

COPYRIGHT LAW REVISION

STUDIES

PREPARED FOR THE
SUBCOMMITTEE ON
PATENTS, TRADEMARKS, AND COPYRIGHTS
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21. The Catalog of Copyright Entries



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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.

ABE A. GOLDMAN,
*Chief of Research,
Copyright Office.*

ARTHUR FISHER,
*Register of Copyrights,
Library of Congress.*

L. QUINCY MUMFORD,
Librarian of Congress.

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

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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.
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STUDY NO. 21
THE CATALOG OF COPYRIGHT ENTRIES
BY ELIZABETH K. DUNNE AND JOSEPH W. ROGERS

April 1960

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THE CATALOG OF COPYRIGHT ENTRIES

I. INTRODUCTION

The "Catalog of Copyright Entries" is the published form of the official U.S. record of works deposited and registered for copyright, and of registrations of claims for the renewal of copyright in previously registered works. It has been published serially since 1891; at present it is issued semiannually. Cumulative catalogs for dramas (1870-1916) and motion pictures (1894-1949) have also been published. Since 1891, the Catalog has listed more than 9 million works.

The publication of the Catalog is required by section 210 of the present copyright law (17 U.S.C.); its distribution and sale are provided for in section 211. The Catalog was initiated in 1891 to aid the Treasury Department in preventing the importation of prohibited copies of copyrighted works—a purpose for which it proved to be ineffectual. Other uses of more present significance, such as making the record available outside the Copyright Office, security of the records, etc., will be considered below. This study attempts to evaluate the factors to be weighed in deciding whether publication of the Catalog should be continued, and if so, what its form and function should be.

II. HISTORICAL DEVELOPMENT

A. THE FIRST COPYRIGHT LAW

Congress in the act of 1790¹ recognized the need for a means whereby the public would be informed about works registered for copyright, other than by resort to the various district registry offices, by providing that the author or proprietor of any work whose title had been recorded should, within 2 months of the date of recording—cause a copy of the said record to be published in one or more of the newspapers printed in the United States, for the space of 4 weeks.

To obtain the benefit of the renewal term it was necessary again to record the title and to publish the record in the same manner.² This method of publicizing the existence of the copyright was abandoned for original registrations in the act of 1831, but remained a condition of renewal registration until 1909.³ It is doubtful if such publication would be effective beyond the local scene.

B. EARLY EXPERIMENTS IN PUBLISHING THE COPYRIGHT RECORD

In the 1820's William and Seth Elliot, both of whom were clerks in the Patent Office where records of copyrights were then maintained,

¹ 1 STAT. 124, § 3 (1790).

² *Id.*, § 1.

³ Act of 1831 (4 STAT. 436, § 2) and Act of 1870 (16 STAT. 212, § 88). The requirement that the copyright notice be printed on the work (Act of 1802, 2 STAT. 171, § 1) was probably considered sufficient.

compiled and published as a private venture an annual list of patents,⁴ to which was appended in the years 1822-25 "A List of All the Books That Have Been Deposited in the Department of State, for Securing Their Copy Right According to Law." The works deposited between 1796 and May 1825 were listed chronologically by date of recordation. The information given was that recorded in the registers of the Patent Office. These men clearly saw the public utility of publishing such records. Seeking official support for his list of patents, Seth Elliot wrote to the Secretary of State, on August 11, 1820, that his list contained three points of information important to the public: an inventor can see what is patented on his subject and can decide with more certainty whether his invention is original; the public will know what is and what is not patented; the public will know when patents expire.⁵ In 1836 the destruction of the Patent Office by fire added the argument of preservation of the record.⁶ The same arguments would apply to lists of copyright deposits.⁷ However, neither official nor public support was forthcoming and the publication was abandoned.⁸

The next list of copyrighted works was compiled as an official act by the first librarian of the Smithsonian Institution, Charles Coffin Jewett.⁹ Mr. Jewett viewed copyright deposit as a valuable and important contribution to a national library not only as a means of building the collection but also as the means needed "to provide complete bibliographical control of man's record currently produced within a given nation." He considered the compilation of a record of copyright deposits to be one of the responsibilities of his position and, in his annual report for 1849, suggested a monthly publication of the works deposited, giving the name of the proprietor and date of deposit. He proposed that the catalog be sent free to every publisher complying with the law and that it be widely distributed gratis to literary institutions here and in Europe as an advertisement of U.S. publications; the publicity would be of more value to the publishers than the deposit they were required to make. He would have included also, in separate lists, other types of works of interest to such institutions, including lists of new works published in Europe and the lists of contents of current issues of important American and European periodicals.¹⁰ In his report for 1850 he suggested annual and quinquennial cumulated catalogs of copyright deposits.¹¹ He also prepared and published, as an appendix to this report, lists of copyrighted works deposited at the Smithsonian from 1846 through 1850.¹² All of these proposals, including some detailed suggestions for revision of the copyright law,¹³ fell on deaf ears.

⁴ "A List of Patents Granted by the United States * * * From 1790 to 1820 * * *," Washington, D.C. Printed and sold by S. Alfred Elliot, July 20, 1820. This work was kept up to date by supplements until 1828 when the work was cumulated. In 1830 the cumulated work was revised and issued under the title "The Patentee's Manual," by William Elliot. The list was superior in arrangement and indexing to the annual chronological list of patents then issued by the Patent Office.

⁵ U.S. State Department "Miscellaneous Letters, 1790-1820" [in the U.S. National Archives].

⁶ Elliot, W., "The Washington Guide," pp. 237, 238 (1837).

⁷ An appeal "To Authors" signed "Cadmus" for publication of the Elliot copyright list appeared in the "National Intelligencer," Mar. 24, 1834, after the Supreme Court decision in the case of Wheaton v. Peters.

⁸ *Ibid.* Elliot charged that Congress reprinted the patent list without compensation.

⁹ The Act of Aug. 10, 1846 (9 STAT. 106, § 10 (1846)), establishing the Smithsonian Institution, provided for the deposit of one copy of each work copyrighted at the Smithsonian and at the Library of Congress for the first U.S. Federal law to provide deposit for the benefit of libraries.

