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"To promote the Progress of Science and useful Arts. . . ."

Article 1, Section 8
U.S. Constitution

*Report to the Librarian of Congress
by the Register of Copyrights*

THE COPYRIGHT OFFICE

INTRODUCTION

Fiscal year 1995 was a challenging and creative year in the Copyright Office as the new Register of Copyrights, Marybeth Peters, and her management team assumed the increasingly complex statutory duties of administering the copyright system. Early on, the Register set the tone for her administration by reaffirming the Office's commitment to increased public service. This goal provided the framework for executing new legal, legislative, regulatory, and administrative tasks. The Office approached each with an eye towards better public service: it strove to assure the legal soundness of our decisions while relaxing regulatory burdens on the public to the greatest extent possible.

The Office adopted new short application forms for easy registration of new works owned by a single author and claimant; it sought full comments from all interested parties before issuing new regulations; it created a new, more objective procedure for appealing rejected claims; it provided thorough and timely responses to Congress on a spate of legislative proposals; and it attempted, as always, to reduce the time for processing claims to afford better public service.

The Copyright Office also played an active role in the Librarian's proposed National Digital Library, assessing the myriad copyright ramifications of posting its vast collections on the Internet. And the Office used automation internally to improve its work product and to post public information on the Internet.

At the same time, the Register participated actively in a number of important international meetings. Acknowledging the global nature of copyright concerns, the Office sponsored several training programs to acquaint foreign students, copyright officials and experts with the United States copyright system and its public and pri-

vate sector dimensions. Representative domestic and international activities are discussed in the following report.

DOMESTIC ACTIVITIES

This year, the Copyright Office and the Library celebrated the 125th anniversary of the registration system's placement in the Library of Congress. The union has been a mutually beneficial one. Each year, copyright transfers more than 800,000 items to the Library for its collections. Technology will afford even greater possibilities to acquire and store electronically materials that will enhance the Library's own digital archives and will be accessible to the public under controlled conditions.

Since October 1993, the Copyright Office has been collaborating with the Library of Congress Information Technology Services and the Corporation for National Research Initiatives (CNRI) in collaboration with the Advanced Research Projects Agency (ARPA) to develop a testbed for the Copyright Office Electronic Registration, Recordation and Deposit System (CORDS). The goal of the project is to develop and test a system for copyright registration and recordation, using copyright applications, copies of works and copyright-related documents transmitted in digital form over communications networks such as the Internet.

During the year, the Office continued to address policy questions and legal issues of authentication and integrity of documents and deposits, access to records during and after registration and recordation, and electronic certification of deposit copies and applications. The Office also continued to work with CNRI to design electronic registration forms and instructions, both in standard and in scripted formats. The Office also began to develop practices and procedures for

processing claims and embarked on outreach and training activities within and outside of the Copyright Office. At the end of the year, steps were completed toward testbed implementation, including software development, hardware procurement and installation, and other tasks.

The Copyright Office continued to advise the Library's Digital Library Coordinating Committee as well as its newly formed National Digital Library Task Force on the state of copyright issues involved in Digital Library initiatives. These efforts included advising the Library on necessary permissions for digitized collections before they were mounted on the Internet and providing the necessary copyright analysis for other Library collections selected for digitization. The Office also offered advice to the Library on National Digital Library initiatives to test the protection of intellectual property rights in an electronic networked environment, assisted in developing major educational programs on protection of intellectual property in digital libraries, and helped the Library to focus on copyright policy issues encountered in collecting and offering copyrighted works in digital form.

The Office filed extensive comments on the draft report on Intellectual Property and the National Information Infrastructure (NII). The report was prepared by the Working Group on Intellectual Property, of which the Register was a member. The report recommended several amendments to the Copyright Act to protect copyrighted material on the NII, including expansion of the distribution right, amendments to the definitions of "publication" and "transmission" and excepting transmissions from the first sale doctrine. The Office concluded that the "critical copyright issues" were "not yet ripe for resolution" and that "fundamental...changes would be premature, creating further instability in a time of major technological change."

The important question of management of rights in a digital environment is in a developmental stage, and the Office's automated system

of tracking ownership of rights in copyrighted works should be a critical component of both the national and global information infrastructures. The Office also plans to assist Congress actively as it considers the legal ramifications of these information communication systems.

This year, the Office continued implementing suggestions of the Librarian's 1993 private sector Advisory Committee on Copyright Registration and Deposit (ACCORD) to further improve service to copyright registrants. The results were a number of policy and regulatory changes designed to ease the burden of registering claims to copyright.

One step in improved public service is the creation of an interim appeals board to rule on the second, final agency appeal from a refusal to make registration. Section 410(b) of the Copyright Act authorizes the Office to refuse registration in any case where a claim is invalid because the material deposited does not constitute copyrightable subject matter or "for any other reason." In the past, appeals were made to the Examining Division, first to the section that denied the claim and, second, to the division chief. To implement ACCORD's recommendations, second-level appeals will now be handled by a formalized board consisting of the Register, the General Counsel, and the Examining Division chief, or their designees. The board has met on several cases to date and will issue written opinions for each case. The Office is seeking public comments and suggestions in an effort to determine the best possible appeal system.

The new short form applications will make registration easier for individual authors of completely new works who have retained copyright ownership in their literary, pictorial, graphic, sculptural, musical or dramatic works. The forms are single paged, with straightforward instructions that hopefully will encourage creators to avail themselves of the benefits of registration and further enhance the Office's database of copyrighted works.

Again with a view to improved public service, the Office relaxed a number of its regulatory requirements. It liberalized deposit requirements for group registrations of contributions to periodicals and for screen display claims and abandoned the requirement that complete print versions of CD-ROM claims must be submitted. The Office reversed a previous policy to permit registration of claims in pictorial, graphic, and sculptural works for which a design patent has been issued and reevaluated registration procedures to assure that registration is made whenever a minimal amount of creativity is present. Finally, the Office expanded permissive group registrations to include certain daily newsletters published by mail or electronic media at least two times each week, if the copyright owner and author is the same for all issues. Such registrations enjoy a reduced filing fee of \$10 per issue and automatically allow the Library to acquire two complimentary subscriptions.

The Office devoted significant time to assuming the complex duties of the former Copyright Royalty Tribunal, an independent agency that had operated since 1978. The Copyright Royalty Tribunal Reform Act of 1993 eliminated the Royalty Tribunal and replaced it with a system of ad hoc Copyright Arbitration Royalty Panels (CARPs) administered by the Librarian of Congress and the Copyright Office to conduct royalty distribution and rate adjustment proceedings under the copyright compulsory licenses. The CARPs consist of three arbitrators, two of which are selected by the Librarian, with the third chosen by the other two.

To implement the CARPs, Congress directed the Office to publish final regulations governing all royalty distribution and rate adjustment proceedings. These new rules, published on December 7, 1994, form a new subchapter of Chapter II of title 37 of the Code of Federal Regulations (CFR). With the new rules in place, the Office initiated distribution proceedings for royalties collected under both the cable and the digital audio

recording (DART) licenses. On March 21, the Office published a notice consolidating the distribution of the 1990-1992 cable royalty funds. Royalty claimants filed notices of their intent to participate in the proceeding and exchanged their cases on August 18. Hearings will begin in December and continue for up to six months, after which the CARP will deliver its written distribution decision to the Librarian for review.

The Office also administered distribution of the 1992, 1993, and 1994 DART funds. These royalties are divided into two funds: the Sound Recordings Fund and the Musical Works Fund; each requires distribution. The Office administered a universal settlement among the claimants to the Sound Recordings Fund for these years. The Musical Works Fund is still the subject of controversy and may require a CARP proceeding in 1996. The Office processed claims for royalties collected under the cable, satellite, and DART licenses for 1994.

An important policy role of the Office is its advice to Congress on proposed legislation. This year the Office advised Congress on several legislative proposals. After many years of congressional hearings, Congress enacted a limited performance right to assure that record producers and performers will receive royalties for certain digital transmissions of their sound recordings on November 1, 1995. The Register's written and oral testimony for both the March (Senate) and June (House) hearings supported the bill and stressed the importance of according this right in the era of the information superhighway, when transmissions of sound recordings have the potential to replace record sales. At the same time, the Office advocated a full public performance right for sound recordings and questioned whether the legislation was sufficiently broad to permit an international agreement that would allow American nationals to receive foreign royalties.

Following the European Union's July 1 extension of the term of copyright protection to life of

the author plus 70 years, new impetus was given to two bills to create a similar term in the United States. If enacted, the legislation would enable American authors to enjoy the longer term both at home and abroad. The Register testified in favor of the extension (except as it applied to unpublished works created before 1978) in July and again in September. But, the Office suggested additional provisions to safeguard certain uses by libraries and nonprofit educational institutions and to create a licensing system for authors and owners who cannot be located.

