure, **265–277**; § 25, 475; § 26, § 27, 477; § 34–39, 481; § 40, 482; E. § 7, 523; U. S. Supreme Court rules, 491. *See also* Court jurisdiction, Remedies.
Proceedings of societies. *See* Publications of.
Processes. *See* Methods.
Proclamations, Presidential, 108, 111, 202, 339, **489**; § 8, 469; R. § 2, 495.
Produce, right to, 42, 45, 61, 163, 376; § 1(d), 465; E. § 1, 518; C. § 2, 556.
Profits, 171, 265, 267, 442; § 25 (b), 476.
Projected work noncopr. 86.
Proof. *See* Evidence.
Proofs, printer's, 432, 442.
Property rights, 45, 47, 314; differentiated, 46; contractual, 97, 430, 436–43; natural, 3, 4, 9, 43, 62; § 2, 467. *See also* Common law, Material object, Ownership, Proprietor, Rights, etc.
Proprietor, 95–113; § 8, 469; definition, 23, 96, 101, 110; liability; 126, 193, 394; E. § 2, 520; C. § 4, 559; Au. § 51, 593; nonqualified, 110; R. § 2, 495; periodical contribution, 101, 104, 115; § 23, 474; C. § 30, 569; Au. § 22, 486; renewals, 104, 106, 115, 117; § 23, 474; § 24, 475; R. § 47, 509. *See also* Assigns, Author, Composite work, Employer, Owner, Property, Publisher, Rights.
Prussia, 311, 402. *See also* Germany.
Pseudonymous work. *See* Anonymous.
Public documents. *See* Government publications.
Public documents bill (1895), 37.
Public domain, works in, 65, 118, 127, 170, 243, 244, 256, 319, 320, 329; § 7, 468; I. 605, 619, 620; P. 639, 650. *See also* Noncopyright matter.
Public place, works in, 264, 376, 404; E. § 2, 518; C. § 4, 558.
Publication, 47; definition, **53**, 59, 91, **126**, 179, 181, 197, 214, 224, 231, 233, **234**, 243, 250, 322, 327, 376, 389; E. § 1, 518; C. § 2, 557; Au. § 4, 581; I. 608, 609; date, 52, 109, **119**, 126, 129, 138, 139, 148, 179, 248, 318, 333, 511; § 62, 488; R. § 29, 502; § 32, 504; § 33, 505; I. 611; P. 638, 650; enforced, 29, 49, 123, 377; E. § 4, 521; C. § 6, 560; Au. § 77, 601; initial step, 5, 52, 126, **133**, 136; § 9, 469; R. § 1, § 3, 495; § 22, 500; E. 545; Au. § 16, 585; of registered unpublished work, 145; R. § 21, 500; rights before, 44, 47. *See also* First, Simultaneous, Exhibition, Performance, Government, Republish, Serial, Term.
Publications of societies, 53, 88, 412; R. § 6, 497; I. 611; P. 638, 650.
Publish, right to, 42, 45, 61, 163, 333, 376, § 1 (a), 465; C. § 1, 518; Au. § 4, 581; P. 633, 637, 649.
Published work, definition, 197, 250, 322, 327; R. § 23, 500; I. 608; P. 650.
Publisher, author's representative, 96, 129, 329; C. § 24, 568; I. 617; assumed proprietor, 95, 403; E. § 6(3), 523; early relations, 8–23; equity in renewal, 117; relations with author, 409, 430–52. *See also* Assigns, Author, Contract, Proprietor, Renewal.
Publishers Association of Great Britain and Ireland, 458.
Publishers' petitions. *See* Petitions.

Publishers' Weekly, 355, 357, 358.
Pulte *v.* Derby (1852), 446.
Punishment, 194, 196, 275, 276, 379, 404; § 28, 478; C. § 13, 562; § 14, 564; spiritual, 17.
Putnam, G: Haven, 9, 16, 31, 51, 360, 362, 453, 454, 455.
Putnam, G: Palmer, 28, 346, 347, 348, 355.
Putnam, Herbert, 308, 366. *See also* Librarian of Congress.
Putnam *v.* Pollard (1880), 40.
Pütter, Johann Stephan, 12, 461.
Puzzles noncopr., 71, 224; R. § 5, 496; § 16, 499.
Pynson, Richard, 19.

Quality. *See* Merit.
Quantity not essential, 73, 254.
Queensland. *See* Australia.
Quotation, 173, 190, 253, 256, 259. *See also* Extracts.

