LIBRARY OF CONGRESS

Report of the
Register of Copyrights

FOR THE

Fiscal Year 1911-1912

[Reprinted from the Report of the Librarian of Congress]

WASHINGTON
GOVERNMENT PRINTING OFFICE
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CONTENTS.

REPORT OF THE REGISTER OF COPYRIGHTS FOR THE FISCAL YEAR 1911–12

WASHINGTON, D. C., *July 5, 1912*

SIR: The copyright business and the work of the Copyright Office for the fiscal year from July 1, 1911, to June 30, 1912, inclusive, are summarized as follows:

RECEIPTS

Fees, etc.

The gross receipts during the year were $120,149.51. A balance of $7,377.33, representing trust funds and unfinished business, was on hand July 1, 1911, making a total of $127,526.84 to be accounted for. Of this amount the sum of $3,506.38 received by the Copyright Office was refunded as excess fees or as fees for articles not registrable, leaving a net balance of $124,020.46. The balance carried over to July 1, 1912, was $7,335.41 (representing trust funds, $6,282.09, and total unfinished business since July 1, 1897—15 years—$1,053.32), leaving for fees applied during the fiscal year 1911–12, $116,685.05.

This is an increase in fees over the previous fiscal year of $6,771.10.

EXPENDITURES

Salaries

The appropriation made by Congress for salaries in the Copyright Office for the fiscal year ending June 30, 1912, was $95,180. The total expenditure for salaries was $95,058.55, or $21,626.50 less than the net amount of fees earned and paid into the Treasury during the corresponding year.

Expenditures

The expenditure for supplies, except furniture, including stationery and other articles, and postage on foreign mail matter, etc., was $1,056.81.

Copyright receipts and fees

During the 15 fiscal years since the reorganization of the Copyright Office (from July 1, 1897, to June 30, 1912), the total receipts have exceeded one and a quarter million

dollars ($1,251,161.82); the copyright fees applied and paid into the Treasury have amounted to more than a million dollars ($1,189,666.70); the articles deposited number more than two and three-quarters million (2,801,691), and the total copyright registrations over one and a half million (1,577,732).

The fees ($1,189,666.70) were larger than the appropriation for salaries ($1,005,134.97) used during the same period by $184,531.73.

Value of copyright deposits

In addition to this direct profit, a large number of the 2,801,691 books, maps, prints, and other articles deposited during the 15 years were of substantial pecuniary value and of such a character that their accession to the Library of Congress through the Copyright Office effected a saving to the purchase fund of the Library equal in amount to their cost.

COPYRIGHT ENTRIES AND FEES

Registrations

The registrations for the fiscal year numbered 120,931. Of these 108,393 were registrations at $1 each, including a certificate, and 11,189 were registrations of photographs without certificates, at 50 cents each. There were also 1,349 registrations of renewals at 50 cents each. The fees for these registrations amounted to a total of $114,662.

The number of registrations in each class from July 1, 1911, to June 30, 1912, as compared with the number of entries made in the previous year, is shown in Exhibit F.

COPYRIGHT DEPOSITS

Articles deposited

The various articles deposited in compliance with the new copyright law which have been registered, stamped, indexed, and catalogued during the fiscal year amount to 219,521. The number of these articles in each class for the 15 fiscal years is shown in Exhibit G.

Elimination of copyright deposits

The copyright act which went into force on July 1, 1909, provides for the gradual elimination of the accumulated copyright deposits (see secs. 59 and 60).[1] During the year

[1] 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

Transfer of books to Library of Congress

books desired for the Library to the number of 8,796 volumes have been transferred to the Library through the Order Division. These volumes were in addition to the "first" copies of copyright books sent as received from day to day, numbering 13,578 for the fiscal year, thus making a total of 22,374 books and pamphlets delivered to the Library from the Copyright Office.

Music and maps transferred

In addition to the current copies of maps and musical works sent daily to the Music and Map Divisions of the Library from the Copyright Office (4,344 maps and 28,113 musical compositions), 25,782 articles (maps, music, and periodicals) were transferred to the Library from the deposits received prior to July 1, 1909.

Books transferred to other libraries

The act of March 4, 1909 (sec. 59), provides for the transfer to other governmental libraries in the District of Columbia "for use therein" of such copyright deposits as are not required by the Library of Congress, and during the present fiscal year 15,755 books were selected by the librarians and thus transferred to the libraries of the Bureau of Education, Bureau of Mines, Bureau of Standards, Department of Agriculture, War Department, Interstate Commerce Commission, Naval Observatory, Surgeon General's Office, Navy Department, Department of Justice, Weather Bureau, and the public library of the District of Columbia.

Return of deposits to copyright claimants

Under the provisions of the act of March 4, 1909, authority is granted for the return to the claimant of copyright of such copyright deposits as are not required by the Library. The notice required by section 60 has been printed during the year for all classes of works deposited and registered during the years 1880 to 1889, but no requests have so far

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or be transferred to other governmental libraries in the District of Columbia for use therein.

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.

been received to enable the return of articles. On the other hand, in response to special requests, 26 dramatic or musical compositions have been returned to the copyright claimants, and of the current deposits not needed by the Library of Congress the following have also been so returned, 16,353 books, 6,118 photographs, 13,015 prints, 4,555 contributions to periodicals, 3,070 periodicals; a total of 43,137 articles.

Request of copies In response to inquiries during the year from the Card Section, the Order Division, and the Reading Room, in regard to 503 books supposed to be copyrighted but not found in the Library, it was discovered that 79 of these works were already in the Library, 119 of the books had been deposited and were still in the Copyright Office, 39 works were either not published, did not claim copyright, or for other reasons could not be deposited, and in the case of 101 works no answers to our letters of inquiry had been received up to June 30, 1912. Copies were received of 165 works in all, in response to request made by the Copyright Office during the period of 12 months.

THE COPYRIGHT INDEX AND CATALOGUE, BULLETINS, AND CIRCULARS

Index cards The copyright registrations are indexed upon cards. The cards made are first used as copy for the printed catalogue and after printing are added to the permanent card indexes of the copyright entries. The temporary cards made for the printed indexes, etc., to the catalogue (numbering 78,517 during the fiscal year) are eliminated; the remaining cards (120,237 for the fiscal year) are added to the permanent card indexes, now numbering considerably over 2,000,000 cards.

Catalogue of Copyright Entries The publication of the Catalogue of Copyright Entries has been continued as required by law. For convenience of search the volumes are made to cover the works published and deposited during the calendar year rather than the fiscal year. Five volumes of the Catalogue of Copyright Entries were printed during the calendar year 1911, containing a total of 6,842 pages, divided as follows: Part I, Group 1, Books, volume 8, contains 1,252 pages of text and 242 pages of index, a total of 1,494 pages; Part I, Group 2, Pamphlets, leaflets, contributions to periodicals, lectures,

dramas, maps, etc., volume 8, contains 1,208 pages of text and 269 pages of index, a total of 1,477 pages; Part II, periodicals, volume 6, contains 698 pages of text and 50 pages of index, a total of 748 pages; Part III, Music, volume 6, contains 1,848 pages of text and 554 pages of index, a total of 2,402 pages; Part IV, Fine Arts, etc., volume 6, contains 667 pages of text and 54 pages of index, a total of 721 pages.

Subscription price

Each part of the catalogue is sold separately at a nominal annual subscription rate within the maximum price established by law, as follows:

Part I, Books, pamphlets, dramatic compositions, and maps (two volumes), $1; Part II, Periodicals, 50 cents; Part III, Musical compositions (a very bulky volume), $1; Part IV, Prints, including chromos and lithographs, photographs, and the descriptions of original works of art—paintings, drawings, and sculpture—50 cents. The price for the entire catalogue for the year is $3. The subscriptions, by express provisions of the copyright act, are required to be paid to the Superintendent of Documents (Office of the Public Printer, Washington, D. C.), and all subscriptions must be for the complete year for each part desired.

Catalogue of books

All books included in the Catalogue of Copyright Entries for which printed cards are made are catalogued by the Catalogue Division of the Library of Congress. The cards are printed first and the linotype slugs are at once used for the Catalogue of Copyright Entries, thus saving the cost of resetting. To avoid delay special effort is made to forward promptly the books deposited, and 10,854 books and pamphlets were delivered to the Catalogue Division during the fiscal year on the actual day of their receipt in the Copyright Office. The Catalogue Division titles are sometimes returned to the Copyright Office in 6 or 7 days; but (exclusive of cases of delay due to the necessity for correspondence to secure the name of the author, etc.), the average period is from 18 to 20 days. As soon as enough titles are received to make up not less than 4 full pages of the catalogue, they are sent to the printer. By this method signatures for the catalogue of books are printed every other day, three issues each week. Each printed signature contains the actual date of printing and is given a consecutive number. The pages are numbered consecutively, as well as the titles, to

make one yearly volume of solid bibliographical text. The monthly indexes for books are printed in separate numbers which contain also the lists of copyright renewals and any miscellaneous text matter, such as copyright proclamations, notices, etc. A complete yearly index of authors and proprietors is supplied for each volume to take the place of the monthly indexes when the catalogue is bound.

Foreign books deposited

The considerable deposit of foreign books made under the operation of the present copyright law adds a new element of value to the catalogue of copyrighted books. More than ten thousand volumes were deposited of books printed in languages other than English, and nearly 1,500 volumes of books printed abroad in the English language.

Copyright publications: New English law

The new British copyright act which went into effect on July 1, 1912, was printed as "Bulletin No. 16" of the Copyright Office entitled "Copyright in England." To the full text of the new law were added the texts of the previous copyright acts not repealed, and the whole was supplied with a complete and carefully made index. (54 pp. 8°.)

Copyright proclamation: Cuba

In addition, a small edition was printed and distributed of the presidential proclamation in regard to the provisions of section 1 (e) of the copyright act, relating to the mechanical reproduction of music in behalf of Cuba, November 27, 1911. (Circular No. 46.)

SUMMARY OF COPYRIGHT BUSINESS

Summary of copyright business

Balance on hand July 1, 1911		$7,377.33	
Gross receipts July 1, 1911, to June 30, 1912		120,149.51	
Total to be accounted for		127,526.84	
Refunded		3,506.38	
Balance to be accounted for			$124,020.46
Applied as earned fees		116,685.05	
Balance carried over to July 1, 1912:			
Trust funds	$6,282.09		
Unfinished business July 1, 1897, to June 30, 1912, 15 years	1,053.32		
		7,335.41	
			$124,020.46

Total fees earned and paid into the Treasury during the 15 years from July 1, 1897, to June 30, 1912	$1,189,666.70
Total unfinished business for 15 years	1,053.32

FEES FOR FISCAL YEAR

Fees

Fees for registrations, including certificates at $1 each	$108,393.00	
Fees for registrations of photographs without certificates, at 50 cents each	5,594.50	
Fees for registration of renewals, at 50 cents each	674.50	
Total fees for registrations recorded		$114,662.00
Fees for certified copies of record, at 50 cents each	528.50	
Fees for recording assignments	1,209.00	
Searches made and charged for at the rate of 50 cents for each hour of time consumed	148.50	
Notices of user recorded (Music)	91.25	
Indexing transfers of proprietorship	45.80	
		2,023.05
Total fees for fiscal year 1911–12		$116,685.05

ENTRIES

Entries

Number of copyright registrations	119,582
Number of renewals recorded	1,349
Total number of entries recorded	120,931
Number of certified copies of record	1,057
Number of assignments recorded or copied	892

Correspondence, money orders, etc.

The greater part of the business of the Copyright Office is done by correspondence. The total letters and parcels received during the fiscal year numbered 140,305, while the letters, certificates, parcels, etc., dispatched numbered 154,436. Letters received transmitting remittances numbered 44,285, including money orders to the number of 29,190. During the last 15 fiscal years the money orders received numbered 376,147.

CONDITION OF COPYRIGHT OFFICE WORK

(a) *Current work*

Condition of current work

At this date (July 5, 1912) the remittances received up to the third mail of the day have been recorded. The account books of the bookkeeping division are written up and posted to June 30, and the accounts rendered to the Treasury Department are settled up to and including the month of

June, while earned fees to June 30, inclusive, have been paid into the Treasury.

All copyright applications received up to and including June 30 have been passed upon and refunds made. The total unfinished business for the full 15 years from July 1, 1897, to June 30, 1912, amounted on the latter date to $1,053.32.

At the close of business on July 5, 1912, of the works deposited for copyright registration up to and including June 30, there remained to be recorded: Class A, Books, 61; Class E, Music, 29; Class J, Photographs, 39; Class K, Prints, 21.

(*b*) *Deposits received prior to July 1, 1897*

Deposits prior to July 1, 1897

During the fiscal year 1911–12 about 9,600 articles received prior to July 1, 1897, were handled in the work of crediting such matter to the proper entries. Of these articles 7,528 pieces (including 3,304 pamphlets and leaflets, 4,103 periodical contributions, 42 engravings, and 79 miscellaneous) were credited to their respective entries and were properly filed. Periodical deposits to the number of 563 were given proper credit preparatory to their disposal through the Order division of the Library of Congress. Entries were located for about 2,000 additional articles and these were arranged by their entry numbers to facilitate later crediting. In addition 1,300 photographs, hitherto arranged only by year, were arranged by entry numbers. No entries could be found for about 200 articles. The examination of this old material becomes proportionally slow and its identification more difficult as the remaining material presents fewer clues under which search can he made for possible entries. Meantime, the pressure of the current copyright business has been so great as to oblige the transfer of the clerks from the old unfinished material to the current work from time to time.

COPYRIGHT LEGISLATION AND INTERNATIONAL COPYRIGHT RELATIONS

I. *Legislation*

Copyright bills

The new copyright law has now been in force three full years and certain amendatory legislation has been suggested. Various copyright bills were proposed during the fiscal year

in the second session of the Sixty-second Congress. Mr. Townsend, of New Jersey, introduced on December 9, 1911, a bill (H. R. 15263) [1] to amend section 25 of the act of March 4, 1909, to limit recovery to $100 in the case of the infringement of a dramatic or dramatico-musical composition by means of motion pictures. The same bill was presented to the Senate on January 8, 1912, by Mr. Briggs (S. 4233).[2] Public hearings on Mr. Townsend's bill were held in the committee room of the House Committee on Patents on January 24 and February 12 and 21, and led to the introduction by Mr. Townsend on February 21 of a substitute bill (H. R. 20595),[3] reprinted on the same day to secure the inclusion of an additional provision as H. R. 20596.[4] A fourth hearing on the Townsend bill was held in the House committee room on March 13, and on March 26 a new bill was introduced by Mr. Townsend (H. R. 22350) [5] proposing to amend section 5, by including motion pictures as subject matter of copyright; section 11, by providing for the deposit and registration of motion pictures; and section 25, by new provisions as to damages in the case of infringement by means of motion pictures. A fifth hearing was held in the House committee room on March 27, and further statements and arguments were submitted in favor of the Townsend bill. On May 7, Mr. Townsend introduced a new text of his bill, with slight changes (H. R. 24224);[6] presented to the Senate

Townsend bills:
H. R. 15263
S. 4233
H. R. 20595
H. R. 20596
H. R. 22350
H. R. 24224

[1] 1911 (Dec. 9). A bill to amend section 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Townsend. H. R. bill No. 15263. Printed, 3 pp., 4°. [Referred to the Committee on Patents.]

[2] 1912 (Jan. 8). A bill to amend section 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Briggs. Senate bill No. 4233. Printed, 3 pp., 4°. [Referred to the Committee on Patents.]

[3] 1912 (Feb. 21). A bill to amend section 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Townsend. H. R. bill No. 20595. Printed, 5 pp., 4°. [Referred to the Committee on Patents.]

[4] 1912 (Feb. 21). A bill to amend section 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Townsend. H. R. bill No. 20596. Printed, 5 pp., 4°. [Referred to the Committee on Patents.]

[5] 1912 (Mar. 26). A bill to amend sections 5, 11, and 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Townsend. H. R. bill No. 22350. Printed, 7 pp., 4°. [Referred to the Committee on Patents.]

[6] 1912 (May 7). A bill to amend sections 5, 11, and 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Townsend. H. R. bill No. 24224. Printed, 7 pp., 4°. [Referred to the Committee on Patents.] (See note at foot of page 138.)

S. 6875 by Mr. Smoot on May 20 (S. 6875),[1] and reported to the *H. R. report 756* House on May 24 (House Report no. 756)[2] with the recommendation that it be passed without amendment. On June 17 the Townsend bill (H. R. 24224) was, by "unanimous consent," debated in the House of Representatives and passed, after amendment striking out the provision for a minimum damage of $50 in the case of the infringement of an undramatized or nondramatic work by means of motion pictures. The House act was presented to the Senate on June 24, read twice, and referred to the Committee on Patents.* (*See* note below.)

While the Townsend bill was under consideration by the House Committee on Patents the following bills, dealing with the same subject matter, were introduced in the House of Representatives. By Mr. Moon of Pennsylvania, *H. R. 21295* on March 4, a bill (H. R. 21295)[3] to amend sections 5 and 11 of the act of March 4, 1909, to provide for the copyright of motion pictures. On March 26 Mr. Moon reintroduced his bill (H. R. 22351)[4] with a text identical with the Townsend bill of the same date (H. R. 22350). On *H. R. 21776* March 12 Mr. Barchfeld introduced a bill (H. R. 21776)[5] proposing to add to section 5 of the act of March 4, 1909, the following proviso: "That nothing in this act shall be construed to give, directly or indirectly, copyright to any work created or designed for production, reproduction,

[1] 1912 (May 20). A bill to amend sections 5, 11, and 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Smoot. Senate bill No. 6875. Printed, 7 pp., 4°. [Referred to the Committee on Patents.]

[2] 1912 (May 24). Statute in relation to copyrights. Mr. Morrison, from the Committee on Patents, submitted the following report (to accompany H. R. bill No. 24224). H. R. report No. 756. Printed, 4 pp., 8°.

[3] 1912 (Mar. 4). A bill to amend sections 5 and 11 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Moon of Pennsylvania. H. R. bill No. 21295. Printed, 3 pp. 4°. [Referred to the Committee on Patents.]

[4] 1912 (Mar. 26). A bill to amend sections 5, 11, and 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Moon of Pennsylvania. H. R. bill No. 22351. Printed, 7 pp. 4°. [Referred to the Committee on Patents.]

[5] 1912 (Mar. 12). A bill to amend section 5 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Barchfeld. H. R. bill No. 21776. Printed, 2 pp. 4°. [Referred to the Committee on Patents.]

* NOTE.—Subsequent to the date of this report, on July 8, the Senate Committee on Patents favorably reported the bill (S. report No. 906); the bill passed the Senate August 19, and on August 24 it was approved and became law.

exhibition, or use in, upon, or through the medium of any patented machine, device, or apparatus."

On March 26 Mr. Morrison, of the House Committee on Patents, introduced a bill (H. R. 22356)[1] to amend section 55 of the act of March 4, 1909, to make the certificate of copyright prima facie evidence of copyright. Discussion of this bill took place in the committee room of the House Committee on Patents next day and resulted in the introduction by Mr. Morrison, on March 29, of a substitute bill (H. R. 22586)[2] proposing amendments to section 55 to include certain additional statements in the certificate of copyright, such certificate to be "admitted in any court as prima facie evidence of the facts stated therein." Amended texts were submitted to the House by Mr. Morrison on April 16 (H. R. 23416)[3] and on April 20 (H. R. 23568),[4] this last bill being also presented to the Senate on June 5 by Mr. Smoot (S. 7062).[5] On June 6 the House Committee on Patents reported the bill (H R. 23568) with two slight amendments and the recommendation that after such amendment the bill should be passed (H. R. report No. 847),[6] but no further action took place.*

H. R. 22356

H. R. 22586

H. R. 23416

H. R. 23568

S. 7062

H. R. report 847

The following additional copyright bills were introduced during the fiscal year. On December 6, 1911, by Mr.

[1] 1912 (Mar. 26). A bill to amend section 55 of "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Morrison. H. R. bill No. 22356. Printed, 2 pp. 4°. [Referred to the Committee on Patents.]

[2] 1912 (Mar. 29). A bill to amend section 55 of "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Morrison. H. R. bill No. 22586. Printed, 2 pp. 4°. [Referred to the Committee on Patents.]

[3] 1912 (Apr. 16). A bill to amend section 55 of "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Morrison. H. R. bill No. 23416. Printed, 2 pp. 4°. [Referred to the Committee on Patents.]

[4] 1912 (Apr. 20). A bill to amend section 55 of "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Morrison. H. R. bill No. 23568. Printed, 2 pp. 4°. [Referred to the Committee on Patents.]

[5] 1912 (June 5). A bill to amend section 55 of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Presented by Mr. Smoot. Senate bill No. 7062. Printed, 2 pp. 4°. [Referred to the Committee on Patents.]

[6] 1912 (June 6). Amendment of laws relating to copyrights. Mr. Oldfield, from the Committee on Patents, submitted the following report (to accompany H. R. 23568). H. R. report No. 847. Printed, 3 pp. 8°.

*NOTE.—Subsequent to the date of this report, on July 15, the House of Representatives accepted the amendments proposed by the committee and passed the bill H. R. 23568 as thus amended.