¹⁰ Smithsonian Institution Annual Report, p. 36 (1850).

¹¹ Smithsonian Institution Annual Report, p. 39 (1851). Jewett had developed a stereotyping process which he believed would make such cumulations economically possible. His process was a mechanical failure but his idea is utilized in the modern cumulated catalogs.

¹² *Id.*, at p. 146.

¹³ Smithsonian Institution Annual Report, pp. 31-37 (1852).

The act of 1870,¹⁴ which transferred the administration of the copyright law to the Librarian of Congress, provided that the Librarian "shall also make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year" (sec. 85). The Librarian, Ainsworth Rand Spofford, felt he was expected to produce a catalog and, in his annual report for 1872, he requested that the registration of commercial prints and labels be transferred to the Patent Office in view of the "manifest absurdity" of including them in a list of current American literature and science. He also requested that he be "authorized and required to print a weekly list of copyright entries for public information."¹⁵ The act of June 18, 1874,¹⁶ effected the desired transfer but no action was taken in regard to the catalog proposed.

C. ESTABLISHMENT OF THE "CATALOG OF TITLE ENTRIES" BY THE ACT OF 1891

No arguments on the value of issuing a catalog of copyrighted works for public information appeared in the discussion of the Chace bill,¹⁷ which was finally enacted as the "International Copyright Law" of March 3, 1891.¹⁸ The Chace bill was the first to provide explicitly for the publication of lists of copyright entries; the purpose of the lists was to provide the means whereby customs officers could prevent importation of illegal editions of works claiming copyright in the United States. Debate on the bill revolved principally on the extension of the copyright privilege to works of nonresident foreign authors, the requirement that such works be manufactured in the United States, and the restriction against importation of foreign editions of works under copyright in the United States. The catalog provision was attacked as "machinery of the Government" to "work as detectives and informers."¹⁹

The catalog provision is set forth in section 4 of the 1891 act. By it, the Librarian of Congress was to furnish copies of the titles of all books and other articles deposited for copyright to the Secretary of the Treasury who was to print "at intervals of not more than a week" catalogs for distribution to customs collectors and to postmasters of all post offices receiving foreign mail. In addition the catalogs were to be available to the public "at a sum not exceeding \$5 a year." The "expenses" of the "lists" were to be defrayed by the registration fees charged nonresident foreign authors.

The split responsibility for publication of the catalog proved to be unwise. The organization and content of the weekly lists²⁰ published from 1891 until 1897 was not efficient for searching by the customs officers or anyone else. When the Copyright Office was established in 1897 Mr. Solberg, the first Register of Copyrights, reorganized the

¹⁴ 16 STAT. 212 (1870).

¹⁵ 1872 U.S. Library of Congress Annual Report, p. 5.

¹⁶ 18 STAT. 78 (1874).

¹⁷ S. 1178, 49th Cong., 1st Sess. (1886).

¹⁸ 26 STAT. 1106 (1891). Under the prior laws copyright had been confined to the works of citizens and residents of the United States. The title of the publication was changed to "Catalog of Copyright Entries" in July 1906.

¹⁹ U.S. Cong., Senate Committee on Patents, "International Copyright, Statements * * * Relating to the Bill (S. 1178)" p. 104 [1886].

²⁰ The lists were divided into sections according to class. Periodicals were soon alphabetized by title but the arrangement of the other classes was apparently by order of recordation. After 1895, music and books were arranged by proprietor. Information given was in very brief form—title, author's name, number of the edition or volume, proprietor's name and address.

catalog, provided indexes, and included more information in the entries so that it might be in fact a means of searching the copyright registration record outside of the Copyright Office itself.²¹ Despite the improvements, the Secretary of the Treasury in 1904 reported to Congress that the Catalog was not "at all helpful to the officers of the customs and post services,"²² and that the Catalog cost far more to publish than the number of subscribers seemed to warrant. He recommended that responsibility for both compilation and publication be given to the Librarian of Congress if the Catalog was to be continued. Mr. Solberg agreed that it would be desirable to transfer the whole responsibility for the publication to the Librarian of Congress. He argued thus for the continuation of the Catalog: No better method of providing customs officers with copyright information offers itself; the Catalog is the most available index to copyright business, used constantly in the Copyright Office itself and making the record available to the public without recourse to the Office; it secures the record against destruction by fire or otherwise; it is the official contemporaneous record of the country's intellectual production; its cost should be defrayed by registration fees.²³

D. THE ACT OF 1909

1. *The Conference on Copyright, November 1-5, 1905*²⁴

The rationale for the Catalog provisions in the present law must be sought in the minutes of the Conference on Copyright, because there was no general discussion of the Catalog in the congressional hearings preceding the act. The Conference discussion was based on sections 13 and 14 of a memorandum draft bill²⁵ prepared for this session. In section 13, in addition to the maintenance of the manuscript card catalog and index of all copyright registrations in the Copyright Office, Mr. Solberg detailed a comprehensive catalog-publication program: production of a printed catalog of all registered articles deposited, on a monthly or more frequent basis, with quarterly and annual indexes; the production of 5-year cumulated catalogs for books, dramas, and music; the production of 10-year cumulated catalogs for each of the other classes; authorization to destroy the original manuscript cards upon the completion of the cumulated catalogs.²⁶ Section 14 provided for the distribution of the catalogs, substantially as enacted and discussed below.

The conferees were asked particularly to consider whether the publication was serving a sufficiently useful purpose to justify its continuation and if they thought so, to express their desire to have it continued.

²¹ 1898 U.S. Library of Congress Annual Report, p. 13.

²² H. Doc. No. 420, 58th Cong., 2d Sess., p. 3 (1904). See especially the letter (p. 4) of J. J. Couch of the New York Customs Service. In practice, the presence of the copyright notice in the works received, and the file of titles sent in by proprietors to alert customs officers to infringing works which might be imported, were used then, as now, as the means of preventing such importation. The volume of importations has always precluded the searching of every title.