Racing charts copr., 70.
Railroad time-tables copr., 70.
Randolph, A. D. F., 350.
Ratification, Attorney General's opinion, 337; of conventions, 112, 320, 322, 329–332, 334, 336, 337, 340; I. 628, 630; P. 635, 640, 647, 652.
Ratisbon, Bishop of, 10.
Ravenna, Peter of, 13.
Reade, C: 457.
Reade *v.* Bentley (1858), 434, 444.
Reade *v.* Conquest (1862), 172.
Reading, public. *See* Recitation.
Rebinding, 159, 263, 287, 514.
Rebuses noncopr., 71, 224; R. § 5, 496; § 16, 499.
Receipt for copies, 137, 145, 304; § 14, 471; § 55, 484;
Recipes copr., 70, 75.
Reciprocity provisions, 37, 107, 202; § 1 (e), 465; § 8 (b), 469; E. § 29, 539; C. § 34, 573; Au. § 62, 598. *See also* Proclamations.
Recitation, 90, 178, 200, 264, 377, 408; E. § 2, 518; § 35, 542; C. § 2, 555.
Re-copyright objectionable, 230.
Record & Guide Co. *v.* Bromley (1910), 128, 136.
Record books, blank, noncopr., 71; R. § 5, 498.
Register of Copyrights, 37, 96, 105, 136, 144, 297, 299, 300, 302, 303, 308; § 10, 469; § 13, 470; § 45, 482; §§ 47–49, 483; §§ 50–51, 53–57, 484–85. *See also* Assistant.
Registers (records) of coprs., 22, 150, 300, 303, 310; § 54, 484; C. § 22, 567; Au. § 64, 599; § 71–73, 600. *See also* Copyright records.
Registrar of Copyrights, 310, 389; Au. § 4, 581; § 9, 582.
Registration, 96, 126, 133, 136, 143, 150, 189; § 10, 469; § 12, 470; R. § 1; § 3, 495; §§ 17–23, 499–501; application, 63, 136, 137, 168, 207, 511; § 5, 467; R. § 29, 502; §§ 30–31, 503; C. § 7 (5), 561; assignment, C. § 7 (3), 560; certificates, 136, 140, 168, 304, 333; § 55, 484; Au. § 69, § 70, 599; I. 638; early provisions, 6, 16, 22, 24, 28; errors, C. § 40, 575; Au. § 72, § 73, 601; false, C. § 11, 562; Au. § 76, 601; fees, 141, 306; § 61, 487; R. § 40, 507; C. § 39, 574; foreign works, 146; in British Empire, 24, 150, 184, 189, 246, 310, 312, 373–97; C. §§ 22–27, 567–69; Au. §§ 64–76, 599–601; in other countries, 151, 310, 399–429; P. 638, 642–48; interim, 147; joint authorship, 101; new editions, 134; oral work, 59, 119; Pan American, 335; P. 642–46; periodicals, 88, 138, 387; periodical contributions, 100; R. § 37, 506; renewal, 115, 116; § 23, 474; § 24, 475; separate volumes, 132, 306; § 61, 487; unpublished works, 119, 144, 179; R. § 1, 495; on publication, 145. *See also* Application, Certificate, Formalities.
Regulations, Copr. Office, 136, 299, 303, 455, 495–510; § 53, 484; for importation, 279, 282, 290, 513; § 33, 480; E. § 14, 525; international bureaus, 319, 329, 335; I. 623; P. 645; Supreme Court, 268, 269, 372, 491–94; § 25, 477.
Reichardt *v.* Sapte (1893), 187.
Reichsanzeiger, 403.
Re-importation, 159, 283. *See also* Importation.
Remedies, 44, 195, 206, 265–77, 378, 379; § 25, 475; § 28, 478; E. §§ 6–13, 522–25; C. § 8–15, 561–65; Au. §§ 45–57, 591–97.