H. R. 14668 Stephens of Texas, a bill (H. R. 14668)[1] to provide for international reciprocity in regard to patents and copyrights. On January 4, 1912, by Mr. Campbell, "A bill suspending the patent and copyright laws of the United States when a patent or copyright, or any article or product protected by patent or copyright, is owned, used, or leased by any trust or monopoly in restraint of trade in violation of the act of February 4, 1887" (H. R. *H. R. 16828* 16828).[2] This is the same bill, with minor changes, which was introduced by Mr. Campbell on April 10, 1911 (H. R. 2930 of 62d Cong., 1st sess.). On May 28, 1912, Mr. Mott *H. R. 24925* presented a bill (H. R. 24925)[3] proposing to include in the list of the classes of articles subject-matter of copyright, "Labels, trade-marks, firm names, and special designs, pictures, prints, wrappers, cartons, containers, and advertisements which are specifically created for individual trades, manufactures, or businesses, engraved, printed, colored, or produced in any manner whatsoever." The bill also proposes to strike out the misdemeanor clause in section 28 of the act of March 4, 1909.

For the full texts of these copyright bills see pages 159–180 of this report.

Copyright hearings Statements and arguments were submitted to the House Committee on Patents at the hearings held before that committee on January 24, February 14 and 21, March 13 and 27, and April 3, by the Hon. Edward W. Townsend, the Hon. Reuben O. Moon; Mr. Frank L. Dyer, president of the Edison Electric Co.; Mr. John J. O'Connell, representing the Motion Picture Patents Co. of New York City; Mr. Augustus Thomas, representing the Society of American Dramatists and Composers; Mr. William A. Brady, presi-

[1] 1911 (Dec. 6). A bill requiring any citizen of a foreign country who may procure a copyright or letters patent from the United States to pay to the United States for such copyright or patent the same amount of fees and to subject himself to the same laws, rules, and regulations relating to such patent, its use and control, as the Government of such foreign country exacts by its laws and regulations from citizens of the United States, and for other purposes. Presented by Mr. Stephens of Texas. H. R. bill No. 14688. Printed, 3 pp. 4°. [Referred to the Committee on Patents.]

[2] 1912 (Jan. 4). A bill suspending the patent and copyright laws of the United States when a patent or copyright, or any article or product protected by patent or copyright, is owned, used, or leased by any trust or monopoly in restraint of trade in violation of the act of Feb. 4, 1887. Presented by Mr. Campbell. H. R. bill No. 16828. Printed, 3 pp. 4°. [Referred to the Committee on Patents.]

[3] 1912 (May 28). A bill to amend the copyright law passed Mar. 4, 1909. Presented by Mr. Mott. H. R. bill No. 24925. Printed, 3 pp. 4°. [Referred to the Committee on Patents.]

dent of the National Association of Producing Managers, of New York City; Mr. Ligon Johnson, attorney, New York City; the Librarian of Congress, and the Register of Copyrights. The stenographic report of the hearings has been printed, with an appendix volume containing documents in the case of Greater New York Film Rental Co. *v.* Motion Picture Patents Co. et al.[1]

II. *International copyright relations*

Pan American convention of 1910

In my report for the fiscal year 1910–11, reference was made to the important fact that the United States had signed at Buenos Aires on August 11, 1910, the Fourth Pan American "Convention concerning literary and artistic copyright," and that its ratifications was approved by the Senate on February 15, 1911. On December 7, 1911, the President in his message to Congress on our foreign relations reported as follows:

"The four important conventions signed at the Fourth Pan American Conference at Buenos Aires, providing for the regulation of trademarks, patents, and copyrights, and for the arbitration of pecuniary claims, have, with the advice and consent of the Senate, been ratified on the part of the United States and the ratifications have been deposited with the Government of the Argentine Republic in accordance with the requirements of the conventions. I am not advised that similar action has been taken by any other of the signatory Governments."

Copyright proclamation: Cuba

On November 27, 1911, the President published a proclamation to the effect that citizens of Cuba "are entitled to all the benefits of section 1(e) of the act of March 4, 1909, including "copyright controlling the parts of instruments serving to reproduce mechanically the musical work," in the case of all musical compositions by Cuban composers which have been published since May 29, 1911, and have been duly registered for copyright in the United States.

Copyright treaty with Hungary

A copyright treaty between the United States and Hungary was signed at Budapest on January 30, 1912. It was

[1] "Townsend Copyright Amendment. Complete file of arguments before the Committee on Patents, House of Representatives, on H. R. 15263 and H. R. 20596, commencing January 24, 1912." 116 pp. 8°. Washington, Government Printing Office, 1912.

"Exhibit Special. Supreme Court of the State of New York. Greater New York Film Rental Co., plaintiff, against Motion Picture Patents Co., and others, defendants Summons, complaint, affidavits, injunction, and order to show cause." Washington, Government Printing Office, 1912.

submitted to the Senate for its advice as to ratification on March 8, 1912, but up to the date of this report the Senate has not recommended its ratification.* (*See* note below.)

Copyright cases reported

So much interest is felt in regard to the judicial interpretation of the provisions of the new copyright statute of March 4, 1909, that it seems desirable to reprint here the more important decisions which have been rendered by the courts in copyright causes; they may be found as Addendum II, pages 181–216.

Respectfully submitted

THORVALD SOLBERG
Register of Copyrights

HERBERT PUTNAM
Librarian of Congress

EXHIBIT A—*Statement of gross receipts, refunds, net receipts, and fees applied for fiscal year ending June 30, 1912*

	Gross cash receipts	Refunds	Net receipts	Fees applied
1911				
July	$8,831.36	$290.57	$8,540.79	$7,301.80
August	8,687.42	151.66	8,535.76	8,377.80
September	9,256.83	190.10	9,066.73	10,796.65
October	10,579.96	253.30	10,326.66	10,959.20
November	9,328.47	405.44	8,923.03	8,852.50
December	11,721.86	256.88	11,464.98	9,698.85
1912				
January	13,655.73	254.25	13,401.48	11,214.30
February	10,204.08	267.11	9,936.97	9,502.25
March	9,869.01	303.94	9,565.07	11,237.30
April	10,007.36	375.82	9,631.54	9,756.00
May	9,134.76	301.90	8,832.86	9,595.30
June	8,872.67	455.41	8,417.26	9,393.10
Total	10,2149.51	3,506.38	116,643.13	116,685.05

Balance brought forward from June 30, 1911			$7,377.33
Net receipts July 1, 1911, to June 30, 1912:			
Gross receipts	$120,149.51		
Less amount refunded	3,506.38		
		116,643.13	
Total to be accounted for			124,020.46
Copyright fees applied July 1, 1911, to June 30, 1912		116,685.05	
Balance carried forward to July 1, 1912:			
Trust funds		6,282.09	
Unfinished business		1,053.32	
			124,020.46

*NOTE.—Since this report was submitted, ratification was advised by the Senate on July 23, the ratifications were exchanged September 16, and the convention went into effect on October 16, 1912. It is, therefore, printed as Addendum III to this report, page 217.

EXHIBIT B—*Statement of fees paid into Treasury*

Date	Check No.	Amount	Date	Check No.	Amount
1911			1912		
July 10	884	$900.00	Jan. 8	916	$865.00
17	885	1,900.00	15	917	2,900.00
24	886	1,700.00	22	918	3,000.00
30	887	1,800.00	29	919	2,400.00
Aug. 5	888	1,001.80	Feb. 5	920	2,049.30
7	889	800.00	6	921	1,000.00
14	890	1,500.00	12	922	1,700.00
21	891	1,400.00	19	923	2,400.00
28	892	2,000.00	26	924	2,100.00
Sept. 5	893	2,300.00	Mar. 4	925	2,100.00
8	894	377.80	6	926	202.25
11	895	1,900.00	11	927	2,300.00
18	896	2,500.00	18	928	2,600.00
25	897	2,700.00	25	929	2,600.00
Oct. 2	898	2,800.00	Apr. 1	930	2,600.00
6	899	896.65	4	931	1,137.30
9	900	1,400.00	8	932	1,200.00
16	901	2,300.00	15	933	2,400.00
23	902	2,700.00	22	934	1,900.00
30	903	2,600.00	29	935	2,400.00
Nov. 6	904	1,959.20	May 6	936	1,500.00
7	905	800.00	8	937	356.00
13	906	1,700.00	13	938	2,400.00
20	907	2,300.00	20	939	1,900.00
27	908	2,100.00	27	940	2,600.00
Dec. 4	909	1,700.00	June 3	941	2,300.00
6	910	252.50	5	942	395.30
11	911	2,000.00	10	943	1,500.00
18	912	2,100.00	17	944	2,600.00
26	913	2,300.00	24	945	2,000.00
1912			July 1	946	2,200.00
Jan. 2	914	2,300.00	5	947	1,093.10
6	915	998.85	Total	.....	116,685.05

EXHIBIT C—*Record of applied fees*

Month	Number of registrations, including certificate	Fees at $1 each	Number of registrations, photographs, no certificate	Fees at 50 cents each	Number of renewal registrations	Fees at 50 cents each	Total number of registrations	Total fees for registrations
1911								
July	6,690	$6,690.00	913	$456.50	78	$39.00	7,681	$7,185.50
August	7,636	7,636,.00	1,238	619.00	83	41.50	8,957	8,296.50
September	10,163	10,163.00	924	462.00	68	34.00	11,155	10,659.00
October	10,144	10,144.00	1,253	626.50	96	48.00	11,493	10,818.50
November	8,328	8,328.00	730	365.00	28	14.00	9,086	8,707.00
December	9,203	9,203.00	629	314.50	93	46.50	9,925	9,564.00
1912								
January	10,325	10,325.00	1,104	552.00	162	81.00	11,591	10,958.00
February	8,608	8,608.00	1,173	586.50	296	148.00	10,077	9,342.50
March	10,592	10,592.00	702	351.00	162	81.00	11,456	11,024.00
April	9,066	9,066.00	956	478.00	124	62.00	10,146	9,606.00
May	9,006	9,006.00	744	372.00	121	60.50	9,871	9,438.50
June	8,632	8,632.00	823	411.50	38	19.00	9,493	9,062.50
Total	108,393	108,393.00	11,189	5,594.50	1,349	674.50	120,931	114,662.00

Month	Copies of record	Fees at 50 cents each	Assignments and copies	Fees for assignments	Notice of user in re music	Fees for notice of user	Indexing transfer of proprietor	Fees at 10 cents each	Search fees	Total applied fees
1911										
July	26	$13.00	35	$84.00	16	$4.00	28	$2.80	$12.50	$7,301.80
August	44	22.00	42	51.00	8	2.00	23	2.30	4.00	8,377.80
September	109	54.50	52	59.00	41	10.25	4	.40	13.50	10,796.65
October	104	52.00	52	62.00	68	17.00	17	1.70	8.00	10,959.20
November	66	33.00	63	76.00	26	6.50	115	11.50	18.50	8,852.50
December	52	26.00	85	93.00	29	7.25	31	3.10	5.50	9,698.85
1912										
January	155	77.50	98	158.00	22	5.50	23	2.30	13.00	11,214.30
February	113	56.50	46	60.00	47	11.75	10	1.00	30.50	9,502.25
March	158	79.00	75	109.00	22	5.50	48	4.80	15.00	11,237.30
April	67	33.50	58	96.00	32	8.00	35	3.50	9.00	9,756.00
May	75	37.50	66	94.00	28	7.00	53	5.30	13.00	9,595.30
June	88	44.00	220	267.00	26	6.50	71	7.10	6.00	9,393.10
Total	1,057	528.50	892	1,209.00	365	91.25	458	45.80	148.50	116,685.05

EXHIBIT D—*Copyright business (monthly comparison). Annual report for the fiscal year from July 1, 1911, to June 30, 1912*

[COMPARATIVE MONTHLY STATEMENT OF GROSS CASH RECEIPTS, EXECUTED BUSINESS, NUMBER OF REGISTRATIONS, DAILY AVERAGES, ETC.]

	Gross receipts			
	Monthly receipts	Monthly increase	Monthly decrease	Daily average
1911				
July	$8,831.36	.....	$305.33	$353.25
August	8,687.42	.....	143.94	321.76
September	9,256.83	$569.41	.....	370.27
October	10,579.96	1,323.13	.....	406.92
November	9,328.47	.....	1,251.49	373.13
December	11,721.86	2,393.39	.....	468.87
1912				
January	13,655.73	1,933.87	.....	525.22
February	10,204.08	.....	3,451.65	425.17
March	9,869.01	.....	335.07	379.58
April	10,007.36	138.35	.....	384.90
May	9,134.76	.....	872.60	351.33
June	8,872.67	.....	262.09	354.90
Total	120,149.51	.....	.....	.....

	Business executed			
	1911–12	Increase	Decrease	Daily average
1911				
July	$7,301.80	.....	$3,160.45	$292.07
August	8,377.80	$1,076.00	.....	310.29
September	10,796.65	2,418.85	.....	431.87
October	10,959.20	162.55	.....	421.51
November	8,852.50	.....	2,106.70	354.10
December	9,698.85	846.35	.....	468.87
1912				
January	11,214.30	1,515.45	.....	431.31
February	9,502.25	.....	1,712.05	395.93
March	11,237.30	1,735.05	.....	432.20
April	9,756.00	.....	1,481.30	375.23
May	9,595.30	.....	160.70	369.05
June	9,393.10	.....	202.20	375.72
Total	116,685.05	.....	.....	.....

EXHIBIT D—*Copyright business (monthly comparison). Annual report for the fiscal year from July 1, 1911, to June 30, 1912*—Continued

	Number of registrations			
	Totals	Increase	Decrease	Daily average
1911				
July	7,681	.....	3,185	307
August	8,957	1,276	.....	332
September	11,155	2,198	.....	446
October	11,493	338	.....	442
November	9,086	.....	2,407	363
December	9,925	839	.....	397
1912				
January	11,591	1,666	.....	446
February	10,077	.....	1,514	420
March	11,456	1,379	.....	440
April	10,146	.....	1,310	390
May	9,871	.....	275	380
June	9,493	.....	378	380
Total	120,932	.....	.....	.....

EXHIBIT E—*Statement of gross cash receipts, business executed, number of registrations, etc., for 15 fiscal years 1897–98, 1898–99, 1899–1900, 1900–1901, 1901–2, 1902–3, 1903–4, 1904–5, 1905–6, 1906–7, 1907–8, 1908–9, 1909–10, 1910–11, 1911–12*

GROSS RECEIPTS

Month	1897–98	1898–99	1899–1900	1900–1901	1901–2
July	$4,257.70	$5,102.74	$5,136.87	$5,571.51	$5,382.28
August	4,525.27	4,675.96	4,846.97	5,864.68	4,880.60
September	5,218.87	4,714.82	6,078.95	4,986.62	5,295.87
October	5,556.21	5,149.07	5,583.59	6,027.36	5,399.03
November	4,292.88	4,788.30	5,479.15	5,068.11	5,019.10
December	6,512.60	6,435.56	6,728.06	7,332.53	7,201.64
January	6,074.03	6,050.86	7,649.80	7,155.68	7,604.08
February	4,606.92	5,141.40	5,523.47	4,803.50	4,810.59
March	5,138.78	6,300.02	6,515.43	6,049.07	5,899.56
April	5,053.21	5,198.69	6,086.82	5,789.03	5,580.14
May	5,386.93	5,593.50	5,660.36	5,580.11	5,762.92
June	4,476.16	5,034.73	5,762.86	5,297.05	5,569.27
Total	61,099.56	64,185.65	71,072.33	69,525.25	68,405.08

EXHIBIT E—*Statement of gross cash receipts, business executed, number of registrations, etc., for 15 fiscal years, etc.*—Continued

GROSS RECEIPTS—Continued

Month	1902–3	1903–4	1904–5	1905–6	1906–7
July	$5,429.52	$5,380.97	$5,540.30	$5,779.98	$6,469.68
August	4,504.56	4,958.30	5,770.70	6,071.25	5,601.93
September	5,539.67	5,658.48	6,849.35	6,405.60	6,137.15
October	5,651.16	6,323.42	6,704.89	6,789.36	6,786.13
November	5,646.93	5,303.93	6,056.79	6,310.94	6,920.64
December	8,005.75	8,581.60	7,699.47	7,981.03	7,856.74
January	8,053.81	7,502.53	8,946.60	9,321.94	10,992.30
February	5,360.48	6,185.14	6,029.62	6,259.18	6,318.95
March	6,119.54	6,367.73	7,311.90	6,965.43	7,662.29
April	6,005.89	5,996.58	6,806.66	6,954.68	7,524.81
May	5,395.02	6,540.88	6,531.99	6,814.08	8,173.59
June	5,821.58	6,303.27	6,192.29	6,957.45	6,940.10
Total	71,533.91	75,302.83	80,440.56	82,610.92	87,384.31

Month	1907–8	1908–9	1909–10	1910–11	1911–12
July	$6,772.43	$6,498.83	$8,244.05	$7,660.44	$8,831.36
August	7,179.19	6,193.68	8,451.80	7,425.97	8,687.42
September	6,605.38	6,606.26	9,032.45	8,800.67	9,256.83
October	7,343.10	7,306.88	9,635.19	9,288.51	10,579.96
November	6,327.06	6,546.78	9,166.19	8,636.00	9,328.47
December	7,386.04	7,873.33	11,504.01	11,907.32	11,721.86
January	9,260.75	10,192.88	12,198.02	13,564.79	13,655.73
February	6,558.38	7,303.02	8,450.90	9,096.69	10,204.08
March	7,048.94	7,894.60	9,912.31	9,984.89	9,869.01
April	7,460.41	7,360.88	9,185.51	9,122.67	10,007.36
May	6,334.10	6,522.35	8,410.45	9,036.88	9,134.76
June	6,766.25	6,786.04	9,471.95	9,136.69	8,872.67
Total	85,042.03	87,085.53	113,662.83	113,661.52	120,149.51

EXHIBIT E—*Statement of gross cash receipts, business executed, number of registrations, etc., for 15 fiscal years, etc.*—Continued

BUSINESS EXECUTED

Month	1897–98	1898–99	1899–1900	1900–1901	1901–2
July	$3,769.00	$4,724.50	$4,789.50	$5,115.00	$4,886.50
August	4,296.00	4,266.50	4,709.50	5,404.50	4,837.50
September	4,559.50	4,537.50	5,357.50	4,738.00	4,828.00
October	4,899.00	4,744.00	5,317.00	5,494.50	5,175.50
November	4,062.00	4,269.50	4,810.50	4,500.50	4,360.00
December	5,262.00	5,088.50	5,183.00	6,339.00	6,176.50
January	6,224.50	6,192.50	8,000.50	6,410.50	7,765.00
February	4,204.00	4,505.50	5,032.50	4,546.50	4,629.00
March	4,865.00	5,312.50	5,871.50	5,416.50	5,473.50
April	4,835.50	4,899.00	5,535.50	5,653.50	5,271.50
May	4,610.50	5,076.00	5,229.50	5,045.50	5,808.00
June	4,339.50	4,651.00	5,369.50	5,023.50	5,475.00
Total	55,926.50	58,267.00	65,206.00	63,687.50	64,687.00

Month	1902–3	1903–4	1904–5	1905–6	1906–7
July	$4,781.00	$5,001.00	$5,553.50	$5,520.50	$6,350.00
August	4,599.00	5,043.50	5,707.50	5,734.50	5,584.50
September	5,388.50	5,406.00	6,431.50	6,171.50	5,559.00
October	5,492.50	5,945.50	6,873.00	6,752.00	6,865.50
November	5,242.00	5,250.50	5,653.00	5,802.00	6,420.50
December	7,228.50	7,441.00	6,760.00	7,458.00	7,863.50
January	8,107.00	8,120.50	9,432.50	9,719.00	10,590.00
February	5,159.00	6,001.50	5,544.50	6,076.50	6,190.00
March	5,993.00	6,146.50	7,266.00	6,777.50	7,399.50
April	6,025.00	5,953.50	6,635.00	6,610.00	7,145.50
May	5,074.50	6,160.00	6,014.50	7,020.50	7,883.50
June	5,784.50	6,159.50	6,187.00	6,556.00	6,833.50
Total	68,874.50	72,629.00	78,058.00	80,198.00	84,685.00

Month	1907–8	1908–9	1909–10	1910–11	1911–12
July	$6,509.00	$6,200.50	$4,975.90	$7,069.70	$7,301.80
August	6,820.00	5,875.00	7,707.90	6,831.65	8,377.80
September	6,682.00	6,408.50	8,523.10	9,050.40	10,796.65
October	6,819.00	7,188.50	9,067.50	9,293.85	10,959.20
November	6,181.00	6,227.50	9,584.90	8,852.35	8,852.50
December	6,889.00	7,657.75	10,066.40	9,897.35	9,698.85
January	9,247.50	10,206.00	9,044.90	10,441.80	11,214.30
February	6,203.50	6,693.50	8,138.80	10,093.60	9,502.25
March	6,885.00	7,772.50	10,146.85	9,665.65	11,237.30
April	7,189.50	6,852.50	9,449.70	9,476.50	9,756.00
May	6,186.00	6,525.50	8,267.45	8,778.85	9,595.30
June	6,776.00	6,209.00	9,671.55	10,462.25	9,393.10
Total	82,387.50	83,816.75	104,644.95	109,913.95	116,685.05