²³ *Id.*, at p. 6.

²⁴ The Conference on Copyright, meeting in three sessions in 1905-06, was convened by the Librarian of Congress to permit representatives of the various industries and groups concerned to discuss proposals for general revision of the copyright law. The minutes of this discussion are set forth in U.S. Copyright Office, stenographic report * * * of the second session of the Conference on Copyright * * * Nov. 1-4, 1905, pp. 193-197; 211-221.

²⁵ *Id.*, at p. 5.

²⁶ The cumulated catalogs, besides allowing for retirement of files, would be more efficient for searches covering several years. Mr. Solberg believed large card catalogs to be too unwieldy to be continued indefinitely. *Id.*, at p. 204. The one criticism made of the catalog provision questioned the wisdom of destroying the card files. See *Arguments Before the Committee on Patents of the Senate and House of Representatives Conjointly on S. 6350 and H.R. 19853*, 59th Cong., 1st Sess. 398 (December 1906).

The actual discussion centered on the desire for more complete indexing under authors and titles and recording of derivative works. It was suggested that it would be an advantage if the Catalog were to be admissible in court as prima facie evidence of the facts stated therein.²⁷ The Treasury Department representative, speaking on the importation question, said again that the Catalog was of no utility to customs officers.²⁸

As finally drafted²⁹ and enacted into law the cataloging provisions were stated more generally.

2. Provisions of the act of 1909³⁰

Section 56 of the act (now 17 U.S.C. 210) provides that the Register of Copyrights shall fully index all copyright registrations and assignments and print at unspecified periodic intervals a catalog of the titles deposited and registered for copyright. At "stated intervals" he shall print complete and indexed catalogs for each class of copyright entries (i.e., cumulated catalogs) and may, if expedient, destroy the original files of cards for the titles included. It is provided further that—

the current catalog of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration.

By section 57 (now 17 U.S.C. 211) the current catalogs are to be distributed to customs officers and postmasters designated by the Secretary of the Treasury and the Postmaster General, and are to be available to the public at a statutory price for the complete catalog or for any one class. The Register is empowered to set a reasonable price for the cumulative catalogs. The subscriptions are handled by the Superintendent of Public Documents, paying the receipts into the Treasury.

Section 58 (now sec. 212) provides for public inspection of the copyright records subject to regulation of the Register with the approval of the Librarian of Congress. No mention is made of any search service to be performed by the Office except indirectly: in section 61 (now sec. 215) a fee is provided for searches requested of the Office.

The sections have been amended, since 1909, only in regard to the statutory price of the current catalogs and the search fee.³¹

3. Development of the catalog since 1909

From 1909 to 1936 the "Catalog of Copyright Entries" was expected to be the main tool for the use of the public in conducting research on copyrighted works. The public was not encouraged to use the facilities of the Office and no staff was set up to conduct requested searches of any length.³² The method of entering the official record in ledgers, the fact that the entries for the card catalog were used as printer's copy before being filed into the permanent indexes,³³ and the increasingly crowded space conditions in the Office made searching by the public very inconvenient for both staff and public alike. The parts of the Catalog were issued fairly promptly at varied frequencies

²⁷ *Op. cit. supra* note 24, at p. 218.

²⁸ *Id.*, at p. 418ff.

²⁹ S. 6330 and H. R. 19853, 59th Cong., 1st Sess. (June 1906).

³⁰ 35 STAT. 1075 (1909).

³¹ By the Act of May 23, 1928, 45 STAT. 713, and Act of Apr. 27, 1948, 62 STAT. 236. The Register may determine the price of each part of the Catalog not exceeding \$25 for the complete yearly catalog. The search fee is now \$3 for each hour of time consumed.

³² Staff members were allowed, on their own time, to make searches for the public, however, and any complex searches or special projects for copying the records were so made during this period.

³³ 1918 U.S. Library of Congress Annual Report, p. 127.

of publication; that for books was issued weekly, or more frequently.³⁴ One cumulative catalog, "Dramatic Compositions Copyrighted in the United States, 1870-1916," was issued in this period and the index cards destroyed.³⁵ However, publication of the work proved to be a long chore and the work received little public attention.

During the depression of the 1930's, and the war years following, the Office was forced to issue the Catalog on a reduced budget and with a reduced staff. Printing costs were cut as much as possible; the entries were shortened. However, a more extended search service was provided in 1937, and the record keeping in the Office was reorganized and amplified so that searches could be made more efficiently.

Beginning in 1945 a general reorganization of the Office took place. Among other objectives more attention was given to the public-service activities of the Office. An improved search service was organized. An effort was made to make all parts of the Catalog more efficient tools for copyright research and for use as a contribution to the national bibliography. It was now recognized that in some fields, notably music and motion pictures, the copyright catalog was the most comprehensive published. The current catalogs were improved in content and issued semiannually. Cumulated catalogs for motion pictures, covering all registrations from 1894 to 1949,³⁶ were issued and proved to be efficient as search tools and of interest to students of motion-picture history. Plans to issue cumulated catalogs in other fields were abandoned when surveys made by the Office indicated the market was not large enough to make the publications economically feasible.

In 1947 the Cooperative Card Service was initiated to supply copies of the official catalog cards on a weekly basis to subscribers who had need for prompt information.

E. PROVISIONS FOR THE CATALOG IN THE REVISION BILLS OF 1924-40

Several bills were introduced between 1924 and 1940 providing for a general revision of the copyright law. All of the bills provided for continued publication of the Catalog on the existing pattern, but some changes in sections 56 and 57 of the 1909 act³⁷ were proposed.

Because the Catalog was seldom mentioned in the congressional hearings on the bills, the rationale for the changes outlined below can only be surmised.

It is not surprising that two bills (Dallinger and Thomas) provided that records of assignments and other documents should be listed in the Catalog, for the importance of assignment records was emphasized throughout the revision efforts. The Thomas bill, which looked to the virtual abandonment of registration as such, but provided that copies of all copyrighted works be deposited in the Copyright Office for the benefit of the Library of Congress, would have included the record of the works so deposited in the Catalog.