See also Damages, Infringement, Penalties, Punishment.
Remittances to Copr. Office, 141; R. § 40, 508.
Renault, Prof. L., 325.
Renewal, 14, 24, 35, 36, 38, 58, 114–124, 148, 246; § 23, 474; R. §§ 46–48, 509; contributions, 104, 115; § 23, 474; R. § 47, 509; estoppel of, 118; extension of subsisting, 117, 140; § 24, 475; R. § 46, 509; formalities, 115, 118, 140, 141, 306, 309; § 23, 475; § 61, 487; R. § 46, § 47, 509; ownership, 104, 106, 116, 117, 435, 447; § 23, 474; § 24, 475; R. § 46, 509; subsisting copyright, 116, 117, 140, 141; § 24, 475; § 61, 487; R. §§ 46–48, 509; unpublished works, 119, 179. *See also* Extension, Registration, Term.
Repeal, 283, 379; § 63, 488; E. § 26, 537; § 36, 544, 546–47; C. § 44, § 45, 576, 578–79.
Replevin suits, 46, 273, 274. *See also* Suits.
Report, right to, Au. § 15, 584; § 33, 589. *See also* Oral work.
Report, Register of Copyrights, 299, 302, 303, 324, 366; § 49, 483; § 51, 484; Director of International Bureau, 320, 329; I. 624.
Reports on copr., 32, 344, 346, 348, 353, 362, 369, 371. *See also* Names of Congressmen, Election, Law, Newspaper reports, Oral work.
Representation, right of, 37, 42, 45, 163, 197, § 1 (d), 465; R. § 23, 501; E. § 35, 543; C. § 2, 556; § 4, 559; Au. § 4, 580; I. 608; 613, 618; P. 640, 652. *See also* Performance, Playright.
Representatives, House of. *See* Congressional; *also* names of Representatives.
Representatives, legal. *See* Assigns, Heirs.
Reprint, right to, 42, 45, 163; § 1 (a), 465.
Reprints of copr. works, 134, 293, 294, 385.
Reproduce, right to, 42, 45, 61, 163, 333, 376, § 1 (d), 465; E. 1, §, 518; C. § 2, 556; Au § 34, 589; § 41, 591; P. 633, 637, 650.
Reproductions of artistic works, 64, 223, 228, 234, 235, 404; § 5 (h), 468; R. § 13, 598; E. § 2, 518; § 24, 534; § 35, 542; C. § 2, 555, § 4, 558; I. 613; P. 634, 639, 651. *See also* Infringement, Mechanical reproduction.
Republish, license to, 29, 123, 377, 412, 415; E. § 4, 521; C. § 6, 559; Au. § 77, 601; *See also* License.
Reputation of author, 46, 85, 100, 244, 274, 404, 435, 443.
Research, use for, 264, 376; E. § 2 (1), 518; C. § 4, 558.
Reservation of copr. *See* Interim copyright, Notice of reservation.
Residence, 107, 108, 138, 139, 151, 200, 246, 373, 375, 376, 387, 388, 405, 420; § 8, 469; R. § 2, 495; § 29, 502; § 30, 503; E. §§ 25–27, 536–38; § 29, 539; § 35, 544; C. § 2 (4), § 3, 447; § 34, 573. *See also* Country, Foreign author.
Restraint of trade, 57. *See also* Limitation.
Retroactive effect, 328; E. § 24 (1), 534; I. 615.
Revenue act (1889), 31, 33, 293, 379.
Reversion in periodical contributions, 29, 122, 440. *See also* Assignment, Heirs.
Reviews, 87, 264, 376; R. § 6, 497; E. § 2, 518; § 15 (7), 527; § 35, 542, 545; C. § 4, 558, § 22, 567; § 30, 569; Au. § 4, 581.
Revised Statutes. *See* U. S. laws, Canada.
Rex v. Bokenham (1910), 277.
Rex v. Willets (1906), 277.
Rhenish Celtic Sodalitas, 11.
Rhode Island copr. legislation, 35.
Richard III, 19, 20.
Rifformatori, 15, 16.
Rights, 42–52, 218; §§ 1–3, 465–67; § 8, 469; E. §§ 1–5, 517–22; C. § 2, 556; Au. § 13, 584; P. 633, 634, 637, 638, 649, 650; existing and substituted; E. § 24, 534, 545; C. § 33, 571, 577. *See also* Common law, Consent, Property, Proprietor, Material object, Dramatize, Mechanical reproduction, Translate, etc.
Rinehart v. Smith (1903), 273.
Rio de Janeiro conference, 331, 334; convention, 334, 336, 419; text of, 642–48. *See also* International, Pan Amer. Union, and names of countries.
Ritchie, P. E., 389.
Road books copr., 69.
Robertson, J: 346.

Robinson, W. E., bill (1882), 356.
Rolls, perforated. *See* Mechanical instruments.
Roman literature, 8.
Rome literary congress (1882), 314.
Roosevelt, President, 368, 371.
Rosebery's, Ld., speeches reported *verbatim*, 68.
Rosmini, Enrico, 461.
Röthlisberger, Ernest, 330, 462.
Roumania, 323, 414.
Routledge *v.* Low (1868), 109, 374.
Rowlett, J: private copr. grant, 38.
Royal Copr. Commission. *See* Commission.
Royal Sales Co. *v.* Gaynor (1908), 70.
Royalties, 123, 124, 199, 201, 202, 206, 207, 209, 211, 268, 377, 385, 412, 435, 437, 439, 440, 447–51; § 1 (e), 466; § 25 (e), 477; E. § 3, 520; § 19, 530–33; § 24, 534; C. § 6, 559; § 33, 571; § 41, 575. *See also* Licenses.
Rules. *See* Regulations.
Russell *v.* Smith (1848), 176, 189, 191.
Russia, 124, 197, 214, 295, 323, 409.