EXHIBIT E—*Statement of gross cash receipts, business executed, number of registrations, etc., for 15 fiscal years, etc.*—Continued

NUMBER OF REGISTRATIONS

Month	1897–98	1898–99	1899–1900	1900–1901	1901–2	1902–3	1903–4
July	5,015	5,653	6,835	7,514	7,010	6,748	7,107
August	5,618	6,005	6,525	7,822	6,776	6,451	7,147
September	6,106	6,188	7,571	6,685	6,684	7,132	7,605
October	6,368	6,316	7,627	7,901	7,305	7,771	8,289
November	5,288	5,682	6,814	6,210	5,909	7,397	7,352
December	7,408	7,288	7,284	9,693	9,190	10,792	10,248
January	9,220	9,556	12,808	9,871	12,241	12,808	12,546
February	5,514	6,552	7,521	6,421	6,333	7,144	8,519
March	6,350	7,417	8,311	7,755	7,757	8,663	8,657
April	6,494	6,834	8,089	8,062	7,527	7,839	8,412
May	6,222	6,888	7,588	6,974	8,325	6,907	8,546
June	5,942	6,589	7,905	7,443	7,921	8,327	8,702
Total	75,545	80,968	94,798	92,351	92,978	97,979	103,130

Month	1904–5	1905–6	1906–7	1907–8	1908–9	1909–10	1910–11	1911–12
July	7,778	8,241	9,023	9,594	8,985	5,106	7,465	7,681
August	8,059	8,337	8,142	10,004	8,190	8,124	7,262	8,957
September	8,487	9,001	7,792	9,281	9,040	8,941	9,514	11,155
October	9,326	9,778	9,682	9,652	10,098	9,672	9,806	11,493
November	8,109	8,317	9,374	8,804	8,820	9,969	9,232	9,086
December	9,436	10,936	11,557	10,163	11,009	10,527	10,388	9,925
January	15,116	15,358	16,841	14,615	16,079	9,519	11,096	11,591
February	7,939	8,639	8,991	8,863	9,301	8,414	10,476	10,077
March	10,879	9,628	10,750	9,999	11,005	10,481	9,948	11,456
April	10,066	9,402	10,422	10,316	9,612	9,808	9,916	10,146
May	8,845	10,411	11,317	8,616	9,076	8,532	9,229	9,871
June	9,334	9,656	9,938	9,838	8,916	9,981	10,866	9,493
Total	113,374	117,704	123,829	119,742	120,131	109,074	115,198	120,931

EXHIBIT E—*Statement of gross cash receipts, business executed, number of registrations, etc., for 15 fiscal years, etc.*—Continued

COMPARATIVE STATEMENT OF GROSS RECEIPTS, YEARLY FEES, AND NUMBER OF REGISTRATIONS

Year	Gross receipts	Increase	Decrease
1897–98	$61,099.56	.....	.....
1898–99	64,185.65	$3,086.09	.....
1899–1900	71,072.33	6,886.68	.....
1900–1901	69,525.25	.....	$1,547.08
1901–2	68,405.08	.....	1,120.17
1902–3	71,533.91	3,128.83	.....
1903–4	75,302.83	3,768.92	.....
1904–5	80,440.56	5,137.73	.....
1905–6	82,610.92	2,170.36	.....
1906–7	87,384.31	4,773.39	.....
1907–8	85,042.03	.....	2,342.28
1908–9	87,085.53	2,043.50	.....
1909–10	113,662.83	26,577.30	.....
1910–11	113,661.52	.....	1.31
1911–12	120,149.51	6,487.99	.....
Total	1,251,161.82	.....	.....

Year	Yearly fees	Increase	Decrease
1897–98	$55,926.50	.....	.....
1898–99	58,267.00	$2,340.50	.....
1899–1900	65,206.00	6,939.00	.....
1900–1901	63,687.50	.....	$1,518.50
1901–2	64,687.00	999.50	.....
1902–3	68,874.50	4,187.50	.....
1903–4	72,629.00	3,754.50	.....
1904–5	78,058.00	5,429.00	.....
1905–6	80,198.00	2,140.00	.....
1906–7	84,685.00	4,487.00	.....
1907–8	82,387.50	.....	2,297.50
1908–9	83,816.75	1,429.25	.....
1909–10	104,644.95	20,828.20	.....
1910–11	109,913.95	5,269.00	.....
1911–12	116,685.05	6,771.10	.....
Total	1,189,666.70	.....	.....

EXHIBIT E—*Statement of gross cash receipts, business executed, number of registrations, etc., for 15 fiscal years, etc.*—Continued

COMPARATIVE STATEMENT OF GROSS RECEIPTS, YEARLY FEES, AND NUMBER OF REGISTRATIONS—Continued

Year	Number of registrations	Increase	Decrease
1897–98	75,545	.....	.....
1898–99	80,968	5,423	.....
1899–1900	94,798	13,830	.....
1900–1901	92,351	.....	2,447
1901–2	92,978	627	.....
1902–3	97,979	5,001	.....
1903–4	103,130	5,151	.....
1904–5	113,374	10,244	.....
1905–6	117,704	4,330	.....
1906–7	123,829	6,125	.....
1907–8	119,742	.....	4,087
1908–9	120,131	389	.....
1909–10	109,074	.....	11,057
1910–11	115,198	6,124	.....
1911–12	120,931	5,733	.....
Total	1,577,732	.....	.....

EXHIBIT F—*Table of registrations made during fiscal years 1901–2, 1902–3, 1903–4, 1904–5, 1905–6, 1906–7, 1907–8, 1908–9, 1909–10, 1910–11, and 1911–12, arranged by classes*

	1901–2	1902–3	1903–4	1904–5
Class A. Books:				
(*a*) Books (vols.) and pamphlets	8,399	10,589	15,870	16,037
(*b*) Booklets, leaflets, circulars, cards	9,174	7,827	3,361	3,366
(*c*) Newspaper and magazine articles	6,699	8,050	8,593	10,457
Total	24,272	26,466	27,824	29,860
Class B. Periodicals (numbers)	21,071	22,625	21,496	22,591
Class C. Musical compositions	19,706	21,161	23,110	24,595
Class D. Dramatic compositions	1,448	1,608	1,571	1,645
Class E. Maps and charts	1,708	1,792	1,767	1,831
Class F. Engravings, cuts, and prints	5,999	5,546	6,510	11,303
Class G. Chromos and lithographs	2,010	2,232	2,384	2,581
Class H. Photographs	13,923	13,519	14,534	15,139
Class I. Fine arts: Paintings, drawings, and sculpture	2,841	3,030	3,934	3,829
Grand total	92,978	97,979	103,130	113,374

EXHIBIT F—*Table of registrations made during fiscal years 1901–2, 1902–3, 1903–4, 1904–5, 1905–6, 1906–7, 1907–8, 1908–9, 1909–10, 1910–11, and 1911–12, arranged by classes*—Continued

	1905–6	1906–7	1907–8	1908–9
Class A. Books:				
(*a*) Books (vols.) and pamphlets	15,504	16,651	.....	.....
(*b*) Booklets, leaflets, circulars, cards	4,567	5,195	.....	.....
(*c*) Newspaper and magazine articles	9,190	9,033	.....	.....
Total	29,261	30,879	30,191	32,533
Class B. Periodicals (numbers)	23,163	23,078	22,409	21,195
Class C. Musical compositions	26,435	31,401	28,427	26,306
Class D. Dramatic compositions	1,879	2,114	2,382	2,937
Class E. Maps and charts	1,672	1,578	2,150	1,949
Class F. Engravings, cuts, and prints	10,946	12,350	10,863	11,474
Class G. Chromos and lithographs	3,471	2,733	2,734	2,899
Class H. Photographs	17,269	15,836	16,704	16,764
Class I. Fine arts: Paintings, drawings, and sculpture	3,608	3,860	3,882	4,074
Grand total	117,704	123,829	119,742	120,131

	1909–10	1910–11	1911–12
Class A. Books (including pamphlets, leaflets, and contributions to periodicals):			
(*a*) Printed in the United States	23,115	24,840	26,540
(*b*) Printed abroad in a foreign language	1,351	1,707	2,294
(*c*) English books registered for ad interim copyright	274	423	452
Total	24,740	26,970	29,286
Class B. Periodicals (numbers)	21,608	23,393	22,580
Class C. Lectures, sermons, addresses	117	102	106
Class D. Dramatic or dramatico-musical compositions	3,911	3,415	3,767
Class E. Musical compositions	24,345	25,525	26,777
Class F. Maps	2,622	2,318	2,158
Class G Works of art; models or designs	4,383	3,355	3,224
Class H. Reproductions of works of art	751	222	47
Class I. Drawings or plastic works of a scientific or technical character	317	232	500
Class J. Photographs	13,348	14,469	13,498
Class K. Prints and pictorial illustrations	11,925	14,269	17,639
Renewals	1,007	928	1,349
Total	109,074	115,198	120,931

EXHIBIT G—*Table of articles deposited during 12 fiscal years, 1897–98, 1898–99, 1899–1900, 1900–1901, 1901–2, 1902–3, 1903–4, 1904–5, 1905–6, 1906–7, 1907–8, 1908–9*

	1897–98	1898–99	1899–1900	1900–1901	1901–2
1. Books:					
(*a*) Books proper	5,575	5,834	6,550	7,746	7,027
(*b*) Volumes, circulars, leaflets, etc.	4,698	4,196	5,073	5,770	6,259
(*c*) Newspaper and magazine articles	3,262	5,185	8,851	9,010	5,577
2. Dramatic compositions	391	507	561	634	815
3. Periodicals (numbers)	13,726	9,777	14,147	17,702	19,573
4. Musical compositions	17,217	19,976	16,505	16,709	21,295
5. Maps and charts	1,296	1,478	1,353	1,718	1,566
6. Engravings, cuts, and prints	2,912	3,505	3,503	5,687	5,636
7. Chromos and lithographs	747	1,050	1,257	1,817	1,757
8. Photographs	5,777	7,695	12,115	13,064	13,884
9a. Miscellaneous (unclassified articles)	375	14	.....	.....	.....
	55,976	59,217	69,915	79,857	83,389
Two copies of each article were received	111,952	118,434	139,830	159,714	166,778
9. Photographs with titles of works of art for identification, one copy each	853	1,709	1,614	2,569	2,948
Grand total	112,805	120,143	141,444	162,283	169,726

	1902–3	1903–4	1904–5	1905–6
1. Books:				
(*a*) Books proper	9,222	12,967	13,389	12,893
(*b*) Volumes, circulars, leaflets, etc.	5,255	3,084	2,910	3,602
(*c*) Newspaper and magazine articles	7,097	7,883	9,081	7,833
2. Dramatic compositions	986	1,098	1,224	1,380
3. Periodicals (numbers)	21,498	20,320	23,457	22,116
4. Musical compositions	19,801	21,203	22,984	24,801
5. Maps and charts	1,801	1,547	1,817	1,708
6. Engravings, cuts, and prints	5,830	5,938	10,460	10,239
7. Chromos and lithographs	2,006	2,167	2,443	3,039
8. Photographs	13,790	14,258	13,954	16,210
	87,286	90,465	101,719	103,821
Two copies of each article were received	174,572	180,930	203,438	207,642
9. Photographs with titles of works of art for identification, one copy each	2,947	3,869	3,986	3,496
Grand total	177,519	184,799	207,424	211,138

EXHIBIT G—*Table of articles deposited during 12 fiscal years, 1897–98, 1898–99, 1899–1900, 1900–1901, 1901–2, 1902–3, 1903–4, 1904–5, 1905–6, 1906–7, 1907–8, 1908–9*—Continued

	1906–7	1907–8	1908–9	Total
1. Books:				
(*a*) Books proper	12,992			
(*b*) Volumes, circulars, leaflets, etc.	5,340	25,363	27,425	265,352
(*c*) Newspaper and magazine articles	8,403			
2. Dramatic compositions	1,568	1,904	2,226	13,294
3. Periodicals (numbers)	23,554	21,378	22,288	229,536
4. Musical compositions	27,308	27,673	23,969	259,441
5. Maps and charts	1,572	2,082	1,848	19,786
6. Engravings, cuts, and prints	11,233	11,125	10,137	86,205
7. Chromos and lithographs	2,589	2,682	2,802	24,356
8. Photographs	16,672	16,306	15,650	159,375
9a. Miscellaneous (unclassified articles)	.....	.....	.....	389
	111,231	108,513	106,345	1,057,734
Two copies of each article were received	222,462	217,026	212,690	2,115,468
Foreign books received under Act of Mar. 3, 1905	585	796	1,146	2,527
9. Photographs with titles of works of art for identification, one copy each	4,000	3,900	4,033	35,924
Grand total	227,047	221,722	217,869	2,153,919

EXHIBIT G—*Table of articles deposited during 1909–10, 1910–11, and 1911–12, with total deposits in each class for 15 fiscal years, 1897–98, 1898–99, 1899–1900, 1900–1901, 1901–2, 1902–3, 1903–4, 1904–5, 1905–6, 1906–7, 1907–8, 1908–9, 1909–10, 1910–11, and 1911–12*

	1909–10	1910–11	1911–12	Total
1. Books:				
(*a*) Printed in the United States:				
Volumes	15,682	17,997	19,650	
Pamphlets, leaflets, etc.	30,150	21,565	23,344	
Contributions to newspapers and periodicals		5,709	5,705	
	45,832	45,271	48,699	
(*b*) Printed abroad in a foreign language	2,920	3,181	4,606	
English works registered for ad interim copyright	275	635	643	
	49,027	49,087	53,948	682,766
2. Periodicals	49,156	46,780	45,172	600,180
3. Lectures, sermons, etc.	117	102	107	326
4. Dramatic or dramatico-musical compositions	5,554	4,165	4,800	41,107
5. Musical compositions	54,426	50,225	52,167	675,700
6. Maps	5,244	4,648	4,344	53,808
7. Works of art; models or designs	4,383	3,365	3,223	46,895
8. Reproductions of works of art	1,502	456	40	1,998
8a. Chromos and lithographs	.....	.....	.....	48,712
9. Drawings or plastic works of a scientific or technical character	317	237	609	1,163
10. Photographs	27,796	25,083	25,802	397,431
11. Prints and pictorial illustrations	21,502	25,079	29,309	248,300
12. Miscellaneous (unclassified articles)	.....	.....	.....	778
13. Foreign books received under act of Mar. 3, 1905	.....	.....	.....	2,527
Total	219,024	209,227	219,521	2,801,691

Addenda to the Report of the Register of Copyrights, 1911–12

CONTENTS

68742—12——3

Addendum 1

COPYRIGHT BILLS AND REPORTS

[H. R. 14668. In the House of Representatives. December 6, 1911.]

Mr. STEPHENS of Texas introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

House bill No. 14668

A BILL Requiring any citizen of a foreign country who may procure a copyright or letters patent from the United States to pay to the United States for such copyright or patent the same amount of fees and to subject himself to the same laws, rules, and regulations relating to such patent, its use and control, as the Government of such foreign country exacts by its laws and regulations from citizens of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) whenever any letters patent are issued by the United States on any article, commodity,

compound, device, mechanical appliance, or machine protected by patent, or (b) any copyright issued by the United States on any article, musical composition, musical instrument, or device for reproducing music or musical composition, or any picture, book, pamphlet, or any other work of literature or art protected by copyright, to any citizen of any foreign country, then such patentee or copyright grantee shall pay to the United States the same amount of fees and subject himself to the identical laws, restrictions, rules, and regulations as such foreign country imposes upon a citizen of the United States for patenting or manufacturing and selling the patented article therein; and the failure on the part of the foreign patentee to comply with this law shall operate as a forfeiture and cancellation of such letters patent or copyright in the manner hereinafter provided: *Provided*, That citizens of any foreign country having no patent laws, or having patent laws that do not permit patents to issue to citizens of this country, shall not be entitled to patents in the United States.

SEC. 2. That the Secretary of the Interior is hereby authorized and empowered to make and carry into effect all such rules and regulations as he may deem necessary to enforce the provisions of this act.

SEC. 3. That (*a*) whenever any letters patent issued by the United States to any citizen of any foreign country on any article, commodity, compound, device, mechanical appliance, or machine protected by patent, or (*b*) any copyright issued by the United States to any citizen of a foreign country on any article, musical composition, musical instrument, or device for reproducing music or musical composition, or any picture, book, pamphlet, or any other work of literature or art protected by copyright is purchased from the foreign patentee or leased, used, or controlled by any individual citizen of a foreign country or by a domestic firm, association, syndicate, corporation, or combination which is engaged in any vocation, business, or enterprise in violation of any law of Congress or of any State prohibiting, restraining, or regulating trusts, monopolies, or combinations which operate in restraint of trade or commerce among the several States or with foreign nations, the right to any protection under the patent or copyright laws of the United States shall cease and terminate and shall subject such patent or copyright to cancellation in the manner hereinafter provided.

SEC. 4. That any citizen of the United States, or any United States district attorney for any district of the United States may institute or cause to be instituted suits in law or in equity for the cancellation of any copyright or letters patent mentioned in this act, when the facts shall warrant such suit or suits as provided in this act, in any circuit court of the United States where the foreign patentee may reside or transact business, or where the patent or copyright referred to in section one of this act is owned, leased, used, or controlled, or the articles or products referred to in section three are manufactured, used, produced, or sold in violation of this act; and said court is hereby given full jurisdiction to try and render judgment in all such cases under this act.

[H. R. 15263. In the House of Representatives. December 9, 1911.]

Mr. TOWNSEND introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

A BILL To amend section twenty-five of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine. *House bill No. 15263*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (b), section twenty-five, of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"(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, except as hereinafter provided, 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 a 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: *Provided*, That in the case of an infringement of a dramatic or dramatico-musical composition through or by means of motion pictures, talking machines, phonographs, or other mechanical devices, or combinations thereof, where, in the judgment of the court, the infringement could not reasonably have been foreseen, the recovery by the copyright proprietor shall not exceed the sum of one hundred dollars."

[H. R. 20596. In the House of Representatives. February 21, 1912.]

Mr. TOWNSEND introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

House bill No. 20596

A BILL To amend section twenty-five of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-five of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read 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.

"(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 a 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: *Provided*, That in the case of infringement of a dramatic or dramatico-musical composition, or of a work adaptable for dramatization or portrayal or exhibition through or by means of motion pictures, talking machines, phonographs, or other mechanical devices or combinations thereof, where the defendant proves that he was not aware that he was infringing a copyrighted work and could not reasonably have foreseen that he was so infringing, the entire recovery by the

copyright proprietor shall not exceed the sum of one hundred dollars; but this shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall it apply to infringements occurring after actual notice to a defendant either by service of process in a suit or other written notice served upon him.

"Nor shall it apply to infringements of dramatic or dramatico-musical compositions actually and for profit being produced upon the stage in the United States at the time of such infringement.

"(c) To deliver, upon 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, upon 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;

"(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.

"Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Coust of the United States."

[H. R. 21295. In the House of Representatives. March 4, 1912.]

Mr. MOON of Pennsylvania introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

House bill No. 21295

A BILL To amend sections five and eleven of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections five and eleven of the act entitled "An act to amend and consolidate the acts respecting

copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"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 or motion-picture photoplays;

"(e) Musical compositions;

"(f) Maps;

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

"(h) Reproductions of a work of art;

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

"(j) Photographs or motion pictures (other than photoplays); and

"(k) Prints and pictorial illustrations:

"*Provided*, 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."

"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 scenario or description thereof, with one photograph or print taken from each scene or act, in the case of a motion-picture photoplay; of a photographic print, if the work be a photograph; of a title and description thereof, with two or more photographs or prints taken from different sections of the complete motion picture, in the case of a motion picture other than a photoplay; or of a photograph or other identifying reproduction thereof, if it be a work of art or a plastic work of 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."

[H. R. 22350. In the House of Representatives. March 26, 1912.]

Mr. TOWNSEND introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

House bill No. 22350

A BILL To amend sections five, eleven, and twenty-five of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections five, eleven, and twenty-five of the act entitled "An act to amend and consolidate the

acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"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 cyclopedic works, directories, gazetteers, and other compilations;

"(b) Periodicals, including newspapers;

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

"(d) Dramatic or dramatico-musical compositions (not to include mere scenarios);

"(e) Musical compositions;

"(f) Maps;

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

"(l) Motion-picture photoplays;

"(m) Motion pictures other than photoplays:

"*Provided*, 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."

"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 dramatic or dramatico-musical composition; of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay; of a photographic print, if the work be a photograph; of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay; 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 a 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."

"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.

"(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 here-

inafter stated; but in case of a newspaper reproduction of a copyrighted photograph, such damages shall not exceed the sum of two hundred dollars and [be] not less than the sum of fifty dollars, and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars nor be less than the sum of fifty dollars; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and 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. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him:

"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 a 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.

"(*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.

"(*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 manu-

facture, 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.

"Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States."

[H. R. 22356. In the House of Representatives. March 26, 1912.]