The Visual Artists Rights Act of 1990 (VARA) directed the Copyright Office to conduct a study to assess for Congress the impact of the waiver provisions contained in that legislation. Much of the fiscal year was spent researching and surveying in preparation for that report. In 1990, Congress for the first time legislated limited moral rights of attribution and integrity to authors of narrowly defined works of visual arts. They guarantee to authors of so-called fine arts and exhibition photographs the right to claim or disclaim authorship in a work; limited rights to prevent distortion, mutilation, or modification of a work; and the right, under some circumstances, to prevent destruction of a work that is incorporated into a building. Based upon testimony from artists' representatives, commercial users, and other interested parties, Congress determined that the artists' rights should not be absolute; rather, they should be tempered by commercial realities, provided that authors were legislatively insulated from giving away their new-found rights under undue influence. Thus, the legislation provides for waiver of these moral rights, but only by a signed, written agreement specifying the work and the precise uses to which waiver applies.

During the year, the Office surveyed earlier federal bills, state laws, artists' contracts, U.S. case law, foreign statutes and case law and the history of the Berne Convention with respect to moral rights and waiver. It also surveyed visual

artists and their representatives to elicit objective information about their experience with VARA rights and their contractual experience with waiver. Finally, it conducted public hearings open to all interested parties to comment on their experience with VARA waivers. The Office will submit a comprehensive report and recommendations to Congress on March 1, 1996.

INTERNATIONAL ACTIVITIES

With the November publication of final regulations governing Statements of Intent for the restoration of U.S. copyright in certain motion pictures and their content, the Office fulfilled its responsibilities under the North American Free Trade Agreement (NAFTA) and its implementing legislation. NAFTA made eligible for restoration those motion pictures and their contents that were first fixed in Mexico or Canada that entered the public domain here as a result of their publication between January 1, 1978, and March 1, 1989, without the required notice of copyright and similar works that were in the public domain because of their first publication in Mexico or Canada during the above time period without a notice of copyright. Statements of Intent were required by the end of the last calendar year. The Office's regulations governing these filings reflected comments sought from all interested parties, particularly with respect to identification of restored works. A list of 349 restored motion pictures was published in the *Federal Register* on February 13, 1995. The list is also available in the Office's Public Information Office, and information about these works is available on the Internet.

Perhaps the most important international development during the fiscal year is the restoration of U.S. copyright in certain foreign works in accordance with the Uruguay Round Agreements Act (URAA) on December 8, 1994. Copyright protection is automatically restored on January 1, 1996, for eligible works. To be eligible, at least one author on the date of creation must have been a

citizen or domiciliary of a country, other than the United States, who is a member of the Berne Convention, the World Trade Organization (WTO), or the subject of a presidential proclamation; the work must be under copyright protection in the source country; first publication, if any, must have occurred in an eligible country and must not have occurred in the United States within 30 days; and, finally, the work must be in the public domain in the United States for failure to comply with formal requirements of U.S. copyright law, be a sound recording fixed before February 15, 1972, or for lack of national eligibility.

The Copyright Office is charged with publishing regulations for two Office filings that help the copyright owner secure remedies, particularly against so-called "reliance parties," those who were using the work prior to enactment of the URAA. The filings comprise Notices of Intent to Enforce (NIE) restored copyrights and applications for copyright registration for these works. The Office must also publish periodic lists in the *Federal Register* that identify restored works and their ownership when NIEs have been filed with the Office.

To reflect the legitimate concerns of interested parties in these regulations, the Office held a public hearing in March and a contemporaneous comment period. It also invited comment from more than 90 artists' rights organizations and industry groups, as well as nearly 200 foreign government agencies with copyright authority. Based upon comments from the 55 respondents and its own needs, the Office issued a Notice of Proposed Rulemaking in early July covering both filings. The final regulation was issued on September 29, 1995. That regulation is responsive to various concerns that were expressed. For example, rather than require a form for NIE filings, the Office issued a format that is available for downloading on the Internet. Only information required by the statute must be given; other information that will assist in identifying the work and the rights being enforced are suggested. The

Office will make full information available on COPICS, which can be accessed on the Internet. Fees have been kept as low as possible, and credit cards will be accepted to ease payment in U.S. dollars. Finally, deposit requirements for URAA registrations have been relaxed.

Two areas of international copyright activity in which the Register has been active are the Berne Protocol and the New Instrument for the Protection of Performers and Producers of Sound Recordings. The Berne Protocol addresses several areas of ambiguity and contention about application of the 1971 Paris Act of the Berne Convention. Topics of discussion at the annual meetings, begun in November 1991, include copyright protection for computer programs and databases, the distribution right and the rental right, the concept of public communication of works, the role of compulsory licensing in emerging satellite telecommunications systems, enforcement of copyright rights, and the scope of the Berne Convention's national treatment obligations. The United States and other participating nations are evaluating the focus of these annual meetings in light of the GATT Trade Related Intellectual Property Agreement and issues raised by the Global Information Infrastructure. The United States submitted substantive proposals for discussion at the September 1995 Protocol meeting.

The New Instrument meetings represent the attempts of the United States and others to secure a higher level of international protection for sound recordings by bridging the gap in protection afforded by countries that protect recordings under neighboring rights laws and those, such as the United States, that protect recordings under copyright law. Efforts are focused on the possible creation of a new instrument to be administered by the World Intellectual Property Organization (WIPO). This has been discussed at four committee of experts' meetings, the last held in September. Issues to be resolved include the scope of national treatment obligations, retroactive protection for pre-existing recordings, the scope of

rights in sound recordings, and the possible protection of audiovisual performers.

The Register and the Acting General Counsel attended a Worldwide Symposium in Mexico City on copyright in the Global Information Infrastructure, sponsored jointly by the WIPO and the Mexican Secretariat of Public Education. The conference stressed the need for harmonization of laws for global distribution systems for digital information.

The Office was part of a November delegation, headed by the U.S. Trade Representative's Office, that visited Greece, Saudi Arabia, the United Arab Emirates, and Egypt to promote U.S. intellectual property. Among other activities, it presented a training seminar on copyright enforcement, evaluated the status of piracy of U.S. products, and met with government officials to discuss protection for U.S. works.

A Principal Legal Advisor to the General Counsel was a member of the U.S. delegation that consulted with the Chinese Ministry of Foreign Trade and Economic Cooperation on August 22-25 regarding implementation of its recent intellectual property rights agreement. Discussions focused on market access, piracy of compact discs, laser discs and CD-ROMs, U.S. technical assistance, customs regulations, and title verification.

The Copyright Office and the WIPO jointly sponsored an International Copyright Institute, which was conducted in Spanish and English from September 18-22, 1995. Participants in the seminar included copyright officials and experts from Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela. Speakers from the Copyright Office, the WIPO, industry groups, and authors groups made presentations and conducted discussions on current issues and trends in the Americas, including regional and multilateral agreements, the protection of computer programs and audiovisual works, protection for record producers and performers, enforcement, and copyright in an information society.

To develop these and other international programs and policies, the Register created a new international office headed by an Associate Register for Policy and International Affairs. Shira Perlmutter, an associate professor of law at Catholic University and widely published author on copyright matters, was named to that position. She will be assisted by two policy planning advisors and two staff attorneys.

JUDICIAL DEVELOPMENTS

Judicial Review

In *Custom Chrome, Inc. v. Ringer*, 35 U.S.P.Q. 2d 1714 (1995), the court awarded summary judgment to defendant Acting Register of Copyrights in an action challenging her refusal to register claims to copyright in 23 motor cycle parts. Plaintiff sued under the Administrative Procedure Act, arguing that the Register's rejection was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

Custom Chrome maintained that the works in question contained artistic elements that are conceptually separable from the utilitarian aspects of the works and therefore are entitled to copyright protection.

Judging the agency's decision on whether its fact finding is "within the zone of reasonableness," the court found it was a permissible construction of the statute. "The Register's decision is entitled to great weight," said the court, and "[c]ourts may not substitute their own judgment even though differing results may well be reasonable." The court declined to judge whether plaintiff's motorcycle parts were conceptually separable from the useful articles, deferring to agency expertise.