Saake *v.* Lederer (1909), 107.
Sabellico, 10, 13.
St. Columba, 9.
St. Leonards, Ld., 1.
St. Mark's library, 16.
Sale, 10, 42, 45–49, 54–57, 127, 163, 265, 333, 378; § 1, 465; C. § 4, 559; § 13, 562; P. 633, 637, 649; as publication, 53, 127; § 62, 488; Au. § 4, 581; control of, 5, 54, 60; withdrawal from, 49. *See also* Assignment, Material object, Outright.
Salvador, 112, 316, 332, 334, 336, 340, 422, 423, 643, 652.
Sampson & Murdock Co. *v.* Seaver Radford (1905), 255.
Sarpy *v.* Holland (1908), 313.
San Domingo. *See* Dominican Republic.
San Marino, 413.
Sanborn, Judge, 47.
Sandwich Islands. *See* Hawaii.
Sarpy *v.* Holland (1908), 313.
Scandinavian countries, 248, 407. *See also* Denmark, Norway, Sweden.
Scenario, 145, 176; R. § 18, 500.
Scenes, infringing, 174, 191.
Scenic composition, 175, 178; E. § 35 (1), 542; C. § 2, 555; Au. § 4, 581. *See also* Dramatic work.
Schedules, British, 377, 379; E. § 2, 519; § 36, 544, 546; C. § 33, 571, 576.
Schemes noncopr., 61. *See also* Arrangement, Methods.
Schlesinger *v.* Bedford (1890), 173.
Schlesinger *v.* Turner (1800), 173.
Schöffer, 10.
Scholz *v.* Amasis (1909), 176.
School books. *See* Education.
Schoolcraft, private copr. grant, 38.
Schott, Johann, 11.
Schumacher *v.* Wogram (1888), 130, 237.
Scientific work, 64, 127, 140, 154, 156, 223, 224, 225, 228, 229, 326, 333, 388; § 5 (i), 468; § 15, 471; R. § 14, 498; I. 603; P. 634, 637, 649.
Scope of copr., 42–62, 318, 319, 326, 327, 332, 375, 387, 392, 393; § 1–3, 465–67; E. § 1–5, 517–22; C. § 2, 556; Au. § 13–15, 584; I. 606; P. 633, 634, 637, 649.
Score-card noncopr., 70.
Scotland, E. § 12, 525, 549, 552. *See also* British.
Scribner *v.* Straus (1908), 55, 56; other cases, 260.
Scriptorium, 8.
Scrolls, ornamental, noncopr., 224; R. § 16, 499.
Scrutton, T. E., 181, 458.
Sculpture, 27, 64, 66, 127, 145, 151, 223, 224, 225, 226, 229, 243, 245, 246, 247, 248, 250, 264, 266, 267, 326, 332, 370, 388; § 5 (i), 468; § 11, 470; § 18, 472; § 25 (b), 476; R. § 12, § 14, § 15, 498; § 20, 500; § 25, 501; E. § 1 (3), 518; § 2, 518; § 35, 542; C. § 2, 555; § 3 (3); § 4, 558; § 26, 568; Au. § 4, 480; I. 603; P. 634, 637, 649; acts, 27, 246. *See also* Architecture, Artistic work.
Seal of copr. office, 141, 300, 303; § 52, 484.
Sealed deposit of author's name, 420, 421, 427.
Search warrants, E. 552; C. § 15, 564; Au. § 52, 593.
Searches, 306, 309; § 61, 487; R. § 49, 509; Au. § 71, 600.