Mr. MORRISON introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

House Bill No. 22356

A BILL To amend section fifty-five of "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-five of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"SEC. 55. That in the case of each entry the person recorded as the proprietor of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain the name and address of the copyright proprietor, the name of the country of which the author of the work is a citizen or subject, or if domiciled in the United States at the time of the registration of his work, then a statement of that fact, the title of the work which is registered for copyright, 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 as above provided for in the case of all registrations made after this

act goes into effect, and in the case of all previous registrations so far as the copyright office record books shall show such facts, 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. The said certificate shall be admitted in any court as prima facie evidence of copyright and 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."

[H. R. 22586. In the House of Representatives. March 29, 1912.]

Mr. MORRISON introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

House bill No. 22586

A BILL To amend section fifty-five of "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-five of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"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 the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, or if domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the title of the work which is registered for 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 as above provided for in the case of all registrations made after this act goes into effect, and in the case of all previous registrations so far as the copyright office record books shall show such facts, 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. 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."

[H. R. 23416. In the House of Representatives. April 16, 1912.]

Mr. MORRISON introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

A BILL To amend section fifty-five of "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine. *House bill No. 23416*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-five of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"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 the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, or, if domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall show the same), the title of the work which is registered for 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 as above provided for in the case of all registrations made after this act goes into effect, and in the case of all previous registrations so far as the copyright office record books shall show such facts, 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. 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."

[H. R. 23568. In the House of Representatives. April 20, 1912.]

Mr. MORRISON introduced the following bill; which was referred to the Committee on Patents and ordered to be printed:

A BILL To amend section fifty-five of "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine. *House bill No. 23568*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-five of the act entitled "An act to amend and consolidate the acts respecting copy-

right," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"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 the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall show the same), the title of the work which is registered for which copyright is claimed, the date of the deposit of the copies of such work, the date of publication if the work has been published, 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 as above provided for in the case of all registrations made after this act goes into effect, and in the case of all previous registrations so far as the copyright office record books shall show such facts, 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. 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."

[House report No. 847. Sixty-second Congress, second session.]

AMENDMENT OF LAWS RELATING TO COPYRIGHTS

[JUNE 6, 1912.—Referred to the House Calendar and ordered to be printed.]

House report No. 847

Mr. OLDFIELD, from the Committee on Patents, submitted the following report (to accompany H. R. 23568):

The Committee on Patents, to which was referred the bill (H. R. 23568) to amend section 55 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, having had the same under consideration, beg to report it back to the House with certain amendments and with the recommendation that the amendments be agreed to and that the bill as amended do pass.

Section 55 of the copyright act relates to the certificate of copyright to be issued by the Copyright Office under the registration of works in that office. The copyright claimant, the person who seeks to dispute a claimant's right to a copyright, and any other individual who pays the fee of 50 cents prescribed by law, is entitled to the certificate and the facts it contains. The present certificate does not afford the holder all the facts necessary to show whether or not the claimant was

entitled to register his claim of copyright, nor does it show all facts and acts essential to copyright. All of this is, of course, of record in the office of the register of copyrights, and can be shown by making the copyright certificate a more complete transcript of the records in the register's office. This is done by the bill, by reenacting section 55, with the further provision that the certificate shall also contain "the name of the country of which the author of the work is a citizen or subject, and, when an alien author domiciled in the United States at the time of registration, then a statement of that fact, including his place of domicile, the name of the author (when the records shall so show), and the date of publication if the work has been reproduced in copies for sale or publicly distributed." The name of the author can not always be specified, as some works are published anonymously or pseudonymously.

Each of the additional facts to be inserted in the certificate are matters of record in the register's office and are essential if the certificate is to convey to the holder all the material facts. Without these facts, the holder of a certificate can neither ascertain or prove whether or not the claimant is entitled to copyright, nor is he informed as to the basis for any copyright claim asserted. For example, under the present certificate, neither the name nor the citizenship of the author is shown, yet, the right of registration hangs wholly upon whether or not the author is a citizen of the United States or of a country having a reciprocal treaty with the United States. The purpose of the bill is to show that the copyright certificate shall show all the facts.

The only change in the form or wording of the bill as originally introduced, and as reintroduced and hereby reported, is the addition, in line 13, page 2, after the word "out," the words "in each case"; and by striking out the word "published" in line 6, page 2, and inserting in lieu thereof the words "reproduced in copies for sale, or publicly distributed." This substitution is necessary, not only to follow the wording of the general bill, but to prevent any misconception of the meaning of the word "published" and of the word "publication" as used in other sections of the copyright act.

The existing copyright law provides for two separate and distinct methods of copyright for the two different classes of copyrightable works; one, under section 9, which applies to works reproduced in copies for sale, and the other, under section 11, which relates to works, such as dramas and operas which are merely to be performed, lectures and sermons to be delivered only, and the like, and none of which is intended for printing and selling, nor are any of them to be reproduced in copies for sale.

Copyright in each class is obtained by legal "publications," but the publication, under each class, is by a different method.

Under section 9, copyright is obtained by reproducing the work "with notice of copyright required by this act affixed to each copy published or offered for sale, or publicly distributed." No act in connection with the Copyright Office is necessary to secure this copyright. The copyright vests in the copyright owner upon his reproducing and

offering for sale the work with proper notice of copyright attached. The copyright owner is merely required to register his work in the Copyright Office when he desires to obtain a right to the remedies afforded by the copyright act. He does not lose his copyright by any failure to register and his copyright runs from the date of the first publication which may be, and frequently is, on a day long prior to the date of registration.

Copyright under section 11 is obtained by filing in the Copyright Office, with claim of copyright, one complete copy of the work not reproduced and published for sale. By this filing the copyright claimant parts with all control of the copy so filed, which copy, by section 58 of the copyright act, is made subject to inspection, examination, and reading by the general public. In effect, by this registration, the copy becomes a public document subject to inspection at will by the general public and it thereby, in the intent of the copyright law, is "published."

Both classes, therefore, secure copyright from the date of first publication, and consequently protection for exactly the same length of time. The publication in the case of works filed under section 11, being upon the date on which the work is registered, and under section 9, the day on which the work is first reproduced and copied for sale or offered for sale, the publication, in which latter case, must be at a time prior to registration.

As the publication under section 9 always precedes registration, it is intended under the bill that such date should be specified in the copyright certificate as well as the date of publication. Hence, the provision that the certificate should contain "the date of publication if the work has been reproduced in copies for sale, or publicly distributed."

As to the amendment of the bill in the addition of the words "in each case" after the word "out," in line 13, page 2, this insertion was made in order that the exact wording of section 55 might be followed.

There has been no opposition to the bill. It has been called up on two occasions following hearings upon other bills, when conflicting interests appeared; however, all such parties appearing before this committee have uniformly urged the passage of the bill in its present form.

The bill has the indorsement of the Librarian of Congress, and has also the indorsement of the register of copyrights.

[House report No. 756. Sixty-second Congress, second session.]

STATUTE IN RELATION TO COPYRIGHTS

[MAY 24, 1912.—Referred to the House Calendar and ordered to be printed.]

House report No. 756

Mr. MORRISON, from the Committee on Patents, submitted the following report (to accompany H. R. 24224):

The Committee on Patents, to which was referred the bill (H. R. 24224) to amend sections 5, 11, and 25 of an act entitled "An act to

amend and consolidate the acts respecting copyright," approved March 4, 1909, submit the following report:

Section 5 of said act provides that the application for registration shall specify to which of the classes named therein the work in which copyright is claimed belongs. The section as proposed in H. R. 24224 is an exact reenactment of the original section, with two classes of works added thereto, as follows:

(*l*) Motion-picture photoplays.

(*m*) Motion pictures other than photoplays.

The occasion for this proposed amendment is the fact that the production of motion-picture photoplays and motion pictures other than photoplays has become a business of vast proportions. The money invested therein is so great and the property rights so valuable that the committee is of the opinion that the copyright law ought to be so amended as to give them distinct and definite recognition and protection. This it seeks to do, so far as section 5 is concerned, by adding the two new classes above set forth.

Section 11 of the copyright act provides for copyright of works, "of which copies are not reproduced for sale."

Section 11 as amended in H. R. 24224 is an exact reenactment of section 11 of the present law, with the additional language as hereinafter indicated. In line 24 on page 2 of the printed bill the words "dramatico-musical" have been added. The present section provides for "a dramatic or musical composition," but does not include a "dramatico-musical composition." They are included in section 5 of the present law in classification (*d*), but were omitted from section 11.

In section 5 dramatic and dramatico-musical compositions are included in one class, class (*d*), and musical compositions are placed in a separate class, class (*e*). It is evident that, in the attempt to combine them in a single provision in section 11, the words "dramatico-musical" were omitted by inadvertence. This amendment is necessary to make section 11 consistent with section 5 and to carry out the manifest intent of the framers of the present law.

In lines 24 and 25 on page 2 and line 1 of page 3 of the present bill these words are added: "of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay."

In lines 2 to 5 on page 3 of the printed bill these words are added: "of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay."

This language is necessary to enlarge section 11 so as to provide for the two new classes added to section 5, as above referred to. It serves no other purpose and is intended to have no other effect.

Section 25 of the present law provides the several remedies to which the copyright proprietor is entitled as against an infringer. Stated in general outline, but without strict accuracy, they are:

(*a*) An injunction restraining infringement.

(*b*) Recovery of damages and profits.

(*c*) Recovery of arbitrary or fixed sums, which it is declared shall not be regarded as a penalty, as follows:

First. In case of a painting, statue, or sculpture, $10 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 5 of the act, except a painting, statue, or sculpture, $1 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, $50 for every infringing delivery.

Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, $100 for the first and $50 for every subsequent infringing performance; in the case of other musical compositions, $10 for every infringing performance.

(*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 of making such infringing copies as the court may order.

(*e*) This subsection relates to the owners of musical copyrights whose copyrights are infringed by the unauthorized manufacture, use, or sale of mechanical appliances for use in mechanical music-producing machines. The proposed amendments do not affect this subsection.

Section 25 as proposed in H. R. 24224 is a reenactment of the whole of the present section 25, with additional provisions as hereinafter set forth.

At page 4 of the printed bill, lines 2 to 19, the following language is added:

"And in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars nor be less than the sum of fifty dollars; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and fifty dollars."

Beginning at line 22 on page 4 of the printed bill and ending with line 2 on page 5, the following new provision is inserted, to wit:

"But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the

limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him."

It will be noticed that the proposed amendments leave all remedies, except one, as they now are. The unaffected remedies still open to all copyright proprietors as under the present law are injunction, damages, profits, impoundage pedente lite of articles alleged to infringe copyright, destruction of copies or devices, as well as all plates, molds, matrices, or other means of making infringing copies.

The special remedy for infringement of musical copyright by music-producing machines is also left intact.

The proposed amendments relate only to the recovery of fixed sums of money (not to be regarded as penalty) on account of infringements "by means of motion pictures where the infringer shall show that he was not aware that he was infringing and that such infringement could not have been reasonably foreseen."

All the other remedies remain against infringers by motion pictures in all cases, and the right to recover fixed amounts in money remains as against all infringers in all cases not expressly excluded by the amendment.

This fact is made clear by the provision in line 22, page 4, to line 2, page 5. This provision also limits the benefit of the new provisions to the time prior to service of process or other written notice on the infringer at the instance of the copyright proprietor.

The new limitation is to the right to recover fixed or arbitrary sums of money in lieu of damages or profits. The arbitrary sums fixed by the statute are "one hundred dollars for the first and fifty dollars for every subsequent infringing performance."

As relates to "undramatized or nondramatic works," the new limitation is a sum not less than $50 and not more than $100. As relates to a "dramatic or dramatico-musical work," the new limitation is a sum not less than $250 nor more than $5,000.

It is believed that the new limitations will remove from the makers of motion-picture films a hazard that imperils them daily with possible bankruptcy, against which they can not by the exercise of reasonable diligence protect themselves, and that it will work no hardship or injustice to any copyright proprietor. Motion-picture films are sent out to many exhibitors and released to use by them all simultaneously. They may be exhibited several times each day by each exhibitor. In case of an inadvertent infringement, the amount of the arbitrary recovery may amount to an almost unlimited sum of money in a few days and before the infringement can be learned by the makers of the films.

The lower limitation is fixed for infringement of "undramatized and nondramatic works." The number of copyrights of works of this character is almost limitless, and, practically speaking, it is impossible for the makers of films to avoid the occasional purchase and production of a scenario that may be held in some of its scenes and situations to infringe some copyrighted undramatized or nondramatic work. It will not often occur that an infringement excusable under the law as proposed

will result in substantial damage to the proprietor of a copyright. As the law now stands, such proprietor might stand by and permit the right to recover the arbitrary amounts to reach a sum sufficient to bankrupt the innocent infringer, without notice or warning, and then demand full payment of such arbitrary amount. This would be true, even though no actual damage resulted from the infringement.

The higher limitation is fixed in the case of an infringement of "a copyrighted dramatic or dramatico-musical work."

In such cases the task of avoiding infringements is not so difficult, and the probability of substantial damage to the copyright proprietor is greater. The new limitation is a substantial sum and is believed to leave fair protection to the copyright proprietor while it furnishes substantial relief to the innocent infringer.

The new limitations do not operate as "compulsory license." They operate only in cases of innocent infringement. The protection terminates with notice, and thereafter the full arbitrary sums are recoverable. This fact and the great expense of making the films, the right of the copyright proprietor to recover actual damages and profits, and the right to impound and destroy all infringing articles and all devices used in their production are believed to be sufficient to induce the makers of films to continue to use all diligence to avoid any and all infringements.

For the reasons stated the committee believes that the bill should be passed without amendment.

[H. R. 24224. In the House of Representatives. May 7, 1912.]

Mr. TOWNSEND introduced the following bill; which was referred to the Committee on Patents and ordered to be printed, to accompany Report No. 756.

House bill No. 24224

A BILL To amend sections five, eleven, and twenty-five of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections five, eleven, and twenty-five of the act entitled "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"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 cyclopedic 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;

"(l) Motion-picture photoplays;

"(m) Motion pictures other than photoplays:

"*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."

"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, musical, *or dramatico-musical composition; of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay;* of a photographic print if the work be a photograph; *of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay;* 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."

"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;

"(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 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 in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars *nor be less than the sum of fifty dollars;* and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire

Omitted words *[See note, page 179]*

sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and 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. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

"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 a 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;

"(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.

"(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.

"Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States."

NOTE.—The above bill was amended in the House of Representatives on June 17, 1912, by striking our the words printed in italics; and, as thus amended, was enacted and was approved as law on August 24, 1912.

[H. R. 24925. In the House of Representatives. May 28, 1912.]

Mr. MOTT introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

A BILL To amend the copyright law passed March fourth, nineteen hundred and nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of the act of March fourth, nineteen hundred and nine, is hereby amended to read as follows:

"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;

"(l) Labels, trade-marks, firm names, and special designs, pictures, prints, wrappers, cartons, containers, and advertisements which are specifically created for individual trades, manufactures, or businesses, engraved, printed, colored, or produced in any manner whatsoever.

"*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."

SEC. 2. That section twenty-eight of the act of March fourth, nineteen hundred and nine, is hereby amended to read as follows:

"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, or shall knowingly and willfully make, sell, or have in possession any infringing copies of any work enumerated in section five 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."

Addendum II

DECISIONS OF THE COURTS OF THE UNITED STATES INVOLVING COPYRIGHTS[1]

DA PRATO STATUARY CO. *v.* GIULIANI STATUARY CO.

(Circuit Court, D. Minnesota, Third Division. May 19, 1911.)

Da Prato Statuary Co. v. Giuliani Statuary Co.

1. TRADE-MARKS AND TRADE NAMES (SEC. 95)—UNFAIR COMPETITION—TEMPORARY INJUNCTION.

A temporary injunction against the publication by defendant in its catalogue of pictures of statuary which it produces and sells for the decoration of churches and religious edifices which are exact copies of pictures in the catalogue of complainant, which is engaged in the same business, will not be granted on the ground of unfair competition.

2. COPYRIGHTS (SEC. 83)—INFRINGEMENT—INJUNCTION—EVIDENCE.

In a suit to enjoin the publication by defendant in its catalogue of copies of cuts copyrighted by complainant, evidence *held* to show that the cuts in defendant's catalogue were copied from those copyrighted by complainant.

3. COPYRIGHTS (SEC. 83)—INFRINGEMENT—INJUNCTION—EVIDENCE.

In a suit to enjoin the publication by defendant of cuts copyrighted by complainant, where it is proven that the defendant has copied one or more of the copyrighted cuts, a finding that the others as to which no explanation is made were also copied is supported by the evidence.

4. COPYRIGHTS (SEC. 9)—SUBJECT OF COPYRIGHTS—CUTS.

Cuts of statuary and other articles for the decoration of churches and other religious edifices in the catalogue of a firm engaged in producing and selling such articles are proper subjects of copyright.

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[1] The Federal Reporter decisions, copyrighted by the West Publishing Co., and the United States Reports, copyrighted by the Banks Law Publishing Co., are used by permission.

5. COPYRIGHT (SEC. 5)—SUBJECTS OF COPYRIGHTS—TRADE CATALOGUE.

A trade catalogue may be the subject of a copyright.

6. COPYRIGHTS (SEC. 38)—EXTENT OF RIGHTS ACQUIRED.

Under Copyright Act March 4, 1909, c. 320, sec. 3, 35 Stat., 1076 (U. S. Comp. St., Supp. 1909, p. 1290), providing that the copyright shall protect all the copyrightable component parts of the work "copyrighted," where complainant copyrighted its catalogue of statuary and other articles for the decoration of churches and other religious edifices, it was entitled to the protection of the copyright law as to each cut contained therein.

7. COPYRIGHTS (SEC. 85)—INJUNCTION—EXTENT OF INFRINGEMENT.

Where complainant's catalogue contained 2,813 cuts, and, of these, 18 which were legally copyrighted were reproduced in defendant's catalogue, which contained 393 cuts, this is sufficient to justify the granting of an injunction, but the injunction should be limited to the cuts that have been copied.

In equity. Bill by the Da Prato Statuary Co. against the Giuliani Statuary Co. On motion for temporary injunction. Granted.

This is a bill in equity brought by the complainant company of Chicago, a producer and seller of statuary and other articles for the decoration of churches and religious edifices. The bill alleges that complainant, for the furtherance of its business, at great expense and labor, prepared and issued a trade catalogue containing pictures and cuts of its various statuary and articles; that said catalogue was duly copyrighted, and that since the issuance thereof the defendant company, which is engaged in the same business at St Paul, Minn., prepared and issued a catalogue of its own, wherein, and without the permission of the complainant, it reproduced exact copies of many of the cuts contained in complainant's catalogue. The defendant avers that the statues shown in the cuts in complainant's catalogue are merely copies of statues which have been for years in existence in Europe; that they are not the subject of copyright; and, further, that complainant's catalogue itself is not a subject of copyright.

The evidence of complainant tended to show the following facts: That these statues can be produced only by the exercise of high artistic skill and care. For instance, a plaster of Paris statue is received from Europe, and, as a general rule, the modeling is artistically good, but the decoration is inferior. Such statues are therefore dismembered, the decoration removed, new casts made and joined together, making a statue without decoration. The modeling and reassembling require a high degree of skill, care, and accuracy. The points of juncture have to be very carefully filled so as to conceal the same. The statues are then redecorated and colored, all of which involves the employment of skilled artists and persons thoroughly well trained in the art. Also the illustrations can only be produced by the employment of photographers skilled in the art of properly modulating and diffusing the light, so as to show the article as it appears in reality.

Edward C. Stringer, McNeil V. Seymour, and Edward S. Stringer (Frank F. Reed and Edward S. Rogers, of counsel) for petitioner.

John E. Stryker for defendant.

WILLARD, district judge (after stating the facts as above):

[1] The motion of the complainant for a temporary injunction, so far as it is based upon the claim of unfair competition, is denied. It is

necessary, however, to consider whether such an injunction should be granted on the ground that the defendant has infringed the complainant's copyright.

[2] The complainant has offered evidence tending to show that 117 of the cuts contained in its catalogue have been copied in the defendant's catalogue; but no proof has been presented to show that any of these photographs so used by the defendant have been copyrighted by the complainant, except 18. The evidence shows that as to these 18 photographs or cuts the complainant has complied with the provisions of the law for the purpose of securing a copyright.

That cuts similar to these 18 cuts of the complainant appear in the defendant's catalogue is not disputed. Some attempt is made to explain the source from which the defendant derived its cuts. The affidavit of Giuliani and the affidavit of McCoy state that defendant's cut No. 372, which is like complainant's cut No. 2739, was made from a photograph sent from Italy. Gaul, the president of the complainant, in his second affidavit, states that this is impossible. An examination of the two cuts, in the light of what is said by Gaul in his affidavit, satisfies me beyond doubt that the defendant's cut 372 was made, not from a photograph taken in Italy, but was made from a photograph of complainant's cut 2739.

I am also satisfied that the same thing is true with reference to complainant's cut 2737, copied by the defendant's cut 373, and complainant's cut 2741, copied by defendant's cut 371. As to the defendant's No. 371, it is to be observed that Giuliani says that it was taken from a photograph sent from Italy, while McCoy says it was copied from a photograph sent to the defendant by the Vermont Marble Co.