³⁴ Mr. Solberg considered the Catalog to be a national bibliography of the United States. However, as with most other bibliographers of the period, he considered books to be of much greater importance than other copyrighted materials.

³⁵ 1918 U.S. Library of Congress Annual Report, p. 120.

³⁶ A new volume covering the period 1950-59 is now in preparation.

³⁷ The Duffy bill (S. 3047, 74th Cong., 1st Sess. (1935)) did not propose to amend these sections. The Sirovich bill (H.R. 12425, 72d Cong., 1st Sess., § 31 (1932)) proposed only to remove the statutory price for the current catalogs. The other bills discussed are Dallinger bill (H.R. 9137, 68th Cong., 1st Sess., §§ 59, 60 (1924)); Perkins bill (H.R. 11258, 68th Cong., 2d Sess., § 55 (1925)); Vestal bill (H.R. 12549, 71st Cong., 2d Sess., § 46 (1930)); Thomas bill (S. 3043, 76th Cong., 3d Sess., § 38 (1940)).

Four bills (Dallinger, Vestal, Sirovich, and Thomas) stipulated that registration should be indexed under both author and title. Fuller indexing of the records had been recommended in 1905³⁸ but Mr. Solberg did not feel the recommendations were justified in view of the expense involved. This may have been an attempt to obtain more useful records.

The provision for the destruction of the card entries was dropped from the Dallinger, Perkins, Vestal, and Thomas bills.³⁹ The provision that the Catalog is to be admissible as prima facie evidence was eliminated from the Vestal and Thomas bills; the reason is not known.

The provision for cumulated catalogs was limited in the Thomas bill to annual catalogs only, the current issues to be on a monthly basis.

Only the Perkins bill, drafted by Mr. Solberg, and the Vestal bill (which was a revision of the Perkins bill) recognized the stated position of the Treasury Department by eliminating distribution of the Catalog to customs officers and postmasters.

The statutory pricing of the current catalogs was retained only in the Thomas bill.

In effect, these revision bills seemed to assume the desirability and need for a published catalog and proposed changes only in such details as had been brought to the attention of the drafters.

III. RELATIONSHIP OF THE "CATALOG OF COPYRIGHT ENTRIES" TO OTHER COPYRIGHT RECORDS

The copyright record is based on those materials that are required by the statute to be submitted to the Copyright Office for registration or recordation, after they have been examined for formal sufficiency and statutory eligibility. For original registrations, these materials consist of an application and one or two copies, depending on the class, of the best edition of the work; for renewal registrations only an application is required, although it must provide information which makes it possible to identify the work and its original registration. The materials also include documents pertaining to registered works (including documents evidencing transfers of ownership, licenses, and other transactions) which have been submitted for recordation. Where the Copyright Office supplies application forms (as in the case of original and renewal registrations and notices of use of music in a mechanical recording), these applications are retained as a permanent part of the copyright record. Documents evidencing transfers of ownership, licenses, etc., and those giving notice of intention to use a musical composition in a mechanical recording are copied and made part of the copyright record.

Using these deposited materials as sources, the Copyright Office prepares a catalog entry on cards which gives a concise statement of the essential facts needed (1) to identify the work registered, renewed, or involved in a transfer or other transaction, (2) to specify the limitation of the claim if it involves less than the whole work, (3) to relate derivative works to original works, (4) to specify facts of authorship, ownership, and registration, and (5) to provide index headings taken from the work or application likely to be used by the public in making searches in the record. Because many of the deposited works are not retained

³⁸ See pt. II(D), *supra*.
³⁹ See note 26. *supra*.

permanently either in the Copyright Office or in the Library of Congress,⁴⁰ and because the applications submitted by claimants very commonly fail to include information which clearly or accurately identifies the work deposited, these card entries provide an essential identifying function.

The type and extent of records of copyright properties kept by the Office since 1891 has varied with the concept of the recording function embodied in the law or as administratively interpreted and, to a certain extent, with the mechanics of making the records. A record by registration number, which insures a complete record, has always been maintained. Certain, but not all, subsequent actions affecting the original registration—such as receipt of copies prior to 1909, renewals, and cancellations—are noted against the original entry. Unless the registration number is known, however, this record cannot be used effectively. Since 1897 the catalog cards prepared by the Office to aid in locating the registration number have generally included the facts of registration normally sought in a copyright search, and it is necessary to refer to the numerical file only for certain kinds of information less frequently needed.

Until 1941 the record by registration number was entered in ledgers, then regarded as the "record books" mentioned in section 208 of the law. The copyright applications were designed so that they could be filed to form a proprietor card index to the ledgers and were so used from 1909 until 1938. In addition, a card entry was prepared for each registration under the index approach considered most appropriate for the class of work; e.g., for books under author, for music under title, etc. Since these cards were handwritten for many years, the number of index approaches provided was limited. These are the "manuscript catalog cards" which may be destroyed under section 210 following publication of cumulated catalogs. The information given on these cards included most of that recorded in the record books except for the data on compliance with the manufacturing clause and addresses. These cards were first used as printer's copy for the current "Catalog of Copyright Entries" and then were filed into the permanent card files of the Office. In the printed Catalog cross references under proprietor at least were provided, with current and annual indexes for each part.

For the period 1941-46, the numerical file of copyright registrations consists of bound carbon copies of the certificates issued to copyright owners. The copyright applications are filed by number also from 1938 to 1946. A new method of preparing entries for the card files of the Office made it economically possible to provide several approaches for each type of material. The entries for the printed Catalogs were separately prepared in different form.

From 1946 to the present, the copyright applications have been bound to form the numerical file of registrations; the certificates sent to proprietors are essentially duplicates of them. The catalog entry now prepared for each work registered is reproduced in quantity, so that all cards for the card catalog of the Office, for the Cooperative Card Service, for compiling the printed Catalog, and for other uses include the same information.