Secretary of the Treasury, 121, 279, 282, 289, 290, 513; § 32, § 33, 480. *See also* Treasury.
Seditions. *See* Immoral works.
Seizure, 22, 196, 268, 272, 273, 274, 279, 282, 283, 296, 319, 322, 328, 329, 334, 337, 389, 409, 424, 514, 525; § 32, 480; E. § 7, § 9, 523; § 11, 524; § 14, 525, 549, 550, 553; C. § 9, 561; § 13, 562; § 14, 563; § 15, 564; § 21, 566; Au. § 49, § 50, 592; § 52, 593; § 53, 594; § 56, 596; § 61, 597; I. 616, 618; P. 640, 652. *See also* Forfeiture.
Selections. *See* Extracts, Quotations.
Sell, right to. *See* Sale.
Senate. *See* Congressional, Ratification, *also* names of Senators.
Serial publication, 47, 87, 120, 318, 322, 328, 439; R. § 6, 497; E. § 15 (7), 527; I. 611; P. 638, 560.
Sermons. *See* Oral work.
Servia, 414.
Seymour, E: 351.
Shadow-trick noncopr., 242.
Shanghai, 417.
Share Certificate Book, *in re* (1908), 150.
"Shaughraun" case, 149.
Sheet, 69, 70, 254, 288; R. § 4, 496; E. § 15 (7), 527; Au. § 4, 580.
Sheldon, Isaac E., 350.
Shepard *v.* Taylor (1911), 258.
Shepley, J., 82, 85.
Sherman, J:, bill (1872), 352, 363.
Shiras, Justice, 54.
Shorthand reproduction, 68, 70, 254.
Siam, 42, 62, 124, 152, 160, 323, 417.
Signature of artist 7, 390. *See also* Name.
Sierra Leone, 397.
Similarity, 173, 255, 260, 263, 326.
Simonds, W. E. (1890), 362.
Simultaneous publication, 109, 148, 150, 160, 327, 333, 337, 376, 387, 393; E. § 35 (3), 543; C. § 2 (3), 557; Au. § 5, 581; § 13, § 14, § 15, 584; I. 607; P. 638, 650. *See also* First publication.
Singapore, 395.
Situations, 171, 173, 174, 176, 191. *See also* Dramatic work.
Sketch, 136, 152, 176, 248, 250, 264, 326, 333, 376; E. § 2, 518; C. § 4, 558; I. 604, P. 634, 637, 649. *See also* Artistic, Dramatic, Musical work.
Slater, J. H., 233, 458.
Sleight-of-hand, not dramatic work, 163; R. § 8, 497.
"Sleuth" cases, 261.
Slingsby *v.* Bradford Co. (1905), 258.
Smithsonian Institution, 36, 301.
Smoot, Senator, bill (1907–08, '09), 370, 371.
Snow *v.* Laird (1900), 245.
Snow *v.* Mast (1895), 130.
Social Register Association *v.* Howard (1894), 262.
Société des gens de lettres, 314.
Société des gens de lettres v. *Egyptian Gazette* (1889), 419.
Società Italiana d. Autori *v.* Gramophone Co. of London (1906), 213.
Societies, importation by, 281, 290; § 31 (d), 479; C. § 17, 565. *See also* Publications of.
Solberg, Thorvald, 308, 324, 366, 367, 453, 455. *See also* Register of copyrights.
Songs, 71, 82, 86, 163, 167, 168, 175, 176, 191, 206, 208; R. § 4, 496; § 9, 497; § 10, 498. *See also* Dramatic, Dramatico-musical, Lyrical work.
Sosius brothers, 8.
Source, acknowledgement of, 322, 328, 333, 337; I. 612; P. 634, 639, 651.
Sousa, 220.
South African Union, 321, 375, 381, 382, 396; E. § 35, 543. *See also* British Empire.
South America. *See* Latin America.
South Australia. *See* Australia.
South Carolina copr. legislation, 35.
Southey *v.* Sherwood (1817), 86.
Spain, 62, 94, 112, 124, 152, 198, 317, 318, 320, 323, 330, 331, 410, 461, 489, 636.
Speech. *See* Oral work.
Spencer, Herbert, 50, 351, 457.
Speyer, J: of, 13.
Spofford, A. R., 297.
Sporting tips, noncopr., 70.
Springer Lith. Co. *v.* Falk (1894), 244.
Stab, Johann, 11.
Stage effects, 162, 173, 198, 326; R. § 8, 497; I. 603. *See also* Dramatic, Scenic.

Stall, Dr. Sylvanus, 288.
Stannard v. Harrison (1871), 239.
Star Chamber decree, 21.
Star maps copr., 223; R. § 11, 498.
State legislation, 33, 35, 39, 194, 366, 391, 392; Au. § 4, 581; § 8, 582; § 12, 583.
State courts. *See* Court.
Stationers' Company, 15, 21; Hall, 22, 24, 150, 184, 189, 190, 246, 310, 312, 374.
Statistics copr., 69.
Statue, 66, 245, 266, 267; § 25 (b), 476; Au. § 41, 590. *See also* Artistic work, Sculpture.
Statute law, 2, 6,7, 22, 24–41. *See also* specific references, Anne, Common law, etc.
Statute law revision act, 27.
Statutory forms, copr., 69.
Stedman, E. C., 348, 359.
Stephen, Sir James, 30, 183, 455, 456, 459.
Stereotype, E. § 35 (1), 543; C. § 2, 556. *See also* Plates.
Stern v. Remick (1910), 127, 130.
Stern v. Rosey (1901), 205.
Steuart, Arthur, 46, 371.
Stevens v. Benning (1854), 444.
Stevenson, Archer, 350.
Stone, E. § 35 (1), 543; C. § 2, 556. *See also* Lithographs, Plates.
Stone v. Long (1903), 442.
Storm, J. B., 350.
Story, J., 92, 252.
Story v. Holcombe (1847), 81.
Stowe v. Thomas (1853), 77.
Straits Settlements, 395.
Strasburg, 11.
Straus v. American Pub. Assoc. (1904, '08), 57.
Structure noncopr., E. § 35, 542; C. § 2, 555; § 10, 562. *See also* Architecture, works of.
Subject-matter of copr., 12, 63–94, 223, 224, 318, 321, 326, 379, 387, 392; §§ 4–7, 467, 468; R. §§ 4–16, 496–99; E. § 35, 542; C. § 2, 555; Au. § 4, 580; I. 603–06, 610; P. 633, 637, 649.
Subject. *See* Citizenship, Foreign, Residence.
Subsisting copr. *See* Existing copr., Extension, Renewal, Term.
Substantial importance, 73.
Substituted rights. *See* Rights, Schedules.
Substitution of name. *See* Name, Notice.
Sugden, Sir E: 445.
Suits, 24, 26, 36, 46, 122, 143, 150, 266, 269–77, 283, 319, 373, 374, 386, 396, 399, 416, 438, 491–94; §12, 470; § 27, 477; §§ 34–40, 481–82; § 63, 488; R. § 3, 495; E. § 7, 523, 549, 552; Au. § 48, 592; § 74, 600; I. 607, 617. *See also* Costs, Damages, Infringement, Limitation, Penalties, Punishment, Remedies, etc.
Sulzer, W: bill (1908, '09), 370.
Summary proceedings, E. §§ 11–13, 524–25, 549; C. § 13, 562; Au. §§ 45–61, 591–98. *See also* Penalties, Remedies, Seizure.
Sumner, C: 347.
Sumner, T: H., 38, 121.
Superintendent of pub. docs., 300, 305; § 57, 485.
Suppression of books, Au. § 77, 601. *See also* License, Republish.
Supreme Court, U. S. *See* Court jurisdiction, Regulations.
Sweden, 112, 124, 200, 248, 316, 317, 321, 323, 330, 340, 368, 407, 490.
Sweet v. Cater (1841), 444.
Swift, 23, 92.
Switzerland, 111, 124, 199, 214, 316, 317, 318, 320, 323, 330, 406, 489; I. 622.
Synopsis, insufficient, R. § 18, 500. *See also* Abridgment.
System. *See* Arrangement, Schemes.