The defendant does not apparently deny that its cut No. 187 is a copy of the complainant's cut 913, but it says that cut 913, together with cut 2737, had been previously published by the complainant in an uncopyrighted circular or art review. This the complainant denies, and the defendant has not produced any such art review which was not copyrighted.

The defendant further claims that complainant's cuts 346, 348, and 349 were published in a catalogue of Benziger Bros., of Cincinnati, without any reservation of copyright by the complainant. The defendant however, produces no copy of that catalogue. This it should have done. (List Pub. Co. *v.* Keller (C. C.), 30 Fed., 772.)

As to the other cuts included in the 18 above mentioned, no explanation is offered by the defendant.

[3] It having been proven that the defendant has copied one or more cuts, a finding that the others as to which no explanation is made were also copied is easily supported by the evidence. (Chapman *v.* Ferry (C. C.), 18 Fed., 539, 542; Lawrence *v.* Dana, 4 Cliff., 1; Fed. Cas. No. 8, 136.) It is therefore proven that the defendant has copied 18 of the cuts included in the complainant's copyrighted catalogue, which cuts had not before appeared in any uncopyrighted publication.

[4] The representations in the complainant's catalogue are proper subjects of copyright. (Burrow-Giles Lithographic Co. *v.* Sarony, 111 U. S., 53; 4 Sup. Ct., 279; 28 L. Ed., 349; Bleistein *v.* Donaldson Lithographing Co., 188 U. S., 239; 23 Sup. Ct., 298; 47 L. Ed., 460.)

[5] A trade catalogue may be the subject of a copyright. (Maple *v.* Junior Army & Navy Stores, Law Rep. 21, Chan. Div. 367 (1882).)

In the case of Lamb *v.* Grand Rapids School Furniture Co. (C. C.), 39 Fed., 474, and which was a case of a trade catalogue, and was cited by the defendant, it did not appear that the defendant's cuts were copied from the plaintiff's cuts, and the court assumed that defendant's cuts were made from photographs of its own stock.

In the case of J. L. Mott Iron Works *v.* Clow, 82 Fed., 316, 27 C. C. A., 250, it appeared that the particular illustration claimed to have been copied were those of a wash bowl, slop sink, bathtub, footbath, sponge holder, brush holder, and a robe hook. It was held that pictures of these objects were not proper subjects of copyright. But the objects there illustrated are very different from the objects illustrated in the catalogue in this case. All that was decided in the case of Baker *v.* Selden, 101 U. S., 99; 25 L. Ed., 841, cited by the defendant, was that a claim of exclusive property in a peculiar system of bookkeeping could not, under the law of copyright, be maintained by the author of a treatise in which that system is exhibited and explained.

[6] The complainant having copyrighted its entire catalogue was entitled to the protection of the copyright law as to each cut contained therein. (Copyright act March 4, 1909, c. 320, sec. 3, 35 Stat., 1076 (U. S. Comp. St. Supp., 1909, p. 1290); Dam *v.* Kirk La Shelle Co., 175 Fed., 902; 99 C. C. A., 392.)

[7] The complainant's catalogue contained 2,813 cuts; of these, 18 which were legally copyrighted were reproduced in defendant's catalogue which contained 393 cuts. Though the number thus reproduced is small, yet it is sufficient to justify the granting of an injunction. (Lawrence *v.* Dana, 4 Cliff., 1; Fed. Cas. No. 8, 136; Campbell *v.* Scott, 11 Simons, 30; Leslie *v.* Young & Sons, 6 Rep., 211; House of Lords (1894); West Publishing Co. *v.* Lawyers Co-operative Publishing Co. 79 Fed., 756; 25 C. C. A., 648; 35 L. R. A., 400.)

The injunction should, however, be limited to the 18 cuts that have been copied. (List Pub. Co. *v.* Keller (C. C.), 30 Fed., 771; Campbell *v.* Scott, 11 Simons, 30; Leslie *v.* Young & Sons, 6 Rep. 211, House of Lords (1894).)

Let an injunction issue, restraining the defendant, as prayed for in the bill, not as to its entire catalogue, but only as to the 18 cuts described on page 8 of the affidavit of Godfried J. Gaul, sworn to on April 20, 1911. In the last line of the affidavit, however, the number of the defendant's cut should be "371" instead of "381." The complainant will furnish a bond in the sum of $5,000.

[From the Federal Reporter, v. 189, 8°. St. Paul, West Publishing Co., 1912, pp. 90–93.]

LESSER *v.* GEORGE BORGFELDT & CO.

(Circuit Court, S. D. New York. June 22, 1911.)

COPYRIGHTS (SEC. 82)—INFRINGEMENT—ACTIONS—EXHIBITION.

Where there was nothing to show that a copyright alleged to have been infringed was a sculpture or other similar work, or that the production of a copy was not feasible, defendant was entitled to have a copy of the alleged infringement, and a copy of the work alleged to have been infringed upon, accompany the petition as required by Supreme Court practice rule 2, in effect July 1, 1909. *Lesser v. G. Borgfeldt & Co.*

In equity. Suit by Elizabeth Lesser against George Borgfeldt & Co. for infringement of copyright. On motion to compel complainant to attach a copy of the alleged infringement, and of the work alleged to have been infringed, to the petition. Granted.

LACOMBE, circuit judge. The rule of practice (No. 2) adopted by the Supreme Court and which went into effect July 1, 1909, provides that "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." No such copies have been submitted, and defendant is entitled to the relief asked for, unless the case comes within one of the exceptions contained in the rule. The record does not show that the copyright is a "sculpture or other similar work," and there is nothing to show that the production of "copy" is not feasible.

Motion granted.

[From the Federal Reporter, v. 188, 8°, St. Paul, West Publishing Co., 1911, p. 864.]

NATIONAL CLOAK & SUIT CO. *v.* KAUFMAN

(Circuit Court, M. D. Pennsylvania. July 17, 1911.)

1. COPYRIGHTS (SEC. 82)—REGISTRATION—VESTING OF PRIVILEGE.

Since copyright vests on the publication of the book or publication with notice of copyright as provided by act March 4, 1909, c. 320, sec. 9, 35 U. S. Stat., 1077 (U. S. Comp. St. Supp., 1909, p. 1292), a bill for infringement was not demurrable for failure to allege registration or entry, in form or manner provided by law, of the title of the book, or volume of the publication. *National Cloak & Suit Co. v. Kaufman*

2. COPYRIGHTS (SEC. 82)—RIGHT TO PRIVILEGE—CORPORATIONS—PLEADING.

Under act March 4, 1909, c. 320, 35 Stat., 1075 (U. S. Comp. St. Supp., 1909, p. 1289), conferring copyright on the author or proprietor, and providing that the word "author" shall include an employer in the case of works made for hire, an allegation in a bill by a corporation for infringement that complainant was a corporation created under the laws of New York, and that it wrote, designed, and compiled and caused to be written, designed, and compiled by those employed by it for such purpose, all of them citizens and residents of the United States, or aliens domiciled within the United States at the time of the first publication of the book in question of which it was the proprietor, sufficiently showed that complainant corporation was entitled to the copyright.

3. COPYRIGHTS (SEC. 9)—MATTER SUBJECT OF COPYRIGHT—PICTORIAL ILLUSTRATIONS—ADVERTISING MATTER.

Under act March 4, 1909, c. 320, 35 Stat., 1075 (U. S. Comp. St. Supp., 1909, p. 1289) relating to copyrights, section 5 (k) expressly authorizing the copyright of pictorial illustrations, where a corporation engaged in the manufacture of feminine attire issued a book containing pictorial illustrations, being pictures of women attired in the latest up-to-date styles depicting the fashion in dress, supplemented by infor-

mation concerning the materials which plaintiff offered to make up in accordance therewith and the prices at which it would do so, such illustrations, though used entirely for advertising purposes and not essentially works of fine art, were proper subjects of copyright.

4. COPYRIGHTS (SEC. 9)—PICTURES—CATALOGUE.

It was no objection to a copyright of pictures representing women attired in up-to-date costumes in a cloak and suit catalogue that the pictures represented visible actual persons and things, and that complainant could not monopolize the right to picture them, under the rule that, while others are free to copy the original, they may not copy the copy.

In equity. Suit by the National Cloak & Suit Co. against David Kaufman for copyright infringement. On demurrer to bill. Overruled.

Archibald Cox and Walter Briggs, for complainant.

John C. Nissley and Charles W. Bacon, for defendant.

WITMER, district judge. This is a demurrer to a bill of complaint in a suit in equity brought by the National Cloak & Suit Co., of New York, against David Kaufman, of Harrisburg, Pa., to restrain an alleged infringement of copyright.

The bill charges, in substance, that the complainant, a New York corporation, doing business in the Borough of Manhattan, city of New York, had secured a copyright, in compliance with the law governing in such cases, of a certain book constituting a volume of a periodical publication which having been for many years issued by the complainant in connection with its business of which it was then the proprietor, said book being entitled, "New York Fashions, vol. 14, No. 4"; that in the preparation of said book it exercised the most careful supervision and discrimination and made large outlays and expenditures, employing in the preparation of its various component parts artists and authors of peculiar skill and ability in the particular matters to which such parts relate; and that the illustrations forming component parts of said book were the work and embodied the personal reaction of artists of recognized skill in their calling, and were pictures of artistic merit, and, in addition to their merit as artistic productions, were of peculiar value as portraying original conceptions and creations relating to wearing apparel, of great interest to a large proportion of the public on account of the originality and exercise of trained aesthetic faculties displayed in said illustrations; that, notwithstanding the notice of copyright required by law having been printed on the title page of each number of such publication, the defendant afterwards, intending to appropriate the fruits of the complainant's efforts, did, without the consent of the complainant, make, print, publish, and distribute, and caused to be made, printed, published, and distributed, copies of copyrightable component parts copied from the compainant's said book, which is made a part of the bill of complaint, to wit, illustrations No. 1422 on page 22, No. 1903 on page 112, No. 11458 on page 189, No. 1402 on page 10, No. 9408 on page 100, No. 1413 on page 16, No. 1405 on page 13, No. 9426 on page 109, and No. 1401 on page 9, whereby the complainant claims the defendant infringed its said copyright and threatens to continue, wherefore he prays for relief.

The demurrer contains several counts, all of which, under the allegations of the bill, aim at the validity of the copyright, challenging (1) those allegations which deal with the steps taken in compliance with the statutory formalities to vest copyright, and (2) the allegation concerning the subject matter as being of character copyrightable.

[1] Taking up these subjects in their order, it is noted that the first count of the demurrer questions the copyright because of the failure to register or enter, in form and manner provided by law, the title of the book or volume of the publication. Such formality as was necessary under the former law is not now required by act March 4, 1909, c. 320, 35 Stat., 1075 (U. S. Comp. St. Supp. 1909, p. 1289), under which the copyright for consideration was acquired. Copyright vests upon the publication of the book or publication with the notice of copyright under section 9 of the act. The allegations in the bill are full and sufficient, showing that the necessary steps of the statute were observed in securing the right and certificate of copyright.

[2] The second count questions the character of the person of the complainant as entitled to copyright. The complainant is a corporation created by the laws of New York, which, according to the bill, "wrote, designed and compiled and caused to be written, designed and compiled by those employed by it for the purpose, all of them citizens and residents of the United States, or aliens domiciled within the United States at the time of the first publication," the book of which it was the proprietor. The present act of Congress confers copyright on "the author or proprietor" (sec. 8), and provides that "the word 'author' shall include an employer in the case of works made for hire" (sec. 62).

Under the old law, which did not recognize or contemplate in its provisions our modern conditions, as the present law, corporations were even regarded as proper persons to secure copyright (Mutual Advertising Co. *v.* Refo [C. C.], 76 Fed., 961; Edward Thompson Co. *v.* American Law Book Co. [C. C.], 119 Fed., 217; Schumacher *v.* Schwencke [C. C.], 25 Fed., 466); and then, as well as now, the employer had the right to the copyright in the literary product of a salaried employee (Collier Engineer Co. *v.* United Correspondence School Co. [C. C.], 94 Fed., 152; Atwill *v.* Ferrett, 2 Blatchf., 39, Fed. Cas. No. 640).

All of the remaining counts deserving notice may be considered in connection with the other (2) allegations concerning the subject matter as being copyrightable.

[3] The illustrations which the defendant is alleged to have copied from the complainant's copyrighted book are so-called pictorial illustrations, being pictures of ladies attired in the latest or up-to-date styles, depicting the fashions in dress, supplemented by information concerning the materials which the complainant offers to make up in accordance therewith, and the prices at which it will do so. Are these so-called illustrations copyrightable component parts of the complainant's book? The act (sec. 5 [*k*]) expressly mentions "pictorial illustrations" as the proper subject of copyright, and they are now

considered the "writing of an author" as contemplated by section 8, Article I, of the Constitution, wherein it is provided that:

> Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and discoveries.

"The act in question was passed in execution of the power here given, and the object thereof was the promotion of science and the useful arts." (Baker *v.* Selden, 101 U. S., 99; 25 L. Ed., 841.) This act no doubt should be liberally construed to give effect to its tenor and true intent. In keeping pace with the growth of the subject of his constitutional provision many statutes have been enacted, extending and enlarging its protection, covering not only maps, charts, and books, as originally, but comprehending now as well all the writings of an author, including, as set forth in the act of March 4, 1909: (*a*) Books, including composite and cyclopedic works, directories, gazeteers, 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.

The protection of the law is not confined to pictorial illustrations known as works of fine arts. This was not so even under the preceding act. In the case of Bleistein *v.* Donaldson Lithographing Co. (188 U. S., 239; 23 Sup. Ct., 298; 47 L. Ed., 460) Justice Holmes, delivering the opinion of the court, said:

> We see no reason for taking the words connected with "the fine arts" as qualifying anything except the word "works," but it would not change our decision if we should assume further that they also qualified "pictorial illustrations," as the defendant contends.

If there is any limitation whatever to this term, it must be found in the words of the Constitution confining pictorial illustration to the "useful arts."

The contention of the defendant that if a picture has no other use than that of a mere advertisement, and no value aside from this function, it would not be promotive of the useful arts within the meaning of the constitutional provisions entitling the author to protection in the exclusive use thereof, was denied in the Bleistein case, the court saying that "a picture is none the less a picture and none the less a subject of copyright that it is used for an advertisement." The complainant's pictures or illustrations are more than mere advertisements of wearing apparel. They are, on their face, exceptionally excellent pictures, having value as compositions. They are no doubt the work embodying the personal reaction of artists of recognized skill in their calling, and, furthermore, admittedly, aside from their artistic merit as productions of peculiar value, they portray original conceptions and creations relating to wearing apparel of great interest to a large portion

of the public. In their ensemble, their details, designs, and general particulars they contain the something that appeals to the taste of an admiring public. It is this secret portrayed by the artist differing from other pictures of this kind in which lies their value and which apparently caught the eye of the defendant and furnishes the reason for protecting the fruits of the artist's labors by copyright.

[4] Nor does it matter that the pictures represent visible actual persons and things. Of course, the complainant can not monopolize the right to picture these. "Others are free to copy the original. They are not free to copy the copy. (Blunt *v.* Patten, 2 Paine, 397, 400; Fed. Cas., No. 1, 580. See Kelly *v.* Morris, L. R. 1 Eq., 697; Morris *v.* Wright, L. R. 5, Ch. 279.) The copy is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible, which is one man's alone. That something he may copyright unless there is a restriction in the words of the act." (Bleistein *v.* Donaldson Lithographing Co., supra.)

Since it did appear to the court that the restrictions in the law as contained in the act then in vogue is not to be found in the limited pretensions of the chromolithographs used as advertisements of Wallace's show, and, as was further said, the least pretentious picture has more originality in it than directories and the like, which may be copyrighted, I see no reason why copyright should be withheld from the complainant's pictures of ladies showing to advantage wearing apparel of the latest styles and its manufacture under another and later act even more favorable than the former. In this conclusion I am, furthermore, strengthened by remembering also that courts will not undertake to assume the functions of critics or to measure carefully the degree of originality or literary skill or training involved (Drury *v.* Ewing, 1 Bond, 540; Fed. Cas. No. 4095; Henderson *v.* Tompkins (C. C.), 60 Fed., 758), that pictures commanding public interest and having commercial value as well shall not thereby be deprived from privacy, and that the taste of the admiring public is not to be treated with contempt.

This case has nothing to do with cases involving attempts to copyright mere catalogues or price lists or labels sometimes containing pictures reproduced by photographic or other mechanical processes of articles intended for sale, but which obviously have no artistic merit or originality. These decisions, whether condemning or upholding such copyrights, do not touch the question involved in the case at bar, many of which having been overruled in the decision of the Bleistein case, distinguishing Mott Iron Works *v.* Clow, 82 Fed., 316; 27 C. C. A., 250; also citing Yuengling *v.* Schile (C. C.), 12 Fed., 97; Schumacher *v.* Schwencke (C. C.), 25 Fed., 466; Lamb *v.* Grand Rapids School Furniture Co. (C. C.), 39 Fed., 474.

The fallacy in the argument that the complainant can not copyright 'productions of the industrial arts'' lies in the confusion of the pictures with the things they depict in a particular way; that is, the wearing

apparel which appears in the illustration as part of the pictures. As said by Mr. Justice Bradley in Baker *v.* Selden, supra:

> There is a clear distinction between the book as such and the article which it is intended to illustrate. The object of the one is illustration; of the other it is the use thereof. The former may be secured by copyright, the latter by patent.

The complainant does not claim to monopolize the manufacture and sale of the wearing apparel depicted by reason of its copyright. It does, however, claim the right thereby to prevent others from copying and appropriating its exclusive property in such pictures, and to this it is entitled by reason of its copyright, which appears to be valid.

The demurrer is therefore overruled.

[From the Federal Reporter, v. 189, 8°. St. Paul, West Publishing Co., 1912, pp. 215–219.]

DAM *v.* KIRK LA SHELLE CO.

(Circuit Court, S. D. New York. July 28, 1911.)

Dam v. Kirk La Shelle Co.

1. COPYRIGHTS (SEC. 87)—INFRINGEMENT—COMPUTATION OF PROFITS.
On an accounting for profits made by defendant from the production of a play, which infringed a copyright of a story on which the play was based, owned by complainant, where defendant made its contracts by the season, each season should be taken as a unit in computing such profits; defendant not being entitled to credit against the profits of one season for losses incurred in another.

2. COPYRIGHTS (SEC. 87)—INFRINGEMENT—ACCOUNTING FOR PROFITS.
On such an accounting defendant is not entitled to charge as an expense against the profits made the sum paid by it for the play, but only the reasonable value of an exclusive license for the time the play was presented.

3. COPYRIGHTS (SEC. 87)—INFRINGEMENT—ACCOUNTING FOR PROFITS.
Defendant, a corporation having a capital stock of $10,000, $9,000 of which was owned by the widow of a former manager, is not entitled to credit on such accounting on account of a salary of $25,000 per year which it contracted to pay her, in addition to a salary as manager for her services as president, and for certain other considerations which she did not furnish, but was entitled to credit for a reasonable salary for her services only.

In equity. Suit by Dorothy Dorr Dam, administratrix, against the Kirk La Shelle Co. On exceptions to report of special master. Sustained in part.

Sur exceptions of both parties to the report of the special master stating an account of the profits derived by the defendant from a play called The Heir to the Hoorah, which has been held to be an infringement of the dramatic rights of the complainant's intestate, as author of a story called The Transmogrification of Dan. (166 Fed., 589; 175 Fed., 902; 99 C. C. A., 392.)

Andrew Gilhooley, for complainant.

Hunt, Hill & Betts, for defendant.

WARD, circuit judge. Although the defendant and its immediate assignor purchased the play from the playwright, Paul Armstrong, in entire good faith and without notice of the complainant's rights, it is subject to the hard rule of having to account for all the profits it made by presenting it. Still the complainant's rights are not to be prejudiced

by the allowance to the defendant of credits for unreasonable payments or for payments made without consideration to third parties.

July 8, 1905, the defendant was incorporated by Mrs. Kirk La Shelle (now Mrs. Hunt), the widow and sole legatee of a well-known theatrical manager, and two of her assistants, under the name of the Kirk La Shelle Co. The capital of the company was $10,000, in 100 shares of $100 each, all paid in by Mrs. Hunt in cash, who gave 5 shares to each of the other incorporators in consideration of their faithful services to her husband and to herself. The defendant had no notice of the complainant's claim until November 4, 1905. In the meantime, July 11, 1905, it made a contract for the purchase of the play from Mrs. Hunt for $16,000 and the assumption of all losses in connection with its presentation previous to July 8, 1905, and payment of the sum in which the disbursements had exceeded the receipts of presentation to date, viz, $5,424.70 (sixth finding of fact). There was also a separate agreement to pay Mrs. Hunt $100 a week as manager for every week the play should be presented. The defendant also made another contract with Mrs. Hunt, to pay her a salary of $25,000 a year as president including the right to use the name of her deceased husband and her agreement to finance the company from time to time (seventh finding of fact).

It is obvious that these contracts were not made for the purpose of defeating the complainant's claim, of which the defendant had then no notice, by exhausting the company's earnings. It is more likely that the purpose was to reduce the value of the 10 shares which Mrs. Hunt gave the other two incorporators. At all events, that was the effect, because the company never paid a dividend, and at the time of the accounting was in debt to her in a considerable amount for salary. It can hardly be believed that if the other two incorporators, who, with Mrs. Hunt, composed the board of directors, paid for their shares, they would have consented to this salary contract.