⁴⁰ See Dunne, "Deposit of Copyrighted Works," p. 23 [Study No. 20 in the present Committee Print] for practice in regard to retention of deposited works.

The copies of assignments and other documents are bound in chronological order of receipt with card indexes provided for them. These records, however, have never been included in the printed Catalog.

In summary, the "Catalog of Copyright Entries" makes an official registration record available for consultation outside of the Copyright Office. It can be used, chiefly through its annual indexes, to ascertain the facts of original or renewal registration for any copyrighted work from 1897 to date, to determine whether a registered work is still within the term of copyright protection, and to identify the copyright owner at the time of registration. It cannot be used to trace subsequent transfers of title, which must be searched in the Office. It also identifies the particular work registered. Notices of use of musical compositions on mechanical instruments are not listed in the Catalog after 1927. Because the publication of cumulated catalogs was not fully carried out, the Catalog is essentially an annual publication by copyright class until 1946, and thereafter a semiannual publication. This makes it time-consuming to search for a work if the approximate registration or publication date and the class in which it was registered are not known. The annual indexes are especially useful to copyright owners in determining which works are entering the period in which renewal registration must be made.

In the Copyright Office the most efficient search tool is the card file because each period division of the files covers several years, and, since 1937, the cards for all classes are interfiled within these periods. Nevertheless, the printed Catalog is used by the Copyright Office staff as a tool supplementary to the card catalog, especially to check original registration data in the processing of renewals or for other reasons when the date of publication or registration is known, and to check for entries possibly misfiled or removed from the card files. Prior to 1937 some parts of the printed Catalog include index approaches not available in the card files. The cumulated printed catalogs for dramas and motion pictures have to be used for searches because, for the most part, the card files were used in making the cumulation and then destroyed, but it is easier to search these catalogs than to search the files where they still exist.

The public may consult the "Catalog of Copyright Entries" in depository libraries to which it is distributed by law throughout the country.⁴¹ The distribution to libraries as well as to subscribers acts as a measure of security for the copyright record against destruction of the original files in the Copyright Office by fire or other catastrophe.⁴² The printed Catalog is also insurance against the incidental damage caused to card files in constant use, by misfiling or removal of individual cards.

The "Catalog of Copyright Entries" may also be useful as a national bibliography of current U.S. literary and artistic production. Though necessarily incomplete, since many works are not registered for copyright, its coverage of current production is wider in scope than any other single bibliography being published in the United States. Public appreciation of the Catalog as a national bibliography has been greater in the areas in which no other comparable bibliography is being pub-

⁴¹ 44 U.S.C. 82-89.

⁴² The records of assignments and other recorded documents and the title card index to them are micro-filmed as a security measure.

lished, notably in music and motion pictures. The book field is covered by several publications better organized for general bibliographic purposes, though not usually limited to domestic works. The printed catalog issued by the Library of Congress, the "National Union Catalog," is one of these bibliographies and it also includes selected works in other fields than books. Nevertheless, the broad coverage of the intellectual works produced in the United States, achieved by virtue of the copyright-registration system, provides the Nation with a bibliographical record of unique scope, both in the record maintained within the Copyright Office and in the "Catalog of Copyright Entries."⁴³

IV. DISTRIBUTION AND USE OF THE CATALOG⁴⁴

A. IN GENERAL

The distribution of the various parts of the Catalog during the calendar year 1959 is shown in the following table:

Part	Continuing subscribers, as of Jan. 26, 1960	Other 1959 sales, current and prior yearly issues	Depository libraries ¹	U. S. Government ²	Total
Books.....	17	20	359	85	481
Periodicals.....	12	11	341	81	445
Dramas.....	16	28	324	65	433
Music.....	121	178	354	84	737
Maps.....	56	21	341	85	503
Art.....	18	22	315	68	423
Prints and labels.....	10	13	304	69	396
Motion pictures.....	84	99	325	90	598

¹ Of the quantities shown, 106 copies of each part were distributed by Smithsonian Exchange to those foreign national and other governmental libraries receiving full or partial sets of U. S. Government documents; the balance were distributed to U. S. depository libraries.

² Includes copies distributed within the Library of Congress, to certain Government agencies, and through the Library's Exchange and Gift Division.

Issues of the cumulated motion-picture catalogs were distributed, upon publication in 1951 and 1953, to 388 depository libraries and to a limited number of Government agencies; by the end of 1959 the following additional number of copies had been distributed by sale:

Catalog issue:	Sales
1894 to 1912.....	423
1912 to 1939.....	654
1940 to 1949.....	421

In recent years the Copyright Office has attempted, by interviews and questionnaires, to obtain some basis for an evaluation of the usefulness of the printed "Catalog of Copyright Entries" as a copyright record and as a national bibliography. The answers obtained are not always clear cut but do present a somewhat consistent pattern. In general, the results show intensive use of the Catalog as the copy-

⁴³ Robert B. Downs, director of the Graduate School of Library Science at the University of Illinois, writing in "Library Trends," April 1954, pp. 501, 502, describes the "Catalog of Copyright Entries," the H. W. Wilson Co's. "Cumulative Book Index," and the "Library of Congress Catalog" as "the principal tools we have available" for the purposes of national bibliography. The "Catalog of Copyright Entries" contains "a vast amount of material recorded in no other source, listing everything which passes through the Copyright Office, including books, pamphlets, periodicals, dramas, music, works of art, prints, and motion pictures." None of these bibliographies "could be spared without leaving a gap in the record of American publishing."

⁴⁴ In 1949 the Copyright Office undertook a survey of the use of the Catalog by customs officers and postmasters. With the approval of the Secretary of the Treasury and the Postmaster General, customs officials were asked to indicate whether they wished to continue receiving the Catalog. Distribution to these officers was placed on a basis of suspension in 1953 by the Superintendent of Documents, pending receipt of advice from them to resume the mailings. The Superintendent of Documents has not been asked by any of these officers to resume distribution.

right record by a few persons or firms and by some for bibliographic purposes, particularly in the fields of the nonbook materials. In the majority of cases use is only occasional or infrequent for either purpose.