Tableaux vivants, 162, 241; R. § 8, 497.
Tabulations, 69, 70; R. § 4, 496; E. § 15 (7), 527; C. § 2, 555; § 3 (2), 558.
Talfourd, Serjeant, 28, 456.
Tariff. *See* Customs.
Tasmania, 381. *See also* Australia.
Tate v. Fullbrook (1908), 176.
Tauchnitz series, 293.
Taylor v. Pillow (1869), 446.
Taxation, 47, 452.
Telegraph codes, 70; messages, 88, 93, 94, 124, 394, 396, 406, 410.
Temporary copr., 387–90; C. § 23, 568. *See also* Interim.
Terence, 8.
Term, 7, 35, 51, 114–24, 134, 180; § 9, 469; § 23, 474; § 24, 475; anonymous and pseu-

donymous works, 101, 328; I. 610; artistic work, 230, 245–49, 374–429; Au. § 36, 590; collective work; C. § 30, 569; commencement, 119, 120, 318, 333, 377; § 9, 469; E. § 19, 529; C. § 31, 570; Au. § 16, 585; I. 611; P. 638, 650; dramatic and musical, 183, 188, 200; dramatization, 58, 169; early provisions, 11–19, 24, 27, 28, 35; government publications, 123, 377, 398, 410, 412, 420; E. § 18, 529; in British Dominions, 33, 121–23, 373–97; E. § 3, 520; C. § 5, 559; Au. § 17, 585; § 35, 591; in other countries, 121, 122, 398–429; interim protection, 146; § 21, § 22; R. § 28; international, 124, 188, 318, 327, 328, 329, 331, 333, 335, 337; E. § 29, 539; C. § 35, 573; I. 607, 609, 631; P. 633, 638, 644, 650; joint authors, 120, 122, 137, 188, 377, 387; E. § 16, 528; C. § 29, 569; Au. § 17, 585; limitation of assignments, 61, 113, 377, 378; E. § 5, 521; § 24, 534; C. § 7, 560; § 33, 571; oral work, 119, 401; periodical contributions, 28, 104, 115; § 23, 474; photographs, 122, 247, 248, 328, 377, 394, 403, 406, 407, 409, 416, 417; E. § 21, 533; C. § 31, 570; I. 610; posthumous work, 122, 328, 377; § 23, 474; E. § 17, 529; C. § 28, 569; Au. § 17, 585; I. 610; mechanical records; E. § 19, 529; C. § 31, 570; subsisting works, 377; E. § 24, 534; successive parts 120, 318, 333; I. 610; P. 638, 650; translation, 58, 78, 318; Au. § 30, 588; I. 610; unpublished work, 119, 179, 180, 230. *See also* Extension, Notice, Perpetuity, Renewal.

Theatre, unlawful use, 193, 394; E. § 2, 520; C. § 4, 559; Au. § 51, 593. *See also* Dramatic work, Infringement, party liable, License.

Thomas *v.* Lennon (1883), 187.

Thompson *v.* Amer. Law Bk. Co.(1903), 258.

Thompson *v.* Stanhope (1774), 92.

Thornton, Sir E:, 349, 356.