Copyrightability

In *Lotus Development Corp. v. Borland International, Inc.*, 49 F. 3d 807 (1st Cir. 1995), the First

Circuit reversed a number of district court decisions to hold that the menu command hierarchy of the Lotus 1-2-3 spreadsheet program was uncopyrightable as a section 102 "method of operation." Defendant's Key Reader feature, that allowed users to run 1-2-3 macro sequences on defendant's Quattro and Quattro Pro programs, were therefore not infringing. The Court declined to follow *Computer Associates, Inc. v. Altai, Inc.*'s abstraction, filtration, comparison test, and instead found that the menu command hierarchy was a method of operation, because it was "indispensable" to the user in operating the 1-2-3 program. The Court cited *Baker v. Selden*, 101 U.S. 99 (1879), in deciding that because the menu command hierarchy was designed as part of a system, rather than to explain a system, it could not be protected by copyright.

The Supreme Court granted *certiorari* to review the case; the First Circuit decision was affirmed without opinion by an equally divided Court. 116 S.Ct. 1062 (1996).

An earlier decision in the Fifth Circuit, *Engineering Dynamics, Inc. v. Structural Software, Inc.*, 26 F. 3d 1335 (5th Cir. 1994), on the other hand, applied the abstraction, filtration, comparison analysis to affirm copyrightability of the non-literal portions of a program including the user interface. The Court left unresolved the question of the protectibility of formats and remanded the case to the district court for a determination of whether industry demand and practice dictated these formats and whether the expression constituted mere "scenes a faire."

A supplemental opinion, *Engineering Dynamics, Inc. v. Structural Software, Inc.*, 46 F. 3d 408 (5th Cir. 1995), clarified the Court's position on protectibility of user input/output formats. Following the Supreme Court's *Feist* standard of originality, the Court held that copyright protects a user interface only to the extent that the selection of variable inputs from the universe of potential inputs reflects non-functional judgment.

The Fifth Circuit's concern for not protecting processes was echoed in another case, *Norma Ribbons & Trimming Inc. v. Little*, 51 F. 3d 45 (5th Cir. 1995). Affirming a grant of summary judgment, the Court held that ribbon flowers, made by an original manufacturing process, were not copyrightable. The only thing original in the appellee's flowers, observed the Court, was the manufacturing process, which is not copyrightable, as explicitly stated in section 102(b) of the Copyright Act.

In *Warren Publishing, Inc. v. Microdos Data Corp.*, 52 F. 3d 950 (11th Cir. 1995), the Court of Appeals for the 11th Circuit held that the trial court did not err in holding that plaintiff's system of selecting cable system communities is sufficiently creative and original to be copyrightable. Dismissing the "sweat of the brow" doctrine, the Court held that for a copyrightable compilation, "the constitutional touchstone is originally in selection, coordination or arrangement of the pre-existing materials." The level of creativity, said the Court, is "low" and the copyright is "thin." The opinion has since been vacated pending rehearing *en banc*. 67 F.3d 276 (11th Cir. 1995).

Scope of Protection: Synchronization of Sound Recordings

In *Agee v. Paramount Communications*, 59 F.3d 317 (2nd Cir. 1995), the Second Circuit Court of Appeals reversed the lower court's award of summary judgment to Paramount and established unequivocally that owners of copyright in sound recordings are entitled to compensation for synchronization of their recordings on sound tracks of audiovisual works, regardless of whether the synchronized works are distributed to the public or transmitted by satellite.

Defendant Paramount purchased a copy of a sound recording and copied portions of two songs to make the audio track of a four-minute segment of its prerecorded television program "Hard Copy." It synchronized the audio to im-

ages of an unsuccessful burglary and transmitted the program by satellite to independent television stations for nationwide broadcast. It also transmitted a 20-second promotional commercial of the program for pre-program broadcast.

Plaintiff, who owned copyright only in the recording and not in the underlying music, alleged infringements of its section 114(b) reproduction right and right to prepare derivative works. Defendant claimed that the reproduction right was not violated because only ephemeral copies were made, and the absence of performance rights for sound recordings rendered its actions non-infringing.

Citing the Copyright Office's *amicus* brief, Judge Newman held that Paramount's synchronization onto an audiovisual work constituted an illegal reproduction, but that physical copies made by the television were ephemeral recordings authorized by section 112.

The Court declined to rule on the derivative works issue and on whether commercial copying solely for time-shifting purposes would constitute an infringing reproduction. It did observe, however, that "mere synchronization" does not create an infringing derivative work absent a showing of "rearranged, remixed or altered sounds." Similarly, the Court found no infringing distribution by the mere transmission of a sound recording to the public on the airwaves. Distribution, said the Court, generally, but not always, requires transmission of a material object.

Ownership of Copyright

The Eleventh Circuit Court of Appeals joined the Second and Ninth Circuits in holding that oral transfers of copyright that are ratified by a later written agreement are valid under section 204(a) of the Copyright Act. *Arthur Rutenburg Homes, Inc. v. Drew Homes, Inc.*, 29 F. 3d 1529 (11th Cir. 1994), upheld the validity of a registration certificate that named as copyright claimant a party who obtained copyright in architectural

plans by oral agreement. After registration in the Copyright Office, a written release was obtained in response to a court decision on work for hire involving another home builder in the same Circuit. The Eleventh Circuit validated the earlier oral grant and the registration made based upon it, because it was confirmed in writing before the alleged infringement occurred.

Publication

The Ninth Circuit Court of Appeals in *La Cienega Music Co. v. ZZ Top*, 44 F. 3d 813 (9th Cir. 1995), by declining to follow Judge Gurfein's opinion in *Rosette v. Rainbo Mfg. Co.*, 546 F. 2d 461 (2d Cir. 1976), created a split in the Circuits on the important question of whether the pre-1978 sale of phonorecords containing sound recordings of musical compositions publishes the underlying music.

A divided Ninth Circuit held such a sale to be a publication, thereby contravening the business practice reenforced by the *Rosette* court. The Ninth Circuit said its view represents the majority view and that because the term of copyright commenced upon registration under the 1909 Act, to hold otherwise would unjustifiably prolong copyright protection and delay registration.

A petition for *certiorari* was denied by the U.S. Supreme Court. 116 S.Ct 331 (1995).

Importation and the Right of Distribution

In *Parfums Givenchy, Inc. v. Drug Emporium*, 38 F. 3d 477 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 1315 (1995), the Ninth Circuit held that a copyright owner's section 602(a) importation right survives until a first sale has occurred within the United States. Thus, he can enjoin domestic distribution of purchased copies that were illegally imported. In this case, the right enabled a domestic subsidiary of the French manufacturer of Amirage perfume to prevent the U.S. sale of gray market Amirage based on his ownership of copyright in

the perfume boxes. Section 602 makes the act of unauthorized importation a violation of the copyright owner's distribution right, even where the imported copies are lawfully made.

Registration

In *Jefferson Airplane v. Berkeley Systems, Inc.*, 32 U.S.P.Q. 2d 1632 (N.D. Cal. 1994), the district court deferred to Office registration regulations and practices presented by then-music examiner Marybeth Peters. The court held that a pre-1978 registration for a sound recording does not cover artwork on the album cover. Under practices governing sound recordings registered under the 1909 Act, jacket cover art work had to be registered separately from the sound recording, and the court was unwilling to rule that a Class N registration covered all the copyrightable authorship owned by the plaintiff.

Copyright Deposit

The First Circuit Court of Appeals declined to invalidate copyright based upon "immaterial discrepancies" in the source code deposited with the Copyright Office and that marketed commercially in *Data General Corp. v. Grumman Systems Support Corp.*, 36 F. 3d 1147 (1st Cir. 1994). The Court likened minor errors in the deposit to similar ones in the application form and held that because neither the identification of the work nor the determination of copyrightability was affected, the minor error in the deposit should not destroy the presumption of validity accorded the registration.

Termination Rights: Derivative Works

In *Woods v. Bourne Co.*, 60 F.3d 978 (2d Cir. 1995), the Second Circuit partially reversed the district court holding that the derivative works exception to the author's right of recapture under the termination provisions of section 304(c)(6)(A)

applied to post-termination performance royalties for use of the song "When the Red, Red Robin Comes Bob, Bob, Bobbin' Along" in audiovisual works. This was so even if the musical arrangement was not sufficiently original to constitute a copyrightable derivative work, because audiovisual works by definition qualify as derivative works. Relying on *Mills Music, Inc. v. Snyder*, 469 U.S.153 (1985), the Court held that the publisher could continue to collect audiovisual performance right royalties for the song itself after termination in accordance with license terms in effect prior to termination.

The issue of originality of the musical arrangements was also discussed. The district court found that certain musical arrangements were not sufficiently original to constitute copyrightable derivative works; therefore, the derivative work exception did not apply. The Second Circuit agreed; it stated that in order for a work to qualify as a derivative work, it must be independently copyrightable. The district court's reliance on *L. Batlin & Son, Inc. v. Snyder*, 356 F.2d 486 (2d Cir.) cert. denied, 429 U.S.857 (1976), for the proposition that the modification to the composition must be an original work of authorship was correct. However, the Court criticized the district court *dicta* that seemed to call for a higher standard than required; the district court had referred to "unusual vocal treatment, additional lyrics of consequence, unusual altered harmonies, novel sequential uses of themes..." 841 F. Supp. at 121. Under the correct less demanding standard, the Court affirmed the district court finding that the arrangements were not copyrightable. The registration certificates, although accorded *prima facie* evidence of copyrightable material in the musical arrangements, were not controlling in light of expert and lay testimony to the contrary.