The complainant contends that Mrs. Hunt, owning 90 shares of the capital stock, is really the company, and in making the contract before mentioned was simply dealing with herself. But the special master has held that the company is a separate entity, and I shall follow him in this.

[1] The next question is whether the defendant's profits shall be ascertained by treating the whole period of presentation as one or by resting at the end of each season or of each week or of each presentation. The special master fixed each season as a unit, and I think he was right in doing so. The defendant made its contracts for the season (twenty-third finding of fact) and kept its accounts in the same way. This is the natural way of ascertaining profits or losses. There might be cases, such as the building of costly separate machines, where each transaction could and should be considered separately. But the general business custom is to ascertain profits and losses annually.

These preliminary conclusions bring us to the question: What profits did the defendant make in each season it presented the play? The theatrical season is from September 15 to July 15. The defendant is entitled to credit against its earnings of each season all the direct

expenses of the presentations of the play, together with such a proportion of its general expenses as is fairly to be appropriated to it.

[2] The special master allowed the defendant a deduction of the whole purchase price of the play, which he found to be $16,000, to the playwright, and $5,424.70, the sum by which the expenses of presentation by Mr. La Shelle in his lifetime and by his widow afterwards down to July 8, 1905, exceeded the receipts. I think the purchase of the play was, so to speak, a capital charge and that only a fair charge for the use of it should be deducted from its earnings. The reasonable value of an exclusive license should be allowed for the times the play was presented.

The defendant should also be allowed (unless it be included in the exclusive license to use) the cost of the scenery, etc., which it obtained from Mrs. Hunt under the contract for the purchase of the play, and which I understand to be $4,708.93 (fifteenth finding of fact).

The defendant presented the play but once in the season 1904–5, viz, for the last week, ending July 15, 1905, and incurred a loss of $730.49. This week is to be treated as a unit. The complainant gets no profits and the defendant is entitled to no deduction from the earnings of the next season. For the same reason the master should not have allowed the defendant any deduction for the loss in the season of 1907–8. Both these periods are to be entirely disregarded, unless upon a resettlement of the account in accordance with this opinion a balance of profits be shown.

The special master rightly refused to allow the defendant to deduct payments made to Mrs. Hunt as royalties for ownership of her late husband in connection with the play. This was necessarily included in the contract for the purchase of the play after his death.

[3] The special master also erred in allowing the defendant to deduct anything for the use of Kirk La Shelle's name, which was one of the considerations mentioned in the $25,000 salary contract. The defendant, as a corporation, had the right to use its own corporate name and, as the purchaser of the play, had a right to advertise the fact that it was originally presented by Kirk La Shelle. It seems to me that Mrs. Hunt gave nothing, and could give nothing, to the defendant in this connection. Moreover, if it be assumed that she did confer any right in the premises, there is no proof of its value. The testimony is pure speculation and wholly unsatisfactory. As for financing the company, the special master rightly held that Mrs. Hunt did none, and none was needed. The salary contract in respect to the foregoing features, though binding between the parties, was unreasonable and without consideration as against complainant's claim. Still, the defendant is entitled to a credit for reasonable salaries paid to its officials, and the special master having found (eleventh finding of fact) that the payment of $7,500 to Mrs. Hunt for her services as president during the four theatrical seasons beginning with 1905–6 would be reasonable, and, as during that period the defendant was presenting only two plays, it should have a credit of one-half that sum as applicable to The Heir to the Hoorah, to be equally divided between the four seasons.

The defendant, under its contract to pay Mrs. Hunt $100 every week the play was presented for services as manager, did pay her for considerable periods during which she was absent in Europe. The special master allowed these payments as against the complainant, and I will follow him in this respect with some doubt.

The defendant was properly charged with the amounts received for licenses of the play in the seasons 1908–9 and 1909–10, but, as heretofore held, should not have been credited with losses in prior seasons.

The foregoing will perhaps enable the parties to agree upon the amount of the decree to be entered in favor of the complainant, with costs; but if they do not, within 10 days after this opinion is handed down, the matter is referred to the special master to restate the account in accordance with this opinion.

[From the Federal Reporter, v. 189, 8°. St. Paul, West Publishing Co., 1912, pp. 842–845.]

NATIONAL CLOAK & SUIT CO. *v.* STANDARD MAIL ORDER CO.
(Circuit Court, S. D. New York, October 30, 1911.)

National Cloak & Suit Co. v. Standard Mail Order Co.

COPYRIGHTS (SEC. 39)—INFRINGEMENT—MANUFACTURERS' CATALOGUES.

A manufacturer of unpatented articles can not practically monopolize their sale by copyrighting a catalogue containing illustrations of them; nor can another manufacturer of identical articles be deprived of the right to illustrate them in his catalogue, providing his illustrations are not in fact copied from the copyrighted catalogue.

Action by the National Cloak & Suit Co. against the Standard Mail Order Co. On demurrer to complaint. Demurrer overruled.

Archibald Cox, for complainant.

Howard Taylor, for defendant.

LACOMBE, circuit judge. I am entirely in accord with defendant in the proposition that a manufacturer of unpatented articles can not practically monopolize their sale by copyrighting a catalogue containing illustrations of them. From a comparison of the illustrations upon which complainant relies, the fair inference would seem to be that defendant makes some garments which are identical with complainant's and offers them for sale. If this be so, he can not be deprived of the right to issue a catalogue of the garments he offers, with illustrations showing what they look like, provided that his illustrations are drawn from the garments themselves, and not copied from complainant's copyrighted catalogue. The difficulty with undertaking to decide the case on demurrer is that we can not be sure how defendant's illustrations were produced. Complainant might be able to show that they were in fact copied from its own, and not drawn with the garments as models.

The demurrer is overruled, with leave to answer within 20 days.

[From the Federal Reporter, v. 191, 8°. St. Paul, West Publishing Co., 1912, p. 528.]

KALEM CO. *v.* HARPER BROS.

(Appeal from the Circuit Court of Appeals for the Second Circuit.)

No. 26. Argued October 31, November 1, 1911. Decided November 13, 1911

Kalem Co. v. *Harper Bros.*

An exhibition of a series of photographs of persons and things, arranged on films as moving pictures and so depicting the principal scenes of an author's work as to tell the story, is a dramatization of such work, and the person producing the films and offering them for sale for exhibitions, even if not himself exhibiting them, infringes the copyright of the author under Rev. Stat., sec. 4952, as amended by the act of March 3, 1891, c. 565, 26 Stat., 1106.

Quaere whether there would be infringement if the illusion of motion were produced from paintings instead of photographs of real persons, and also *quaere* whether such photographs can be copyrighted.

Rev. Stat., sec. 4952, as amended by the act of March 3, 1891, c. 565, 26 Stat., 1106, confines itself to a well-known form of reproduction and does not exceed the power given to Congress under Art. I, sec. 8, cl. 8, of the Constitution, to secure to authors the exclusive right to their writings for a limited period.

169 Fed. Rep., 61, affirmed.

The facts are stated in the opinion.

Mr. John W. Griggs and Mr. Drury W. Cooper for appellant:

The court of appeals was right in affirming the proposition that the making and publication of a series of pictures of the incidents described in a book is not an infringement of a copyright in the book.

Copyright does not monopolize the intellectual conception, but only the form of expression, i. e., the "arrangement of words" (Holmes *v.* Hurst, 174 U. S., 86) adopted by the author. It is the writings of the author that are protected, and the statute can not extend the "monopoly" to his ideas. (White-Smith *v.* Apollo, 209 U. S., 17; Stowe *v.* Thomas, 2 Wall. Jr., 547; 23 Fed. Cas., 201, 206; Baker *v.* Selden, 101 U. S., 99; Johnson *v.* Donaldson, 3 Fed. Rep., 22; Perris *v.* Hexamer, 99 U. S., 674, 676; Bobbs-Merrill Co. *v.* Straus, 210 U. S., 339, 347.)

A moving picture film, whether made by a modern rapid-fire camera, or by the ancient and laborious process of taking, or drawing, and collating pictures of objects in successive positions, is a picture. (Edison *v.* Lubin, 122 Fed. Rep., 240; Am. Mutoscope Co. *v.* Edison, 137 Fed. Rep., 262; United States *v.* Berst, 175 Fed. Rep., 121. And see Edison *v.* Mutoscope Co., 114 Fed. Rep., 926.)

Copyright law differs from the law of patents; in the former there may be two concurrent copyrights in what is identically the same creation; in the latter there can only be one patent, the first inventor being entitled. (MacGillivray on Copyrights, 243. And see Baker *v.* Selden, 101 U. S., 99.)

Termination of the author's common-law rights upon voluntary publication (Millar *v.* Taylor, 4 Burr., 2331) has been recognized frequently by this court and was known to the framers of the Constitution. (Stephens *v.* Cady, 14 How., 528, 530; Lithograph Co. *v.* Sarony, 111 U. S., 53, 58; Holmes *v.* Hurst, 174 U. S., 82, 86; Wheaton *v.* Peters, 8 Pet., 591, 676; and cases *passim*.)

If one, by copyrighting a book, can prevent an artist from picturing the scenes described, reason can not afford room for the orator to use,

in his flights of fancy, the author's created characters or figures of speech, for the idea is not open to appropriation or use in one case more than in the other. But it is the writing only, and not the idea, that is monopolized; the mode of expression and not the thought conveyed. Books and pictures are essentially different.

As to whether a painting is a manuscript, see Parton *v.* Prang, 18 Fed. Cas., 1273.

A series of moving pictures is not a copy of the book (Perforated Music Roll Case, 209 U. S., 1) nor are defendants' photographs copies of the book as the word copy is understood. (Bennett *v.* Carr, 96 Fed. Rep., 213.)

The statutory monopoly to make copies does not cover the plates and other tools with which they are made and does not pass with their ownership. (Stephens *v.* Cady, 14 How., 530.) Being a creature of the statute, this species of property is legally distinct from the underlying ideas upon which it is, after all, predicated, just as from the paper and metal without which it would have no commercial value.

A person may utilize the ideas portrayed in a copyrighted publication, provided he bestows upon his own writings such skill and labor as to produce an original result. (Folsom *v.* Marsh, 2 Story, 100, 115; S. C., 9 Fed. Cas., 342.) Utilizing ideas without copyrighting their expression is lawful. (Dun Co. *v.* Lumbermen's Credit Association, 209 U. S., 20; Morris *v.* Wright (1870), L. R. 5 Ch. 279; West Pub. Co. *v.* Lawyers' Co., 64 Fed. Rep., 360; 79 Fed. Rep., 756; Edward Thompson Co. *v.* American Co., 130 Fed. Rep., 369; 157 Fed. Rep., 1003.)

Not only is there no evidence here that the copyright proprietors were injured even in the slightest degree; but, on the contrary, the defendant asserted by letter that its films would benefit the complainants, and this they did not deny, but stood upon their naked assertion of legal right.

To transcribe a musical composition by making a record upon a phonograph blank, or by perforating a sheet of paper, requires neither creative nor artistic power, but merely the common skill of the artisan. Yet, to make such record is not to copy the composition, as has been held in every reported case that has come to our special knowledge. (Kennedy *v.* McTammany, 33 Fed. Rep., 584; White-Smith Co. *v.* Apollo Co., 77 C. C. A., 368; 147 Fed. Rep., 226; 209 U. S., 1; Boosey *v.* Wright, 1 Ch., 122; Stern *v.* Rosey, 17 App. D. C., 562.)

Under Lithograph Co. *v.* Sarony, 111 U. S., 53, and Bleistein *v.* Donaldson, 188 U. S., 250, the films were legally copyrightable as they were the result of original conception, posing, and artistic skill.

A photograph can not be an infringement of a copyrighted book. (See Littleton *v.* Ditson Co., 62 Fed. Rep., 597; 67 Fed. Rep., 905, holding that "book" is distinct from "musical composition"; Woods *v.* Abbott, Fed. Cas. No. 17938, holding that "photograph" is not a "print"; Stowe *v.* Thomas, 2 Wall., Jr., 547, holding that "translation" is not a "copy"; Hills *v.* Austrich, 120 Fed. Rep., 862, holding that "stone" does not include "metal plate.")

All the marks of literary property that distinguish the book or the drama are lacking from the picture, save in so far as both involve the same underlying ideas.

The exhibition of the pictures, arranged upon a film, which is, during all the time of its use, a part of a machine, is not an infringement of the book copyright.

The complainants' creation was not copied in the making of the pictures, but they are realizations, in a different art, of some of the ideas to which Gen. Wallace gave a written portrayal. Their exhibition by machine does not approach more nearly the writing of the book than did their making and selling.

Such exhibition of the pictures is not a "public performance or representation" in violation of the dramatic copyright act. (Daly *v.* Palmer, 6 Blatchf., 256; Daly *v.* Webster, 56 Fed. Rep., 483, distinguished. And see Chatterton *v.* Cave, 10 C. P., 572; Hanststoengel *v.* Baynes, 1895, App. Cas., 20.)

There are no cases in which an exhibition has been declared to be a dramatic performance or representation unless human actors are present and either performing themselves or at least causing dummies or puppets to move and act. (Drone on Copyrights, 587–589; Russell *v.* Smith, 12 Q. B., 236, 237; Brackett on Theatrical Law, p. 54; Lee *v.* Simpson, 3 C. B., 871; Day *v.* Simpson, 18 C. B. (N. S.), 680; Turner *v.* Robinson, 10 Irish Ch., 121, 510, distinguished.)

For cases where the courts have distinguished mechanical arrangements from dramatic performances, see Harris *v.* Commonwealth, 81 Virginia, 240; Jacko *v.* The State, 22 Alabama, 73; Fuller *v.* Bemis, 50 Fed. Rep., 926; Carte *v.* Duff, 23 Blatchf., 347; 25 Fed. Rep., 183; Serrana *v.* Jefferson, 33 Fed. Rep., 347.

The copyright statutes are to be construed strictly, and not stretched by resort to equitable considerations. (Banks *v.* Manchester, 128 U. S., 244; Bolles *v.* Outing Co., 175 U. S., 262, 268; Higgins *v.* Keuffel, 140 U. S., 428; Thompson *v.* Hubbard, 131 U. S., 123. See, generally, Oregon Ry. *v.* Oregonian Co., 130 U. S., 1, 26.)

In any event, defendant is not an infringer, direct or contributory. It does not give any performance in, nor does it manage, any theater. Dramatizing is entirely distinct from public performance or represenastion. As an act of infringement, it is defined, Revised Statutes, ection 4965, and is punishable by forfeiture of plates; as a penal statute it must be strictly construed. (Thornton *v.* Schreiber, 124 U. S., 612; Bolles *v.* Outing Co., 175 U. S., 262.) Section 4966 provides damages against public performances.

Defendant derives no profit from the exhibition, and hence is not within the class against which section 4966 is directed, for that operates against the actual wrongdoer (Brady *v.* Daly, 175 U. S., 174), not the indirect participant therein.

The defendant is not concerned with the ultimate use to which its films are put, and they are manifestly susceptible of many uses which complainants do not contend to be within the purview of a dramatic

copyright. (Russell *v.* Briant, 8 C. B., 836, 848; Harper *v.* Shoppell, 26 Fed. Rep., 519.)

If the act protects copyright in a drama against any exhibition of pictures, it is stretched to cover that which was not the work of the author, but of another, and therefore it is unconstitutional since that instrument limits the author's monopoly to his writings.

Mr. John Larkin for appellee Harper Brothers.

Mr. David Gerber for appellees Klaw & Erlanger.

Mr. Justice HOLMES delivered the opinion of the court.

This is an appeal from a decree restraining an alleged infringement of the copyright upon the late Gen. Lew Wallace's book Ben Hur. (169 Fed. Rep., 61; 94 C. C. A., 429.) The case was heard on the pleadings and an agreed statement of facts, and the only issue is whether those facts constitute an infringement of the copyright upon the book. So far as they need to be stated here they are as follows: The appellant and defendant, the Kalem Co., is engaged in the production of moving-picture films, the operation and effect of which are too well known to require description. By means of them anything of general interest from a coronation to a prize fight is presented to the public with almost the illusion of reality—latterly even color being more or less reproduced. The defendant employed a man to read Ben Hur and to write out such a description or scenario of certain portions that it could be followed in action; these portions giving enough of the story to be identified with ease. It then caused the described action to be performed and took negatives for moving pictures of the scenes, from which it produced films suitable for exhibition. These films it expected and intended to sell for use as moving pictures in the way in which such pictures commonly are used. It advertised them under the title "Ben Hur." "Scenery and supers by Pain's Fireworks Co. Costumes from Metropolitan Opera House. Chariot race by 3d Battery, Brooklyn. Positively the most superb moving-picture spectacle ever produced in America in sixteen magnificent scenes," etc., with taking titles, culminating in "Ben Hur victor." It sold the films and public exhibitions from them took place.

The subdivision of the question that has the most general importance is whether the public exhibition of these moving pictures infringed any rights under the copyright law. By Revised Statutes, section 4952, as amended by the act of March 3, 1891, c. 565, 26 Stat., 1106, authors have the exclusive right to dramatize any of their works. So, if the exhibition was or was founded on a dramatizing of Ben Hur this copyright was infringed. We are of opinion that Ben Hur was dramatized by what was done. Whether we consider the purpose of this clause of the statute, or the etymological history and present usages of language, drama may be achieved by action as well as by speech. Action can tell a story, display all the most vivid relations between men, and depict every kind of human emotion, without the aid of a word. It would be impossible to deny the title of drama to pantomime as played by masters of the art. (Daly *v.* Palmer, 6 Blatchf., 256, 264.) But if a pantomime of Ben Hur would be a dramatizing of Ben Hur, it

would be none the less so that it was exhibited to the audience by reflection from a glass and not by direct vision of the figures—as sometimes has been done in order to produce ghostly or inexplicable effects. The essence of the matter in the case last supposed is not the mechanism employed but that we see the event or story lived. The moving pictures are only less vivid than reflections from a mirror. With the former as with the latter, our visual impression—what we see—is caused by the real pantomime of real men through the medium of natural forces, although the machinery is different and more complex. How it would be if the illusion of motion were produced from paintings instead of from photographs of the real thing may be left open until the question shall arise.

It is said that pictures of scenes in a novel may be made and exhibited without infringing the copyright and that they may be copyrighted themselves. Indeed it was conceded by the circuit court of appeals that these films could be copyrighted and, we may assume, could be exhibited as photographs. Whether this concession is correct or not, in view of the fact that they are photographs of an unlawful dramatization of the novel, we need not decide. We will assume that it is. But it does not follow that the use of them in motion does not infringe the author's rights. The most innocent objects, such as the mirror in the other case that we have supposed, may be used for unlawful purposes. And if, as we have tried to show, moving pictures may be used for dramatizing a novel, when the photographs are used in that way they are used to infringe a right which the statute reserves.

But again it is said that the defendant did not produce the representations, but merely sold the films to jobbers, and on that ground ought not to be held. In some cases where an ordinary article of commerce is sold nice questions may arise as to the point at which the seller becomes an accomplice in a subsequent illegal use by the buyer. It has been held that mere indifferent supposition or knowledge on the part of the seller that the buyer of spirituous liquor is contemplating such unlawful use is not enough to connect him with the possible unlawful consequences (Graves *v.* Johnson, 179 Mass., 53), but that if the sale was made with a view to the illegal resale the price could not be recovered. (Graves *v.* Johnson, 156 Mass., 211.) But no such niceties are involved here. The defendant not only expected but invoked by advertisement the use of its films for dramatic reproduction of the story. That was the most conspicuous purpose for which they could be used, and the one for which especially they were made. If the defendant did not contribute to the infringement it is impossible to do so except by taking part in the final act. It is liable on principles recognized in every part of the law. (Rupp & Wittgenfeld Co. *v.* Elliott, 131 Fed. Rep., 730, 732; Harper *v.* Shoppell, 28 Fed. Rep., 613; Morgan Envelope Co. *v.* Albany Paper Co., 152 U. S., 425, 433.)

It is argued that the law construed as we have construed it goes beyond the power conferred upon Congress by the Constitution to secure to authors for a limited time the exclusive right to their writings. (Art. 1, sec. 8, cl. 8.) It is suggested that to extend the copyright to a case

like this is to extend it to the ideas as distinguished from the words in which those ideas are clothed. But there is no attempt to make a monopoly of the ideas expressed. The law confines itself to a particular, cognate and well known form of reproduction. If to that extent a grant of monopoly is thought a proper way to secure the right to the writings this court can not say that Congress was wrong.

Decree affirmed.

[From United States Reports, v. 222, 8°. New York, The Banks Law Publishing Co., 1912, pp. 55-63.]

MAIL & EXPRESS CO. *v.* LIFE PUB. CO.

(Circuit Court of Appeals, Second Circuit. January 8, 1912.) No. 115.

Mail & Express Co. v. Life Pub. Co.

1. COPYRIGHTS (SEC. 38)—STATUTE—CONSTRUCTION—COMPONENT PARTS.
Copyright act March 4, 1909, c. 320, sec. 3, 35 Stat., 1076 (U. S. Comp. St. Supp. 1909, p. 1290), provides that the copyright provided for shall protect 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, and that the copyright on composite works or periodicals shall give to the proprietor all the rights in respect thereto which he would have if each part were individually entitled under the act. *Held*, that a copyright on a periodical protects the pictures therein as component parts of the periodical.