Thring, G. H., 457.

Ticker tape news, 89.

Ticket, railway, noncopr., 70.

Tillinghast, J. L., 346.

Time-tables copr., 70.

Times (London) case, 90.

Times (N. Y.), Peary copr., 89, 102.

Tinsley *v.* Lacy (1863), 173.

Title, 12, 82, 86, 88, 94, 138, 171, 173, 191, 260, 261, 416, 428; conformity of, 137, 192, 261; R. § 29, 502; § 30, 503; registration; 37, 86, 136, 304, 390, 396; § 55, 484; R. § 30, 503. *See also* Ownership.

Title abstracts copr., 69.

Topographic charts. *See* Maps.

Toole *v.* Young (1874), 172.

Tools noncopr., 72, 223; R. § 12, 498.

Toy noncopr., 172, 223; R. § 12, 498; soldiers, protected, 247.

Trade-mark, 75, 99, 223, 237, 263, 386; R. § 16, 499; acts, 40, 83; C. § 32, 570; title as, 83, 88. *See also* Title.

Trade-name, 102; R. § 24, 501.

Trading stamps noncopr., 70.

Transcriptions, 45, 169, 170, 198. *See also* Musical work.

Transfer of copr. *See* Assignment, Ownership; *also* Lithograph.

Translate, right to, 42, 45, 47, 58, 61, 78, 124, 146, 170, 322, 328, 333, 392, 417; § 1 (b), 465; E. § 1, 518; § 29, 539; C. § 2, 556; Au. § 13, 584; § 30, § 31, 588; I. 605, 610, 612, 620; P. 633, 634, 637, 639, 649, 650; British limitation, 78; in other countries, 398–429.

Translations, 29, 64, 77–80, 155, 159, 288, 318, 319, 321, 326, 333, 337, 438; § 6, 468; E. § 1 (2), 518; C. § 35, 573; Au. § 28, 587; § 29, 588; I. 604, 613; P. 634, 639, 650; in other countries, 78, 397–429. *See also* Dramatization, Foreign works, Notice of reservation.

Transpositions, 170, 198, 392; R. § 10, 170; Au. § 13, 584. *See also* Musical work.

Transvaal, 160, 397. *See also* South African Union.

Treasury decisions, 168, 283–88, 291. *See also* Regulations, Secretary of the Treasury.

Treaties, 111, 202, 295, 312, 313, 319, 329, 339, 347, 349; § 1 (e), 466; I. 620. *See also* International conventions, Proclamations, names of countries.

Tree *v.* Bowkett (1896), 174.

Trengrouse *v.* "Sol" Syndicate (1901), 254.

Trevers, Peter, 21.
Tribonian, 8.
"Trilby" cases, 82, 171, 174.
Trinidad, 391.
Trinity College. *See* University deposit.
Trotting records copr., 70.
Tucker, J. R., bill (1886), 359.
Tunis, 198, 214, 316, 318, 320, 323, 330, 397, 398, 418.
Turkey, 415.
Turner *v.* Robinson (1860), 232.
Twain, Mark, *see* Clemens, S. L.
Type, forms of, noncopr., 224; R. § 16, 499.
Type setting. *See* Manufacturing provisions.
Typewritten deposit, 143; R. § 18, 499; C. § 26, 568.
Typographical unions, 156, 158, 358, 361, 363.

Unauthorized publication. *See* Consent, Infringement, Seizure, etc.
Uncopyrightable matter. *See* Non-copyright.
Underselling. *See* Price, limitation of.
Unfair competition, 85, 192, 260, 262, 263. *See also* Fair use, Infringement, Title.
United Book Co. *See* Fraser *v.* Yack.
United Dictionary Co. *v.* Merriam (1908), 134.
United States copr. history and laws, 35–41, 341–72; scope, 42–61; subject-matter, 63–93; ownership, 95–112; term, 114–210; formalities, 125–50; manufacturing provisions, 153–59; dramatic and musical, 162–95; mechanical reproduction, 202–21; artistic, 222–46; infringement, 251–64; remedies, 265–77; importation, 278–92; copr. office, 297–310; duties, 288–90; international, 112, 212, 317, 318, 323, 324, 325, 332, 334, 337, 339, 420; internat. movement, 341–72; literature, 453–56; code of 1909, 5–88; proclamations, 489–90; Supreme Court rules, 491–94; Copr. Office regulations, 495–510; Application form, 511–12; Treasury and P. O. regulations, 513–16. *See also* Constitution, Court jurisdiction, Regulations and specific subjects.
University copr., 24, 26, 123, 377, 380; E. § 33, 541; act (1775), 26, 27; E. § 33, 541; deposit, 22, 150, 151, 374, 378; E. § 15 (2), (4), 527; of Oxford, 19; of Padua, 15, 16; of Paris, 9, 17.
Unpublished work, 4, 25, 44–48, 61, 86, 113, 166, 180, 187, 225, 227, 238; § 2, 467; § 11, 470; R. § 17–21, 499–500; I. 603; deposit, 144, 226, 412; § 11, 470; R. § 18–20, 499–500; dramatic and musical work, 119, 165, 179, 187; I. 613; in British Empire, 61, 151, 182, 375, 379, 387, 392; E. § 1, 517; § 16 (2), 528; § 31, 541; § 35 (4), 544; C. § 2, 556; § 26, 568; Au. § 7, 582; not asset in bankruptcy, 452; registration, 144, 145, 179; § 11, 470; R. § 21, 500; term, 119, 179, 230; title, 85. *See also* Manuscript, Oral work.
Unrecognized authorship, 427, 428.
Uruguay, 62, 124, 323, 331, 332, 426.
Use. *See* Fair use, Limitation, Private use.

