86th Congress
2d Session

COMMITTEE PRINT

COPYRIGHT LAW REVISION

STUDIES

PREPARED FOR THE

SUBCOMMITTEE ON
PATENTS, TRADEMARKS, AND COPYRIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-SIXTH CONGRESS, SECOND SESSION

PURSUANT TO

S. Res. 240

STUDIES 20-

20. Deposit of Copyrighted Works

Printed for the use of the Committee on the Judiciary

UNITED STATES
GOVERNMENT PRINTING OFFICE
59536 WASHINGTON : 1960

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FOREWORD

This committee print is the seventh of a series of such prints of studies on "Copyright Law Revision," published by the Committee on the Judiciary Subcommittee on Patents, Trademarks, and Copyrights. The studies have been prepared under the supervision of the Copyright Office of the Library of Congress with a view to considering a general revision of the copyright law (title 17, United States Code).

Provisions of the present copyright law are essentially the same as those of the statute enacted in 1909, though that statute was codified in 1947 and has been amended in a number of relatively minor respects. In the half century since 1909 far-reaching changes have occurred in the techniques and methods of reproducing and disseminating the various categories of literary, musical, dramatic, artistic, and other works that are subject to copyright; new uses of these productions and new methods for their dissemination have grown up; and industries that produce or utilize such works have undergone great changes. For some time there has been widespread sentiment that the present copyright law should be reexamined comprehensively with a view to its general revision in the light of present-day conditions.

Beginning in 1955, the Copyright Office of the Library of Congress, pursuant to appropriations by Congress for that purpose, has been conducting a program of studies of the copyright law and practices. The subcommittee believes that these studies will be a valuable contribution to the literature on copyright law and practice, that they will be useful in considering problems involved in proposals to revise the copyright law, and that their publication and distribution will serve the public interest.

The present committee print contains the following two studies: No. 20, "Deposit of Copyrighted Works," by Elizabeth K. Dunne, Research Analyst of the Copyright Office; and No. 21, "The Catalog of Copyright Entries," by Elizabeth K. Dunne and Joseph W. Rogers, Chief of the Cataloging Division of the Copyright Office.

The Copyright Office invited the members of an advisory panel and others to whom it circulated these studies to submit their views on the issues. The views, which are appended to the studies, are those of individuals affiliated with groups or industries whose private interests may be affected by copyright laws, as well as some independent scholars of copyright problems.

It should be clearly understood that in publishing these studies the subcommittee does not signify its acceptance or approval of any statements therein. The views expressed in the studies are entirely those of the authors.

JOSEPH C. O'MAHONEY
Chairman, Subcommittee on Patents, Trademarks and Copyrights, Committee on the Judiciary, U.S. Senate.

COPYRIGHT OFFICE NOTE

The studies presented herein are part of a series of studies prepared for the Copyright Office of the Library of Congress under a program for the comprehensive reexamination of the copyright law (title 17 of the United States Code) with a view to its general revision.

The Copyright Office has supervised the preparation of the studies in directing their general subject matter and scope, and has sought to assure their objectivity and general accuracy. However, any views expressed in the studies are those of the authors.

Each of the studies herein was first submitted in draft form to an advisory panel of specialists appointed by the Librarian of Congress for their review and comment. The panel members, who are broadly representative of the various industry and scholarly groups concerned with copyright, were also asked to submit their views on the issues presented in the studies. Thereafter each study, as then revised in the light of the panel's comments, was made available to other interested persons who were invited to submit their views on the issues. The views submitted by the panel and others are appended to the studies. These are, of course, the views of the writers alone, some of whom are affiliated with groups or industries whose private interests may be affected, while others are independent scholars of copyright problems.

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Copyright Office.

ARTHUR FISHER,
Register of Copyrights,
Library of Congress.

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Librarian of Congress.

STUDIES IN EARLIER COMMITTEE PRINTS

First print:

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

Second print:

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

Third print:

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

Fourth print:

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

Fifth print:

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

Sixth print:

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

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STUDY NO. 20

DEPOSIT OF COPYRIGHTED WORKS

By Elizabeth K. Dunne

January 1960

59536—60——2

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DEPOSIT OF COPYRIGHTED WORKS

INTRODUCTION

The deposit of copies of copyrighted works serves two purposes: to identify the copyrighted work in connection with copyright registration, and to provide copies for the use of the Library of Congress. The deposit of copies for the first purpose has been an integral part of the U.S. copyright system since its beginning in 1790. Deposit for the Library of Congress was inaugurated in 1846. Before 1870 the deposit for each purpose was made separately. Since the administration of the registry system was placed in the Library of Congress in 1870, a single deposit has served both purposes.

Prof. Benjamin Kaplan in his study "The Registration of Copyright" [1] has dealt extensively with the general aspects of deposit in relation to copyright registration. The present study is concerned more directly with the deposit system as a means of providing copies of works for the Library of Congress, and will also consider some of the specific questions concerning deposits in relation to registration.

I. DEVELOPMENT of LIBRARY DEPOSIT SYSTEMS in GENERAL

The first law requiring the deposit of books and other cultural materials in a library for the purpose of preserving the cultural achievements of a nation was the Ordonnance de Montpellier, 1537, promulgated by Francis I of France.[2] As the idea was adopted in other European states and developed in France, it was often found expedient to embody it in the laws on control of the press or to combine it with the granting of printing privileges, to insure better compliance with the deposit provisions as well as surveillance of the works being published. The first real deposit law in England was incorporated in the Licensing Act of 1662.[3]

The copyright laws which evolved out of the old system of granting printing privileges very often contained provision for deposit of copies which might be used both as record evidence of the work copyrighted and for the enrichment of libraries.[4] This system of deposits

[1] "Copyright Law Revision Study No. 17" [in the present series of Committee Prints].

[2] The law applied to all materials then published, including imported foreign works which, however were purchased. Its only intent was to collect the works in one place. The penalty for noncompliance was confiscation of the whole edition. Because of the difficulty of communication, however, it was not easy to enforce such laws.

[3] 13 and 14 CAR. II, c. 33. Library deposit in England began at the Bodleian Library at Oxford in 1611 under a perpetual covenant made between Sir Thomas Bodley and the officials of the Stationers' Co. It was a type of voluntary deposit. Registrations of titles had been made at Stationers' Hall since 1557 but no copies were deposited. The main body of printers saw no advantage to deposit and complied reluctantly or not at all. There is some evidence that the efforts of the Bodleian to enforce this deposit agreement resulted in the provision for deposit of copies in the Star Chamber Decree of July 11, 1637, and the Licensing Acts, *cf.* PARTRIDGE, HISTORY OF THE LEGAL DEPOSIT OF BOOKS THROUGHOUT THE BRITISH EMPIRE (1938), which is a major source of the historical material on English deposit in this paper.

[4] As, for example, in the Statute of Anne, 1710 (8 ANNE ch. 19). The French Copyright Law of 1793 required deposit, as a condition of enforcing copyright, at the Bibliothèque Nationale, until 1925. But under the ordonnance of Oct. 24, 1814, the deposit was integrated with that required under the various press laws which was the deposit actively enforced.

for both purposes is still retained in some countries that require copyright registration.[5] However, in 1908 the Berne Union, to which most European nations are parties, abandoned compulsory formalities, including registration and deposit, in connection with copyright. Thereafter the countries of the Berne Union generally adopted special deposit laws (dépôt légal to provide for the enrichment of libraries independently of copyright.[6] With similar effect, the recent laws creating national libraries in Canada [7] and Japan [8] contain the provision for deposit in those countries. In Switzerland an agreement between the publishers and the national library provides for deposit on a voluntary basis (dépôt gratuit).[9]

In the broad sense of the term any deposit required by law may be termed "legal deposit" whether the law is a press law, a copyright law, or a law specifically drawn to benefit libraries. A true "copyright deposit," however, is limited to the deposit of works protected under the copyright law and deposited initially for copyright registration, though the works may also be used to enrich a library or libraries. "Legal deposit" is usually understood as referring to the required deposit of all works of certain types for the benefit of libraries without regard to copyright, and it is used herein in that sense.

Copyright deposits by their nature are likely to include more types of material than legal deposits because works of all categories granted protection are subject to copyright deposit, and will be deposited to some extent, whether they are works ordinarily collected by libraries or not. On the other hand, for certain categories of works copyright deposit will bring in a smaller percentage of all the works published, if many works of a particular category are not copyrighted. A notable example is newspapers, all of which are generally required to be deposited under legal deposit systems but most of which are not copyrighted in the United States. Copyright deposits used to enrich a library must be supplemented by other arrangements for acquiring noncopyrighted works, such as certain types of Government publications and works which are in the public domain. Copyright deposit may be enforcible by provisions affecting the exercise of copyright as well as by a fine. The obligation to make copyright deposit normally rests on the author or copyright proprietor.

Legal deposit systems, although potentially capable of bringing into a library all works published domestically which in any way contribute to the national intellectual heritage, are likely to be more severely tailored to the needs and facilities of the libraries which they are to enrich, because there usually exists by law or practice an obligation to preserve the deposits permanently. The amount of material of little use to libraries which may be placed in the collections under a legal deposit law is infinitely greater than under a copyright law.

[5] The countries retaining combined deposit include Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, Haiti, Nicaragua, Peru, the Philippines, Portugal, Spain, the United States, Uruguay, and Venezuela. The copyright deposit required in Chile, Nationalist China, and Mexico is apparently for purposes of record alone.

[6] For example, the special-deposit laws in France and Italy which are discussed in pt. II below. British Commonwealth countries, except the United Kingdom and India, have not yet revised their copyright laws based on the British Act of 1911. Provisions for the library deposit are still included in the copyright law although deposit is not tied to copyright registration. With adjustments for local conditions the provisions follow the pattern of the Act of 1911. Australia and New Zealand limit the deposit to works under copyright; other Commonwealth countries require the deposit of all works published.

[7] National Library Act, 1952 (11). If deposit is made under the Copyright Act it is accepted as compliance with the Library Act. The "Report on Copyright of the Canadian Royal Commission," 1957 does not discuss deposit.

[8] National diet library law, Feb. 9, 1948 (Law No. 5), Arts. 24, 25.

[9] For discussion see ch. II(d) *infra*.

At present, in practice, the obligation of legal deposit is usually limited to printed or near-print publications (including microfilm). Moreover, most countries, either specifically by law or by not enforcing compliance, exempt certain types of marginal materials such as commercial publications, works printed for personal use, and certain kinds of administrative documents. The obligation to make legal deposit is most often laid on the printer to insure comprehensiveness, but is sometimes laid on the publisher. The penalty for failure to deposit is usually a fine, which in many cases is so small that, in practice, libraries buy the work rather than take legal action.

Under either system most laws specify that the works deposited must be of a certain physical standard. If several copies are demanded, or if the best edition is a limited de luxe edition, some relaxation of the deposit requirements is often made. The number of copies which are required varies considerably from country to country regardless of the type of law, and may also vary according to the category of work. Most laws specify a time limit within which deposit should be made and some set a limit to the time allowed the library to enforce compliance. Practice varies as to whether the depositor or the depository should pay postage fees or whether the franking privilege is granted.

It is not possible to say positively that the practical results in terms of library acquisitions under a legal deposit act are necessarily more complete than under a copyright law, because it is impossible to get any kind of reliable figures on which to base comparisons of possible receipts under the two systems. In the last analysis the type of law employed in the various countries seems to be that which best suits the needs and philosophy of government and best conforms to local publishing conditions, Berne Union countries will not generally use a true copyright deposit law because they consider registration and deposit unjustifiable as a condition attached to the exercise of the rights of an author. The next chapter surveys the deposit laws in representative Berne Union countries and in the Soviet Union.

II. Current Library Deposit Systems in Selected Countries

A. THE UNITED KINGDOM

1. Historical background [10]

From 1709 to 1956 provisions for deposit in several libraries were included in the various copyright acts. Although from the first the copies were sent to Stationers' Hall as the central distribution depot, they were not apparently used in making the copyright entries in the Stationers' Register. That the library deposit was divorced from copyright registration was settled by the decision in 1812 in *Cambridge University* v. *Bryer* (16 East 317), that—

> 11 of the best and largest copies of every new work and reprint with additions were in future to be deposited at Stationers' Hall for the use of the libraries whether the work be registered or not.

The number of copies required was reduced to five in 1836. In 1850 the keeper of printed books at the British Museum, Anthony Panizzi, began a series of successful legal actions against recalcitrant pub-

[10] PARTRIDGE, THE HISTORY OF THE LEGAL DEPOSIT OF BOOKS (1938) is the basic text for this material.

lishers to secure current and retrospective compliance. Since then compliance with the law has been satisfactory and, on the whole, willing, although the publishers during the revision of the law in 1911[11] and again in 1951 argued to restrict the types of works to be deposited in libraries other than the British Museum.

The Copyright Committee in 1951 took testimony on deposit for the libraries, because it had been so long a part of the copyright law, but questioned whether the provision should not be in a separate statute since it was in no way connected with copyright.[12] The Committee felt that the arguments of the depository libraries for the continuance of the privilege were justified historically, that the dispersal among several libraries of complete sets of published works was of great cultural importance to the country, and an act of prudence besides. The publishers' contention that the financial burden of deposit lay unequally among publishers was accepted, but it was noted that the obligation was of such long standing that by now it must have become part of the normal expenses of conducting a publishing business. The Committee felt it was outside its province to extend the deposit obligation to motion pictures and phonograph records as requested by the British Film Institute and the British Institute of Recorded Sound, Ltd., for the purpose of establishing national archives in those fields.

The new copyright bill which became the Act of 1956 omitted the sections of the 1911 Act on library deposits. Efforts were made in Parliamentary debate to restore these provisions and to include deposit of films and records. The Government spokesman refused to support these amendments and proposed that sections 15 and 34 of the Copyright Act of 1911 remain in force until Parliament should review the whole question of deposit on its merits.[13] Accordingly, while no provisions for library deposits were included in the Copyright Act of 1956, those sections of the Act of 1911 remain the law for deposit in the United Kingdom.

2. Operation of the deposit system

Six libraries benefit under section 15 of the Copyright Act of 1911—the British Museum, the Bodleian Library at Oxford, the University Library at Cambridge, the Library of Trinity College (Dublin), the National Library of Scotland, and the National Library of Wales.

Delivery by the publisher of all "books" to the British Museum is obligatory within 1 month of publication at the publisher's expense;[14] delivery to the other libraries is obligatory only on receipt of a written demand issued within a year of publication.[15] The term "book" is defined as every part or division of a book, pamphlet, sheet of letter press, sheet of music, map, plan, chart, or table separately

[11] The National Library of Wales (established 1907) was added as a depository in 1911 on a limited basis (§ 15(5)). *Cf.* National Library of Wales (Delivery of Books) Regulations, 1924, amended 1956 (S.I. 1956, No. 1978).

[12] Report of the Copyright Committee 1951, pp. 22-29 (1952).

[13] See THE BOOKSELLER, pp. 800, 801 (Aug. 11, 1956), and pp. 1517, 1518 (Nov. 3, 1956).

[14] The Copyright Receipt Office is a unit of the British Museum which receives, records, issues receipts, and carries on compliance activities for materials received under the Copyright Act. The Office has no real connection with copyright as such but often receives inquiries on copyright problems.

[15] Delivery to these libraries (except Wales) is to a central depot maintained cooperatively in London to collect, distribute, and claim the deposit. Most trade publishers deliver automatically. For efficiency of operation the claims issued are usually for all four libraries and they all join in any legal action taken. Titles collected are somewhat more selective than at the British Museum. The system is reported to work very satisfactorily.

published.[16] Subsequent editions are exempt unless they contain additions or alterations. The penalty for noncompliance within a month after a demand, on summary conviction, is £5 and the value of the work, to be paid to the library for which the demand was made.[17] The copy to be delivered to the British Museum must be of the best edition published; for the other libraries, from the largest trade edition published.

There are only two ways in which the British deposit may be said to serve any purpose connected with copyright: unpublished works in typewritten form will be accepted for deposit and their existence at the date of deposit is evidenced by the receipt issued by the British Museum; and for published works the receipt is accepted as evidence of publication by the date of deposit.