B. USE IN DEPOSITORY LIBRARIES

By law, Government publications issued through the Superintendent of Documents are distributed free to a number of "depository" libraries throughout the country designated by Members of Congress.⁴⁵ These libraries are, for the most part, public, university, or college libraries, varying greatly in size and in the amount of service offered to the public, i.e., college and university libraries often serve only their faculty and students. Depository libraries may elect to receive the complete Catalog or only certain parts. It is in these libraries that the general public usually consults the Catalog. In 1953-54 visits were made to libraries in New York, Chicago, Los Angeles, and the New England area by Copyright Office staff members. Their findings, together with the results of a questionnaire sent in 1954 to depository libraries and subscribers receiving the "Drama Catalog" and "Map Catalog," are used as a basis for the following general comments.

As a general observation it seems that the use of the Catalog for copyright search depends to a large extent on the amount of publishing in the community and upon the amount of use of copyright material for performances of music, dramas, etc. Further, this use may be concentrated in one library in a community. The depository set in the New York Public Library Reference Department is used extensively for copyright searches, whereas those in the Brooklyn Public Library, Queens Borough Public Library, and at Columbia University (not open to the general public but with a faculty which includes many authors) are infrequently used. In New York, also, ASCAP and BMI are subscribers to the Cooperative Card Service of the Office, and some users of the music catalogs have said that they consult ASCAP for current copyright information, knowing that the copyright cards are there. The Chicago Public Library reported that their depository set is used several times daily for copyright searches by authors, composers, etc., and that they receive mail requests for copyright information from all sections of the country. The Los Angeles City Library reported frequent use by authors. Copyright use of the sets in the public libraries in Boston, Springfield, and Worcester, Mass., and in Hartford, Conn., was reported as only "occasional." The results of the questionnaires seemed to follow this pattern also. In college and university libraries not open to the general public more copyright use was made of the Catalog if there was an active drama, music, or broadcasting program conducted on campus. The "Drama Catalog" was used predominantly for copyright purposes; the "Map Catalog" for bibliographic purposes. In many libraries the use of the Catalog as a general bibliography and aid in library work predominates, and varies in relation to the availability of other bibliographies. It was fairly obvious that the amount of public use made of the Catalog in most libraries was directly influenced by the accessibility of the catalogs to the general public and the reference librarian's knowledge of the bibliography and his in-

⁴⁵ 44 U.S.C. 82-89.

itiative in promoting its use. Many librarians commented that, though only occasionally used, the Catalog was invaluable when needed. Most of the libraries said they would subscribe to the drama and map catalogs at a modest price if they were not available as a depository set.

C. USE BY SUBSCRIBERS

The comments below are based on questionnaires sent to subscribers to the book and music current catalogs, and the motion-picture cumulative catalog in January 1958, and to the subscribers to the current "Drama Catalog" and "Map Catalog" in 1954.

Subscribers to the "Music Catalog" are chiefly publishers, libraries, dealers, and foreign performing rights societies. About 60 percent of the respondents⁴⁶ used the catalog (both current and older issues) more than 10 times per month; 20 percent of these indicated daily use or said use was too frequent to compute. Seventy-two percent said they would be greatly inconvenienced if the Catalog was discontinued. The above figures were equally true for subscribers who were interested primarily in the works as copyright properties (publishers and protective societies) and those who were primarily interested in the works themselves (libraries and dealers). The purposes for using the Catalog, however, were quite different. Libraries and dealers use the Catalog primarily for identifying and acquiring works, and only occasionally for securing information for copyright purposes. The producers of copyright materials indicated use of the Catalog for almost all copyright purposes possible but also made use of the bibliographical information provided. Uses indicated were identification of a particular work, determining ownership of a work and the pertinent facts of registration, whether a work was still under protection, determining works which were in the renewal period, and any information which might be useful in commercial negotiations or in litigation. One of the foreign performing rights societies said it was used in determining to whom royalties should be paid.

Fifty percent of those interested in the "Music Catalog" primarily as a source of information about copyright properties indicated they also used the Copyright Office Reference Search Service.⁴⁷

The subscribers to the motion-picture cumulated catalogs are predominantly libraries and individuals interested in motion pictures as critics, scholars, etc., who use the catalogs as a bibliography. A few indicated use of the catalogs up to 20 times a month; most from 2 to 5 times a month. There is no other comparable printed source of information. Very few of the subscribers indicated use of the Reference Search Service. It should be noted that many persons interested in motion pictures as copyright properties apparently use the services of firms specializing in copyright search activities in this and related fields.

Subscribers to the "Drama Catalog" are principally publishers, broadcasters, and authors' societies who are interested in the works as copyright properties. They use the Catalogs intensively for copy-

⁴⁶ The questionnaires were sent to 25 percent of the subscribers at that time; 80 percent of the questionnaires were returned.

⁴⁷ Among these respondents were some of the most frequent users of the Service. Some of the respondents who said they did not use the Service are connected with firms who do.

right purposes and have no other comparable printed source of information.

Subscribers to the "Book Catalog" felt they could obtain the same information from other sources; they seldom consult it; nearly a third also use the Reference Search Service.

Map publishers and libraries are the principal subscribers to the "Map Catalog." Both groups use the Catalog predominantly as a bibliographical tool but its use is infrequent.

In summary, the "Catalog of Copyright Entries" is used fairly intensively as a source of copyright information by a relatively few persons or firms interested primarily in music and dramatic properties. Use of the printed Catalog is usually supplemented by use of the Copyright Office Reference Search Service. This suggests what has been stated by some subscribers, that the "Catalog of Copyright Entries" is used primarily for on-the-spot information and preliminary search; if a legal or commercial transaction is involved, an official search of the records in the Office is requested. For other classes of works, persons interested in securing copyright information apparently have searches made for them by the Copyright Office or by one of the commercial search agencies. It is estimated that 67 percent of the searches made by the Reference Search Service are made for authors, publishers, or their agents. The largest number of searches reported are for music registrations; the next largest number are for book registrations. Few book publishers subscribe to the printed Catalog; it may be that in the nature of their business it is more efficient to consult the records of the Office directly through the Reference Search Section or some other searching agency.