Infringement

In *Advanced Computer Services of Michigan, Inc. v. MAI Systems Corp.*, 845 F.Supp 356 (E.D.Va.

1994), the court held that the plaintiff service organization infringed the defendant's copyright in computer programs by loading those programs from a computer's hard drive or permanent memory to a computer's random access memory ("RAM"), which constitutes the making of a "copy" under section 101 of the Copyright Act. The court rejected the plaintiff's arguments that RAM is not a material object but simply a collection of positive and negative charges and that RAM is too transitory, since a program that is fixed only in RAM momentarily disappears when the computer is turned off. The court said that although the contents of RAM are, to some extent, ephemeral or transitory, the Copyright Act does not require absolute permanence for the creation of a copy. All that is required is that the work be "fixed" in a material object that is "sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration." Copyright protection, said the court, extends to computer programs that can be perceived, reproduced, or otherwise communicated with or without the aid of a machine or device. Where a program is loaded into RAM and maintained there for minutes or longer to enable technicians to service and repair computer systems, it is sufficiently "fixed" to constitute a "copy."

In another important computer software case involving merger, *Apple Computer, Inc. v. Microsoft Corp.*, 32 U.S.P.Q. 2d 1086 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 1176 (1995), the Ninth Circuit Court of Appeals held that when the range of protectible expression is narrow, the appropriate standard for infringing copying is "virtual identity" between the works as a whole. In this case, because all the individual components of Apple's graphic user interface (GUI) were either licensed to another company or uncopyrightable and the only originality was in the selection and arrangement of the GUI as a whole, protection was "thin," and plaintiff failed to prove copying to the extent of virtual identity.

Another split among Circuit Courts arose over the issue of the statute of limitations for an infringement action. Rejecting the Seventh Circuit's lead, the Fifth Circuit Court of Appeals in *Makedwde Publishing Co. v. Johnson*, 37 F. 3d 180 (5th Cir. 1994), was persuaded by the Ninth, Sixth and Second Circuits' interpretation of section 507(b). It held that for purposes of the statute of limitations governing civil infringement, only acts committed within the three-year period are included, and no "continuing tort" theory can be applied to embrace acts committed before that time that continue to cause harm within the three-year period.

The case involved an allegedly infringing recording and distribution of a song by a company with whom defendant had not been affiliated since 1985. The court found that plaintiff's claim accrued on the date of defendant's last act of infringement and expired three years thereafter. In so doing, the Court rejected the lower court's finding that defendant remained subject to suit after his infringing actions ceased because he failed "to take reasonable steps to prevent others with whom he had previously collaborated from continuing to infringe."

In *Aymes v. Bonelli*, 47 F. 3d 23 (2d Cir. 1995), the Second Circuit Court of Appeals held that a company's modification of a computer program, to make changes that were necessary to continue internal use of the program in the company's business, did not create an infringing derivative work. Because the company was the rightful owner of a copy of the program, it was entitled under section 117 of the Copyright Act to make modifications "as an essential step in the utilization of the computer program."

The Court explained that section 117 implements the recommendation of the National Commission of New Technological Uses of Copyrighted Works ("CONTU"). The CONTU report states that "persons in rightful possession of copies of [computer programs] should be able to use them freely without fear of exposure to

copyright liability" (citation omitted). The modifications, concluded the Court, were essential to allow use of the program for the very purpose for which it had been purchased and therefore did not constitute infringements.

Criminal Infringement: Wire Fraud

In *United States v. la Macchia*, 871 F. Supp. 535, (D. Mass. 1994), the district court held that defendant's use of a computer bulletin board to facilitate copying of copyrighted software did not violate the criminal wire fraud statute.

Defendant, an M.I.T. student and a computer hacker, gained access to the Internet through the University's computer network. He set up an electronic bulletin board onto which he encouraged others to upload computer software and video games. He transferred these items to a second address from which they could be downloaded by those with access to his password. Based on this scheme to defraud, and without any showing of personal profit, defendant was indicted under 18 U.S.C. Sec. 1343.

The court declared the wire fraud statute did not govern this case. Copyright, said the court, is "unlike an ordinary chattel," and its infringement is governed by a carefully crafted scheme of federal protection defined in the Copyright Act. Interference with copyright does not equate with theft, conversion, or fraud and is not within the ambit of section 1343. *Dowling v. U.S.*, 473 U.S. 207 (1985). To hold otherwise, said the court, would permit criminal actions against private home computer users who copy single programs.

Fair Use

American Geophysical Union v. Texaco, Inc., 37 F.3d 881 (2d Cir. 1994), cert. dismissed, 116 S.Ct. 592 (1995), affirmed a lower court opinion that "institutional systematic copying" of scientific journal articles was not fair use where the principal purpose of the copying was archival—to assemble a

set of papers for future research reference. Defendant Texaco purchased three subscriptions to various journals from which employees made personal copies that they kept. Each journal contains 20-25 articles. The copying involved was of eight entire articles and although the copied articles constituted a small portion of each journal, the Court observed that Texaco could have obtained photocopying licenses from the CCC and that failure to do so caused substantial harm to the value of the copyrights.

The Court analyzed all the statutory fair use factors and emphasized that the archival nature of the copying rendered it not transformative. In so doing, it reaffirmed that "the more transformative the new work, the less will be the significance of other [fair use] factors...that may weigh against a finding of fair use." Thus, even though the copying was not directly related to Texaco's overall commercial activities, and the works copied were primarily factual in nature and no copies were sold or distributed, Texaco's use was not a fair use where photocopying licenses could have been obtained. "The greater the private economic rewards reaped by the secondary user (to the exclusion of broader public benefits), the more likely the first [fair use] factor will favor the copyright holder and the less likely the use will be considered fair," said the Court.

The Court limited its holding to the facts of the case, and in a July 11th amendment, clarified that the ruling applied only to institutional copying and not to copying by individual researchers.

Another commercial copying practice was held to exceed fair use in *Princeton University Press v. Michigan Document Services, Inc.*, 855 F. Supp. 905 (E.D. Mich. 1994), vacated on grant of *reh'g en banc*, 37 U.S.P.Q. 2d 1673 (1996), restored to the docket as a pending appeal, 74 F.3d 1528 (1996). Citing *Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F. Supp. 1522 (S.D.N.Y. 1991), the Michigan court found that a copy shop's photocopying of excerpts from copyrighted works to sell as college "coursepacks" infringed works of six pub-

lishers. Defendant admitted copying between 10,000 and 15,000 excerpts each semester. The court found the infringements to be "blatant" and "willful" and awarded an injunction, enhanced statutory damages of \$5,000 per infringement, and attorneys' fees and costs. These higher fees, it said, were warranted to encourage the litigation of meritorious infringement claims.

Submitted by,
Marybeth Peters

*Register of Copyrights and
Associate Librarian of Congress
for Copyright Services*

International Copyright Relations of the United States as of September 30, 1995

This table sets forth U.S. copyright relations of current interest with the other independent nations of the world. Each entry gives country name (and alternate name) and a statement of copyright relations. The following code is used:

Berne	Party to the Berne Convention for the Protection of Literary and Artistic Works as of the date given. Appearing within parentheses is the latest Act ¹ of the Convention to which the country is party. The effective date for the United States is March 1, 1989. The latest Act of the Convention to which the United States is party is the revision done at Paris on July 24, 1971.
Bilateral	Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.
BAC	Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the Government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.
None	No copyright relations with the United States.
Phonogram	Party to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States is March 10, 1974.
SAT	Party to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, Brussels, 1974, as of the date given. The effective date for the United States is March 7, 1985.
UCC Geneva	Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States is September 16, 1955.
UCC Paris	Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States is July 10, 1974.
Unclear	Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.
WTO	(World Trade Organization) Member of the World Trade Organization, established pursuant to the Marrakesh Agreement of April 15, 1994, to implement the Uruguay Round Agreements. These Agreements affect, among other things, intangible property rights, including copyright and other intellectual property rights. The effective date of United States membership in the WTO is January 1, 1995. A country's membership in the World Trade Organization is effective as of the date indicated.