The keeper of printed books informed this writer in 1955 as follows: The majority of publishers now view deposit at the British Museum as a cultural contribution they are glad to make. Since the "British National Bibliography" based on the deposit was started in 1950, deposit has been much more prompt. A number of U.S. publishers deposit their works although the British Museum does not demand them unless they carry an English imprint. Some of the difficulties mentioned in the administration of the deposit were the determination of whether a "new edition" does contain alterations and should be deposited; the difficulty in claiming and acquiring government publications not issued through H. M. Stationery Office; the vagueness of the law concerning the obligation to deposit works not on public sale, i.e., society publications, "confidential publications," etc.; some trade publications exempted by the 1932 act are desirable bibliographic works and must be solicited. On the whole he thought the system is very satisfactory.

B. FRANCE

In 1925 after many years of agitation by librarians, authors and their societies, and publishers, a new deposit law was passed which was designed to increase the scope and compliance with the law for the benefit of the Bibliothèque Nationale, and at the same time provide an official record in a central registry bureau (the Régie du Dépôt Légal in the Ministry of the Interior) of the existence of a work, the date of publication, and the number of copies actually printed, as an aid to authors.[18] To improve compliance with the law a dual system of deposit by both printers and publishers was instituted. The registry system was only to be declaratory of rights; the records were to be freely available to depositors, authors and successors in title with provision for the issuance of certified copies of the records.

The revised law of June 21, 1943, now in force, increased the number of copies to be deposited and introduced new means of control over compliance. Printed matter of all kinds (except works for personal use, administrative and business forms, rate schedules, labels, securi-

[16] Since the British Museum by its own law must preserve everything which is once accepted, the British Museum Act, 1932 (22 and 23 GEO. V, ch. 34) exempts from the deposit (and authorizes refusal if deposited) commercial publications such as advertisements, registers of voters, patent specifications, local transport timetables, calendars, blank books and forms, wall sheets with alphabets, mottoes, etc. The other libraries simply do not claim such material.

[17] In practice legal action is now rarely taken. It is cheaper to buy the work.

[18] NEVEUX, LE DÉPÔT LÉGAL DES PRODUCTIONS DES ARTS GRAPHIQUES, 1935, discusses library deposit in France historically and the 1925 law intensively. The French system is in a sense an inversion of the U.S. system, the documentation depending on the library deposit. The Régie du Dépôt Légal was established by décret of Feb. 20, 1924.

ties, voting ballots, etc.), films and phonorecords are subject to deposit.[19] The publisher now sends one copy of each work to the Régie du Dépôt Légal and four copies to the Bibliothèque Nationale prior to sale or distribution. The printer or manufacturer who last handles the work deposits two copies of all works except music at a designated provincial library which retains one copy for its collections and forwards the other to the Bibliothèque Nationale.[20] In the case of new editions, works issued in limited editions, et cetera, printers deposit one copy, publishers one for each depository. Copies deposited must be regular trade editions. All deposits are sent post-free. The penalty for noncompliance is the price of the copies and a fine of 200–300 francs; for repeated offense, 3,000–10,000 francs. In addition, seizure and confiscation of copies illegally put on sale may be ordered. The library is given 10 years to claim a work; penal action is limited to 3 years from publication. Legal action is now rarely taken as it is too expensive. The Bibliothèque Nationale distributes the duplicate copies to various French libraries according to subject matter, uses some for international exchange, but keeps permanently one copy of all deposits and the duplicate copies not distributed to other libraries. The "Bibliographie de la France" is based on this deposit.

To control compliance with the law each publisher and printer is required to keep a special register in which each work published or printed is assigned an order number, and in which is recorded all the information required to be printed in a notice on the work itself.[21] The law (art. 4) provides that the notice must appear on all copies of a work subject to deposit. By decrees of June 21 and October 12, 1943, the following particulars must appear in the notice: (1) Name of the printer and manufacturer; (2) place of residence; (3) day and year of creation or publication; (4) the words "dépôt légal" followed by the quarter of the year in which deposit was effected; (5) order numbers of the publisher and printer for the particular work (new printings must give the year in which they were made and the date of initial deposit). The name of each person or firm who contributes to the publication of the work must also be included in the notice.

Each deposit must be accompanied by a declaration in triplicate (one copy being returned as the receipt). The printer's declaration must indicate (1) name and address of the printer or producer; (2) title of the work or the name and subject of prints, photos, etc.; (3) number of copies printed; (4) surname and forenames of the author and his pseudonym if any, or indication of anonymity; (5) name, address and occupation of the person for whom the printing was made; (6) date when printing was completed; (7) order number in the printer's register. The publisher's declaration combines publishing facts and information to be used in cataloging (1) title of the work; (2) names of the author, printer, and publisher; (3) date fixed for placing on sale; (4) price; (5) number of copies printed; (6) for books, size in centimeters; (7) number of pages and illustrative matter; (8) date of completion of printing; (9) order number of the work in

[19] Deposit of films is in abeyance. Phonorecords are deposited at the Phonothèque Nationale, established in 1938.

[20] It was found that the printers' deposits were too often incomplete to be entirely useful. The Bibliothèque Nationale catalogs only from publishers' deposits. In spite of the new provision the printers' copies are still often incomplete.

[21] Many European deposit laws have similar requirements which seem to tie in with laws on the regulation of the press.

the publisher's register. Only one declaration annually need be made for periodicals (with the last issue of the year).

The head of the Régie du Dépôt Légal at the Bibliothèque Nationale informed this writer in 1955 as follows: The Bibliothèque Nationale receives in all classes except graphic arts 90–100 percent of works the library knows about and wants. The large amount of compliance activity necessary to achieve this figure, however, is quite expensive. The deposit at regional libraries contributes to the delay and expense. He also questioned the value of the printer's and publisher's catalog numbers in controlling compliance because the requirement causes much confusion and correspondence. Deposit, which is supposed to take place prior to publication, is usually delayed until 3 or 4 weeks after publication, sometimes much longer. Publishers are willing to deposit but do not take sufficient care to see that it is done automatically.

C. ITALY

Italy has both a copyright deposit and a legal deposit system.

1. Copyright deposit

Articles 103 and 105 of the copyright law of 1941 (No. 633) require the deposit for registration, at the Office of Literary, Artistic, and Scientific Property, of the copy, or an identifying reproduction, of all protected works (except certain photographs). Failure to deposit (art. 106) does not affect the copyright except for a few classes of works (phonorecords (art. 77)), certain photographs (art. 92) and engineering plans (art. 99)), but the Minister of Public Culture is "entitled to seize * * * a copy of a work which has not been deposited as required by the Regulations." Deposit, accompanied by a declaration in duplicate giving necessary bibliographical information, is to be made within 90 days after publication, but only one issue annually of a newspaper or periodical need be deposited. The deposits are kept as a permanent record. They are listed in the monthly "Bollettino dell' Ufficio della Proprieta Letterarià, Artistica e Scientifica."

Italy is one of the few countries in which some comparison of receipts under copyright deposit versus legal deposit is possible. This writer was told in 1955 at the depository office that about 80 percent of the important new works is deposited under the copyright law. However, only the music deposits show a close quantitative correlation with the legal deposit made at the National Central Library in Florence. Deposit of book materials was about 50 percent of the legal deposit receipts considered worth cataloging by the Florence library but the legal deposit includes reprints and an unknown number of Government documents. Very little compliance activity is considered necessary.[22]

2. Legal deposit

The basic law on legal deposit now in force in Italy is that of February 2, 1939 (No. 374), amended by the decree of August 31, 1945 (No. 660), and implemented by decree of December 12, 1940 (No. 2052). Five copies of all printed works (except works printed for personal or business use (art. 7)) are to be deposited by the printer

[22] Galtieri, "*Le Formalita' nella Legislazione Italiana sul Diritto d'Autore,*" in 23 IL DIRITTO DI AUTORE 490–507 (Ott/Dic. 1952), gives a review of deposit under copyright. He says deposit under the present system is more effective than when it was required as a condition of copyright. See especially p. 500 footnote 12.

before publication and before transmittal to the person who commissioned the printing. Subsequent editions and reprints involving any change in content or form are included. The copies are to be of the best edition published unless this is a de luxe limited edition not distributed through regular trade channels. Each copy of a work subject to deposit must bear on the frontispiece, or lacking one, on the last page of the text (1) the name and legal domicile of the printer; (2) the year and effective date of publication; (3) for reprints made by the same printer indication of the type of reprint, whether identical or with modifications, and the year date of the previous publication. The penalty for violation of the law is 200 to 2,000 lira, to which may be added, if the offense involves a more serious crime, suspension of the "art or profession" for a period not in excess of 3 months.

Although eventually all five copies reach libraries, initial deposit of four copies is made at the printer's provincial prefecture (prefettura) and of one copy at the local attorney-general's office (procura della repubblica). The prefect, assisted by the provincial librarian, is the official who has the immediate responsibility for enforcing the local observance of the law. Three copies are forwarded immediately to the National Central Libraries at Florence and Rome and to the press office of the Presidency of the Council of Ministers. The fourth copy, after serving its administrative function, is sent to the designated provincial library. The fifth copy goes to the library of the Ministry of Justice, which forwards unneeded works to other institutions selected by the Ministry of Public Instruction.

As a control over compliance printers and publishers must register at their local prefecture, and they are required to keep a numbered chronological register of all printed matter, except newspapers, leaving their premises. These registers must be submitted for inspection upon request of the prefect or his agents to aid in enforcement of the law.

Criticism of the law centers on the cumbersomeness of the mode of deposit and the resulting delay in deposit in the libraries. The diligence with which the law is enforced depends too much on the local prefectures which have many other duties to perform. All compliance actions must go through the prefecture in which the deposit should have been made, so that the Florence library, which publishes the national bibliography "Bollettino delle Pubblicazioni Italiane Ricevute per Diritto di Stampa," must send lists of works to be claimed to some 100 offices. It was estimated that eventually all but a small percentage of works, except fine prints, are received, though the copy may be, contrary to law, from the cheapest edition. Librarians are working for a revised law in which deposit would be made directly to the libraries.[23]

D. SWITZERLAND

Switzerland has been included in this survey because it is the outstanding example of the operation of a voluntary deposit system (dépôt gratuit) for the benefit of a national library.[24]

[23] ACCADEMIE E BIBLIOTECHE D'ITALIA, vol. 19, p. 391 (Sett./Dic. 1951), and vol. 21, p. 219 (Mar./Aug. 1953).

[24] German publishers since 1912 have sent copies to a library established by the trade itself for the purpose of publishing a bibliography of all current works in German (including Austrian and Swiss publications), and of providing reference service on them. This library was formerly the Deutsche Bücherei in Leipzig, now one of the chief depository libraries of the German Democratic Republic. The Deutsche Bibliothek in Frankfort was founded on the same basis in 1947. The complicated deposit situation in Germany, a mixture of local state laws and voluntary deposit, is discussed fully in WILL, DIE ABGABE VON DRUCKWERKEN AN ÖFFENTLICHE BIBLIOTHEKEN (1955).

The basis on which the deposit rests is a simple "convention" concluded between the Swiss publishers and the National Library in 1915 by which the library receives free copies of all works published and in return publishes the record of them in "Le Livre Suisse," and also furnishes the entries for "Der Schweizer Buchhändel," the publishers' trade list.

Marcel Godet, the library director who instituted the system, wrote in 1928 that there is no constitutional authorization for a Federal deposit law; that publishers were opposed to a system of obligatory deposit whose origins lay in political and religious censure, but were quite willing to give the books in the public interest, especially as their business interests are helped thereby.[25]

According to the "convention" between the Swiss National Library on the one hand and the Schweizerbuchhändlerverein and the Société des Librairies et Editeurs de la Suisse Romande on the other, the publishers agreed (1) to send free all their publications, including de luxe editions and new editions; (2) to send the works regularly immediately after printing; (3) to supply necessary bibliographic information in order to facilitate listing in "Le Livre Suisse"; (4) to send a free copy of works handled on commission, or at least to supply information about them. If the publisher requests, the library will pay for (1) transportation charges; (2) binding charges for the bound edition of a work issued also in an unbound edition; (3) second copies of popular works.

The Library in turn agreed to publish regularly the monthly bibliography (the publishing details being set out in full), to publish in its annual report a list of the contributing publishers, to supply these publishers with free copies of the bibliography, and to compile the statistics of national literary production.

The works covered by the deposit agreement are: books and pamphlets, music, maps, periodicals and newspapers, and graphic arts except original etchings, engravings, etc. Official documents and nontrade publications, if not sent to the Library automatically, are requested as gifts.

Compliance was estimated for this writer in 1955 to be very close to 100 percent. Undoubtedly, where local conditions are favorable voluntary deposit can be very effective, perhaps more effective than a compulsory system not strongly enforced. Larsen, in his "National Bibliographic Services" (UNESCO, 1953), at page 40, points out the possible drawbacks: the publisher decides what he will send and delivery is dependent on him; works sold or distributed outside the book trade will seldom be delivered; the library must have funds to purchase works not voluntarily deposited. Therefore he recommends legal deposit as the best means of assembling material for the national bibliography. It is only fair to say that the Swiss Library appears to suffer less from these problems than the deposit libraries in England, France, or Italy.

[25] Godet, "*Le Dépot Voluntaire en Suisse*," in 38 REVUE DES BIBLIOTHEQUES 298 (1928). The text of the "convention" is included.

E. THE SOVIET UNION [26]

The Soviet Union is relying heavily on legal deposit to build up the library system in all parts of its territory. The system of deposit is centralized in the All-Union Book Chamber, which receives the deposit directly from the printers before distribution to the publishers. It distributes the copies (about 8 million annually), records all publications, issues the national bibliographies based on the deposits, and compiles the Soviet official statistics of publishing. In addition, it undertakes bibliographical reference work, issues works on bibliographical method, and organizes study courses for the staffs of the state book chambers. As the national archives of Soviet publishing it preserves one copy of all works received. Each republic has a similar book chamber which receives and preserves a copy of each work printed in its territory which it "registers" in the language of the book (the bibliographies issued by the All-Union Chamber list in Russian translation the works issued in other languages). In some cases the local book chambers also receive the copy which is to be sent to the State Library of the Republic.

Printed works of all kinds are subject to free compulsory deposit. Films and phonorecords are not included. The number of copies required varies with the type of publication, the size of the edition published, and the language of the text. The deposit for books ranges from 7 to 44 copies, for periodicals 7 to 44 copies, for newspapers 3 to 39 copies. In each case the higher figure is for works in the Russian language issued in editions of over 500 copies, the minimum for works in any other language issued in a smaller edition. The number of copies of ephemera, music, maps, visual aids, and pictorial works required is smaller.

The All-Union Book Chamber and four libraries of all-union significance—Lenin State Library (three depository sets), the Saltykov-Shchedrin State Public Library, Library of the Academy of Sciences of the U.S.S.R., and the Fundamental Library of the Social Sciences of the Academy of Sciences of the U.S.S.R.—receive complete sets of all publications. The state libraries of the various republics receive a copy of all publications in the Russian language (except those issued in small editions) but receive publications in other languages of the U.S.S.R. only if published locally. Thirty-one sets are distributed to the above libraries. In addition, partial sets assigned on a subject basis are sent to certain specialized libraries, of which 12 have first priority, and 34 more receive works remaining from the first distribution.

Besides the system of free deposit, Russia in 1940 instituted a system of "purchasable copies," enabling designated large libraries not eligible for the free deposit to purchase works in their fields of interest from a central agency. One hundred and fifty copies from all large printings are collected by OGIZ (Union of State Publishing Houses) and held for a short length of time for this purpose.