2. COPYRIGHTS (SEC. 69)—INFRINGEMENT—DAMAGES—ASSESSMENT—"COURT."
Copyright act March 4, 1909, c. 320, sec. 25, 35 Stat., 1081 (U. S. Comp. St. 1901, p. 1297), provides that an infringer of the copyright laws shall be liable to pay the proprietor such damages as he suffered by the infringement, as well as all profits which the infringer shall have made from such infringement, and in proving profits plaintiff shall be required to prove sales only, and the defendant 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 in its discretion may allow the amount thereinafter stated, but, in the case of a newspaper reproduction of a copyrighted photograph, such damages shall not exceed the sum of $200 nor be less than $50, and such damages in no other case shall exceed $5,000 nor be less than $250, and shall not be regarded as a penalty. *Held*, that the statute, by using the word "court," did not require that the judge acting by himself should assess the damages when a case was presented calling for an award under the minimum damage clause, and that the court, under such circumstances, properly directed the jury that, if they found for plaintiff, they must award at least $250 for each infringement.

In error to the Circuit Court of the United States for the Southern District of New York.

Action by the Life Publishing Co. against the Mail & Express Co. Judgment for plaintiff, and defendant brings error. Affirmed.

Charles S. Mackenzie (J. Joseph Lilly, of counsel), for plaintiff in error.

Spencer, Ordway & Wierum (O. C. Wierum, jr., of counsel), for defendant in error.

Before LACOMBE, WARD, and NOYES, circuit judges.

NOYES, circuit judge. The first contention of the defendant seems to be that the new copyright statute affords protection to proprietors of periodicals only in respect of such component parts thereof as were copyrightable by such proprietors. Stated more particularly, the

claim seems to be that when a periodical contains articles or pictures made by persons who have not transferred their rights to the publisher the copyright of the periodical does not cover them.

We have no reason to question the correctness of the defendant's contention. It is sufficient to say that the trial court ruled in accordance therewith and submitted the question involved to the jury. The verdict established that the artists sold their rights in these pictures to the plaintiff.

[1] The next contention seems to be that the plaintiff's copyright of its periodical does not protect the pictures as "component parts." But section 3 of the copyright act says in so many words that a copyright does protect "all copyrightable component parts of the work copyrighted" and that in the case of a periodical the copyright "gives the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this act."[1] The language of the statute is so exactly contrary to the defendant's claim that there seems to be no reason for interpretation nor ground for discussion.

The defendant further contends that the class of pictures in question here are of such a transitory nature that "unless they are specially registered as provided for in the act they fall within the public domain as soon as they are published." We find nothing in this proof to show that these pictures are of an especially transitory nature and nothing in the law to substantiate the defendant's contention.

[2] The defendant also contends that the trial court erred in charging the jury that if they found for the plaintiff they must award at least $250 damages for each infringement. The relevant provisions of the section of the copyright act relating to damages are printed in the footnote [2] and the defendant urges that while the trial judge might have taken away the question of damages from the jury and himself have awarded the damages stated, he was not authorized to direct the jury to do so.

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[1] Section 3 of the copyright act of 1909 reads as follows:

"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."

[2] 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:

* * * * * * *

(*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.

While the language of the provision quoted is somewhat obscure, we do not think that by the use of the word "court" it is required that the judge acting by himself shall assess the damages when a case is presented calling for an award under the minimum damage clause. We think it the better view that the statute permits him to direct the jury to assess the damages within the prescribed limits. But if this is not the correct interpretation of the statute, we fail to see how the defendant was harmed by the action of the judge in this case. It is evident that he considered that the case was one in which an award of actual damages proven would not have been just and if he had himself fixed the damages under the statute he could not have awarded less than the minimum amount.

The remaining assignments present no error.

The judgment of the circuit court is affirmed.

[From the Federal Reporter, v. 192, 8°. St. Paul, West Publishing Co., 1912, pp. 899–901.]

WOODMAN *v.* LYDIARD-PETERSON CO.

(Circuit Court, D. Minnesota, Fourth Division. January 17, 1912.)

1. COPYRIGHTS (SEC. 29)—SUFFICIENCY OF NOTICE.

A copyrighted publication, designated on the title page as "Woodman's Minnetonka Map-Directory," which consists of a map, and also a directory with the name of the publisher printed on the map, and also the words "Copyright 1908," contains a sufficient notice to protect the copyright of the map.

Woodman v. Lydiard-Peterson Co.

2. COPYRIGHTS (SEC. 12)—VALIDITY—MAP.

A map is subject to copyright, although the material was obtained from prior publications not copyrighted, if it constitutes a new arrangement of such old material and also contains new and original features.

3. COPYRIGHTS (SEC. 64)—INFRINGEMENT—MAP

Where every part of a map is copied from a copyrighted map, infringement is not avoided because certain features of the copyrighted map are omitted therefrom.

4. COPYRIGHTS (SEC. 87)—SUIT FOR INFRINGEMENT—DAMAGES—CONSTRUCTION OF STATUTE.

Copyright act March 4, 1909, c. 320, sec. 25; 35 Stat., 1081 (U. S. Comp. St., Supp., 1909, p. 1297), which provides that in a suit for infringement the complainant may recover actual damages and profits, or, in lieu thereof, such damages as to the court shall appear to be just, and that such damages shall not exceed the sum of $5,000 nor be less than the sum of $250, does not compel the court to award damages to the amount of $250 if, in its opinion, the actual damages do not amount to so much.

5. COPYRIGHTS (SEC. 87)—SUIT FOR INFRINGEMENT—DAMAGES.

That defendant gave away a certain number of copies of a map which infringed complainant's copyright does not create any presumption that complainant was thereby deprived of the same number of sales and entitle him to damages on that basis.

In equity. Suit by Prentiss M. Woodman against Lydiard-Peterson Co. The evidence was taken orally in court at the final hearing. At the conclusion of the trial the court delivered its opinion, ordering a decree for complainant.

Charles J. Traxler for complainant.

Milton D. Purdy for defendant.

WILLARD, district judge. While it is not admitted in the answer that the defendant copied the map of the complainant, yet the evidence in the case shows that that was done, and I understand that no contention to the contrary is now made by counsel for defendant. So we start with the fact found that, the complainant having a copyrighted map or publication, the defendant has made copies of it and used them. The question is whether, under these circumstances, the bill can be maintained.

[1] There is first the preliminary question raised by the defendant to the effect that no notice was given of the copyright, as required by law. The thing copyrighted was Woodman's Minnetonka Map-Directory, and the thing copyrighted is described in a letter from the Librarian of Congress acknowledging the receipt of the title page.

That the book contains a proper notice of the copyright is admitted; but the question is whether the map is covered by the copyright notice found in the book. It is to be noticed, in the first place, that the title of this publication is "Map-Directory." It is not a directory alone; it is a map-directory, indicating that the map is included in the directory and made a part of it. When the table of contents is examined, we find on the first line in that table the words "Lake Minnetonka Map . . . Inside front cover." The map is in a pocket in the first page of the book.

It has been held repeatedly that the copyright of a magazine copyrights every article in the magazine, that it is not necessary that the copyright notice should be repeated upon each article, but that one notice in the beginning of the magazine protects all the contents of the magazine. If it were necessary, I should be inclined to hold that this copyright notice in the book itself protects the map. But I am of the opinion that the notice on the map itself is sufficient. It contains the words, "Copyright 1908." To be sure, it does not say, by P. M. Woodman, nor does it say copyrighted by Woodman; but nobody can have any doubt upon reading this language but that Woodman was the man who procured the copyright.

In the case of Osgood *v.* A. S. Aloe Instrument Co. (C. C.), 83 Fed., 470, there was no name whatever either after or before the word "Copyright." Here we do have "Woodman's Minnetonka Map-Directory." In that case there was no statement by whom it was published, as there is in this case. We also have the statement on the map that it was published by the Woodman Publishing Co., and we have on the title page the words "Woodman's Minnetonka Map-Directory." I do not see any reason for a very strict construction of the law. My recollection is that the strictness required by the former act has been materially modified by the present one. The object is to notify persons who is the owner of the publication, and the person by whom it is copyrighted, so that, if they make copies, they may know that they are infringing upon somebody's copyright. While it is probably material that some name be stated, yet I do not think that it is essential that the initials of the person copyrighting should be given. I therefore pass that con-

tention by, holding that there was sufficient notice given of the copyright as required by law.

[2] The other serious question is whether the defendant has taken any substantial part of the map of the complainant. That everything that there is in the map of the defendant is taken from the map of the complainant is admitted; but it is suggested that some things which were in the map of the complainant do not appear upon the map of the defendant. It is also suggested that there is nothing original in the map of the complainant; that he himself secured all his material, not from original research, but from other publications. The fact that he did secure all this material from other publications which were not copyrighted does not, to my mind, prevent him from getting a copyright upon this map, if it constitutes a new arrangement of old material; and that this map does constitute a new arrangement of old material I think is apparent. It contains some parts of Carver County; it contains more than had appeared upon any one piece of paper or map of that character; it is a combination of the Government and other maps. It is not true to say that it does not contain any original feature that had not appeared in any map prior to this time. It does contain quarter section lines. These, to be sure, are to some extent the same as those which had appeared in the Dahl Map; but that was accidental. They appeared in the Dahl Map because the boundaries of farms and tracts of land happened to coincide with the boundaries of the quarter sections. But an examination of the Dahl Map shows that, whenever the boundaries did not coincide with the quarter section line, then the quarter section lines were omitted. This is an original feature which the defendant availed himself of when he copied the map.

The complainant in his testimony specified some 38 features which he says were original in his map and did not appear in any other map unless it was in the Goverment map. It was suggested by counsel, as I understood him, that the complainant had a right to copyright features which appeared upon the Government map and did not appear upon any other map. I do not understand upon what basis that contention was made. I find nothing in the law to sustain it. On the contrary, it appears from section 7 of the act of March 4, 1909, that there is an express provision that no copyright shall be obtained of any Government publication. Therefore, eliminating from the 38 items specified by the complainant all those which had formerly appeared on the Government map, there still remain quite a number of original features, which, so far as the evidence shows, did not appear upon any other map. I think it specially appears that a part of a road near Holdridge did not appear upon the Government map. The complainant also specified a lake in the southeast quarter of section 29, and said that the road across it was new. An examination of the Government map shows that to be the fact. While the Government map does show two lakes, it shows no road across the narrowest point between them. Again, in section 1, town 116, the complainant testified that there was a road marked by a dotted line, which did not appear upon any other map. No evidence is produced to contradict that. So, in the north-

east corner of the northwest quarter of section 35, town 117, there is a road on the section line; and I might go through the different specifications that complainant made and point out several more instances which were not contradicted by evidence of the defendant. So I say that it is not true that there are no features at all in this map which are original with the complainant. These features are protected by the copyright.

The defendant itself had a right to take from the same sources that the complainant sought. It had a right itself to make a map which would be identical with the complainant's map and not infringe the copyright, but it did not see fit to do that. Instead of expending its own time and labor for that purpose and making a map which would be identical with complainant's map, and thus protecting itself, it made an exact copy of the complainant's map, and thereby saved itself the expenditure of time and labor which the complainant was compelled to expend himself in order to make his map.

[3] I think that there has been a case made out of copyright matter in this map, not only in the arrangement but also in the matter of original material, and that the defendant, having copied the map, has infringed this right. The fact that it left off the houses and the numbers can not, in my judgment, protect it. We might as well say that if it had copied only half the houses and left off the other half it would be protected. When it copied the map without the houses, it copied the essential features of the arrangement and the new elements to which I have called attention.

This I think is a proper case for an injunction restraining the defendant from making, disposing of, distributing, or in any way using this map.

[4] The serious question is with regard to the damages. It is admitted that the defendant did not sell its maps. It made nothing at all out of them, and the complainant very properly waived all rights to an accounting in the matter of profits. The law allows a complainant in a case of this kind to recover damages. Prior to the act of 1909 he had to prove his damages. That act seems to have made some radical changes upon this subject. It provides (sec. 25):

> 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.

The rest of the section is of no importance here except subdivision 2, which provides that:

> 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 may be allowed.

The anomalous provision in this section is this: That the court may in lieu of actual damages and profits in its discretion allow such damages as shall appear to be just, yet it apparently requires such damages in this case to be $250. But it can not be possible that, where the court is of the opinion that there were no damages at all, it still is bound to allow $250, and that, where the court is of the opinion that it would be a matter of injustice to allow even $1, it would be compelled by law to allow $250. Some other construction must be given to that provision. I think it means that where the court is satisfied that there are substantial damages, but the evidence is incomplete or is insufficient, so that the court can not determine just what the damages are, then it may allow them on that basis. But wherever the court is of the opinion that the damages can not be more than $50 or $100, it should not allow $250.

[5] In this case the evidence shows that for the six months prior to the publication by defendant of its map the total proceeds received by the complainant were $50; what part of that was profit does not appear. An injunction being allowed, any further distribution of this map will be stopped, so that the damages to be considered can be only such damages as the complainant has suffered from the time of the publication by the defendant, which was March of this year, up to the present date, which is a period of about six months. I can not see how these damages can amount to more than $50. It is suggested that, a thousand of these maps of the defendant having been distributed, the complainant has lost a thousand purchasers. That is on the assumption that, if the defendant had not given away a map to each one of these thousand men, the complainant would have gone to each of them and sold him a map for a dollar or 50 cents, and thereby made a profit.

But such a presumption is altogether too violent. There is no presumption that each of these men would have gone to the complainant and paid him a dollar or 50 cents for his map, and there is no showing that they would. There is no way of determining whether the complainant could have got into communication with these men so as to have sold them one map. So I am inclined to disregard that feature of the statute which fixes the damages at $250 as a minimum, and I will allow the complainant $75 damages and an injunction.

A decree may be entered, therefore, for a permanent injunction as prayed for in the bill, for the sum of $75 damages, and the sum of $50 as an attorney's fee. A decree will also go for the complainant for his costs in the case. This disposition of the case will render unnecessary a reference, accounting, or any further proceeding before the master, or otherwise.

[From the Federal Reporter, v. 192, 8°. St. Paul, West Publishing Co., 1912, pp. 67–72.]

FERRIS *v.* FROHMAN

(Error to the Supreme Court of the State of Illinois.)

No. 44. Submitted November 7, 1911. Decided February 19, 1912

Ferris v. *Frohman*

Although complainant may assert his own common-law copyright to his play, if he alleges that defendant has obtained a copyright for the play sought to be enjoined and the defendant stands upon the copyright and is enjoined, a Federal right is set up and denied, and this court has jurisdiction to review the judgment, under section 709, Revised Statutes.

Under the law as it existed in 1894, after a play had been performed in England, the rights of the owner to protection against the unauthorized production in England is only that given by the statutes; but the deprivation of common-law rights by force of the statutes was limited by territorial bounds within which the statute was operative.

Public representation in this, or in another, country of a dramatic composition not printed and published, does not deprive the owner of his common-law right save by operation of statute.

At common law the public performance of a play is not an abandonment to public use.

The purpose and effect of the copyright law is not to render fruits of piracy secure; and a copyright does not protect one producing a play which is substantially a copy of an unprinted and unpublished play, the common-law property right whereof is in another.

238 Illinois, 430, affirmed.

The facts, which involve the right of authors to unpublished dramatic compositions and productions on the stage, are stated in the opinion.

Mr. Charles H. Aldrich, with whom Mr. Charles R. Aldrich, Mr. Charles G. McRoberts, and Mr. L. E. Chipman were on the brief, for plaintiff in error:

Plaintiff in error properly claimed below that the play which he was presenting and against which the injunction was sought, was protected by copyright under section 4952, Revised Statutes, and that the assertion of common-law rights in a drama which had been copyrighted in England by its authors who were citizens of Great Britain was in conflict with the copyright arrangements between Great Britain and this country and the act of March 3, 1891.

The final decision of the Supreme Court of Illinois was against these claimed rights and a Federal question is therefore involved. (Erie R. R. Co. *v.* Purdy, 185 U. S., 148, 153; C., B. & Q. Ry. Co. *v.* Illinois, 200 U. S., 561, 580, 581; Murdock *v.* Memphis, 20 Wall., 635; Pickering *v.* Lomax, 145 U. S., 310; U. P. R. R. Co. *v.* Colburn, 164 U. S., 383; Green Bay, &c., Canal Co. *v.* Patten Paper Co., 172 U. S., 58, 68; Dale Tile Company *v.* Hyatt, 125 U. S., 46; Atherton *v.* Fowler, 91 U. S., 143.)

There could have been no decision in favor of the plaintiff below that did not in effect deny the right claimed under the copyright laws of the United States by the defendant below. In such case there is a Federal question whether mentioned in the opinion of the court below or not. (Erie R. R. Co. *v.* Purdy, 185 U. S., 148, 153; C., B. & Q. Ry. Co. *v.* Illinois, 200 U. S., 561, 580, 581; Murray *v.* Chatterton, 96 U. S., 432, 441, 442.)

The statute 5 and 6 Vict., c. 45, sec. 20, makes public performance of a dramatic work with the author's or owner's consent equivalent to the first publication of a book.

And in England it is held that performance in the United States with the owner's consent terminates the author's playright in England and makes the performing right *publici juris*. (Boucicault *v.* Chatterton, 5 L. R. Ch. Div., 267; Boucicault *v.* Delafield, 1 H. & M., 597; 7 & 8 Vict., c. 12, sec. 19; Drone on Copyright, 583; Jefferys *v.* Boosey, 4 H. L. Cas., 815, 847 ,852, 856; Chappell *v.* Purday, 14 M. & W., 303; Boosey *v.* Purday, 4 Ex. Rep., 145.)

The performing right or playright had no existence at common law separate and apart from the manuscript of the author, but dates its origin from 3 and 4 Wm. IV, c. 15, and in this country from the act of Congress, August 18, 1856, 11 Stat., 138. (Boucicault *v.* Chatterton, L. R. 5 Ch. Div., 269; Wall *v.* Taylor, 9 L. R. Q. B. D., 727, 730; Donaldson *v.* Beckett, 4 Burr., 2408; Jefferys *v.* Boosey, 4 H. L. Cas., 815, 920.)

The English act was passed to give the right of performance and was brought about by the decision in Murray *v.* Elliston, 5 B. & Ald., 657; Chappell *v.* Boosey, 21 Ch. Div., 232, 241.

The public performance of a drama is in all respects analogous to the right to multiply copies of a book. It is not a common-law right distinct from the manuscript. (Cases *supra* and Wheaton *v.* Peters, 8 Pet., 590; Banks *v.* Manchester, 129 U. S., 123, 151; White-Smith Music Co. *v.* Apollo Co., 209 U. S., 1, 15.)

The statutes and decisions cited make public performance of the play a "publication" equivalent to the publication of a book and the word should have the same meaning in the law of literary property in this country if that equality of right with respect to such property as between the citizens of the United States and those of the Kingdom of Great Britain intended by the international copyright arrangement and the acts passed to carry it into effect is not to be defeated.

There can be but one publication and it makes no difference where this is made if with the consent of the author or proprietor. (The Mikado Case, 25 Fed. Rep., 183; Drone on Copyright, pp. 293, 295, and 577; Boucicault *v.* Wood, Fed. Cases, No. 1683; Pierce & Bushnell Mfg. Co. *v.* Werckmeister, 72 Fed. Rep., 54; 7 Amer. & Eng. Ency. of Law, 2d ed., p. 528, sub. Copyright; 25 Cyc., 1495, and cases cited.)

The contention of defendant in error is rendered presumptively unsound by the history of the struggle for international copyright arrangements. (2 Sen. Doc., 24th Cong., 2d sess., Doc. 179, and Messages of President therein; Report Royal Commissioners on Copyright; sec. 4971, Rev. Stat.; Act Mar. 3, 1891, 26 Stat., 1106–1110.)

It was not the intention of Congress to give to foreign citizens and composers advantages in this country which, according to the international copyright convention, were to be denied to citizens of this country abroad. (White-Smith Music Co. *v.* Apollo Co., 209 U. S., 1, 15.)

No copyright can be obtained in this country after a publication in this or any foreign country. (Rev. Stat., sec. 4956.)

Publication puts an end to common-law rights and all rights of the author or proprietor, unless he at the same time takes steps to initiate and secure statutory rights. (Drone on Copyright, pp. 100–104; MacGillivray on Copyright, 36–38; Mercantile Agency *v.* Jewelers' Pub. Co., 155 N. Y., 241; Mifflin *v.* White Co., 190 U. S., 260; Mifflin *v.* Dutton, 190 U. S., 265.)

The two rights do not coexist in the same composition. (Drone on Copyright, pp. 100–104; Bobbs-Merrill Co. *v.* Straus, 210 U. S., 339, 346; Fraser *v.* Yack, 116 Fed. Rep., 285; Mercantile Agency *v.* Jewelers' Pub. Co., 155 N. Y., 241; Tompkins *v.* Halleck, 133 Mass., 32, 36.)

The claim that this proposition should be limited by adding the words "in the same country," or equivalent words, as contended by counsel for defendant in error, is without foundation.