Afghanistan
None

Albania
Berne Mar. 6, 1994 (Paris)²

Algeria
UCC Geneva Aug. 28, 1973
UCC Paris July 10, 1974

Andorra
UCC Geneva Sept. 16, 1955

Angola
Unclear

Antigua and Barbuda
WTO Jan. 1, 1995

Argentina
Bilateral Aug. 23, 1934
BAC Apr. 19, 1950
UCC Geneva Feb. 13, 1958
Berne June 10, 1967 (Brussels)²
Phonogram June 30, 1973³
WTO Jan. 1, 1995

Armenia
SAT Dec. 13, 1993

Australia
Bilateral March 15, 1918
Berne Apr. 14, 1928 (Paris)²
UCC Geneva May 1, 1969
Phonogram June 22, 1974
UCC Paris Feb. 28, 1978
SAT Oct. 26, 1990
WTO Jan. 1, 1995

Austria
Bilateral Sept. 20, 1907
Berne Oct. 1, 1920 (Paris)²
UCC Geneva July 2, 1957

SAT Aug. 6, 1982⁴
 UCC Paris Aug. 14, 1982
 Phonogram Aug. 21, 1982
 WTO Jan. 1, 1995

Bahamas, The
 Berne July 10, 1973 (Brussels)²
 UCC Geneva Dec. 27, 1976
 UCC Paris Dec. 27, 1976

Bahrain
 WTO Jan. 1, 1995

Bangladesh
 UCC Geneva Aug. 5, 1975
 UCC Paris Aug. 5, 1975
 WTO Jan. 1, 1995

Barbados
 UCC Geneva June 18, 1983
 UCC Paris June 18, 1983
 Berne July 30, 1983 (Paris)²
 Phonogram July 29, 1983
 WTO Jan. 1, 1995

Belarus
 UCC Geneva May 27, 1973

Belau
 Unclear

Belgium
 Berne Dec. 5, 1887 (Brussels)²
 Bilateral July 1, 1891
 UCC Geneva Aug. 31, 1960
 WTO Jan. 1, 1995

Belize
 UCC Geneva Dec. 1, 1982
 WTO Jan. 1, 1995

Benin (formerly Dahomey)
 Berne Jan. 3, 1961 (Paris)²

Bhutan
 None

Bolivia
 BAC May 15, 1914
 UCC Geneva Mar. 22, 1990
 UCC Paris Mar. 22, 1990
 Berne Nov. 4, 1993 (Paris)²
 WTO Sept. 13, 1995

Bosnia and Herzegovina
 UCC Geneva May 11, 1966
 UCC Paris July 10, 1974
 Berne Mar. 6, 1992 (Paris)²
 SAT Mar. 6, 1992

Botswana
 WTO May 31, 1995

Brazil
 BAC Aug. 31, 1915
 Berne Feb. 9, 1922 (Paris)²
 Bilateral Apr. 2, 1957
 UCC Geneva Jan. 13, 1960
 Phonogram Nov. 28, 1975
 UCC Paris Dec. 11, 1975
 WTO Jan. 1, 1995

Brunei Darussalam
 WTO Jan. 1, 1995

Bulgaria
 Berne Dec. 5, 1921 (Paris)²
 UCC Geneva June 7, 1975
 UCC Paris June 7, 1975
 Phonogram Sept. 6, 1995

Burkina Faso (formerly Upper Volta)
 Berne Aug. 19, 1963 (Paris)²
 Phonogram Jan. 30, 1988
 WTO June 3, 1995

Burma
 (See Myanmar, Union of)

Burundi
 WTO July 23, 1995

Cambodia
 UCC Geneva Sept. 16, 1955

Cameroon
 Berne Sept. 21, 1964 (Paris)²
 UCC Geneva May 1, 1973
 UCC Paris July 10, 1974

Canada
 Bilateral Jan. 1, 1924
 Berne Apr. 10, 1928 (Rome)²
 UCC Geneva Aug. 10, 1962
 WTO Jan. 1, 1995

Cape Verde
 Unclear

Central African Republic
 Berne Sept. 3, 1977 (Paris)²
 WTO May 31, 1995

Chad
 Berne Nov. 25, 1971 (Brussels)²

Chile
 Bilateral May 25, 1896
 BAC June 14, 1955
 UCC Geneva Sept. 16, 1955
 Berne June 5, 1970 (Paris)²
 Phonogram Mar. 24, 1977
 WTO Jan. 1, 1995

China
 Bilateral Jan. 13, 1904⁵
 Bilateral Mar. 17, 1992⁹
 Berne Oct. 15, 1992 (Paris)²
 UCC Geneva Oct. 30, 1992
 UCC Paris Oct. 30, 1992
 Phonogram Apr. 30, 1993

Colombia
 BAC Dec. 23, 1936
 UCC Geneva June 18, 1976
 UCC Paris June 18, 1976
 Berne Mar. 7, 1988 (Paris)²
 Phonogram May 16, 1994
 WTO Apr. 30, 1995

Comoros
 Unclear

Congo
 Berne May 8, 1962 (Paris)²

Costa Rica⁶
 Bilateral Oct. 19, 1899
 BAC Nov. 30, 1916
 UCC Geneva Sept. 16, 1955
 Berne June 10, 1978 (Paris)²
 UCC Paris Mar. 7, 1980
 Phonogram June 17, 1982 WTO
 Jan. 1, 1995

Cote d'Ivoire (Ivory Coast)
 Berne Jan. 1, 1962 (Paris)²
 WTO Jan. 1, 1995

Croatia
 UCC Geneva May 11, 1966
 UCC Paris July 10, 1974

Berne Oct. 8, 1991 (Paris) ²
SAT Oct. 8, 1991

Cuba

Bilateral Nov. 17, 1903
UCC Geneva June 18, 1957
WTO Apr. 20, 1995

Cyprus

Berne Feb. 24, 1964 (Paris) ²
UCC Geneva Dec. 19, 1990
UCC Paris Dec. 19, 1990
Phonogram Sept. 30, 1993
WTO July 30, 1995

Czech Republic

UCC Geneva Jan. 6, 1960
UCC Paris Apr. 17, 1980
Berne Jan. 1, 1993 (Paris) ²
Phonogram Jan. 1, 1993
WTO Jan. 1, 1995

Czechoslovakia ¹¹

Bilateral Mar. 1, 1927

Denmark

Bilateral May 8, 1893
Berne July 1, 1903 (Paris) ²
UCC Geneva Feb. 9, 1962
Phonogram Mar. 24, 1977
UCC Paris July 11, 1979
WTO Jan. 1, 1995

Djibouti

WTO May 31, 1995

Dominica

WTO Jan. 1, 1995

Dominican Republic ⁶

BAC Oct. 31, 1912
UCC Geneva May 8, 1983
UCC Paris May 8, 1983
WTO Mar. 9, 1995

Ecuador

BAC Aug. 31, 1914
UCC Geneva June 5, 1957
Phonogram Sept. 14, 1974
UCC Paris Sept. 6, 1991
Berne Oct. 9, 1991 (Paris) ²

Egypt

Berne June 7, 1977 (Paris) ²

Phonogram Apr. 23, 1978
WTO June 30, 1995

El Salvador

Bilateral June 30, 1908 by virtue of
Mexico City Convention, 1902
Phonogram Feb. 9, 1979
UCC Geneva Mar. 29, 1979
UCC Paris Mar. 29, 1979
Berne Feb. 19, 1994 (Paris) ²
WTO May 7, 1995

Equatorial Guinea

Unclear

Estonia

Berne Oct. 26, 1994 (Paris) ²

Ethiopia

None

European Community

WTO Jan. 1, 1995

Fiji

Berne Dec. 1, 1971 (Brussels) ²
UCC Geneva Mar. 13, 1972
Phonogram Apr. 18, 1973 ³

Finland

Berne Apr. 1, 1928 (Paris) ²
Bilateral Jan. 1, 1929
UCC Geneva Apr. 16, 1963
Phonogram Apr. 18, 1973 ³
UCC Paris Nov. 1, 1986
WTO Jan. 1, 1995

France

Berne Dec. 5, 1887 (Paris) ²
Bilateral July 1, 1891
UCC Geneva Jan. 14, 1956
Phonogram Apr. 18, 1973 ³
UCC Paris July 10, 1974
WTO Jan. 1, 1995

Gabon

Berne Mar. 26, 1962 (Paris) ²
WTO Jan. 1, 1995

Gambia, The

Berne Mar. 7, 1993 (Paris) ²

Georgia

Berne May 16, 1995 (Paris) ²

Germany ¹⁰

Berne Dec. 5, 1887 (Paris) ^{2,7}
Bilateral Apr. 15, 1892
UCC Geneva Sept. 16, 1955
Phonogram May 18, 1974
UCC Paris July 10, 1974
SAT Aug. 25, 1979 ⁴
WTO Jan. 1, 1995