[26] The most recent deposit law (No. 3639 of Sept. 29, 1948) was not available for consultation. Material has been gathered from Whitby, "*Development of the System of Legal Deposit in the U.S.S.R.*" in 15 COLLEGE AND RESEARCH LIBRARIES 398 (October 1954); Kukharkov, "*Copyright Deposit and Related Services: The All-Union Book Chamber of the U.S.S.R.*" in 11 UNESCO BULLETIN FOR LIBRARIES 2 (January 1957); Grigor'ev, "*Sistema Besplatnogo obiazatel'nogo ékzemplíara proizvedenii pechati na sovremennoi étape,*" in 44 SOVETSKAÍA BIBLIOGRAFIA 3 (1956), to which Mr. Whitby supplied a translation. The number of deposit copies given in this paper was taken from a letter from Kukharkov, Apr. 4, 1959.

All Russian books carry on the final page information similar to the legal deposit notice used in France. The data include title and authorship of the work, date set in type, date printing was completed, size of sheet before folding, number of signatures, publisher's and printer's catalog numbers, number of copies printed, price, order number, publisher's name and address.

It is assumed that the deposit is a complete record of all Soviet publishing since the industry is state-controlled. For control purposes each publishing house submits monthly lists of its publications and the All-Union Chamber maintains files under publisher of all works deposited.

III. Legislative History of Deposit in the United States

The history of copyright deposit in the United States falls naturally into three periods. From 1790 to 1870 the function of deposit was chiefly to serve as record evidence of the work covered by the copyright claim. The deposit for use in libraries was initiated in the Smithsonian Institution Act of 1846 but was imperfectly achieved. The registration system was organized primarily on a local basis with provision for ultimate centralization of all works and records in a national office, first in the Department of State, later in the Department of the Interior. From 1870 to 1909, under a completely centralized registration system at the Library of Congress, the deposit of two copies of each work provided equally for the maintenance of a copy as record evidence, as in the previous period, and as a means of enriching the Library. With the passage of the act of 1909 the concept of the deposit as record evidence of the copyrighted work became of somewhat less importance since the deposits could be dispersed in several directions after the making of the registration record, but the copies deposited were essential for the making of the registration record. The concept of the deposit for the use of the Library of Congress grew in importance.

A. PERIOD 1790–1870

Copyright legislation in the period 1790–1870 is divided into two phases: under the law of 1790 and under the general revision law of 1831.

The first Federal copyright law of 1790 [27] provided for a registration system (sec. 3) based on the filing, prior to publication, of a printed title of the work in which copyright was claimed, in the clerk's office of the district court in which the author or proprietor resided. Registration of the title before publication was clearly stated to be a condition precedent to the obtaining of a copyright, and the term of copyright began from the time of the recording of the title, thus affording protection during the process of publication. This general scheme was continued until 1909.

After publication, a copy of the work was to be delivered to the Secretary of State for preservation in his office. The purpose for which the works were to be preserved was not stated, and no mention

[27] 1 STAT. 124 (1790).

was made of any records to be kept regarding them.[28] The records kept by the State Department of the works actually received indicate that only a small percentage of the works whose titles were registered in the various district clerks' offices were deposited in the Department of State after publication.[29]

Under the general revision act of 1831 [30] the first step toward the centralization of copyright records and deposits was taken (sec. 4). The registration of titles was still to be performed by the clerks of the district courts and, in addition, they were to receive the copies of the published works, which were to be delivered within 3 months of publication. At least once a year a certified list of all records of copyright (including the titles recorded and the dates of record) together with the copies deposited were to be transmitted to the Secretary of State to be preserved in his office. The purpose of the deposit of copies was not clarified.

In 1834, in the *Landmark* case of *Wheaton* v. *Peters*,[31] the Supreme Court affirmed the principle that copyright in a published work derives, not from the common law, but from the statute. Therefore, in order to secure the copyright all formalities required in the statute must be observed. Concerning deposit Justice McLean said:

> The deposit of the book in the Department of State may be important to identify it at any future period, should the copyright be contested, or an unfounded claim of authorship asserted.[32]

The purpose of the deposit in the U.S. law as record evidence of the work copyrighted was thus confirmed.

In 1846 the act establishing the Smithsonian Institution [33] provided that one copy of each work for which a copyright should be secured under act of Congress should be delivered to the Librarian of the Smithsonian Institution and to the Librarian of Congress within 3 months after publication. The librarian appointed to the Smithsonian, Charles Jewett, felt that the copyright deposit had great importance for a national library:

> To the public, the importance, immediate and prospective, of having a central depot, where all the products of the American press may be gathered, year by year, and preserved for reference, is very great. The interest with which those who in 1950 may consult this library would view a complete collection of all the works printed in America in 1850, can only be fully and rightly estimated by the historian and bibliographer, who has sought in vain for the productions of the past. * * * Thus, in coming years, the collection would form a documentary history of American letters, science, and art. It is greatly to be desired, however, that the collection should be complete, without a single omission. We wish for every book, every pamphlet, every printed or engraved production, however apparently insignificant. Who can tell what may be important in future centuries? [34]

He found, however, that neither of the libraries nor the State Department was receiving all the works being copyrighted; he estimated that the State Department received perhaps half of the works in which copyright was nominally claimed. To improve compliance he suggested that publishers be allowed to transmit copies free

[28] By some it was argued that the purpose of deposit must be parallel to the deposit for the benefit of libraries in the Statute of Anne (8 ANNE, ch. 19, § IV, 1710) and had no connection with the registration system. *Cf.* Nichols v. Ruggles, 3 Day 158, C.C. (1808); Ewer v. Coxe, 4 Wash. 490 (Conn. 1824).

[29] Copyright records of Federal agencies from 1796 to 1870 and of some of the district courts from 1790 to 1870 are now in the Rare Book Division of the Library of Congress.

[30] 4 STAT. 436 (1831).

[31] Wheaton v. Peters, 8 Pet. 591 (1834).

[32] *Id.*, at p. 664.

[33] 9 STAT. 106, § 10 (1846).

[34] 4 Smithsonian Institution Annual Report 35 (1849).

(accomplished in an act of March 3, 1855, pertaining to the Post Office Department).[35] In his annual report for 1851 he went into the matter of copyright deposit at considerable length, pointing out weaknesses in the current law and proposing measures for simplification of the system and to insure deposit.[36] He thought the deposit necessary for the complete protection of the author to insure that a certified copy would be available in infringement actions.

The deposit section of the law of 1846 was repealed in 1859 because it failed to bring in substantial literature contributing to research but did present the libraries with masses of unwanted materials such as textbooks, music, prints, etc., which presented custodial problems.[37] The law lacked any enforcement provisions. It was decided in the case of *Jollie* v. *Jacques* (1850) (1 Blatchf. 618) that while deposit of a copy with the district court was a formality necessary to secure copyright, failure to deliver the copies to the Smithsonian and Library of Congress had no effect on the copyright. The act of February 5, 1859,[38] which repealed the deposit provision of 1846, transferred the custody of the copyright deposits and records from the State Department to the Department of the Interior, which was charged with the duties connected with copyright until 1870.

By 1865 the Library of Congress had a new librarian, Ainsworth R. Spofford, who envisioned it as the national library and who was also convinced of the value of the copyright deposit to such an institution.[39] When the law was amended in 1865 [40] to include photographs, the deposit of one copy of each registered work at the Library of Congress (sec. 2) was again required, this time with compliance provisions. If the work was not deposited within 1 month of publication "it * * * [was] the duty of the Librarian to make demand thereof in writing" within a year of publication; if the work was not deposited within 1 month of demand the copyright was forfeited (sec. 3). However, the Librarian had to detect the delinquent deposits and in his annual report for 1866 [41] he pointed out the difficulties of ascertaining what had been copyrighted in the various district courts before demands be sent. Few except the leading publishers complied automatically, although most deposited on demand. He therefore suggested that a monetary penalty be added to the law on the order of the British law. Section 1 of the amendatory act of February 18, 1867, assessed a penalty of $25 for default in delivery of the work within a month of publication, to be collected by the Librarian of Congress.[42]

B. PERIOD 1870–1909

In 1870 as part of the codification of all U.S. statutes, there was enacted a general revision law relating to both patents and copyrights.[43] One of the most important features of the act in relation to copyrights was the centralization and simplification of all copyright business by making the Librarian of Congress responsible for both the registration of copyrights and the custody of all records and

[35] 10 STAT. 685, § 5 (1855).
[36] 6 Smithsonian Institution Annual Reports 31–37 (1851).
[37] 11 Smithsonian Institution Annual Report 40 (1856).
[38] 11 STAT. 380 (1859).
[39] Mearns, "*The Story Up to Now*," p. 102 in 1946 U.S. Librarian of Congress Annual Report.
[40] 13 STAT. 540 (1865).
[41] Mearns, *op. cit.*, *supra* note 39, at 103.
[42] 14 STAT. 395 (1867).
[43] 16 STAT. 212, §§ 85–111 (1870).

deposits (sec. 85). The copies to be deposited in the Library after publication would serve for both registration and Library use. Mr. Jencks, the committee chairman, in presenting the bill, said that centralization would simplify the copyright procedures, reduce the publisher's expense in connection with registration and deposit, and eliminate the hazards of mistakes and omissions inherent in the former system of registration and initial deposit in the several districts. The deposits would be placed where they would be of use to the public and would be properly cataloged and serviced. Moreover, the copyright fees, which previously went to the clerks of the district courts, would go into the Treasury henceforth to defray the expense of the registration system.[44]

Under section 90 of the act of 1870 the filing for registration of a printed copy of the title of the work before publication was continued as a necessary preliminary, and the language employed made it plain that the deposit in the mail of the work itself, within 10 days after publication, was also a necessary formality for copyright protection. The period for deposit was intentionally kept short to insure promptness, and the provision for deposit in the mails was to make it possible for publishers far from Washington to comply.[45] The monetary fine for failure to deposit was continued (sec. 94) and also the franking privilege. Section 96 provided that the postmaster to whom the articles were delivered should give a receipt on request as proof of deposit. Sections 109–110 completed the centralization of the records by providing for the transfer of the records and deposits previously kept in the Department of the Interior and required the district court clerks to "transmit forthwith" all copyright records and publications of whatever nature to the Librarian of Congress.

The practical result of the act of 1870 was to increase deposits so substantially that the Librarian asked for relief almost immediately. In the annual reports of 1872 and 1873 he expressed his dissatisfaction with the task of registering commercial prints and labels (approximately 5,000 annually) which he thought should be transferred to the Patent Office.[46] The amendment of June 18, 1874,[47] transferred the registration of prints and labels for articles of manufacture to the Patent Office, the Library to retain jurisdiction over "pictorial illustrations or works connected with the fine arts." By 1875 copyright had become the Library's largest source of acquisitions for books and almost the only source for some other materials. The annual volume of copyright entries grew from 11,512 in 1870 to 72,470 in 1896 and led to the creation of the Copyright Office in 1897 as a department of the Library to perform the duties of the Library in regard to copyrights.[48] Since no authorization was given for disposal of any deposits (until 1909) it was considered necessary to preserve everything. One copy of each work was apparently always kept in reserve to provide the record copy for purposes of copyright.[49]

The act of 1870 came at a time of great increase in intellectual activity in the United States, but the success of the law in regard to

[44] CONGRESSIONAL GLOBE, 41st Cong., 2d Sess., p. 2680 ff. (1870).
[45] *Id.*, at p. 4822.
[46] 1872 U.S. Librarian of Congress Annual Report, p. 4.
[47] 18 STAT. 78 (1874).
[48] 29 STAT. 545, 546 (1897).
[49] Conference on Copyright, 2d Sess. (Nov. 1–4, 1905) at p. 445.

deposit was due undoubtedly to the centralization of registration and deposit in the Library, and to the compliance features of the law.

Of the amendments to the act of 1870 those which affected deposit were the act of March 3, 1891, and the act of March 3, 1905. The effect of the act of 1891,[50] granting U.S. copyright to foreign authors, subject to the requirements of the manufacturing clause, was to bring in deposits of some foreign works for the first time. The time allowed for deposit of two copies of any work at the Library of Congress or in the mail within the United States, was also further shortened to "not later than the day of publication in this or any foreign country." Since the printed title was still to be delivered "on or before the day of publication," it became the practice of domestic publishers to deliver the two simultaneously or to deliver the copies within a few days after the title, so that the original purpose of the title recordation was in most cases nullified. There continued to be, however, a sizable number of titles recorded for which deposit copies were never received—either because the work was never completed, or the necessity of deposit was overlooked, or, in many instances, it was mistakenly believed that recordation of the title reserved the use of that title to the recorded author.[51]

It was found almost impossible for foreign authors, writing in a foreign language, to complete negotiations for the publication of an American edition of their work (as required by the manufacturing clause) prior to publication abroad. The act of March 3, 1905,[52] provided for ad interim protection—the deposit in the Library of Congress of one complete copy of a foreign-language book containing the prescribed notice of copyright within 30 days of first publication abroad would protect the copyright owner for 1 year while the book was typeset and printed in the United States either in the original language or in English translation. Filing of the title and deposit of two copies of the book typeset and printed in the United States, within 12 months after first publication abroad, extended the copyright to 28 years.

C. PERIOD 1909 TO DATE

The copyright law was revised comprehensively in the Copyright Act of 1909.[53] In substance that act, with some amendments, is the present law as codified in title 17 of the United States Code.

A "Report of the Register of Copyrights on Copyright Legislation," setting forth the need for a comprehensive revision of the copyright laws in considerable detail, was published in 1903. Specifically, Mr. Solberg questioned the desirability of maintaining the double requirement of filing of title and deposit of copies, and the loss of copyright for noncompliance.[54] The Librarian in his annual report of 1904 (p. 20) drew attention to the fact that over a million deposits not wanted for the Library's collections constituted a growing expense to the Government for their storage.

During the three sessions of the Conference on Copyright 1905–06,[55] in line with the general aim of lessening the rigidity of the formalities

[50] 26 STAT. 1106 (1891).
[51] 1903 U.S. Librarian of Congress Annual Report, pp. 466, 467.
[52] 33 STAT. 1000 (1905).
[53] 35 STAT. 1075 (1909).
[54] 1903 U.S. Librarian of Congress Annual Report, pp. 458, 461, 466, 467.
[55] This Conference was convened by the Librarian of Congress with representatives of various industries and groups concerned to discuss proposals for general revision of the copyright law.

required to perfect copyright, it was proposed to eliminate the preliminary filing of the title which most of the interested parties considered valueless and expensive, and to make deposit of copies and accompanying registration a condition only of bringing suit for copyright infringement. To insure that the Library of Congress should continue to receive copies of works for its collections, it was further proposed that the failure to deposit on demand a work containing a U.S. copyright notice would be punishable by a fine but not by forfeiture of the copyright.[56]

There was some objection to requiring the deposit of two copies of the "best" edition since the Librarian was pressing for authorization to dispose of works not wanted by the Library.[57] The Librarian, however, strongly resisted any attempt to reduce the number or quality of copies for the use of the Library. He indicated willingness to return to the claimant works which were not wanted, or to demand one copy only of certain articles.

There was considerable opposition to the proposal to authorize the Library to dispose of unwanted materials.[58] Although the Copyright Office presented figures to show that copies had been rarely used in litigation, publishers were reluctant to agree to the disposal of copies which might be needed for identification and to prove compliance with the technical requirements of the law. These objections were met by providing that the certificate of registration and the "Catalog of Copyright Entries" would be admissible as prima facie evidence of the facts stated therein; that deposits would not be destroyed without first giving notice in the catalog so that, if desired, the proprietor might reclaim them; and by assurances from the Librarian and Mr. Solberg that great discretion would be used in disposing of materials. The Librarian stressed the point that the copies exacted were for the use of the Library and that it was an impossible charge on the Library to keep all the deposits indefinitely.

Most of the participants in the Conference wanted some time after publication in which to make the deposit, although the suggestions made were for fairly short periods, ranging from 10 days to 6 months. A fairly short period was definitely in the interest of the Library of Congress and most of the copyright interests also felt that registration should be prompt to be efficient.

Other topics which received some attention at the Conference were provision for the continuation of deposit with local postmasters and issuance by them of deposit receipts; continuance of free mailing privileges; proposed provision for issuance of a certificate of registration by the Copyright Office in all cases (instead of on request), which some objected to because it meant an increase in fees; provision for registration of several volumes or series of articles under one fee; the necessity for filing descriptions of art objects when the original was not deposited.