The "Catalog of Copyright Entries" is used to some extent as a national bibliography in all fields, but principally for motion pictures, music, and maps.

D. PRODUCTION COSTS AND SALES

The Catalog is published as a public service. Subscriptions have never contributed substantially toward defraying the cost of its production.⁴⁸ The free distribution to depository libraries removes a sizable segment of the potential market and at the same time requires the printing of a larger number of copies. The statutory prices for current issues have always been quite nominal,⁴⁹ and can scarcely have been expected to meet expenses. From 1949 to 1951 the Copyright Office actively publicized the Catalog, especially the music, motion picture, and map parts, to encourage sales among libraries and those interested in copyright properties. The number of subscriptions rose substantially but the increase was not considered sufficient to justify continuation of the publicity program.⁵⁰ Since that time the number of subscriptions has decreased steadily.

For calendar year 1959 receipts from sales of the various parts of the Catalog totaled \$4,033, of which \$390 was for the sale of cumulated catalogs.

⁴⁸ The sale of the cumulated motion-picture catalogs has been the most successful financially, returning more than 90 percent of the printing and binding costs.

⁴⁹ Under the present statute, 17 U.S.C. 211, the Register fixes the prices but the statute specifies that the price for the complete yearly catalog shall not exceed \$25.

⁵⁰ Peak subscriptions for current issues of the Catalog in 1951-52 were: music, 497; motion pictures, 640; maps, 270.

Table of production costs: "Catalog of Copyright Entries, 1958"

Printing and binding.....	\$29,000.00 ¹
Editorial costs (estimated).....	80,000.00 ²
Total.....	109,000.00
Cost per registration (239,000 registrations).....	.46

¹ This, in round numbers, was the total charge of the Government Printing Office for the 1958 issues; there were 16 issues in all, ranging in size from 52 to 1,154 pages and totaling 5,888 pages for the year.

² This estimated figure includes only the salaries of staff members whose principal duties are connected with the compilation of the Catalog.

V. PUBLICATION OF COPYRIGHT RECORDS IN OTHER COUNTRIES

Countries which have registration systems, either compulsory or voluntary, provide for public access to the records of the registry office and usually for some form of publication of the works registered. Generally, publication is intended only to be a record of copyrighted works; in most countries a national bibliography based on the legal deposit is separately published, often with financial assistance from the publishing industry.

Where the Government publishes an official gazette, the copyright law or regulations may specify that the register of works appear therein. Spain, Portugal, Argentina, Brazil, and some other Latin American countries follow this practice.⁵¹ The record published in the "Boletín Oficial de la República Argentina," is a listing by registration number with no divisions by class of work. This listing can only serve as public notice of the registrations made; to conduct a search in it would be time-consuming and almost impossible.

The Italian Copyright Office has issued since 1945 the monthly "Bollettino dell'Ufficio della Proprieta Letteraria, Artistica e Scientifica" (subscription price 2,050 lira) which reproduces the entries in brief tabular form corresponding to the entries in the official register.⁵² Works are listed alphabetically by author under class of work, and the register is divided into sections which correspond to the main divisions of the copyright law. An annual author index is provided. The Bollettino, in addition, reports decisions on copyright cases, prints official notices, foreign copyright laws, registration statistics, etc. Prior to 1945 the copyright registrations were included with patents and trade-marks in the "Bollettino della Proprieta Intellettuale." These catalogs can be effectively searched on an annual as well as a monthly basis.

The Canadian record of copyright registrations and assignments has been included since 1892 in the weekly "Canadian Patent Office Record and Register of Copyrights" (price \$40 per year). Listing is by registration number; there are no class divisions. This is primarily a patent register. Since no index is provided for copyright registrations it is not efficient for copyright searching. A large proportion of the published works registered are of U.S. origin.

The Australian Copyright Office issues annually "Names of Applicants for Registration of Literary, Musical, Dramatic and Artistic Works" (price 5s.). The listing is alphabetical by name of depositor; a list by number indicates the registrations completed. This list has

⁵¹ See the relevant regulations on copyright registration for each country included in *Copyright Laws and Treaties of the World*, UNESCO (1958 to date). The copyright law of Argentina (art. 59) requires the publication in the *Boletín Oficial*. Spain formerly issued a *Boletín de la Propiedad Intelectual*, covering the years 1847-1938, 1949-51.

⁵² This publication is required by Italian Copyright Regulations (Art. 42) (Decree No. 1369, May 18, 1942).

been issued since 1907; prior to 1953 the title of the catalog was "Name and Subject-Matter Index of Applications for Registration," and a title index was included.

It would seem that in most countries any effective search of copyright properties must be conducted in the registry office itself, whether registration is compulsory for the securing of a copyright or is voluntary.

VI. ANALYSIS OF ISSUES

A. NEED FOR THE CATALOG

The "Catalog of Copyright Entries" was brought into being by the act of 1891 as a tool for the use of customs officers in policing the importation provisions of the act. For this function the Catalog has not been effective. As early as 1904 the Secretary of the Treasury reported to Congress that the Catalog was not used by the customs officials for the purpose intended, partly because of its organization, but also because the volume of imported works made it impossible for officials to search to determine the copyright status in the United States of all works imported. Customs officials rely on the presence of the copyright notice in the work and on notification filed by copyright proprietors to alert them to any violations of the import restrictions. In spite of this situation, distribution of the Catalog to customs officials and postmasters receiving foreign imports was specifically included in the 1909 law because no better means of supplying copyright information to them was available. Distribution to them finally ceased in 1953 by administrative act of the Register of Copyrights, with the approval of the Secretary of the Treasury and the Postmaster General, after a survey showed that the Catalog was not being used for this purpose.