Ghana

UCC Geneva Aug. 22, 1962
Berne Oct. 11, 1991 (Paris) ²
WTO Jan. 1, 1995

Greece

Berne Nov. 9, 1920 (Paris) ²
Bilateral Mar. 1, 1932
UCC Geneva Aug. 24, 1963
SAT Oct. 22, 1991
Phonogram Feb. 9, 1994
WTO Jan. 1, 1995

Grenada

Unclear

Guatemala ⁶

BAC Mar. 28, 1913
UCC Geneva Oct. 28, 1964
Phonogram Feb. 1, 1977
WTO July 21, 1995

Guinea

Berne Nov. 20, 1980 (Paris) ²
UCC Geneva Nov. 13, 1981
UCC Paris Nov. 13, 1981

Guinea-Bissau

Berne July 22, 1991 (Paris) ²
WTO May 31, 1995

Guyana

Berne Oct. 25, 1994 (Paris) ²
WTO Jan. 1, 1995

Haiti

BAC Nov. 27, 1919
UCC Geneva Sept. 16, 1955

Holy See

(See entry under Vatican City)

Honduras ⁶

BAC Apr. 27, 1914

Berne Jan. 25, 1990 (Paris) ²
Phonogram Mar. 6, 1990
WTO Jan. 1, 1995

Hong Kong
WTO Jan. 1, 1995

Hungary
Bilateral Oct. 16, 1912
Berne Feb. 14, 1922 (Paris) ²
UCC Geneva Jan. 23, 1971
UCC Paris July 10, 1974
Phonogram May 28, 1975
WTO Jan. 1, 1995

Iceland
Berne Sept. 7, 1947 (Rome) ²
UCC Geneva Dec. 18, 1956
WTO Jan. 1, 1995

India
Berne Apr. 1, 1928 (Paris) ²
Bilateral Aug. 15, 1947
UCC Geneva Jan. 21, 1958
Phonogram Feb. 12, 1975
UCC Paris Apr. 7, 1988
WTO Jan. 1, 1995

Indonesia
Bilateral Aug. 1, 1989
WTO Jan. 1, 1995

Iran
None

Iraq
None

Ireland
Berne Oct. 5, 1927 (Brussels) ²
Bilateral Oct. 1, 1929
UCC Geneva Jan. 20, 1959
WTO Jan. 1, 1995

Israel
Bilateral May 15, 1948
Berne Mar. 24, 1950 (Brussels) ²
UCC Geneva Sept. 16, 1955
Phonogram May 1, 1978
WTO Apr. 21, 1995

Italy
Berne Dec. 5, 1887 (Paris) ²

Bilateral Oct. 31, 1892
UCC Geneva Jan. 24, 1957
Phonogram Mar. 24, 1977
UCC Paris Jan. 25, 1980
SAT July 7, 1981 ⁴
WTO Jan. 1, 1995

Ivory Coast
(See entry under Cote d'Ivoire)

Jamaica
Berne Jan. 1, 1994 (Paris) ²
Phonogram Jan. 11, 1994
WTO Mar. 9, 1995

Japan ⁸
Berne July 15, 1899 (Paris) ²
UCC Geneva Apr. 28, 1956
UCC Paris Oct. 21, 1977
Phonogram Oct. 14, 1978
WTO Jan. 1, 1995

Jordan
Unclear

Kazakhstan
UCC Geneva May 27, 1973

Kenya
UCC Geneva Sept. 7, 1966
UCC Paris July 10, 1974
Phonogram Apr. 21, 1976
SAT Aug. 25, 1979 ⁴
Berne June 11, 1993 (Paris) ²
WTO Jan. 1, 1995

Kiribati
Unclear

Korea
Democratic People's Republic of Korea
Unclear
Republic of Korea
UCC Geneva Oct. 1, 1987
UCC Paris Oct. 1, 1987
Phonogram Oct. 10, 1987
WTO Jan. 1, 1995

Kuwait
WTO Jan. 1, 1995

Laos
UCC Geneva Sept. 16, 1955

Latvia
Berne Aug. 11, 1995 (Paris) ²

Lebanon
Berne Sept. 30, 1947 (Rome) ²
UCC Geneva Oct. 17, 1959

Lesotho
Berne Sept. 28, 1989 (Paris) ²
WTO May 31, 1995

Liberia
UCC Geneva July 27, 1956 Berne
Mar. 8, 1989 (Paris) ²

Libya
Berne Sept. 28, 1976 (Paris) ²

Liechtenstein
Berne July 30, 1931 (Brussels) ²
UCC Geneva Jan. 22, 1959
WTO Sept. 1, 1995

Lithuania
Berne Dec. 14, 1994 (Paris) ²

Luxembourg
Berne June 20, 1888 (Paris) ²
Bilateral June 29, 1910
UCC Geneva Oct. 15, 1955
Phonogram Mar. 8, 1976
WTO Jan. 1, 1995

Macau
WTO Jan. 1, 1995

Macedonia (former Yugoslav Republic)
Berne Sept. 8, 1991 (Paris) ²

Madagascar (Malagasy Republic)
Berne Jan. 1, 1966 (Brussels) ²

Malawi
UCC Geneva Oct. 26, 1965
Berne Oct. 12, 1991 (Paris) ²
WTO May 31, 1995

Malaysia
Berne Oct. 1, 1990 (Paris) ²
WTO Jan. 1, 1995

Maldives
WTO May 31, 1995

Mali Berne Mar. 19, 1962 (Paris) ² WTO May 31, 1995	Nauru Unclear	Panama BAC Nov. 25, 1913 UCC Geneva Oct. 17, 1962 Phonogram June 29, 1974 UCC Paris Sept. 3, 1980 SAT Sept. 25, 1985
Malta Berne Sept. 21, 1964 (Rome) ² UCC Geneva Nov. 19, 1968 WTO Jan. 1, 1995	Nepal None	Papua New Guinea Unclear
Mauritania Berne Feb. 6, 1973 (Paris) ² WTO May 31, 1995	Netherlands Bilateral Nov. 20, 1899 Berne Nov. 1, 1912 (Paris) ² UCC Geneva June 22, 1967 UCC Paris Nov. 30, 1985 Phonogram Oct. 12, 1993 WTO Jan. 1, 1995	Paraguay BAC Sept. 20, 1917 UCC Geneva Mar. 11, 1962 Phonogram Feb. 13, 1979 Berne Jan. 2, 1992 (Paris) ² WTO Jan. 1, 1995
Mauritius UCC Geneva Mar. 12, 1968 Berne May 10, 1989 (Paris) ² WTO Jan. 1, 1995	New Zealand Bilateral Dec. 1, 1916 Berne Apr. 24, 1928 (Rome) ² UCC Geneva Sept. 11, 1964 Phonogram Aug. 13, 1976 WTO Jan. 1, 1995	Peru BAC Apr. 30, 1920 UCC Geneva Oct. 16, 1963 UCC Paris July 22, 1985 SAT Aug. 7, 1985 Phonogram Aug. 24, 1985 Berne Aug. 20, 1988 (Paris) ² WTO Jan. 1, 1995
Mexico Bilateral Feb. 27, 1896 UCC Geneva May 12, 1957 BAC Apr. 24, 1964 Berne June 11, 1967 (Paris) ² Phonogram Dec. 21, 1973 ³ UCC Paris Oct. 31, 1975 SAT Aug. 25, 1979 ⁴ WTO Jan. 1, 1995	Nicaragua ⁶ BAC Dec. 15, 1913 UCC Geneva Aug. 16, 1961 SAT Aug. 25, 1979 ⁴ WTO Sept. 3, 1995	Philippines Bilateral Oct. 21, 1948 Berne Aug. 1, 1951 (Brussels) ² UCC status undetermined by UNESCO (Copyright Office considers that UCC relations do not exist.) WTO Jan. 1, 1995
Monaco Berne May 30, 1889 (Paris) ² Bilateral Oct. 15, 1952 UCC Geneva Sept. 16, 1955 Phonogram Dec. 2, 1974 UCC Paris Dec. 13, 1974	Niger Berne May 2, 1962 (Paris) ² UCC Geneva May 15, 1989 UCC Paris May 15, 1989	Poland Berne Jan. 28, 1920 (Paris) ² Bilateral Feb. 16, 1927 UCC Geneva Mar. 9, 1977 UCC Paris Mar. 9, 1977 WTO July 1, 1995
Mongolia None	Nigeria UCC Geneva Feb. 14, 1962 Berne Sept. 14, 1993 (Paris) ² WTO Jan. 1, 1995	Portugal Bilateral July 20, 1893 Berne Mar. 29, 1911 (Paris) ² UCC Geneva Dec. 25, 1956 UCC Paris July 30, 1981 WTO Jan. 1, 1995
Morocco Berne June 16, 1917 (Paris) ² UCC Geneva May 8, 1972 UCC Paris Jan. 28, 1976 SAT June 30, 1983 ⁴ WTO Jan. 1, 1995	Norway Berne Apr. 13, 1896 (Paris) ² Bilateral July 1, 1905 UCC Geneva Jan. 23, 1963 UCC Paris Aug. 7, 1974 Phonogram Aug. 1, 1978 WTO Jan. 1, 1995	Qatar None
Mozambique WTO Aug. 26, 1995	Oman None	
Myanmar, Union of (formerly Burma) WTO Jan. 1, 1995	Pakistan Berne July 5, 1948 (Rome) ² UCC Geneva Sept. 16, 1955	
Namibia Berne Mar. 21, 1990 (Paris) ²		