The first bill introduced (S. 6330, H.R. 19853, 59th Cong., 1st Sess., 1906) was written in the Copyright Office and the provisions on deposit were very much in line with the recommendations of the Conference. The Librarian of Congress, as the first witness in the June 1906, Hearings Before the House and Senate Committees on

[56] Conference on Copyright, 1st Sess. (May 31-June 2, 1905) at p. 368 ff.; 2d Sess. (Nov. 1-4, 1905) at p. 229 ff.
[57] Conference on Copyright, 2d Sess., at p. 461; 3d Sess. (Mar. 13-16, 1906), at pp. 19, 37, 87, 187-194, 300-303.
[58] Conference on Copyright, 2d Sess., at pp. 127, 128, 212, 224-235; 3d Sess., at pp. 84-100.

Patents,[59] speaking of the deposit provisions, made special note of the longer period allowed for deposit and registration (30 days after publication for all works except periodicals, which were to be deposited within 10 days) (p. 12), of the automatic issuance of the registration certificate (p. 14), and of the desire of the Library to be free to dispose of deposits not useful to the Library nor considered necessary for retention in the files of the Copyright Office (p. 15). There was otherwise very little discussion of any of the provisions regarding deposits in the hearings on the various bills.

A number of the provisions in the original bill relating to deposit were changed substantially during the congressional proceedings leading to the act of 1909. The following summarizes the more important of these changes.

The original bill proposed to require that deposit be made within 30 days after publication (10 days in the case of periodicals); the 1909 act required that deposit be made "promptly" after publication (sec. 12; now sec. 13 of 17 U.S.C.).[60] In the original bill the penalty for failure to deposit after a demand by the Register was a fine; the 1909 act added the further penalty of loss of copyright (sec. 13; now sec. 14). Regarding these provisions the congressional committee report on the bill enacted said:

> Sections 12 and 13 deal with the deposit of copies, and should be considered together. They materially alter the existing law, which provides that in order to make the copyright valid there must be deposited two complete copies of the book or other article not later than the date of first publication. The failure of a shipping clerk to see that the copies go promptly forward to Washington may destroy a copyright of great value, and many copyrights have been lost because by some accident or mistake this requirement was not complied with. The committee felt that some modification of this drastic provision, under which the delay of a single day might destroy a copyright, might well be made. The bill reported by the committee provides that there shall be "promptly" deposited in the Copyright Office, or in the mail, two complete copies of the best edition then published, and that no action or proceeding shall be maintained for the infringement of copyright in any work until the provisions with respect to the deposit of copies and the registration of such work shall have been complied with.
>
> If the works are not promptly deposited, we provide that the Register of Copyrights may at any time after publication of the work, upon actual notice, require the proprietor of the copyright to deposit, and then in default of deposit of copies of the work within 3 months from any part of the United States, except an outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of $100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void. It was suggested that the forfeiture of the copyright for failure to deposit copies was too drastic a remedy, but your committee feel that in many cases it will be the only effective remedy; certainly the provision for compelling the deposit of copies by the imposition of a fine would be absolutely unavailing should the copyright proprietor be the citizen or subject of a foreign state.[61]

The provisions of the original bill concerning the administrative duties of the Register in regard to deposits and registration therefor—the making of records and catalogs of deposits, the issuance of registration certificates, and the disposition of deposit copies—were adopted with virtually no change in the act of 1909 (secs. 54–60; now secs. 208–214). The act added a new provision for the issuance by

[59] *Arguments Before the Committees on Patents of the Senate and House of Representatives Conjointly on S. 6330 and H.R. 19853*, 59th Cong., 1st Sess. (June 1906).

[60] Hereafter, the first section number used is that of the Act of 1909; the second is the number of the corresponding section in 17 U.S.C.

[61] H.R. REP. NO. 2222, 60th Cong., 2d Sess., at p. 11 (1909). The comment of the committee suggests that the voiding of the copyright was intended to some extent at least to compel foreign deposits. Actually the Copyright Office has not ordinarily attempted compliance action in regard to foreign works.

the Register, upon request, of a receipt for the deposit copies, in addition to the registration certificate (sec. 55; now sec. 209).[62] Except for sections 59 and 60 (secs. 213 and 214), the congressional committee report merely summarized the contents of these sections. Regarding sections 59 and 60, which provide for the disposition of deposits, the report said:

> Section 59 provides for a transfer of books and other articles not needed in the copyright office to certain government libraries.
>
> Section 60 is inserted for the following reason: The Librarian of Congress states that the volume of the copyright deposits is now enormous and more than 200,000 articles a year are now being added to the great accumulation. Many of these articles are valuable to the library and are used by it. The rest remain in the cellar, and the accumulations there number 2 million of articles. There are many articles there that would be useful in other government libraries. Some might be used in exchange for other articles. The remainder are a heavy charge upon the Government for storage and care, without any corresponding benefit.
>
> The impression that the deposited articles are a part of the record and are necessary evidence of the thing copyrighted is not well founded. In the last thirty-eight years there have been only five cases in which articles deposited have been taken into court, and it is said that in none of these cases was there any necessity for such use of the deposited article. It is believed by your committee that the suggestions of the Librarian of Congress embodied in these two sections are wise ones and that the rights of all parties interested are carefully safeguarded.[63]

The present law.—Some minor amendments of the provisions regarding deposits have been made since 1909. In summary the present law (17 U.S.C.) provides the following.

Copyright in certain unpublished works may be secured by the deposit, with a claim of copyright, of "one complete copy of such work" (or of other identifying material for certain works) (sec. 12).

After a work has been published with the copyright notice, deposit is to be made "promptly" of "two complete copies of the best edition" then published,[64] accompanied by a claim of copyright (except that one copy only is required for contributions to periodicals and for works of foreign authors published abroad,[65] and photographs or other identifying reproductions may be deposited in lieu of copies for some works in the art classes) (sec. 13). Deposit is a prerequisite to the maintenance of an action for infringement of copyright (sec. 13). If deposit is not made promptly after publication, the Register may make a demand therefor, and in default of deposit within 3 months thereafter (or 6 months from outside the United States) the copyright owner is liable to a fine of $100 and payment of twice the retail price of the best edition of the work, and the copyright becomes void (sec. 14).

Postmasters are to give a receipt, upon request, for deposits mailed and are to mail them free of cost to the copyright claimant. (sec 15).[66]

The Register of Copyrights is to make an entry in the registration records for each deposit and issue a certificate of registration to the copyright claimant (secs. 208, 209). The Register is also to furnish,

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[62] The Copyright Office knows of only one request for this receipt in the last 27 years.

[63] H.R. REP. NO. 2222, 60th Cong., 2d Sess., at pp. 20, 21 (1909).

[64] During the *Hearings on H.R. 9897*, 63d Cong., 2d Sess. (1914), Mr. Solberg was asked why two copies of domestic works were required. He said that two copies were required for books to enable the Library to prepare the printed LC cards for sale promptly without waiting for copyright to be recorded, and that the Library would in many cases be forced to buy a second copy for its use. Second copies are also used for transfer to, or exchange with, other libraries.

[65] The registration fee is waived for such foreign works if two copies of the work and a catalog card are deposited: 17 U.S.C. 215. Since the enactment of this waiver-of-fee provision in 1949, a majority of the deposits of foreign works have been made thereunder.

[66] The postage for deposits so mailed, currently estimated at $6,500 for the year, is now paid by the Copyright Office.

upon request, a receipt for the deposit (sec. 209). The Register is to index all registrations and prepare catalogs of the articles deposited and registered (secs. 210, 211). The records and indexes, as well as the deposits retained in the Copyright Office, are to be open to public inspection, and copies may be taken of the entries in the record (sec. 212).

The Librarian of Congress is to determine what deposits shall be transferred to the permanent collections of the Library, and what other deposits are to be placed in the reserve collections of the Library for sale or exchange or for transfer to other governmental libraries (sec. 213). The Librarian and the Register jointly are to determine periodically which of the remaining deposits are to be retained in the Copyright Office; and those then remaining may be destroyed, unless they are reclaimed after a general notice has been given in the "Catalog of Copyright Entries" of the group of published works to be destroyed, or after a specific notice to the copyright owner in the case of an unpublished work (sec. 214).

Foreign works qualifying for protection under the Universal Copyright Convention are exempt from the deposit requirement (sec. 9(c)). But if registration is desired for any such works, the deposit must be made in order to secure registration.

Mention should be made here of the Supreme Court decision in *Washingtonian Publishing Co.* v. *Pearson* in 1939.[67] At issue in that case was the requirement in section 12 of the act of 1909 (now sec. 13) that deposit be made "promptly" after publication with a copyright notice. The court held that a delay of 14 months in making the deposit did not affect the copyright or its enforcement against an infringement occurring before the deposit.[68]

Shortly after the Supreme Court decision in the *Washingtonian* case, a bill was introduced at the behest of the Register of Copyrights to fix time limits for deposit.[69] After a brief hearing at which the Register was the only witness,[70] an amended bill was introduced.[71] In pertinent substance the amended bill provided that deposit was to be made within 60 days after publication, for works published in the United States, and within 120 days for works published abroad; that if deposit were delayed beyond that time, no action could be maintained for any damages suffered by infringement between the end of the 60- or 120-day period and the date of deposit; and that failure to deposit within 6 months after publication would void the copyright (except in certain circumstances). No further action was taken on these bills.

[67] 306 U.S. 30 (1939).

[68] For a full discussion of this decision see Kaplan, *op. cit.*, note 1 *supra*, 20–25. Subsequent decisions, relying on the Supreme Court ruling in the *Washingtonian* case, have held that delays of several years in making deposit do not affect the enforcement of copyright against a prior infringement; Shapiro, Bernstein & Co. v. Jerry Vogel Music Co., 161 F. 2d 406 (2d Cir. 1946) (delay of 27 years); Silvers v. Russell, 113 F. Supp. 119 (S.D. Calif. 1953) (delay of 13 years); Ziegelheim v. Flohr, 119 F. Supp. 324 (E.D.N.Y. 1954) (delay of 9 years).

[69] H.R. 4433, 76th Cong., 1st Sess. (1939).

[70] *Hearings Before the House Committee on Patents, Subcommittee on Copyrights*, 76th Cong., 1st Sess., on H.R. 4433 (1939).

[71] H.R. 5319, 76th Cong., 1st Sess. (1939).

IV. Deposit in the General Revision Bills of 1924–40[72]

In the series of bills introduced between 1924 and 1940 to revise the copyright law generally, deposit continued to serve the two purposes of providing the basis for the registration of copyright claims, and of supplying the Library of Congress with copies of the works desired for its collections. Since a primary aim of the revision efforts was to make the U.S. law conform with the requirements for adherence to the Berne Union, works by foreign authors originating in Berne Union countries were exempted from mandatory formalities, including deposit of copies, at least until the work was republished in the United States. Some of the bills proposed to make registration voluntary for domestic works, but all of them required the deposit of domestic works for the Library.

Changes proposed in the various bills regarding deposit were of two kinds: (1) fundamental adjustments in the *system* of deposit, made necessary by proposed changes in the registration system, and (2) changes in specific *details* which experience had indicated to be desirable. Some of the deposit details are not of special significance today because they were tailored to situations in the Copyright Office and the Library of Congress which have since changed. The following discussion will review the deposit system proposed with the more important details, but some of the minor details will be omitted.

The first group of general revision bills—the Dallinger,[73] Perkins,[74] Vestal,[75] and 1932 Sirovich [76] bills, introduced between 1924 and 1932—made registration voluntary for domestic (as well as foreign) works,[77] but sought to insure that the Library of Congress would continue to receive copies of the domestic publications it desired for its collections. In general, these bills required the deposit for the Library of two copies of printed works published in the United States,[78] with or without registration. For the voluntary registration of other works (which at that time were not generally collected by the Library) one copy or other identifying material was required. Except in the Perkins bill, a definite time limit was fixed for the Library deposit. Deposit for the Library was enforceable by a demand, and failure to deposit within a stated time after the demand was penalized by a fine but did not affect the copyright.

The comments made at the various hearings on these four bills indicate the expectation that most published works would be registered under the voluntary system, so that deposits made for registration were expected to be the primary source of copies for the Library. The Dallinger and 1932 Sirovich bills therefore maintained the integrated deposit system under which the deposit for registration included the copies for the Library. This was supplemented in the

[72] This pt. IV is based on material prepared by Borge Varmer, Attorney-Adviser of the Copyright Office. For a comprehensive discussion of the provisions of these bills concerning registration (and deposit as related thereto), see Kaplan, *op. cit.*, note 1 *supra*, at 48–58.

[73] H.R. 9137, 68th Cong., 1st Sess., §§ 14, 16, 26(a), 62 (1924). This was a redraft of an earlier Dallinger bill. Two or more versions of some of the other general revision bills cited below were also introduced; the last amended version only will be cited.

[74] H.R. 11258, 68th Cong., 2d Sess., §§ 45–51 (1935).

[75] H.R. 12549, 71st Cong., 2d Sess., §§ 15(b), 36, 38–43 (1930). This bill was passed by the House but died in the Senate.

[76] H.R. 12425, 72d Cong., 1st Sess., §§ 8, 19, 36 (1932).

[77] The Dallinger, Vestal, and 1932 Sirovich bills, however, would have limited the remedies available against an innocent infringer of a work that had not been registered.

[78] The specification of the works to be deposited for the Library varied somewhat in the several bills. In general, an effort was made to exclude the classes of works which the Library was not at that time taking for its collection.

Dallinger bill by a provision that, if registration was not made within 1 month of publication, the Librarian or the Register of Copyrights could make demand upon the publisher to deliver two copies of certain works to the Library, and failure to comply within 30 days would subject the publisher to a penalty of $50 and the value of the work. The 1932 Sirovich bill provided that two copies of all copyright works printed in the United States must be deposited for the Library within 90 days of publication if they were not deposited for registration; the Register could make demand upon the copyright owner at any time after publication to deposit the copies for the Library, and failure to comply within 3 months would subject the copyright owner to a penalty of $250 and the retail price of the two copies.

The approach in the Perkins and Vestal bills was somewhat different. One copy of a work (or other identifying matter) was to be deposited for voluntary registration, and a separate deposit of two copies of certain published works was to be made for the Library. The Perkins bill provided that the copy deposited for registration was to be returned to the registrant, but the Vestal bill omitted this provision. Both bills provided, however, that registration could be secured in conjunction with the Library deposit if that deposit was accompanied by an application for registration. Under the Perkins bill the Library deposit was to be made by the copyright owner "promptly" after publication; under the Vestal bill the Library deposit was to be made by the publisher within 30 days after publication. Under both bills the Librarian could demand the deposit, and upon default for 3 months thereafter the copyright owner (under Perkins) or the publisher (under Vestal) became liable to a fine of $100 and the retail price of the two copies.

A second group of general revision bills—the Duffy,[79] 1936 Sirovich,[80] and Daly[81] bills, introduced between 1935 and 1937[82]—retained the substance of the registration and deposit provisions of the 1909 act, with some minor changes in detail. Thus, registration was to be made "promptly" after publication (and was apparently thought to be mandatory)[83] for all copyrighted domestic works, and the deposit required in conjunction with registration included copies for the Library. The Register could demand deposit at any time, and default for 3 months thereafter subjected the copyright owner to a fine and voided the copyright.

The last effort at general revision was the Thomas bill[84] of 1940, drafted by the Shotwell committee. It differed from all the previous bills in some important respects. Registration was to be wholly voluntary, and the deposit of copies was apparently designed to serve as a substitute for registration.[85] The publisher of certain works published in the United States was required to deposit two copies for the

[79] S. 3047, 74th Cong., 1st Sess. (1935). This bill amended some sections of the 1909 Act, leaving other sections unchanged. The deposit provisions of the 1909 Act were retained in general substance. Some changes of a relatively minor character in §§ 11 and 12 of the 1909 Act were in §§ 9 and 10 of the bill. This bill was passed by the Senate but died in the House.

[80] H.R. 11420, 74th Cong., 2d Sess., §§ 11, 12, 13 (1936).