Van Dyke, H:, 360, 454.
Van Nostrand, D., 350.
Variations, 170, 198. *See also* Musical work; *also* Title.
Vend, right to. *See* Sale.
Venetia imprint, 16.
Venezuela, 124, 323, 429.
Venice, 13.
Verification, unfair use for, 255.
Verlagsrecht, getheilles, 46.
Version, right to make, 42, 45, 58, 80, 170–73; § 1 (b), 465. *See also* Translations, etc.
Vevey literary congress (1901), 209.
Victor Talking Machine Co. *v.* The Fair (1903), 50.
Victoria, Queen, 238.
Victoria. *See* Australia.
Vienna literary congress (1881), 314.
Virginia copr. legislation, 35.
Vocal work. *See* Dramatico-musical, Musical work.
Voiding of copr. *See* Forfeiture.
Volumes, Separate, 132, 306, 318; § 61, 488; I. 611; P. 638, 650.
Vouchers, 72. *See also* Forms.

Wage tables copr., 70; R. § 4, 496.
Wagner v. Conried (1903), 181.
Wales, National lib. deposit; E. § 15, 527. *See also* British.
Walker v. Globe. *See* Globe v. Walker.
Walpole's "Castle of Otranto," 87.
Walter v. Lane (1900), 68.
Walter v. Steinkopff (1892), 89, 259.
Ward v. Beeton (1875), 445.
Ward, Lock & Co. v. Long (1906), 441.
Warne v. Routledge (1874), 445.
Warne v. Seebohm (1888), 173.
Warrants. *See* Search.
Washburn, C. G., bills (1908, '09), 44, 370, 371.
Webster, Noah, 35, 344.
Webster Dictionary cases, 261.
Weldon v. Dicks (1878), 83.
Welsh, James, 361.
Werckmeister v. American Lithograph Company, (1902), 235; (1904) 235; (1907) 225, 232; v. Springer Lithograph Company, (1894), 234.
West Pub. Co. v. Lawyers' Pub. Co. (1894, '97), 258.
West Pub. Co. v. Thompson Co. (1897), 258, (1910), 132, 259.
Western Australia. *See* Australia.
Western Union Tel. Co. v. Call Pub. Co. (1901), 44.
Wheaton v. Peters (1834), 40, 41, 44, 149.
Wheeler v. Cobbey (1895), 272.
White, R: Grant, 454.
White v. Bender (1911), 257.
White-Smith v. Apollo Co. (1906, '08), 54, 204.
White-Smith v. Goff (1910), 116.
Widow, widower. *See* Heirs.
Will. *See* Heirs.
Willfully. *See* Intent, Knowledge.
William IV, 27.
Wilson, James Grant, 355.
Winchester, Boyd, 317.
Winslow, Reginald, 459.
Wisconsin copr. legislation, 39, 194.
Withholding of work. *See* Publication, enforced, Republish.
Witnessing, 106, 389.
Woman, married, E. § 16 (4), 529.
Wood-cuts, 8, 98, 223; R. § 13, 498; E. § 35, 542; C. § 2, 555; Au. § 4, 580. *See also* Engravings.
Wooster v. Crane (1906), 442.
Words, 75, 85, 130, 262; for music, 70, 121, 188, 326; R. § 4, 496; R. § 10, 498; E. § 19 (2), 530. *See also* Dramatic, Dramatico-musical, Musical works, Title.
Woven fabrics noncopr., 223; R. § 12, 470.
Wrappers, 71; R. § 5, 496.
Wright, Carroll D., 456.
Wright v. Eisle (1903), 242.
Writ of error, 269, 272; § 38, 481.
Writings, 35, 64, 66, 94, 215, 326. 410; § 4, 467; I. 603; P. 633, 649.
Wynken de Worde, 21.

Year book, E. § 35 (1), 542; C. § 30, 569.
Young, J: Russell, 96.

The Riverside Press
CAMBRIDGE . MASSACHUSETTS
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7 7 1 8 5 (A)