Romania

Berne Jan. 1, 1927 (Rome) ²
 Bilateral May 14, 1928
 WTO Jan. 1, 1995

Russian Federation

UCC Geneva May 27, 1973
 SAT Dec. 25, 1991
 UCC Paris Mar. 9, 1995
 Berne Mar. 13, 1995 (Paris) ²
 Phonogram Mar. 13, 1995

Rwanda

Berne Mar. 1, 1984 (Paris) ²
 UCC Geneva Nov. 10, 1989
 UCC Paris Nov. 10, 1989

St. Christopher (St. Kitts) and Nevis

Berne Apr. 9, 1995 (Paris) ²

Saint Lucia

Berne Aug. 24, 1993 (Paris) ²
 WTO Jan. 1, 1995

Saint Vincent and the Grenadines

UCC Geneva Apr. 22, 1985
 UCC Paris Apr. 22, 1985
 WTO Jan. 1, 1995
 Berne Aug. 29, 1995 (Paris) ²

San Marino

None

São Tomé and Príncipe

Unclear

Saudi Arabia

UCC Geneva July 13, 1994
 UCC Paris July 13, 1994

Senegal

Berne Aug. 25, 1962 (Paris) ²
 UCC Geneva July 9, 1974
 UCC Paris July 10, 1974
 WTO Jan. 1, 1995

Seychelles

Unclear

Sierra Leone

WTO July 23, 1995

Singapore

Bilateral May 18, 1987
 WTO Jan. 1, 1995

Slovakia

UCC Geneva Jan. 6, 1960

UCC Paris Apr. 17, 1980

Berne Jan. 1, 1993 (Paris) ²
 Phonogram Jan. 1, 1993
 WTO Jan. 1, 1995

Slovenia

UCC Geneva May 11, 1966
 UCC Paris July 10, 1974
 Berne June 25, 1991 (Paris) ²
 SAT June 25, 1991
 WTO July 30, 1995

Solomon Islands

Unclear

Somalia

Unclear

South Africa

Bilateral July 1, 1924
 Berne Oct. 3, 1928 (Brussels) ²
 WTO Jan. 1, 1995

Soviet Union

(See entry under Russian Federation)

Spain

Berne Dec. 5, 1887 (Paris) ²
 Bilateral July 10, 1895
 UCC Geneva Sept. 16, 1955
 UCC Paris July 10, 1974
 Phonogram Aug. 24, 1974
 WTO Jan. 1, 1995

Sri Lanka (formerly Ceylon)

Berne July 20, 1959 (Rome) ²
 UCC Geneva Jan. 25, 1984
 UCC Paris Jan. 25, 1984
 WTO Jan. 1, 1995

Sudan

Unclear

Suriname

Berne Feb. 23, 1977 (Paris) ²
 WTO Jan. 1, 1995

Swaziland

WTO Jan. 1, 1995

Sweden

Berne Aug. 1, 1904 (Paris) ²
 Bilateral June 1, 1911
 UCC Geneva July 1, 1961
 Phonogram Apr. 18, 1973 ³
 UCC Paris July 10, 1974
 WTO Jan. 1, 1995

Switzerland

Berne Dec. 5, 1887 (Paris) ²
 Bilateral July 1, 1891
 UCC Geneva Mar. 30, 1956
 UCC Paris Sept. 21, 1993
 SAT Sept. 24, 1993
 Phonogram Sept. 30, 1993
 WTO July 1, 1995

Syria

Unclear

Tajikistan

UCC Geneva May 27, 1973

Tanzania

Berne July 25, 1994 (Paris) ²
 WTO Jan. 1, 1995

Thailand

Bilateral Sept. 1, 1921
 Berne July 17, 1931 (Paris) ²
 WTO Jan. 1, 1995

Togo

Berne Apr. 30, 1975 (Paris) ²
 WTO May 31, 1995

Tonga

None

Trinidad and Tobago

Berne Aug. 16, 1988 (Paris) ²
 UCC Geneva Aug. 19, 1988
 UCC Paris Aug. 19, 1988
 Phonogram Oct. 1, 1988
 WTO Mar. 1, 1995

Tunisia

Berne Dec. 5, 1887 (Paris) ²
 UCC Geneva June 19, 1969
 UCC Paris June 10, 1975
 WTO Mar. 29, 1995

Turkey

Berne Jan. 1, 1952 (Paris) ²
 WTO Mar. 26, 1995

Tuvalu

Unclear

Uganda

WTO Jan. 1, 1995

Ukraine

UCC Geneva May 27, 1973

United Arab Emirates

None

United Kingdom Berne Dec. 5, 1887 (Paris) ² Bilateral July 1, 1891 UCC Geneva Sept. 27, 1957 Phonogram Apr. 18, 1973 ³ UCC Paris July 10, 1974 WTO Jan. 1, 1995	UCC Geneva Oct. 5, 1955 Phonogram July 18, 1977 UCC Paris May 6, 1980	UCC Paris July 10, 1974 SAT Aug. 25, 1979 ⁴
Upper Volta (See entry under Burkina Faso)	Venezuela UCC Geneva Sept. 30, 1966 Phonogram Nov. 18, 1982 Berne Dec. 30, 1982 (Paris) ² WTO Jan. 1, 1995	Zaire Berne Oct. 8, 1963 (Paris) ² Phonogram Nov. 29, 1977
Uruguay BAC Dec. 17, 1919 Berne July 10, 1967 (Paris) ² Phonogram Jan. 18, 1983 UCC Geneva Apr. 12, 1993 UCC Paris Apr. 12, 1993 WTO Jan. 1, 1995	Vietnam Unclear	Zambia UCC Geneva June 1, 1965 Berne Jan. 2, 1992 (Paris) ² WTO Jan. 1, 1995
Vanuatu Unclear	Western Samoa Unclear	Zimbabwe Berne Apr. 18, 1980 (Rome) ² WTO Mar. 3, 1995
Vatican City (Holy See) Berne Sept. 12, 1935 (Paris) ²	Yemen (Aden) Unclear	
	Yemen (San'a) None	
	Yugoslavia Berne June 17, 1930 (Paris) ² UCC Geneva May 11, 1966	

¹ "Paris" means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24, 1971 (Paris Act); "Stockholm" means the said Convention as revised at Stockholm on July 14, 1967 (Stockholm Act); "Brussels" means the said Convention as revised at Brussels on June 26, 1948 (Brussels Act); "Rome" means the said Convention as revised at Rome on June 2, 1928 (Rome Act); "Berlin" means the said Convention as revised at Berlin on November 13, 1908 (Berlin Act). NOTE: In each case the reference to Act signifies adherence to the substantive provisions of such Act only, e.g., Articles 1 to 21 and the Appendix of the Paris Act. Articles 22 to 38 deal with administration and structure.

² The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, did not enter into force with respect to the United States until March 1, 1989.

³ The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on October 29, 1971, did not enter into force with respect to the United States until March 10, 1974.

⁴ The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite done at Brussels on May 21, 1974, did not enter into force with respect to the United States until March 7, 1985.

⁵ The government of the People's Republic of China views this treaty as not binding on the PRC. In the territory administered by the authorities on Taiwan the treaty is considered to be in force.

⁶ This country became a party to the Mexico City Convention, 1902, effective June 30, 1908, to which the United States also became a party, effective on the same date. As regards copyright relations with the United States, this Convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

⁷ Date on which the accession by the German Empire became effective.

⁸ Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the UCC Geneva, effective April 28, 1956.

⁹ Bilateral copyright relations between the People's Republic of China and the United States of America were established, effective March 17, 1992, by a Presidential Proclamation of the same date, under the authority of section 104 of title 17 of the United States Code, as amended by the Act of October 31, 1988 (Public Law 100-568, 102 Stat. 2853, 2855).