[81] H.R. 5275, 75th Cong., 1st Sess. (1937). This bill was substantially like the Duffy bill in pertinent respects.

[82] A number of other bills introduced between 1936 and 1940 were substantially identical with one of these three.

[83] Note that the decision in the *Washingtonian* case came later, in 1939.

[84] S. 3043, 76th Cong., 3d Sess., §§ 14, 15, 17 (1940).

[85] This deposit was to be accompanied by an "application for deposit" and a small fee, and the Register was to make a record of the deposit, and issue a receipt containing specified copyright information (presumably to be given in the application). The receipt was to be prima facie evidence of the facts stated therein.

Library within 90 days. If deposit was not made within that time, the publisher would not be entitled to statutory damages for any infringement occurring after the 90 days and prior to deposit;[86] and the Register could demand, within 2 years after publication, that the publisher either make the deposit or file a relinquishment of the publication right, and upon failure to do either within 90 days after the demand the publisher would be subject to a penalty of $100. The Thomas bill also provided that registration could be obtained by filing an application therefor and paying the registration fee at the time of making the deposit or later.

In the several hearings held on the various bills introduced between 1924 and 1936, and in the proceedings of the Shotwell committee that drafted the Thomas bill of 1940, there was considerable discussion and differences of opinion concerning the registration system, particularly as to its mandatory or voluntary character; but the deposit of copies for the Library was apparently accepted on all sides with little discussion.

All of the various revision bills retained, in substance, the administrative provisions of the 1909 act (now secs. 208–214, 17 U.S.C.) concerning registration records and certificates and the disposition of deposits. The Thomas bill added new provisions requiring the Register to make records of deposits and to issue receipts for deposits containing specified information.

A bill of an entirely different nature was introduced in 1937.[87] Its intent was to create five regional national libraries at New York, Memphis, Chicago, Denver, and San Francisco. To benefit these libraries the copyright deposit was to be increased to 12 copies (2 to be supplied to each regional library, in addition to the 2 for the Library of Congress), unless the work to be deposited was published in less than 50 copies, or was priced at more than $50 per copy. No action was taken on this bill.

V. Operation of the Deposit System Since 1909 [88]

It is desirable to assess the practical results of the operation of the deposit provisions of the present law in terms of the dual objectives of providing the basis for copyright registration and of enriching the collections of the Library of Congress.

A statistical analysis has been prepared, by copyright class, of the registrations and deposit receipts, works transferred to the Library of Congress or other libraries, and the final disposition of the remaining articles. This analysis, covering a period of 56 years, July 1, 1901, through June 30, 1957 (fiscal years 1902–57), is presented in the table on the next page. The textual comment is intended to amplify and clarify the table and supply the rationale of past and present practice with respect to the disposition or retention of deposits.

The 1909 copyright law, as discussed in chapter III, broke with the tradition that one copy of each deposit should be preserved throughout the copyright term as record evidence of what had been deposited.

[86] The denial of statutory damages was extended to the owner of an unpublished work if he did not deposit a copy or manuscript of the unpublished work within 90 days after its completion.

[87] H.R. 3699 and S. 1510, 75th Cong., 1st Sess. (1937); reintroduced as H.R. 1644, 76th Cong., 1st Sess. (1939) and H.R. 4486, 77th Cong., 1st Sess. (1941).

[88] This pt. V is based on material prepared by Joseph W. Rogers, Chief of the Cataloging Division, Copyright Office.

Section 59 of that act (now sec. 213) authorizes the Librarian of Congress to select the deposited articles to be transferred to the Library collections, or to other Government libraries, or to be used by the Library for sale or exchange. Section 60 (now sec. 214) provides that the Librarian and the Register of Copyrights are jointly to determine which of the remaining articles it is desirable or useful to preserve in the permanent files of the Copyright Office, and which, after notice has been given, may be destroyed.

A. RETENTION OF DEPOSITS IN THE COPYRIGHT OFFICE

The general policy of the Copyright Office since 1909 may be stated to have been to retain custody of unpublished works throughout the entire 56 years of possible copyright protection, but not to retain published works rejected for Library use beyond a period determined largely by the space available for storage. At present this period is at least 3 years, which has been found to be the time in which interested persons most frequently seek to consult the deposits of published works. There are several exceptions to this general statement, however, as follows.

As to unpublished works: The Copyright Office retains virtually complete files of unpublished dramas deposited from 1901 to date (except that a few are preserved in the Library's Rare Book Division). Two-dimensional works of art (some of which are photographs of original unpublished works) and lectures, sermons, and addresses are retained from 1909 to date; unpublished photographs and music from 1928 to date. In 1939, when the Copyright Office moved to the new annex building, all music deposits received prior to 1928 were transferred to the Library's Music Division, where they are preserved and are available for consultation, and since then some unpublished musical compositions of particular importance have regularly been so transferred. On occasion copyright proprietors have reclaimed deposits of unpublished works in all classes.

Receipt and disposition of copies of works deposited for copyright registration, 1901–57

Class in 17 U.S.C. 5	A [1]	B	E	G–K	KK	D	F	L–M	C	Total
Works registered:										
1902–29	1,138,588	811,647	712,250	742,118	[2] 45,729	87,840	54,917	32,876	4,409	3,630,374
1930–57	1,483,302	1,333,160	1,308,733	315,861	[3] 188,379	146,353	46,947	67,628	24,183	4,914,546
Total	2,621,890	2,144,807	2,020,983	1,057,979	234,108	234,193	101,864	100,504	28,592	8,544,920
Copies deposited:										
1902–29	1,913,434	1,623,066	1,494,471	1,246,371	91,458	105,635	108,396	[4] 131,062	4,394	6,718,287
1930–57	2,698,482	2,665,019	1,602,289	825,463	376,852	163,687	93,521	108,410	24,173	8,557,896
Total	4,611,916	4,288,085	3,096,760	2,071,834	468,310	269,322	201,917	[5] 239,472	28,567	15,276,183
Disposition of copies:										
Currently to the Library of Congress [6]	1,650,000	4,008,788	1,500,000	90,000	0	29,105	201,917	[7] 9,500	0	7,489,310
Currently to other libraries	265,000	0	40,000	0	0	0	0	0	0	305,000
Returned to claimants	843,973	279,297	122,782	204,299	0	217	0	228,119	0	1,678,687
Transferred to the Library of Congress in bulk	1,625,943	0	508,978	1,377,535	0	0	0	0	0	3,512,456
Total	4,384,916	4,288,085	2,171,760	1,671,834	0	29,322	201,917	237,619	0	12,985,453

[1] The arrangement of classes in this table is in the order of the total numbers of copies deposited.

[2] Prints and labels registered in the Patent Office and transferred to the Copyright Office in 1940.

[3] Includes 25,260 prints and labels registered in the Patent Office between 1930 and 1940 and transferred to the Copyright Office in 1940.

[4] From 1914 to 1927 the number of articles recorded as deposited in classes L and M was 3 to 6 times the number of registrations for the same years. Apparently the count was based on reels rather than copies. Actual number of copies deposited would not have been greater than 60,000.

[5] See note 4. The actual number of copies probably was substantially fewer than 200,000; possibly not more than 175,000.

[6] Estimates of number of copies disposed of by transfer currently to Library of Congress or by return to claimants are based on records of the transfers made as a part of regular routines. Some small number of additional copies were so disposed of in special cases.

[7] Copies of motion pictures; excludes approximately 70,000 descriptions of motion pictures received prior to 1954 and transferred to the Library.

Deposit copies have been subpoenaed for use in court in seven known cases since 1929.[93] Since 1940, the Copyright Office has used deposit copies in seven court cases in which it was an interested party. These are cases known to the present officers of the Copyright Office; there are probably others but they are undoubtedly few.

In a number of instances parties engaged in legal controversies have requested the Copyright Office or the Library of Congress to supply a certified photocopy of a deposited work involved in such a controversy. Prior to August 1953, the "Copyright Office Regulations" provided that a certified photocopy of a copyright deposit would be supplied (1) when authorized in writing by the copyright owner, (2) when required in a court proceeding in which the work was the subject of litigation, or (3) when ordered by a court.[94] The need for copies of deposits by parties involved in legal controversies before they have reached the stage of litigation is illustrated by the following statement presented to the Library by a prominent copyright attorney in urging that this regulation be broadened:

> If a claim of alleged infringement is a just one, the [motion picture] companies desire to settle it as quickly as possible and out of Court. Even if a claim is not entirely clear cut, the companies generally try to settle rather than to incur the expense and risk of a trial. But unless the defendant is able to obtain a copy of the works alleged to be infringed, it has, in most instances no opportunity of determining, for itself, the validity of the claim asserted. The requirement of obtaining a written authorization from the copyright proprietor is one often impossible of accomplishment. From my own personal experience I can state that in the majority of cases the claimant refuses such authorization and in many other cases claimants have furnished copies of the works alleged to be infringed which are radically different from the actually copyrighted works.
>
> No court order can be obtained until a case is actually in court and the inability of a settlement out of court has caused numerous cases to be brought which might otherwise have been settled. Settlements after suits have been filed are always at much higher figures than if the claims had been disposed of before the bringing of suit.

The regulation was broadened in June 1953 (effective August 1953) to provide that a certified copy of a copyright deposit would also be supplied when the work was involved in "prospective litigation." [95]

Statistics on the number of certified photocopies supplied to parties involved in actual or prospective litigation have only recently been kept. On the basis of informed opinion, it is estimated that 175 such photocopies were supplied in 1957. Of the 124 supplied by the Copyright Office, 30 percent were for commercial prints and labels, 20 percent for published works of art, 15 percent for unpublished music, 10 percent for books or pamphlets. There is no breakdown by class of the 51 certified photocopies supplied by the Library of Congress.

A larger number of photocopies of copyright deposits have been supplied to copyright owners, in many cases to replace the owner's copy of an unpublished work which he had mislaid or destroyed. In recent years approximately 1,100 photocopies have been made annually from deposits retained in the Copyright Office. Seventy-nine percent of these in 1958 were copies of unpublished music. Presumably some of these may be used in copyright negotiations. Another estimated 1,500 photocopies annually are made from deposits transferred to the Library of Congress.

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[93] These cases were U.S. v. Santangelo (1937), settled before trial; U.S. v. Rebhuhn (1939), a Post Office proceeding against an alleged obscene publication; U.S. v. Dinshah P. Ghadiali et al, (1936), another Post Office case; U.S. v. Alvin Kaplan (1939), settled before trial; Jerome v. Twentieth Century-Fox Film Corp., 65 F. Supp. 736 (S.D.N.Y. 1946); Korzybski v. Underwood & Underwood, 36 Fed. (2d) (1929); Dodge Inc. v. General Classics (1958).

[94] 37 C.F.R., 1949 edition, § 201.2(d).

[95] 18 Federal Register 3459, June 17, 1953.

As to published works: In view of its limited storage space, and since most published works are available elsewhere (and can generally be identified from the registration records), the Copyright Office has felt it is less important to retain for consultation the published works rejected by the Library. Commercial prints and labels, however, are retained substantially intact from 1874 to date.[89] Some published materials deposited in classes D, G, I, and J before 1946 are still retained in the Copyright Office because they were registered and stored in the same series as unpublished works. Otherwise the Office retains published works deposited during the current and the preceding 3 years in all classes except periodicals and maps (which are transferred immediately in toto to the Library) and motion pictures (which are generally returned to the copyright proprietor, otherwise transferred to the Library).

The current policy of the Office, therefore, is to preserve deposits (either in the Copyright Office or in the Library), as far as storage space will permit, for as long as there is a substantial need for their use as record evidence in connection with the copyright claim. For unpublished works, which exist at most in only a few copies, this is considered to be for the full copyright term. For published works, which are usually widely distributed and available elsewhere, a relatively short period has proved to be generally sufficient.[90]

B. USES OF THE DEPOSITS FOR COPYRIGHT PURPOSES

The basic copyright purposes for the retention of deposit copies are to have them available when needed in litigation and for identification of the exact work under copyright.[91] The extent to which the deposits have been so used is discussed briefly below.

Satisfactory statistics on the uses of deposits for copyright purposes are difficult to procure. Uniform statistics have not been kept over the years, and users of deposited materials have not been asked, or if asked have not always clearly indicated, their purposes in consulting the deposits. This analysis presents the facts available.

In 1926 the Register of Copyrights was asked:

> How frequently are the copies deposited for copyright withdrawn or consulted for use as evidence, or otherwise, in litigation?

He stated:

> The deposit copies are occasionally examined. No exact figures are available, but removals from the files because of litigation would not amount to more than 100 per year. Not above five cases are known where copies deposited between the period 1870 to date have been removed in order to be taken into court for use as evidence or otherwise in litigation.[92]

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[89] Commercial prints and labels previously registered in the Patent Office were transferred to the Copyright Office in 1940. The Library has never made a general selection of the deposits in this category. Copies of this material may not be readily available elsewhere, and requests to consult deposit copies, including older ones, have been relatively frequent. Oversized and three-dimensional works in this category have been disposed of, and a few of these were selected by the Library in the course of their disposition.

[90] It is estimated that, at most, 50 requests per year to consult copies cannot be satisfied. The requests are not necessarily related to copyright purposes.

[91] In two cases the failure to produce the deposited copies in evidence was raised by the defendant but the court accepted copies answering the description of those identified in the certificate of registration (Gerlach-Barklow Co. v. Morris & Bendien, Inc., 23 F. 2d 159 (2d Cir. 1927); Alfred Bell & Co. v. Catalda Fine Arts, Inc., 5 F.R.D. 327 (S.D.N.Y. 1946)). In Sayers v. Spaeth (not reported but set forth in 20 COPYRIGHT OFFICE BULL. 625; S.D.N.Y. 1932) copyright was challenged on the ground that since only one copy could be found in the Library of Congress, it was to be presumed that only one copy had been deposited; the court rejected this argument since the records of the Copyright Office showed that the two copies required had been deposited.

[92] *Hearings Held Before the House Committee on Patents*, 69th Cong., 1st Sess., on H.R. 10434, p. 225 (1926). From 1909 to 1939 thousands of deposits were being returned immediately to the copyright owners and the amount of their use in litigation cannot be determined.

Periodicals,[96] maps, and one copy of published music [97] are now automatically transferred to the Library. Motion pictures are usually returned to the copyright claimant subject to the recall of one copy of selected titles for the Library's collections. Commercial prints and labels have never been selected (except for a few oversized prints among those being disposed of). With other published materials the Library's practice has been to select one or both copies of individual titles. In these latter classes the amount of material selected fluctuates with the acquisition policies of the Library and the types of materials available; e.g., in the art classes, where the total number and character of deposits has changed radically in this period.[98]

Copyright deposit has contributed materially to the growth and strength of the Library's collections of domestic publications, especially in the classes in which the proportion of registrations is high in relation to the total volume of publication. An assessment of the effectiveness of the copyright deposit in meeting the Library's needs is attempted in part VI below.

D. TRANSFERS TO OTHER GOVERNMENT LIBRARIES

Regular transfer on a current basis to other Government libraries began soon after passage of the 1909 act. Statistics are available up to 1945 and show a total of 196,537 copies transferred prior to 1945 to 15 Federal libraries in the District of Columbia, among them the Department of Agriculture Library and the National Library of Medicine which act as the national libraries in their fields. No statistics on transfers to other libraries since 1945 are available; by extrapolation the figure would be about 305,000 copies transferred up to 1957. All of the deposits transferred to these libraries were books except for 40,000 pieces of published music transferred to the District of Columbia Public Library early in this period. Most of the transferals were second copies of works for which the Library of Congress had need for only one copy.

In exchanges with foreign libraries and domestic nongovernmental libraries the Library has transferred an undeterminable number of copyright deposits (usually second copies) as well as materials received in other ways.

E. DISPOSAL OF DEPOSITS UNDER SECTION 214

Until 1909 there was no authorization in the law for the Library to dispose of any copyright deposits. Many of the works received were not needed or wanted in the Library and were stored in the custody of the Copyright Office. Mr. Putnam, then Librarian, argued vigorously to be relieved of the necessity to store such items.[99] Congress was convinced [100] and provided in section 60 of the 1909 act (now

[96] In the early years, some periodicals were returned to the copyright owner.