Copyright in a book or drama is the exclusive right of the owner to multiply and dispose of copies; this is where the drama is treated as a book. Playright is the exclusive right of public performance of the dramatic or musical composition. There is no reason why one should cease upon publication, or when devoted to unrestricted public use, and not the other.

Mr. Levy Mayer for defendants in error:

This court has no jurisdiction of the present writ of error. (Appleby *v.* Buffalo, 221 U. S., 524; Waters-Pierce Oil Co. *v.* Texas, 212 U. S., 86; Harding *v.* Illinois, 196 U. S., 78; Howard *v.* Fleming, 191 U. S., 126; Home for Incurables *v.* New York, 187 U. S., 155; De Lamars *v.* Nesbitt, 177 U. S., 523; Sayward *v.* Denney, 158 U. S., 180.)

The public performance in England of a manuscript play which under the British statutes is made a publication and deprives the author of his common-law right of exclusive representation, does not deprive the author of such common-law right in this country where public performance is not deemed a publication. (Crowe *v.* Aiken, 2 Biss., 208; S. C., Fed. Cas. No. 3441; Palmer *v.* De Witt, 2 Sweeny, 530; S. C., 40 How. Pr., 293; aff'd 47 N. Y., 532; Tompkins *v.* Halleck, 133 Massachusetts, 32; Drone on Copyright, 118–121, 554, 574; Wandell, Law of the Theater, 479; 25 Cyc., 1497.)

At common law and before the passage of copyright statutes an author had an exclusive property right in his manuscript. (Cases *supra*, and see Drone on Copyright, 102.)

The public performance of a manuscript drama is not in this country a publication, but the author still retains his common-law right to its exclusive representation. (Drone on Copyright Law, 119; cases *supra* and Boucicault *v.* Hart, 13 Blatchf., 47; S. C., Fed. Cas. No. 1692; Aronson *v.* Fleckenstein, 28 Fed. Rep., 75; 25 Cyc., 1497, and cases cited.)

A different rule prevails in England by statute. (Stats. 3 and 4 Wm. IV, c. 15; Stats. 5 and 6 Vict., c. 45, sec. 20; Boucicault *v.* Delafield, 1 Hem. and M., 597; Boucicault *v.* Chatterton, 5 Ch. Div., 267; Drone on Copyright, pp. 574, 605, 656; MacGillivray on Copyright, 126; Scrutton on Copyright, 3d ed., 72.)

The provisions of the English statutes in regard to registration of dramatic compositions are permissive only. (Drone on Copyright, pp.

280, 603; MacGillivray on Copyright, 47, 133; Scrutton on Copyright, 3d ed., 88; 8 Halsbury's Laws of England, 179; Russell *v.* Smith, 12 Q. B. [Ad. & El. (N. S.)], 217; Clark *v.* Bishop, 27 L. T. (N. S.), 908.)

The *lex domicilii* can not fix the status of literary property where the author seeks to enforce rights in respect thereto in a foreign country. (1 Morgan, Law of Literature, 479; Drone on Copyright, 581; Story's Conflict of Laws, sec. 550; cases *supra*, and Baglin *v.* Cusenier Co., 221 U. S., 580; Minor *v.* Cardwell, 37 Missouri, 350.)

Mr. Justice HUGHES delivered the opinion of the court.

This is a writ of error to the Supreme Court of Illinois.

The suit was brought by Charles Frohman, Charles Haddon Chambers, and Stephano Gatti (defendants in error), to restrain the production of what was alleged to be a piratical copy of a play known as The Fatal Card. Its authors were Charles Haddon Chambers and B. C. Stephenson, British subjects resident in London, who composed it there in 1894. The firm of A. & S. Gatti, theatrical managers of London, of which the complainant Gatti is the surviving partner, became interested with the authors and on September 6, 1894, the play was first performed in London. It was registered under the British Statutes on October 31, 1894, and again on November 8, 1894. Charles Frohman, of New York, by agreement of June 13, 1894, obtained the right of production in this country for five years. On March 25, 1895, Frohman acquired all the interest of Stephenson in the play in and for the United States, and it was extensively represented under his supervision. It was not copyrighted here.

George E. McFarlane made an adaptation of this play, called it by the same name, and transferred it to the plaintiff in error, Richard Ferris, of Illinois, who copyrighted it in August, 1900, under the laws of the United States, and later caused it to be performed in various places in this country. The adapted play differed from the original in various details, but not in its essential features.

The Superior Court of Cook County found that the complainants were the sole owners of the original play; that it had never been published or otherwise dedicated to the public in the United States or elsewhere, and that the Ferris play was substantially identical with it. Ferris was directed to account, and was perpetually restrained from producing the adaptation which he had copyrighted. The Appellate Court for the First District reversed the decree (131 Ill. Ap., 307), but on appeal to the Supreme Court of Illinois this decision was reversed and the decree of the Superior Court was affirmed. (238 Illinois, 430.)

The defendants in error contest the jurisdiction of this court upon the ground that the bill was based entirely upon a common-law right of property, and insist that the upholding of this right by the State court raises no Federal question. But the complainants sued, not simply to maintain their common-law right in the original play, but by virtue of it to prevent the defendant from producing the adapted play which he had copyrighted under the laws of the United States. They challenged a right which the copyright, if sustainable, secured. (R. S., 4952.) It was necessary for them to make the challenge, for they could

not succeed unless this right were denied. Ferris stood upon the copyright. That it had been obtained was alleged in the bill, was averred in the answer, and was found by the court. The fact that the court reached its conclusion in favor of the complainants, by a consideration, on common-law principles, of their property in the original play does not alter the effect of the decision. By the decree Ferris was permanently enjoined "from in any manner using, . . . selling, producing, or performing . . . the said defendant's copyrighted play hereinbefore referred to for any purpose." The decision thus denied to him a Federal right specially set up and claimed within the meaning of sec. 709 of the Revised Statutes of the United States. This court, therefore, has jurisdiction. (C., B. & Q. Ry. Co. *v.* Drainage Commissioners, 200 U. S., 561, 580, 581; McGuire *v.* Commonwealth, 3 Wall., 382, 385; Anderson *v.* Carkins, 135 U. S. 483, 486; Shively *v.* Bowlby, 152 U. S., 1, 9; Northern Pacific R. R. Co. *v.* Colburn, 164 U. S., 383, 385, 386; Green Bay &c. Canal Co. *v.* Patten Paper Co., 172 U. S., 58, 67, 68.)

The substantial identity of the two plays was not disputed in the appellate courts of Illinois, and must be deemed to be established. The contention was, and is, that after the public performance of the original play in London in 1894 the owners had no common-law right, but only the rights conferred by the British statutes, and that Frohman's interest (save the license which expired in 1899) was subsequently acquired. Hence, it is said, the play not being copyrighted in the United States was *publici juris* here, and the adapter was entitled to use it as common material.

Performing right was not within the provisions of 8 Anne, c. 19, which gave to authors the sole liberty of printing their books. (Coleman *v.* Wathen, 5 T. R., 245.) The act of 1833, known as Bulwer-Lytton's Act, conferred statutory playright in perpetuity throughout the British dominions, in the case of dramatic pieces not printed and published, and for a stated term if printed and published. (3 and 4 Wm. IV, c. 15.) By section 20 of the copyright act of 1842, 5 and 6 Vict., c. 45, it was provided that the sole liberty of representing any dramatic piece should be the property of the author and his assigns for the term therein specified for the duration of copyright in books. The section continued "and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition as if the same were herein expressly reenacted and applied thereto, 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." Mr. Scrutton, in his work on copyright (4th ed., p. 77), states that it is "probable, though there is no express decision to that effect, that the court, following Donaldson *v.* Beckett, 2 Bro. Cases in Parl., 129, would hold the common-law right destroyed by the statutory provisions after first performance in public." (Compare MacGillivray on Copyright, pp. 122, 127, 128.) And it may be assumed,

in this case, that after the play had been performed the right of the owners to protection against its unauthorized production in England was only that given by the statutes.

Further, in the absence of a copyright convention, there is no playright in England in the case of a play, not printed and published, where the first public performance has taken place outside the British dominions. This results from section 19 of the act of 7 and 8 Vict., c. 12, known as the international copyright act, which provides: "Neither the author of any book nor the author or composer of any dramatic piece or musical composition . . . which shall after the passing of this act 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." The provision applies to British subjects as well as to foreigners, and the words "first published" include the first performance of a play. In Boucicault *v.* Delafield, 1 H. & M., 597, the author of the play known as The Colleen Bawn filed a bill to restrain a piratical production. It appeared that the play had first been represented in New York, and by reason of that fact—there being no copyright convention with the United States—it was held that, under the statute above quoted, there was no playright in England. To the same effect is Boucicault *v.* Chatterton, 5 Ch. Div., 267, where the author unsuccessfully sought to restrain an unauthorized performance of The Shaughraun, an unprinted play which had first been represented here.

The British Parliament, in thus fixing the limits and conditions of performing rights, was dealing with rights to be exercised within British territory. It is argued that the English authors in this case, by the law of their domicile, were without common-law right and in its stead secured the protection of the British statutes which can not avail them here. But the British statutes did not purport to curtail any right of such authors with respect to the representation of plays outside the British dominions. They disclose no intention to destroy rights for which they provided no substitute. There is no indication of a purpose to incapacitate British citizens from holding their intellectual productions secure from interference in other jurisdictions according to the principles of the common law. Their right was not gone *simpliciter*, but only in a qualified sense for the purposes of the statutes, and there was no convention under which the authors' work became public property in the United States. (See Saxlehner *v.* Eisner, 179 U. S., 19, 36; Saxlehner *v.* Wagner, 216 U. S., 375, 381.) When section 20 of the act of 5 and 6 Vict., c. 45, provided that the first public performance of a play should be deemed equivalent, in the construction of that act, to the first publication of a book, it simply defined its meaning with respect to the rights which the statutes conferred. The deprivation of the common-law right, by force of the statute, was plainly limited by the territorial bounds within which the operation of the statute was confined.

The present case is not one in which the owner of a play has printed and published it and thus, having lost his rights at common law, must depend upon statutory copyright in this country. The play in question has not been printed and published. It is not open to dispute that the authors of The Fatal Card had a common-law right of property in the play until it was publicly performed. (Donaldson *v.* Beckett, 2 Bro. Cases in Parl., 129; Prince Albert *v.* Strange, 1 MacN. & G., 25; Jefferys *v.* Boosey, 4 H. L. C., 815, 962, 978.) And they were entitled to protection against its unauthorized use here as well as in England. (Wheaton *v.* Peters, 8 Pet., 591, 657; Paige *v.* Banks, 13 Wall., 608, 614; Bartlett *v.* Crittenden, 5 McLean, 32; Crowe *v.* Aiken, 2 Biss., 208; Palmer *v.* De Witt, 2 Sweeny, 530; 47 N. Y., 532.)

What effect, then, had the performance of the play in England upon the rights of the owners with respect to its use in the United States? There was no statute here by virtue of which the common-law right was lost through the performance of the unpublished play. The act of August 18, 1856 (11 Stat., 138, c. 169), related only to dramatic compositions for which copyright had been obtained in this country; its object was to secure to the author of a copyrighted play the sole right to its performance after it had been printed. (Boucicault *v.* Fox, 5 Blatchf., 87, 97, 98.) The same is true of the provisions of the copyright act of July 8, 1870 (16 Stat., 198, 212, 214; R. S., 4952, 4966), and of those of the act of March 3, 1891 (26 Stat., 1106, 1107), which were in force when the transactions in question occurred and this suit was brought. The fact that the act of March 3, 1891, was applicable to citizens of foreign countries, permitting to our citizens the benefit of copyright on substantially the same basis as its own citizens (sec. 13), and that proclamation to this effect was made by the President with respect to Great Britain (27 Stat., 981), did not make the British statutes operative within the United States. Nor did that fact add to the provisions of the act of Congress so as to make the latter destructive of the common-law rights of English subjects in relation to the representation of plays in this country, which were not copyrighted under that act and which remained unpublished. These rights, like those of our own citizens in similar case, the act of 1891 did not disturb.

The public representation of a dramatic composition, not printed and published, does not deprive the owner of his common-law right, save by operation of statute. At common law, the public performance of the play is not an abandonment of it to the public use. (Macklin *v.* Richardson, Ambler, 694; Morris *v.* Kelly, 1 Jac. & W., 481; Boucicault *v.* Fox, 5 Blatchf., 87, 97; Crowe *v.* Aiken, 2 Biss., 208; Palmer *v.* DeWitt, 2 Sweeny, 530, 47 N. Y., 532; Tompkins *v.* Halleck, 133 Mass., 32.) Story states the rule as follows: "So, where a dramatic performance has been allowed by the author to be acted at a theater, no person has a right to pirate such performance, and to publish copies of it surreptitiously; or to act it at another theater without the consent of the author or proprietor; for his permission to act it at a public theater

does not amount to an abandonment of his title to it, or to a dedication of it to the public at large." (2 Story, Eq. Jur., sec. 940.) It has been said that the owner of a play can not complain if the piece is reproduced from memory. (Keene *v.* Wheatley, 9 Am. Law Reg., 33; Keene *v.* Kimball, 16 Gray, 545.) But the distinction is without sound basis and has been repudiated. (Tompkins *v.* Halleck, *supra.*)

And, as the British statutes did not affect the common-law right of representation in this country, it is not material that the first performance of the play in question took place in England. In Crowe *v.* Aiken (1870), *supra*, the play Mary Warner had been composed by a British subject. It was transferred to the plaintiff with the exclusive right to its representation on the stage in the United States for five years from June 1, 1869. It had not been printed with the consent either of the author or of the plaintiff. It was first publicly performed in London in June, 1869, and afterwards was represented here. The court (Drummond, J.) held that the plaintiff by virtue of his common-law right was entitled to an injunction restraining an unauthorized production. In Palmer *v.* De Witt (1872), *supra*, the suit was brought to restrain the defendant from printing an unpublished drama called Play, composed by a British citizen resident in London. The plaintiff, on February 1, 1868, had purchased the exclusive right of printing and performing the play in the United States. On February 15, 1868, it was first performed in London. It was held that the common-law right had not been destroyed by the public representation, and the plaintiff had judgment. In the case last cited, and apparently in that of Crowe *v.* Aiken, the transfer to the plaintiff antedated the public performance, but neither decision was rested on that distinction. In Tompkins *v.* Halleck (1882), *supra*, an unpublished play called The World had been written in England, where, after being presented, it was assigned by the author to a purchaser in New York. It was acted in that city and then transferred to the plaintiffs with the exclusive right of representation in the New England States. The plaintiff's common-law right was sustained, and an unauthorized performance was enjoined.

Our conclusion is that the complainants were the owners of the original play and exclusively entitled to produce it. Their common-law right with respect to its representation in this country had not been lost. This being so, the play of the plaintiff in error, which was substantially identical with that of the complainants, was simply a piratical composition. It was not the purpose or effect of the copyright law to render secure the fruits of piracy, and the plaintiff in error is not entitled to the protection of the statute. In other words, the claim of Federal right upon which he relies is without merit.

Judgment affirmed.

[From United States Reports, v. 223, 8°. New York, The Banks Law Publishing Co., 1912, No. 3, March 20 1912, pp. 424-437.]

NEW YORK TIMES CO. *v.* STAR CO.

(Circuit Court, S. D. New York. April 5, 1912.)

New York Times Co. v. Star Co.

1. COPYRIGHTS (SEC. 2)—STATUTORY PROVISIONS—POWERS OF CONGRESS.

The subject of statutory copyright is wholly within the powers of Congress, and it may restrict in any way the maintenance of actions or proceedings in the courts for infringement of copyright.

2. COPYRIGHTS (SEC. 74)—INFRINGEMENT—JURISDICTION—INJUNCTION.

Under act of Congress March 4, 1909, c. 320, sec. 12, 35 Stat., 1078 (U. S. Comp. St. Supp., 1909, p. 1293), providing for copyright and declaring that no "action or proceeding shall be maintained for infringement of copyright" until the provisions with respect to the deposit of copies and registration of the work has been complied with, and that actions or proceedings shall be cognizable by enumerated courts and that civil actions may be instituted in the district of which defendant is an inhabitant, etc., an injunction enjoining the publication of an alleged copyright work, issued in a suit in equity and served before two copies of the work have been deposited in the copyright office or mailed, addressed to the register of copyrights, is void because of want of jurisdiction of the suit; the quoted phrase including a suit in equity.

In equity. Application by the New York Times Co. to punish the Star Co. for contempt for violation of an injunction. Denied.

Leventritt, Cook & Nathan for complainant.

Clarence J. Shearn for defendant.

LACOMBE, circuit judge. This proceeding grew out of the transactions referred to in the decision on motion for preliminary injunction. The order to show cause included a restraining order or temporary injunction, and it is charged by complainant that defendant published an account of Amundsen's journey to the South Pole, which was a colorable copy of its copyrighted narrative. Many points have been argued, but it will not be necessary to discuss them all.

The bill was verified March 8. It stated that complainant "is about to file two complete copies of the best edition when published." The order to show cause and restraining order were signed March 8 and were served on some one in the office of the defendant about midnight on the same day. Very early in the morning of March 9 the publication of complainant's copyrighted narrative and of defendant's paraphrase thereof appeared in their respective newspapers. The two copies of the copyrighted work were filed in the office of the register of coyprights, Washington, D. C., on March 9, on or after the opening of that office on that day. On these facts the question arises: Was complainant entitled to maintain an action such as this when the order was served at midnight on March 8?

The action is based upon the statute, and the answer to this question must be found in its provisions. Section 9 of the act of March 4, 1909 (35 Stat., 1077, c. 320 [U. S. Comp. St. Supp. 1909, p. 1292]), provides:

> 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, etc.

The bill shows that such a publication had been made before it was verified. Complainant thereby had then secured its copyright. Ownership of copyright and the vindication of such ownership by suit

are different things. The latter is provided for in section 12, which reads:

> 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. * * * 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.

[1, 2] The subject of statutory copyright being one wholly within the powers of Congress, it had full power to restrict in any way it chose the maintaining of such actions or proceedings in the courts as are concerned with the subject of infringement of the rights secured by such statute. A prohibition so broad as this goes to the jurisdiction of the courts to entertain such action or proceedings; and if the prohibition were operative when the injunction was served, the latter would be void, because made in an action which could not be maintained and of which, therefore, the court could not have jurisdiction.

The papers submitted indicate that at midnight of March 8, when the injunction was served, the two copies had not yet been "deposited in the copyright office or in the mail addressed to the register of copyrights." At that time, therefore, this action or proceeding could not be maintained and the injunction, being issued in an action whose maintenance was prohibited, would be of no binding force.

Complainant refers to sections 34, 35, and 36, which read as follows:

> 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.
>
> 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 enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

It does not seem that this last-quoted section in any way qualifies the prohibition of the twelfth section. The court or judge is given express authority to grant an injunction to prevent the violation of a copyright which has been secured by the party aggrieved. This in-

junction may be granted upon a bill of equity; that is, in an equity suit. But such an equity suit is covered by the phrase "action or proceeding for the infringement of copyright," and there is no apparent reason for construing the act so as to exempt such suits from the operation of the prohibition of section 12. No hardship to the owner of copyright results from the construction here followed. At the time the person entitled to copyright publishes his work with the notice required presumably he has copies of it in his possession and could at once deposit in the mail the two copies required addressed as the statute prescribes. That act on his part would seem to be a compliance with section 12 sufficient to entitle him to maintain his action or proceeding. But until he does this the prohibition of that section is imperative.

Without considering the other questions presented, the application is denied.

[From the Federal Reporter, v. 195, 8°. St. Paul, West Publishing Co., 1912, No. 1, June 6, 1912, pp. 110–113.]

Addendum III

COPYRIGHT CONVENTION BETWEEN THE UNITED STATES AND HUNGARY

ARTICLE 1

Convention between United States and Hungary

Authors who are citizens or subjects of one of the two countries or their assigns shall enjoy in the other country, for their literary, artistic, dramatic, musical and photographic works (whether unpublished or published in one of the two countries) the same rights which the respective laws do now or may hereafter grant to natives.

The above provision includes the copyright control of mechanical musical reproductions.

ARTICLE 2

The enjoyment and the exercise of the rights secured by the present convention are subject to the performance of the conditions and formalities prescribed by the laws and regulations of the country where protection is claimed under the present convention; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work.

ARTICLE 3

The term of copyright protection granted by the present convention shall be regulated by the law of the country where protection is claimed.

ARTICLE 4

The present convention shall be ratified and the ratifications shall be exchanged at Washington as soon as possible.

ARTICLE 5

The present convention shall be put in force one month after the exchange of ratifications, and shall remain in force until the termination of a year from the day on which it may have been denounced.

In faith whereof the plenipotentiaries have signed the present convention in two copies, each in English and Hungarian languages, and have affixed thereto their seals.

Done at Budapest, the 30th day of January, 1912.

RICHARD C. KERENS. [SEAL.]
ESTERHÁZY PÁL. [SEAL.]
TÖRY GUSTAV. [SEAL.]

[Ratification was advised by the Senate of the United States on July 23, 1912; ratifications were exchanged September 16, 1912; and the Convention went into force, October 16, 1912.]

INDEX.