¹⁰ The dates of adherence by Germany to multilateral treaties include adherence by the Federal Republic of Germany when that country was divided into the Federal Republic of Germany and the German Democratic Republic. However, through the accession, effective October 3, 1990, of the German Democratic Republic to the Federal Republic of Germany, in accordance with the German Unification Treaty of August 31, 1990, the German Democratic Republic ceased, on the said date, to be a sovereign state. Previously, the German Democratic Republic had become party to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works on February 18, 1978, but ceased to be a party to the said Convention on October 3, 1990. The German Democratic Republic had also been a member of the Universal Copyright Convention, having become party to the Geneva text of the said Convention on October 5, 1973, and party to the revised Paris text of the same Convention on December 10, 1980.

¹¹ See also Czech Republic and Slovakia.

Number of Registrations by Subject Matter, Fiscal 1995

Category of Material	Published	Unpublished	Total
Nondramatic literary works			
Monographs and computer-related works	141,107	54,892	195,999
Serials			
Serials (non-group)	80,988		80,988
Group Daily Newspapers	1,663		1,663
Group Serials	5,926		5,926
Total literary works	229,684	54,892	284,576
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	50,329	113,293	163,622
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied arts ...	30,613	64,937	99,550
Sound recordings	13,602	20,406	34,008
Total	324,228	253,528	577,756
Renewals			30,606
Mask work registrations			833
Grand total all registrations			609,195
Documents Recorded			16,575

Copyright Registrations, 1790-1995

Year(s) Date	Total	Year(s) Date	Total	Year(s) Date	Total
1790-1869	¹ 150,000	1912	121,824	1955	224,732
1870	5,600	1913	120,413	1956	224,908
1871	12,688	1914	124,213	1957	225,807
1872	14,164	1915	116,276	1958	238,935
1873	15,352	1916	117,202	1959	241,735
1874	16,283	1917	112,561	1960	243,926
1875	16,194	1918	107,436	1961	247,014
1876	15,392	1919	113,771	1962	254,776
1877	16,082	1920	127,342	1963	264,845
1878	16,290	1921	136,765	1964	278,987
1879	18,528	1922	140,734	1965	293,617
1880	20,993	1923	151,087	1966	286,866
1881	21,256	1924	164,710	1967	294,406
1882	23,141	1925	167,863	1968	303,451
1883	25,892	1926	180,179	1969	301,258
1884	27,727	1927	186,856	1970	316,466
1885	28,748	1928	196,715	1971	329,696
1886	31,638	1929	164,666	1972	344,574
1887	35,467	1930	175,125	1973	353,648
1888	38,907	1931	167,107	1974	372,832
1889	41,297	1932	153,710	1975	401,274
1890	43,098	1933	139,361	1976	410,969
1891	49,197	1934	141,217	1976	² 108,762
1892	54,741	1935	144,439	1977	452,702
1893	58,957	1936	159,268	1978	³ 331,942
1894	62,764	1937	156,930	1979	429,004
1895	67,578	1938	168,663	1980	464,743
1896	72,482	1939	175,450	1981	471,178
1897	75,035	1940	179,467	1982	468,149
1898	75,634	1941	180,647	1983	488,256
1899	81,416	1942	182,232	1984	502,628
1900	95,573	1943	160,789	1985	539,165
1901	93,299	1944	169,269	1986	560,212
1902	93,891	1945	178,848	1987	581,276
1903	99,122	1946	202,144	1988	565,801
1904	104,431	1947	230,215	1989	611,328
1905	114,747	1948	238,121	1990	643,602
1906	118,799	1949	201,190	1991	663,684
1907	124,814	1950	210,564	1992	606,253
1908	120,657	1951	200,354	1993	604,894
1909	121,141	1952	203,705	1994	⁴ 530,332
1910	109,309	1953	218,506	1995	609,195
1911	115,955	1954	222,665	Total	26,342,706

¹ Estimated registrations made in the offices of the Clerks of the District Courts (source: pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790-1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

² Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

³ Reflects change in reporting procedure.

⁴ Approximately 65,000 claims were examined but were not assigned registration numbers in fiscal 1994 due to the conversion of the numbering operation from manual hand-stamping to an automated optical disk system.

Non-Fee Information Services to Public, Fiscal 1995

Information and Reference Division direct reference services	
In person	26,459
By correspondence	163,571
By telephone	¹ 316,179
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Total	506,209
Licensing Division direct reference services	
In person	787
By correspondence	2,903
By telephone	6,896
	<hr/>
Total	10,586
	<hr/>
Grand total direct reference services	516,795

¹Includes 2,698 telephone reference services provided by the Receiving and Processing Division and 2,765 telephone reference services provided by the General Counsel's Office.

Fees Received, Fiscal 1995

Receipts	Fees
Applications for Registration	\$ 11,834,448
Fees for mask works	18,520
Renewals	641,546
Total	<u>\$ 12,494,514</u>
Fees for recordation of documents	519,142
Fees for certifications	133,058
Fees for searches	199,050
Fees for expedited services	1,147,991
Fees for other services	117,577
Total	<u>\$ 2,116,818</u>
Grand Total	<u>\$ 14,611,332</u>
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Fees transferred to the appropriation	\$ 14,563,414

Estimated Value of Materials Transferred, Fiscal 1995

	Registered works transferred to other departments of the Library	Non-registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average unit price	Total value of works transferred to other departments of the Library	Works transferred to the National Library of Medicine
Books	181,006	31,178	212,184	\$35.00	\$ 7,426,440	
Serials	267,812	261,500	529,312	7.70	4,075,702	
Computer-related works	7,487	3,362	10,849	²	1,654,473	
Motion Pictures	¹ 11,073	539	11,612	³	5,167,340	1
Music	54,336	1,621	55,957	24.00	1,342,968	
Dramatic Works, choreography, and pantomimes	1,906		1,906	35.00	66,710	
Other works of the performing arts	1,170		1,170	24.00	28,080	
Sound Recordings	22,465	4,201	26,666	10.00	266,660	32
Maps	3,231	276	3,507	26.00	91,182	
Prints, pictures, and works of art	1,627	232	1,859	21.00	39,039	20
Total	552,113	302,909	855,022		\$20,158,594	53

¹ An additional 1,624 copies returned to the remitter are available for selection by the Library under Motion Picture agreements.

² 35% Software @ \$20, 20% CD ROM @ \$500 and 45% printouts of indeterminate value.

³ 95% video @ \$100 and 5% films @ \$7,000.

*Financial Statement of Royalty Fees for Compulsory Licenses for Secondary
Transmissions by Cable Systems for Calendar Year 1994*

Royalty fees deposited	\$ 159,640,294.83	
Interest income	4,235,703.07	
Gain on matured securities	2,258,008.30	
Transfers in	<u>24,308.85</u>	
		\$ 166,158,315.05
Less: Operating costs	\$ 2,190,909.00	
Refunds issued	535,241.08	
Cost of investments	163,620,959.61	
Cost of initial investments	(310,935.38)	
Transfers out	<u>79,255.00</u>	
		\$ 166,115,429.31
Balance as of September 30, 1995		\$ 42,885.74
Plus: Face amount of securities due		167,970,000.00
Less: Pending refunds		157,096.61
Cable royalty fees for calendar year 1994 available for distribution by the Library of Congress		\$ 167,855,789.13

*Financial Statement of Royalty Fees for Statutory Licenses for Secondary
Transmissions by Satellite Carriers for Calendar Year 1994*

Royalty fees deposited	\$ 18,026,424.41	
Interest income	520,562.59	
Gain on matured securities	167,274.70	
		\$ 18,714,261.70
Less: Operating costs	\$ 37,013.00	
Refunds issued	9.98	
Cost of investments	18,836,468.07	
Cost of initial investments	(166,521.23)	
		\$ 18,706,969.82
Balance as of September 30, 1995	\$ 7,291.88	
Plus: Face amount of securities due		18,955,000.00
Satellite carrier royalty fees for calendar year 1994 available for distribution by the Library of Congress		\$ 18,962,291.88

*Financial Statement of Royalty Fees for Statutory Obligations for Distribution
of Digital Audio Recording Equipment and Media for Calendar Year 1994*

Royalty fees deposited	\$ 520,488.73	
Interest income	7,246.26	
Gain on matured securities	10,082.93	
		\$ 537,817.92
Less: Operating costs	\$ 73,888.00	
Cost of investments	150,092.19	
Cost of initial investments	2,054.16	
Distribution of fees	305,113.17	
		\$ 531,147.52
Balance as of September 30, 1995		\$ 6,670.40
Plus: Face amount of securities due		151,489.30
Audio Home Recording Act royalty fees for calendar year 1994 available for distribution by the Library of Congress		\$ 158,159.70