[97] Prior to 1957 both copies of published music were routinely transferred. The Copyright Office now retains one copy because of the amount of copyright interest in this field, unless the Library specifically requests both copies.

[98] The deposits in the art classes are now about 40 percent of those made in 1909. Moreover, many works now registered, such as jewelry, textiles, toys, etc., are not wanted for the Library.

[99] See 1904 U.S. Librarian of Congress Annual Report, pp. 2–22, for a full exposition of his views, and *Hearings Before the Joint Committee on Patents*, on S. 6330 and H.R. 19853, June 6, 1906, pp. 14, 15.

[100] H. REP. NO. 2222, 60th Cong., 2d Sess., p. 21 (1909).

Requests in the Copyright Office to inspect deposits still in its custody numbered 232 in fiscal 1959 and involved about 525 works. A study of the requests in fiscal 1957 shows the following distribution among the classes:

Class	Number of works	Percentage
KK—Commercial prints and labels, 1936 to date	151	30
E—Unpublished music, 1936 to date	86	17
A—Books, 1954 to date	81	16
G-K—Works of art, 1943 to date	47	9
	365	72
All others [1]	139	28
Total	504	100

[1] 74 requests were for works registered prior to 1936.

To make some evaluation of the need to consult deposit copies, users were asked to state the purpose of their requests over a 10-month period in 1957. From a careful analysis of the replies, some of which were too vague to be of use, it appears that the following motives were present in one or more cases: to determine whether a work had been infringed or would infringe another; whether copies or certified copies would be needed; whether exploitation of a work would be desirable; to identify a work; to compare it with another; to make a description of it, or to copy it with permission; to consult a work not available elsewhere. It is estimated that possibly two-thirds of the requests were the result of an interest in a legal claim in connection with which examination of one or more deposits was desirable. In three or four instances there was an indicateion of interest in reproducing or exploiting a work under copyright. Other requests usually did not indicate a specific copyright interest and were in some cases apparently for other research purposes.

In summary, it is apparent that the number of deposited copies requested for copyright purposes is very small in proportion to the number of registrations made, though the availability of the deposited copy may be of great importance in a given instance.

C. COPYRIGHT DEPOSITS TRANSFERRED TO THE LIBRARY OF CONGRESS

In the period from 1902 to 1957, some 7,490,000 copies of deposited works (49 percent of all deposits received) were transferred to the Library of Congress for its collections, for transfer to other libraries, or for its exchange program. (See table, p. 24.)

In numbers of copies transferred the materials rank as follows:

Class	Number transferred	Percent of class deposit
Periodicals (issues)	4,008,788	93
Books, pamphlets, etc	1,650,000	36
Music [1]	1,500,000	50
Maps	201,917	100
Works of art [1]	90,000	4
Dramas [1]	29,105	11
Motion pictures [1] [2]	9,500	5

[1] Includes unpublished works.
[2] Selection for the Library's collections began in 1942.

VI. Current Effectiveness of the Copyright Deposit for the Benefit of the Library of Congress

The great value of the copyright deposit to the collections of the Library of Congress since 1870 has been recognized many times.[106] In the past it has materially assisted the Library in building its collections on all aspects of American history, literature, law, music, and social culture. The contribution of copyright deposit, however, varies considerably in the separate categories of copyrighted works according to the amount of material deposited out of the total U.S. production, the value of the deposited material for use in research, and changes in the acquisition policies of the Library itself. An attempt will be made here to evaluate the usefulness of the present copyright deposit system in meeting the needs of the Library, and to point out certain adjustments that might be made in the present deposit provisions to serve the needs of the Library more adequately.

Consideration is here directed only to works published domestically. Many thousands of valuable foreign works have been added to the Library's collections through copyright deposit, but only musical compositions have been deposited in sufficient numbers to allow the Library to rely on copyright deposit as a major source of acquisition for foreign works. Since registration and deposit of the works of foreign countries adhering to the Universal Copyright Convention is no longer mandatory, deposit of such works is likely to decrease.[107]

The Library acquires a wide variety of works and no precise statistics are available as to the proportion of the works in the several categories that it acquires through copyright deposit and through other sources. The available statistics on copyright deposits transferred to the Library have therefore been supplemented by interviewing members of the Library staff who could indicate from experience the strength and weaknesses of the copyright deposit in meeting the Library's needs, and by examining the other acquisitions sources used by the Library, to determine what works are acquired through these other sources and to what extent such works might be covered by a broadened copyright deposit system.

Under the present system of deposit in conjunction with copyright registration, the Library receives by copyright deposit a very high percentage (estimated at 90 percent or over) of the current books and pamphlets, periodicals of general interest, dramas, music, maps, and motion pictures published domestically through the regular trade channels in these fields.[108] In addition, many works of importance issued by nontrade publishers are received in these categories.

Newspapers, noncommercial periodicals of limited scope, fine prints, and photographs are not copyrighted and deposited in sufficient quantity to supply more than a small part of the Library's needs. A few specialized categories of commercial-book publication—such as bibliographical series and de luxe limited editions—are also likely not to be copyrighted. The failure to claim copyright protection in these

[106] See especially 1901 Librarian of Congress Annual Report, pp. 296-343; and 1946 Librarian of Congress Annual Report, p. 99.

[107] Foreign music deposits fell off heavily (about 1,000 registrations per year) from fiscal 1956 to 1958, but in fiscal 1959 the rate of decrease slowed sharply to a decrease of 129 registrations; receipts in 1959 were still about 75 percent of the total in 1955. Foreign book registrations have fluctuated from year to year; the registrations for fiscal 1959 were about 79 percent of those for fiscal 1955.

[108] These figures on commercial publications are based on published bibliographies where possible. The figure on periodicals refers to periodicals of general interest, not including periodicals published especially for information of a particular trade, profession, or organization.

sec. 214) for the disposition of deposits not wanted by the Library and not needed for preservation in the Copyright Office, after notice of their intended disposition has been given.

Deposits returned to claimants.—Since fiscal 1910 notice that the older deposits of published works can be reclaimed before their destruction is inserted in each issue of the "Catalog of Copyright Entries" but very few deposits have ever been reclaimed as the result of publication of this notice.[101]

From 1910 until 1939 the Office returned to the copyright owner immediately after registration most of the published works not selected by the Library of Congress or by the other Federal libraries. It appears that during this period the Office "disposed" of current deposits not wanted by the Library mainly by automatic return to the claimant.[102] Thus the deposit was preserved as a record for the claimant but not for public consultation. The total number of deposits returned to claimants was 1,678,687, of which 42 percent were pamphlet materials in class A. Including "contributions to periodicals" then registered in class A and a relatively small number of "books proper," 36 percent of the total deposits in this class were returned. All motion-picture deposits were returned,[103] about 10 percent of the art deposits, 5 percent of the periodicals, and 4 percent of the music deposits. Except for motion pictures and occasional deposits reclaimed in other classes, this practice was discontinued in 1939.

Bulk transfers of deposits to the Library of Congress.—While return to the claimant was the method of disposing of current deposits not wanted by the Library up to 1939, disposal of older materials was accomplished by transferring large segments of whole classes to the Library of Congress. There is evidence of selection of some items for the Library, [104] but the remainder was apparently destroyed. In 1939 the Office transferred to the custody of the Library all music deposited prior to 1928 still in its possession.

Currently, all deposits in a particular class not previously selected, when they are no longer to be retained in the Copyright Office, are transferred to the Library in bulk. The Library then handles them as it does materials received from any other source. The works are reassessed and some of them are added to the Library's collections, [105] or are used for exchange with or donation to other libraries. Those remaining after these screenings (the vast majority of those transferred in bulk) are pulped.

[101] See especially the annual reports of the Register of Copyrights, 1910, 1911, 1912, section on "Copyright Deposit."

[102] See annual reports of the Register of Copyrights, in section on *Copyright Deposits*, especially that of 1932, p. 3.

[103] Early motion pictures made on nitrate stock, easily flammable, were considered a fire hazard and so undesirable. When the Library established a Motion Picture Division, an agreement was made in 1946 that films would be returned to the owners for interim use if they would return a complete copy in satisfactory condition if the Library recalled it within 2 years of registration. This arrangement is still in force.

[104] See annual reports of the Register of Copyrights, section on *Copyright Deposit*, for 1910 to 1932.

[105] Occasionally works which held little bibliographic interest when first published become more valuable over the years and are selected for the Library out of the bulk transfer. *E.g.*, there is growing interest in advertising art of the 19th century as social documentation of importance.

for registration as a result of compliance action by the Copyright Office,[114] the number of registrations made in response to compliance requests in fiscal 1958 was only 6 percent of total registrations. A very large percentage of the compliance requests is initiated at the behest of various officers of the Library who learn of copyrighted items wanted for the Library which have not been deposited. Various lists of current publications are checked to see whether deposit of materials wanted by the Library is being overlooked, but a complete check of all publications is not feasible and it is sometimes difficult to determine whether a particular work not in hand has been published with a copyright notice.[115] Requests are made regularly for the deposit of missing issues of periodical titles which are usually registered. Library purchase orders for domestic publications are often contingent on whether the works carry a copyright notice; if a work ordered does bear a notice, the dealer does not fill the order and the Copyright Office is asked to request its deposit.

Deposits have generally been made fairly promptly after publication. Studies made in the Copyright Office in fiscal 1957 showed that 94 percent of all copyrighted books and pamphlets listed in Publishers' Weekly for a 6-month period were deposited within 2 months after publication; that 62 percent of all registrations of domestic book and pamphlet material, 87 percent of periodicals, and 81 percent of domestic music were deposited within 1 month of publication; and that 95 percent of all registrations were made within 6 months of publication. However, in order to fulfill its service and bibliographical functions the Library needs some of these materials earlier than this. It must buy from a local retailer some copyrighted periodicals and newspapers that are in immediate demand. It has obtained the cooperation of many publishers in sending one copy of books and pamphlets to the Library prior to general publication for the preparation of catalog cards, because the libraries of the country want to have the Library of Congress catalog cards when the books are published.[116] This means that many publishers are now sending three copies of copyrighted books to the Library, two copies being deposited after publication for copyright registration. A provision in the law allowing deposit before general publication might serve to make two copies suffice for all purposes.

Since the copyright deposit system covers only copyrighted works, the Library must acquire by other means a large volume of uncopyrighted material.[117] Federal documents are deposited under title 44, section 139, of the United States' Code. State publications are acquired either under authorization of individual State distribution laws or by exchange agreements.[118] Other types of publications which the Library needs, it tries to secure through exchange agreements with other institutions, or by gift from the authors or publishers.

[114] The number of registrations resulting from compliance activities in fiscal 1949 was 3,392; in fiscal 1958, 15,007. Most of these registrations are made in response to letters which call attention to §§ 13 and 14 of the law and request compliance. The number of cases in which formal "demands" are issued (after requests have been unavailing) are very few in number—59 cases since 1950.

[115] Works published without a notice, not being copyrighted, are not subject to the deposit requirement.

[116] For this purpose, an effort was made during the 1940's to encourage the deposit of books prior to the announced publication date for subsequent registration (see U.S. Copyright Office Regulations, § 201.7 (1942)), but such prior deposits were not made in sufficient quantity to fill the Library's needs.

[117] As pointed out in pts. I and II above, the legal deposit systems in some foreign countries cover all domestic publications (with specified exceptions) regardless of copyright. A similar system in the United States would require consideration of the constitutional basis for requiring the deposit of works not copyrighted.

[118] It has been estimated that about 5 percent of State publications are copyrighted.

categories has sometimes been attributed to the expense involved in the present requirements of copyright deposit and registration. Thus, the fees for the separate registration of each issue of a newspaper or other serial publication or of each separately published photograph may discourage copyrighting them; or the publisher of a very expensive work may forego copyright to avoid the deposit of two copies. The Library receives as gifts many newspapers and serial publications that are not copyrighted, and will often receive as a gift a single copy of a high-priced work not copyrighted. Perhaps some adjustment of the deposit and registration requirements for these categories of works should be considered.

A great variety of noncommercial works collected by the Library, chiefly State and local government publications, publications of businesses, societies, and institutions, and scholarly and scientific publications, are not copyrighted. Copyright is usually not claimed in these works, probably because they are largely intended for dissemination freely as a public service, as public information, or as a means of influencing public opinion. These materials are largely acquired by the Library as gifts or on an exchange basis.

Among the works which the Library is interested in acquiring, but which are not covered by the present copyright deposit system, are sound recordings of musical and literary works. Sound recordings are not now acceptable as deposits for copyright registration.[109] A number of recording companies are supplying all of their recordings to the Library as gifts.[110] A bill recently introduced in Congress, on which no action was taken, proposed to require record producers to deliver to the Library two copies of their recordings of copyrighted works, as selected by the Library from lists to be submitted by the producers of all such recordings issued by them.[111]

Deposit is not now required for foreign works protected under the Universal Copyright Convention although they may be reissued here under an American imprint. The deposit of these works, when published in the United States, would be of value to the Library [112] and could perhaps be required of the American publisher as proposed in the Perkins and Vestal bills.[113]

The Copyright Office has no satisfactory means of determining what percentage of total U.S. publication is published with copyright notice, or what percentage of the works in which copyright is claimed is actually deposited.

The Register of Copyrights is charged with the responsibility of enforcing compliance with the deposit provisions of the present law (sec. 14), and the present compliance activities of the Copyright Office were inaugurated in 1948. While the annual reports show a substantial growth since 1948 in the amount and value of materials deposited

[109] The matter of making sound recordings eligible as deposits for copyright registration, either as copies of the musical or literary work recorded or as copyrightable works in themselves, involves substantive issues for special consideration beyond the scope of this study.

A recent bill would permit the deposit of a sound recording for the copyright registration of a musical composition in the special situation where the composition is produced directly upon a recording without the use of conventional notations: S. 4317, 85th Cong., 2d Sess. (1958), reintroduced as S. 1357, 86th Cong., 1st Sess. (1959). This bill was apparently designed to apply to what is known as "electronic" or "concrete" music.

[110] The Library received as gifts 2,283 phonorecords in fiscal 1958.

[111] H.R. 9844, 85th Cong., 2d Sess. (1958).

[112] Over 10 percent of the books listed currently in Publishers' Weekly as U.S. publications are works of foreign origin.

[113] Cited *supra*, at notes 74 and 75. It is believed that a requirement of deposit by the American publisher of a foreign work would not be precluded by the convention as long as the failure to deposit did not affect the copyright.

Insofar as possible, the Library seeks to establish voluntary deposits of uncopyrighted materials from these sources on a continuous and automatic basis. The Library's funds for purchase of current domestic materials is expended largely in the purchase of duplicate copies of works necessary in its various research and service functions, and to secure works not obtainable through other sources.[119]

In view of the extremely heterogeneous nature of the works deposited, it is difficult to make an accurate appraisal of the monetary value of the material acquired by the Library through copyright deposit; but it has been estimated that the value of the deposits selected by the Library is over $500,000 annually.[120] Not the least of the advantages of the deposit system to the Library is that it provides an automatic flow to the Library of the more important works of various classes published commercially in the United States, constituting a widely useful national collection of domestic publications in the form of books, periodicals, dramas, music, maps, and motion pictures.

VII. Analysis of Issues

A. GENERAL OBSERVATIONS

A system for the deposit of copyrighted works cannot bring into the Library of Congress—as the "legal deposit" system in other countries does for their national libraries—the large volume of domestically published works that are not under copyright. The Library of Congress, however, has generally been able to procure the bulk of the uncopyrighted domestic publications wanted for its collections through gift or exchange or, to some extent, through purchase. If a "legal deposit" system covering all domestic publications without regard to copyright were desired, the consitutional basis for requiring the deposit of works not under copyright would need to be considered; and since the deposit requirement for such works would not be based on the copyright clause of the Constitution, such a "legal deposit" system for works not under copyright would properly be the subject of legislation other than the copyright law. The possibility of such legislation is beyond the scope of this study which is concerned with the problem of the deposit provisions in the copyright law. Perhaps, even under a "legal deposit" system, the deposit of copyrighted words would be integrated with their deposit for copyright registration. It

[119] A substantial portion of such funds is used for the acquisition of newspapers on microfilm, as an economical alternative to binding.

[120] See *Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives*, 86th Cong., 1st Sess., p. 194 (1959). The estimate is derived on an average-cost-per-item basis for each category of works. In fiscal 1958 the number of copies in each category currently transferred to the Library was:

	Domestic copies	Foreign copies
Books and pamphlets	47,342	6,194
Periodical issues	100,086	852
Newspaper issues	21,086	----------
Music	12,208	10,087
Maps	3,000	----------
Art	494	----------
Motion-picture reels	1,941	----------

The figure for domestic books includes 18,480 second copies. The figures for domestic periodicals, newspapers, and maps include the two copies deposited with each registration.

is assumed herein that a system for the deposit of copyrighted works for the Library will continue to be a part of the copyright law.

In considering the deposit provisions to be incorporated in a new copyright law, it should be borne in mind that deposits of copyrighted works serve two purposes: (1) To identify the work for the purpose of copyright registration, and (2) to provide copies of works for the Library of Congress.

The deposit of a copy of the work (or of other identifying material) is deemed essential to the making of reliable and informative registration records. The deposit provides proof of the existence of the work and its content at the time of registration, supplies evidence of its copyrightability and of compliance with the requirements for copyright protection (such as the copyright notice), and furnishes data needed for an accurate registration record (both as a check against the data given in the application for registration and as a source of other data needed to identify the work and to record facts bearing on the copyright claim). Insofar as the deposits remain available for consultation, they also serve as record evidence of the work covered by the copyright registration.

The great value to the public of supplying copies of published works to a national library has long been recognized in the United States and in other countries. The major problem here is the kind of deposit system that will serve this purpose most effectively and economically.

B. THE BASIC DEPOSIT SYSTEM

The present system of requiring the deposit of copyrighted works for registration "promptly" after publication, and of having this deposit include the copies for the Library (with deposit being enforceable by a demand under penalty for noncompliance) has worked reasonably well, on the whole, in providing the Library with the copyrighted domestic works wanted by it. The success of the present system in this regard depends upon the registration (and the deposit in conjunction therewith) of virtually all of the copyrighted works published domestically that are wanted by the Library. The deposit system to be provided for in a new law, therefore, will depend largely upon the kind of registration system therein provided.

Under a system of compulsory registration, the requirement that the deposit for registration include the copies wanted by the Library (which is the theory of the present law) would operate to supply the Library with the copyrighted works it wants. Under such a registration system the present deposit provisions could be retained in substance, perhaps with some minor changes in the details discussed below.

If the registration system were to be completely abandoned, it would be necessary to establish a compulsory system of deposit for the Library. The features of such a system might follow the pattern discussed below in connection with deposits for the Library in the absence of registration.

If registration is provided for but is not to be compulsory, the deposit provisions of the present law will need to be altered or supplemented to assure the deposit for the Library of works wanted by it. This problem was dealt with in a number of the prior revision bills discussed in part III above.

The bills referred to provided for voluntary registration (though most of them made registration advantageous to the copyright owner

and it was apparently assumed that a large portion of the works under copyright would be registered). In general, the approach followed in most of these bills was to keep the present integrated deposit system for registered works—i.e., the deposit required for voluntary registration included the copies for the Library—and to supplement this by requiring that certain published works, if not registered, were to be deposited for the Library within a stated time after publication. A somewhat different approach, though perhaps much the same in result as regards deposit, was followed in the Thomas bill (which offered little inducement to register but apparently attempted to make deposit a substitute for registration). Under the Thomas bill, deposit for the Library of certain kinds of published works within a stated time (accompanied by an application for deposit and a fee) was a primary requirement, and registration could be secured, if desired, in conjunction with the deposit.[121] In all of these bills the deposit for the Library was enforceable by a demand under penalty of a fine; the Thomas bill also deprived the publisher of certain remedies if he failed to make the deposit, and permitted him to relinquish publication rights to avoid the fine.[122]

Assuming that registration under a new law is to be voluntary but that a large volume of registrations can be expected (which would be likely if registration is made advantageous to the copyright owner), the present integrated system has obvious advantages over a system of separate deposits for registration and for the Library. For all concerned the integrated system is simpler and more economical. Deposit for the Library could then be made a supplemental requirement for those copyrighted works wanted by the Library which are not deposited for registration; and the required deposit for the Library could be enforced by demand under a penalty adequate to insure compliance.

The more important details of such a system are considered in the following discussion.

C. DEPOSIT FOR REGISTRATION

Under any system of copyright registration it would be possible, of course, to have two separate systems of deposit, one for registration and another for the Library. As indicated above, however, it is advantageous to all concerned to have the deposit made for registration include the copies required for the Library. The present law is based on this premise. It requires, for the registration of works published in the United States, two complete copies of the best edition (with certain exceptions to be noted below) (sec. 13); and these copies are available to the Library (sec. 213).

Provision is also made in the present law for the voluntary registration of certain classes of unpublished works (sec. 12). Except for specially selected items, these unpublished works are not taken into the Library's collections. For their registration the deposit of one copy only, or of other identifying matter, is now required. But when a work registered as unpublished is later published, copies of the published edition must be deposited as required generally for published works (sec. 12).

[121] All of these bills contained further provisions as to the deposit to be made for the voluntary registration of works other than those required for the Library.

[122] The Thomas bill, cited at note 84 *supra*, also required the deposit of unpublished works and deprived the owner of certain remedies if he failed to make the deposit (§ 14).

All or a large part of the copyrighted published works in most categories are wanted by the Library, but there are some categories which the Library does not select for its collections, or of which it takes only a few representative samples. The deposit of one copy of works in the latter categories (or other identifying matter where the deposit of a copy is not practicable) would be sufficient for the purpose of registration alone.

Under the present law (sec. 13), two categories of published works, which are not generally taken into the Library's collections,[123] are excepted from the two-copy requirement: for the registration of a contribution to a periodical, one copy only of the periodical issue is required;[124] and for the registration of certain published works in the art categories, photographs or other identifying matter may be deposited in lieu of copies.[125]

Some of the other categories of published works, of which two copies are now required for registration, are not generally taken into the Library's collections. This is true at present of commercial prints and labels and of certain works in the art categories. Moreover, published motion pictures, of which two copies are now required for registration, are subject to a special procedure: both copies are returned to the depositor after registration upon his agreement to deliver one copy to the Library at its subsequent request. The Library now collects only one copy of selected motion pictures.

Consideration might be given to limiting the two-copy requirement to those categories of works wanted by the Library. One copy only (or other identifying matter where appropriate) would then be sufficient for the registration of works in other categories. This will be considered further in the discussion below of the works to be deposited for the Library in the absence of registration.

The deposit requirements of the present law may also be too rigid in certain other respects. Because of the great variety in the forms of copyright material and the development of new forms, any blanket provisions governing deposits may prove to be unsuitable in special cases, as the following instances illustrate. The requirement of separate deposit and registration, with the payment of the registration fee, for each issue of a newspaper, and for each separately published photograph, has discouraged their deposit and registration. The requirement of two copies tends to discourage the deposit and registration of very expensive works. For the purpose of registration, identifying parts of a motion picture might suffice, subject to the deposit for the Library of one copy of the motion pictures selected for its collections. A sound recording is not now acceptable for deposit, though in the case of so-called "concrete" or "electronic music" of recent innovation, the work is composed and reproduced by the use of sound recordings and its transcription into written notation may be difficult and of dubious clarity. A recent amendment of the statute was necessary to permit the deposit of photographs in lieu of actual copies of unwieldy, fragile, or costly art works, but the Copy-

[123] For other reasons one copy only is required for the registration of works of foreign authors published abroad (sec. 13), though many such works are wanted by the Library. For such works, the foreign registrant is given the option of securing registration without payment of the fee by depositing two copies with a catalog card (sec. 215).

[124] In most cases two copies of the same periodical issue will be acquired by the Library through their deposit for copyright registration of the periodical.

[125] Two sets of photographs are now required in lieu of the two copies. Since the photographs are not wanted by the Library, one set would seem to suffice.

right Office is still obliged to accept actual copies though their handling and storage is inconvenient.

Whatever may be the appropriate provisions to take care of these particular instances—and other special situations are likely to arise in the future—it may be desirable to provide for some flexibility in the statutory prescription of the deposit requirements, perhaps by authorizing some modification of the statutory prescription by administrative regulation.

D. DEPOSITS FOR THE LIBRARY IN THE ABSENCE OF REGISTRATION

1. Works to be deposited

As indicated above, there are some categories of copyrighted works that are not generally wanted for the Library. Under a system that requires deposit for the Library of copyrighted works not registered, such categories could be excluded. This was the aim of some of the prior revision bills: they purported to limit the Library deposit to the kinds of works then being collected by the Library. For example, the Dallinger bill [126] required the deposit for the Library (if not deposited for registration) of two copies of "any book published in the United States," and defined "book" as including "every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, map, plan, chart, or table separately published." The Vestal bill [127] required the deposit for the Library of two copies of works published "in book form" and one copy of each issue of a newspaper or other periodical. The Thomas bill [128] required the deposit for the Library of two copies of works published "in book, pamphlet, map, or sheet form."

Such a specification in the statute, however, may well prove to be too narrow, particularly since the acquisitions policies of the Library change from time to time.[129] Perhaps a better approach would be to authorize the Librarian of Congress (or the Register of Copyrights with the approval of the Librarian) to prescribe by regulation (which could be amended from time to time) the categories of works that are to be deposited (or that need not be deposited) for the Library. Similar authority might be given to permit the deposit of only one copy of any category of works; this might be found desirable, for example, in the case of very expensive works. The deposit requirements for registration could also be made subject to adjustment by regulation to correspond with the Library requirements.

2. Time of deposit

Copies are generally needed by the Library as soon as possible after publication. The present law calls for deposit "promptly" after publication, but that term has been deemed to permit long delay. A definite time period would seem preferable, as was provided in most of the prior revision bills which specified time periods ranging from 30 to 90 days after publication.

As mentioned earlier, the Library wants to have a copy of some works, particularly trade books, in advance of publication for the

[126] Bill cited at note 73 *supra*, § 62.
[127] Bill cited at note 75 *supra*, § 41.
[128] Bill cited at note 84 *supra*, §§ 14(1), 29(1).
[129] For example, motion pictures were not being collected by the Library at the time of the revision bills referred to, but are being collected on a selective basis today.

preparation of catalog cards, and many book publishers are now voluntarily sending an advance copy to the Library for this purpose. Consideration might be given to making such advance copies acceptable in lieu of deposit after publication.

3. Enforcement of deposit

The prior revision bills followed the general scheme of the present law (sec. 14) for enforcing the deposit required for the Library. If deposit was not made (with or without registration) within the specified time, the Register of Copyrights (or in some bills the Librarian) could demand the deposit. A time period, ranging from 30 to 90 days in the various bills, was allowed for compliance with the demand, and a penalty was provided for noncompliance.

This penalty in the present law is twofold: a fine of $100 plus twice the retail price of the best edition of the work, and voiding of the copyright. On the theory that deposit (as well as registration) was not to be a condition for copyright protection, most of the prior revision bills eliminated the penalty of voiding the copyright; the fine was retained in amounts ranging from $50 to $250.

Loss of copyright is an extremely severe penalty, and its necessity to compel deposit may be questioned. In practice, the vast majority of the Register's requests for compliance under the present law have been met promptly, and the penalties have been imposed in relatively few cases. To what extent the high rate of compliance may have been impelled by the threat of loss of copyright, rather than by the threat of the fine, is a matter of conjecture.

If it is doubted that the present fine of $100 is sufficient to compel compliance, the amount of the fine might be increased and the loss of copyright eliminated.

4. Who should make deposit

Under the present law the obligation to make deposit and registration is placed on the copyright owner (secs. 13, 14). In practice, the publisher (who may or may not be the copyright owner) commonly makes the deposit and applies for registration on behalf of the copyright owner.

In requiring deposits for the Library in the absence of registration, the prior revision bills differed as to whether the copyright owner or the publisher was to be responsible for the deposit. Since the Library deposit would pertain only to published works, the deposit of copies would usually be more convenient for the publisher; demands could be made more readily on him; and assuming that failure to deposit is to be penalized by a fine only, it would seem logical to place the deposit obligation upon the publisher. It might be pointed out that in the case of a foreign work protected under the Universal Copyright Convention, the obligation to deposit when the work is published in the United States would necessarily be placed upon the domestic publisher (and his default could not affect the copyright).

5. Receipt for deposit

Some of the prior revision bills provided for the issuance of a receipt for Library deposits,[130] and the Thomas bill also provided for the payment of a fee to accompany the deposit.[131] If such receipts

[130] The present law (§ 209) provides for issuance, upon request, of a receipt for copies deposited for registration, as did some of the revision bills. Such receipts have almost never been requested. Inasmuch as a certificate of registration, showing the deposit, is issued in all cases, the receipt seems superfluous.

[131] Bill cited at note 84 *supra*, §§ 15, 42.

are required, a small fee would seem to be warranted. Or it might be provided that such receipts are to be furnished upon request, for a small fee.

E. DISPOSITION OF DEPOSITS

About half of all the deposits heretofore made for registration have not been wanted for the Library. The present law (sec. 214) provides that those not taken by the Library may be destroyed when the Librarian and the Register jointly determine that it is no longer necessary to retain them in the Copyright Office; but before their destruction, notice of the published works to be destroyed must be printed in the "Catalog of Copyright Entries," and notice of the intention to destroy the manuscript of any unpublished work must be given to the copyright owner of record, and any work to be destroyed may then be reclaimed by the copyright owner.

Ideally, perhaps, a copy of every registered work should be kept in the Copyright Office or in the Library during the life of the copyright. But this is not feasible, principally for lack of storage space, and little need has been demonstrated to have deposits of published works available for copyright purposes after a few years. Some provision for the ultimate disposition of the huge volume of deposits seems essential. Provisions similar to those in the present law were included in all of the prior revision bills. The practices followed under the present law, as outlined above in part V, A, attempt to balance the demonstrated need to have deposit copies available against the storage limitations, and those practices seem to have worked reasonably well.

The printing in the "Catalog of Copyright Entries" of a notice of the groups of published works to be destroyed has proved to be a useless procedure. Almost no requests to reclaim deposits have been made in response to such notices over a period of many years.

F. FREE MAILING PRIVILEGE

The present law provides that deposits may be mailed free of cost to the copyright claimant (sec. 15). Beginning with fiscal year 1958, however, the Copyright Office has been required to pay the estimated postage of $6,500 per year for such free mailings. A rough estimate indicates that of all the copyright deposits mailed to the Copyright Office during a recent period, about 30 percent were mailed free. Free mailing entails special procedures, and many publishers apparently prefer to include the mailing of copyright deposits in their usual mailing routines, thereby paying the postage. Whether the free mailing privilege should be continued, with postage being paid by the Copyright Office rather than by the individual depositors, may be open to question.

The present law also provides that the postmaster, if requested, is to give a receipt for deposits mailed (sec. 15). This seems to be a vestige of the copyright statutes prior to 1909, which required that deposit be made or placed in the mails on, or very shortly after, the date of publication. Evidence of timely mailing was then important, but the date of mailing no longer has such significance.

VIII. Sumary of Major Issues

A. Assuming that some kind of registration system is to be provided for in a new copyright law—

1. Should the deposits required for registration include copies for the Library, or should a separate deposit system be established to provide the Library with copies?

2. Should the deposits required for registration be prescribed in the statute in complete detail for the various kinds of works; or should the statutory prescription be in general terms (e.g., two copies of published works, one copy of unpublished works) subject to relaxation by administrative regulation (e.g., one copy instead of two, or other identifying material in lieu of copies, for certain works)?

B. Assuming that registration is not to be compulsory, should the deposit of copies for the Library be required when they are not deposited for registration? If so—

1. Should the deposits required for the Library be prescribed in the statute in complete detail, or should the statutory prescription be in general terms subject to relaxation by administrative regulation?

2. What time period should be prescribed for making the Library deposit? For complying with a demand for the deposit? What penalty should be imposed for noncompliance?

3. Should the obligation to make the Library deposit be placed upon the copyright owner or the publisher?

4. Should a receipt for the Library deposit be issued in all cases, or upon request? Should a fee be charged for such receipt?

C. Should the present provisions of 17 U.S.C. 214, regarding the disposition of deposits of registered works, be changed? If so, in what respects?

D. Should the free mailing privilege under 17 U.S.C. 15 be retained or eliminated?

COMMENTS AND VIEWS SUBMITTED TO THE COPYRIGHT OFFICE ON DEPOSIT OF COPYRIGHTED WORKS

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COMMENTS AND VIEWS SUBMITTED TO THE COPYRIGHT OFFICE ON DEPOSITS OF COPYRIGHT WORKS

George E. Frost

JANUARY 16, 1960.

I have read Mrs. Dunne's "Deposit of Copyrighted Works" with a great deal of interest and profit.

Insofar as the subject of deposit rests on acquisition of works for various libraries, there is no comment that I can make.

It is most interesting to note the apparently small extent actual copyright deposits have been involved in litigation. This is in sharp contrast to the experience in the patent law (where the originally filed patent application is normally scrutinized in great detail by the courts) and in the law of confidential disclosures (where controversies frequently arise as to the subject matter disclosed).

It is hard to resist some feeling that the value of copyright deposits for litigation purposes is underestimated. *Mazer* v. *Stein* provides at least one illustration of the use of such deposits in litigation. There the actual deposited works were shown to the Supreme Court and were viewed with interest by the Court. The fact that they were in the form of statuettes in plaster and not complete lamps had at least some relevance to the controversy. Of course this incident does not justify sweeping requirements for physical copies in all instances (requirements that have at least not been present in recent years). But it does suggest that there is a definite value in Copyright Office records that adequately identify what has been created and is copyrighted.

The only question raised in Mrs. Dunne's study that seems to require answer in veiw of the above is A-2. My present reaction is that the statutes should be in sufficient detail to assure in every instance that the subject matter copyrighted can be ascertained by reference to Copyright Office records. Considerations of expense and cost of storage should, of course, be reflected in the requirements as to what must be deposited (as they now are in 17 U.S.C. 12). Some thought might be given, however, to statutory language that would assure that the burden is on the copyright registrant to assure full identification of the work from what is deposited.

GEORGE E. FROST.

Walter J. Derenberg

JANUARY 20, 1960.

I have read with considerable interest the exhaustive study by Mrs. Dunne on "Deposit of Copyrighted Works." I believe that my comments concerning Study No. 17 on "The Registration of Copyright" are also in point with regard to the question of deposit. More specifically, my answers to the questions raised under VIII A and B would be these:

A. (1) I would not favor a separate deposit system but would be inclined to recommend that the basic structure of the present combined system be retained in the new act.

(2) Based on my past experience, it would be my view that the statute should not set forth complete details for the various kinds of works but that such details should be left for administrative determination based on joint action by the Librarian of Congress and the Register of Copyrights. It has always troubled me that the present law was so inflexible as to provide no material differences in the deposit system with regard to the type of work in which the Library of Congress would be interested and those works which are registered and deposited for copyright purposes only. As you know, it was only quite recently that we finally had the statute changed with regard to the deposit of three-dimensional works of art. I believe that matters of this sort could well be left to the administrative discretion of the agencies involved.

B. (1) As already stated, I believe that the statutory prescriptions should be in general terms and not be as inflexible as they have proven to be under the present Act of 1909.

(2) This is the point I feel most strongly about. Under no circumstances should failure to deposit, lead to forfeiture of the copyright itself. We had to give up this notion, anyway, as a result of our ratification of the Universal Copyright Convention, and I feel strongly that we should not retain it even with regard to our own citizens or with regard to works first published in the United States. We may consider the imposition of a fine or other penalty, but we should not make the deposit a condition of copyright even after filing the demand.

WALTER J. DERENBERG.

Robert Gibbon (the Curtis Publishing Co.)

JANUARY 29, 1960.

We feel that there are few comments which need to be made concerning the latest Copyright Office study, "Deposit of Copyrighted Works." As Mrs. Dunne explained, the present system of using deposits required for registration to supply the needs of the Library of Congress, works quite adequately.

If a new copyright law does not provide for compulsory registration, public interest will demand a deposit procedure which will work at least as effectively as the present one. Without knowing in detail how such a revised copyright law might operate, it is next to impossible to say now how to cope with failures to submit copies. We do believe, however, that a reasonable time limit should be imposed and that a monetary penalty should be established for willful failures. Revocation of copyright, as a penalty, is too drastic a measure.

Under such a new law, where there is no benefit accruing to the copyright owner who must deposit copies, it would be only reasonable to grant free mailing privileges and give a free receipt to him upon deposit at the post office.

ROBERT GIBBON.

Harry R. Olsson, Jr.

FEBRUARY 3, 1960.

* * * * * * *

A. A new copyright law should provide for a registration system within the following framework:

(1) The deposits should include copies for the Library. A separate deposit system seems to me to be unnecessary.

(2) The statutory prescription should be written in general terms. Copyright statutes obviously have a way of remaining with us for a long haul and too much specification leads to early obsolescence.

B. Registration should be compulsory but, assuming it is not—

(1) The statutory prescription should be in general terms subject to interpretation by administrative regulation.

(2) The obligation to make the Library deposit should be on the copyright proprietor. If he is not the publisher, as between himself and publisher, he can put it on the publisher by contract if that appears advisable to him as probably in most instances it would.

(3) A receipt for the Library deposit should be issued in all cases; there should be no charge for the receipt.

C. The present provisions of [title] 17, United States Code, Section 214, should be retained except that the notice-before-destruction-of-a-manuscript to the copyright proprietor of record should be made contingent upon the payment of an extra fee by the original copyright registrant. The purpose of this requirement would be to confine the necessity of such notice to cases where the registrant really believes he might want the manuscript returned.

D. The free mailing privileges under [title] 17, United States Code, Section 15, should be eliminated except with regard to cases where the postage would exceed nominal postage charges.

HARRY R. OLSSON, Jr.

Robert L. Talmadge (The University of Kansas Libraries)

APRIL 26, 1960.

Thank you for giving me an opportunity to study Mrs. Dunne's admirable statement on "Deposit of Copyrighted Works."

Perhaps understandably, my particular concern with regard to the deposit of copyrighted works is its important contribution in the public interest through additions to the library resources of the United States. The availability of copyright deposits to the Library of Congress is, of course, indispensable. It seems to me, however, that the benefits which would result from the deposit of, say, three or four additional copies of selected classes of materials in other regions of this broad land should not be overlooked. The increased accessibility and the increased safety of research resources which would result from moderate use of this principle would seem to me far to outweigh the disadvantages of slight additional cost to publishers and of a more complicated system of deposit and distribution. It seems to me that both the United Kingdom and the Soviet Union are ahead of us in this respect, though I would not propose that we need go even as far as the six copies required in the United Kingdom. It seems to me, however, that at least two additional copies for deposit in other libraries, say, somewhere in the Midwest and in a suitable location on the West Coast, would make a great deal of sense.

Beyond the above general observation, I would submit the following views regarding the questions listed under VIII A and B:

A. (1) A separate deposit system does not appear to be required.

(2) I would strongly favor a statute set forth in general terms, with provision for detailed arrangements to be prescribed, and altered from time to time as circumstances change, through administrative regulation by the Librarian of Congress and the Register of Copyrights acting jointly. Flexibility is highly desirable.

B. (1) Again, I should favor provision for administrative regulation of deposit, rather than the relative inflexibility which would result from a detailed statute.

(2) A fixed deadline for deposits should be prescribed, and it should be set immediately (ten days?) after publication. The longer the interval provided, the greater would seem the possibility of procrastination or forgetfulness on the part of publishers. The penalty for noncompliance should be sizable—$250 would not seem too much—but it should not entail forfeiture of the copyright.

(3) It seems to me that it would be sensible to place the obligation for Library deposit upon the publisher. There should be no great inconvenience from the standpoint of the publisher, for whom such deposit would become a regular part of the publishing routine. It should also facilitate correspondence and followup for the Register of Copyrights.

(4) Automatic issuance of a free receipt in all cases should be provided for in the statute.

C. The present provisions of [title] 17, United States Code, Section 214, seem satisfactory.

D. I would favor retention of the free mailing privilege.

ROBERT L. TALMADGE.

Herman H. Fussler (The University of Chicago Library)

APRIL 27, 1960.

I have read with great interest the study prepared for the U.S. Copyright Office by Elizabeth K. Dunne on the "Deposit of Copyrighted Works". The study is a very useful account of an intricate and important subject.

In any revision of the Copyright law, it seems to me essential that at least the following points be covered with respect to the deposit of copyrighted works.

1. In one way or another the deposit of copyrighted works should be mandatory and the law should provide for adequate and easily enforceable penalties to insure compliance on as broad a basis as possible. From the point of view of research libraries certain classes of material, e.g. forms, labels, etc., might be excluded if such classes can be defined in ways satisfactory to the Library of Congress.

2. The requirements as to deposit should be such as to insure the prompt deposit with the Library of Congress. Publishers should be encouraged to deposit copyrighted works prior to publication if they wish to do so; for others a specified period of time after publication seems highly desirable.

3. The Library of Congress should be given great discretion to dispose of material that in its judgment need not be retained. This discretionary power should be exercisable with the fewest possible restraints on the Library. I do not believe there is any appreciable risk of such discretionary authority being abused, while failure to grant such authority can be extremely costly to the Government.

HERMAN H. FUSSLER.

William S. Dix (Princeton University Library)

MAY 5, 1960.

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Speaking from the point of view of the University Library, and with a general concern for making the materials of research available to scholars, I should say that quite apart from technical legal aspects the scholarly community has a right to expect that there will be preserved at the Library of Congress one copy of each work which has been copyrighted. The remaining issues outlined in your study, while interesting and important, seemed to me essentially matters of procedure. If in order to make sure that it maintains this one copy the Library of Congress feels that it should receive two copies, this requirement would seem to me reasonable. Whether the Library receives its copies as a part of the process of copyright registration or in some other manner seems to me a matter to be determined by the convenience of the Library and the person seeking to obtain copyright. In general, I should be prepared to endorse any position in this matter which the Librarian of Congress might take.

While it goes beyond the scope of the present study, some consideration might be given of the system something like the British system by which other appropriate libraries in the country might receive the second copy. In other words, some sort of "Farmington Plan" system by which libraries having great strength in particular fields might receive copies of all copyright works in those fields might help call fugitive and esoteric publications to the attention of the scholarly community. I fear however that the operation of a system of this sort might be expensive.

WILLIAM S. DIX.

Ralph E. Ellsworth (University of Colorado Libraries)

MAY 27, 1960.

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DEPOSIT OF COPYRIGHTED WORKS

We believe that the present law serves the need of libraries as well as any system could and we therefore think there is little to be gained by a new system.

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RALPH E. ELLSWORTH.

R. B. Downs (University of Illinois Library)

JUNE 1, 1960.

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Some of the conclusions to which we have come and which we pass along as suggestions are the following:

A. (1) Deposits required for registration should include copies for the Library of Congress. (It seems doubtful that copyright owners should be required to furnish additional free copies for use in possible regional depositories.)

(2) Statutory prescriptions should be in general terms.

B. (1) Deposits required for the Library of Congress should be prescribed in the statute in general terms, subject to relaxation by administrative regulation.

(2) Deposits should be required within definite time limits, perhaps within thirty days following publication. A similar limit should be set for complying with a demand for the deposit. A suitable monetary fine should be imposed for noncompliance.

(3) Because of practical considerations, obligation to make the library deposit should be placed on the publisher rather than the copyright owner.

(4) A receipt for the deposit should be issued on request and for a fee to cover costs.

C. The Copyright Office might consider the feasibility of a plan whereby items not wanted by the Library of Congress be returned to the publisher, etc., if the latter indicated at time of deposit that he would want to have it returned. A suitable fee to cover costs would need to be charged.

D. In view of the statement in paragraph F, page 39, abolition of free mailing privilege may well be considered.

R. B. DOWNS.

Page Ackerman (University of California Library)

JUNE 21, 1960.

* * * It seems desirable to work toward a system of legal deposit combined with copyright registration, if such a system can be devised as to be constitutionally valid.

Concerning the following points:

A. Assuming registration system to be provided for in a new copyright law:

1. Deposit and registration systems should be combined. Advance copies sent for precataloging should be accepted in place of deposit copies, if these copies are identical in every respect.

2. Statutory prescription should be in sufficiently general terms to allow for special cases and types of material.

B. Assuming registration not to be compulsory:

1. Statutory prescription should be general.

2. Two months' time limit would seem sufficient. Loss of copyright seems too severe a penalty; a warning followed by a fairly stiff fine should be enough.

3. The obligation for deposit should be on the copyright owner. Although, in practice, the publisher usually would, and should, make the deposit, the responsibility should rest with the copyright owner, to insure deposit of privately printed materials.

4. The receipt should be issued automatically, and without charge. If registration is not compulsory, every inducement to registration should be offered.

C. No change in [title] 17, United States Code, Section 214.

D. Free mailing privilege should be retained.

PAGE ACKERMAN.

Frederick H. Wagman (University of Michigan Library)

JUNE 30, 1960.

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I think that the deposits required for registration should include copies for the Library. Whether or not the deposits be prescribed in the statute in complete detail or in general terms should be a matter for decision by your office in terms of the wealth of your experience. However, I should like to introduce a completely new element here and suggest that for books, periodicals, pamphlets, maps, and newspapers the deposit required should consist of one copy of the best edition and one copy in microfilm form. In fact it would be better if instead of asking the copyright owner or publisher to supply the microfilm, a fee were substituted to cover the cost of making this film at the Library of Congress. This would insure that the microfilm was up to standard and it would be possible to include a catalog card in the film.

The value of this film record is self-evident. First and less important it would reduce very greatly the space required for the storage of copyright deposits. Second, it would insure the availability for purchase by libraries or individuals of copies when the copyright period had lapsed and would eliminate the necessity for the retention of a great many publications in a great many libraries throughout the United States after they have reached the category of little used materials. Such a provision in the copyright law would alter very greatly the need for storage buildings, cooperative storage arrangements among libraries, concern about

perishability of paper and availability for the long future of a great part of the American record.

At the same time this would simplify the problem of deposit of newspapers and journals since it could readily be arranged that the fee for the film of these be on an annual basis encompassing a whole volume rather than on a per issue basis.

With respect to the question of relaxation of statutory prescription by administrative regulation, I feel that this should be the case definitely to permit the degree of flexibility that is always needed. I have no suggestion regarding the length of time to be prescribed for making the Library deposit or complying with the demand for deposit, but I would argue for a short time, indeed, and for a fairly heavy penalty for not complying. The obligation, it seems to me, should be placed upon the publisher since in the majority of cases he will make the application anyway and since it would be most convenient for him. As to whether a receipt for the deposit should be issued in all cases or upon request, I have no opinion worth offering. It seems to me that this is a matter for your administrative judgment.

As regards disposition of deposited registered works I would argue for complete freedom on the part of the Library of Congress to dispose of these as it sees fit without recourse to the copyright owner, since in my view the deposit should be considered as payment for the privilege of registration and the copyright owner would retain no proprietary interest in the works deposited. As regards length of time it is advisable to retain copyright copies against the eventuality of legal action requiring their use. This, it seems to me, again is a matter requiring the experience and judgment of the Copyright Office and any contribution I should make would be feeble both from the legal and the practical point of view.

I see no reason why the free mailing privilege should be retained any more than for granting free registration. The deposit and fee are part of the quid pro quo arrangement and if the deposit also costs not only the value of the material but the postage on it, this should make no substantive difference.

FREDERICK H. WAGMAN.