There remain to be considered the other functions which the Catalog has also attempted to serve. Does the Catalog fulfill a basic copyright function in the Office or for the public which justifies its publication in some form, either in current issues or cumulated catalogs? Since the establishment of the Copyright Office in 1897 the Catalog has been organized to serve as part of the public information service on the official U.S. record of copyright registration. The legal requirement that copyrighted works be deposited for registration implies that the records of registration and of subsequent transactions will be of use and value to the registrants and to any of the general public who may be interested in copyright properties. The Copyright Office, recognizing the desirability of having such information available outside of the Copyright Office itself (especially in early years when physical conditions within the Copyright Office made searching by the public inconvenient for both staff and public), provided in the Catalog a record of completed registrations which could be consulted without recourse to the Office files. The fact that this record was widely distributed throughout the country in depository libraries provided a safeguard against destruction of the original records and, at the same time, made the record available to a limited number of investigators, principally in large metropolitan centers, who found it useful for their purposes.

The usefulness of the Catalog for such consultation has varied, at different times, according to the amount of information supplied, the

index approaches provided, the currency and frequency of publication, and other factors. Currently, the entries are duplicates of the cards in the "Copyright Office Card Catalog" and the same index approaches are provided. The publication of cumulated catalogs, provided by law, has been carried out only for dramas, 1870-1916, and for motion pictures for 1894-1949 due largely to lack of public interest in other cumulations. By means of annual indexes it is possible to conduct searches in the catalogs prior to 1946 on an annual basis; since 1946 on a semiannual basis. If a search of assignments and other documents recorded is desired, however, it is necessary to consult these records in the Copyright Office itself or through the medium of its reference search staff.

The Copyright Office performs searches of the official records and provides copies of the records on request for a nominal statutory fee.⁵³ The Office also offers through its cooperative card program to supply duplicates of the card entries prepared for the official files at a price based on direct cost plus 10 percent. By law, the official records of the Office may be consulted by the public in person without payment of a fee.

Currently, then, the Copyright Office provides public access to the records of registrations and recorded documents, without cost of those who can consult them in the Office in person; or upon payment of a fee, the Office will make searches of the records and will supply copies of record entries. The records of works registered and renewed are also made available through the distribution of the "Catalog of Copyright Entries" by sale and to depository libraries. For the very few who need to consult the current registrations constantly, the Cooperative Card Service provides a superior service though at substantial cost.

Along with the development of the search service within the Office since 1946, the "Catalog of Copyright Entries" was improved to make it more efficient for both copyright and general bibliographical purposes. Surveys of the use of the various parts of the Catalog in depository libraries and by subscribers indicate that a few people use it intensively for copyright searches but often only as a preliminary search tool; where thorough searches are important, an official search of the record is usually requested from the Copyright Office. Some parts of the Catalog are used more than others, partly because the amount of commercial trading in copyright properties differs materially from class to class, partly because the users in some fields are accustomed to bibliographical search techniques where those in other fields are not, and partly because, for some classes of works, there are no other comparable bibliographies. The music, motion picture, and map parts of the Catalog seem to be those most frequently consulted, the "Map Catalog" principally for bibliographical purposes. The "Drama Catalog" appears to be used intensively for copyright purposes but by a limited number of users. Those parts of the Catalog devoted to books and pamphlets, periodicals, works in the art classes, and commercial prints and labels are little used for either copyright or general search purposes; persons interested in the copyright status of these properties usually consult the records in the Copyright Office or have searches made by the Office. The motion-picture interests

⁵³ Searches are occasionally refused when the search is of extreme length and the client will not accept copies of the card entries on microfilm in lieu of the integrated search report usually prepared.

also utilize the Office files through the search services of either a private search agency or the Copyright Office.

B. ALTERNATIVES TO THE PRESENT CATALOG

The cost of preparing and publishing the "Catalog of Copyright Entries" is considerable. Granting that the objectives of its publication are valid, the question is suggested whether they might be met by other means which would provide service to those who need it at a lower overall cost. At the time publication of the Catalog began, printing was the only efficient method of reproduction of the record, as it still is if an edition of more than a few copies is needed. To serve as security for the record and to make the record available outside of the Office, the Catalog had to include the complete record of registrations; once set in type, the cost of added copies was relatively small. Today it would be possible to make the record secure by reproducing the whole registration record in microform. It would then be possible to make a very few copies of the microform record available to the public in regional depositories in the centers where the Catalog is frequently used. Copies of the microform record in the various classes could also be available for purchase, although the price might possibly be greater than that of the present printed parts and such copies could be used only with special equipment. Printed catalogs might still be issued for the classes in which a continuing and substantial need is evident.

The Cooperative Card Program might be offered as a substitute for the printed catalogs. Aside from subscription cost, even if reduced, this service is expensive because it requires the subscriber to maintain extensive files. At present the subscribers to this service are performing rights societies and private search agencies who already maintain extensive files to which these cards are added, who use the cards intensively, and who have need of prompt information. It is unlikely that depository libraries would be willing to maintain such files for all copyright registrations as a public service, regardless of subscription costs, because of the labor costs of filing the cards and the space required for the files.

If it is considered that the Catalog fails to satisfy the objectives for which it is now published, or that the limited use of the Catalog does not justify its continued publication, searches can be made, and will have to be made, in the Copyright Office files in person or by use of the Office search service or a private search agency.

C. INCIDENTAL USES OF THE CATALOG

The statute (17 U.S.C. 210) provides that the "Catalog of Copyright Entries" shall be admissible in any court as prima facie evidence of the facts stated therein as regards any copyright registration. This supplements the provision in 17 U.S.C. 209 that the certificate of registration (issued for each individual registration) shall be admitted in any court as prima facie evidence of the facts stated therein. The intent of the provision giving probative effect to the Catalog was said to be to make it convenient to supply prima facie proof in cases where many works were involved. Registration certificates have frequently

been used as prima facie evidence, but the use of the Catalog for this purpose has been rare.

The statute (17 U.S.C. 214) also provides that the Catalog is to be used to notify copyright owners of the anticipated destruction of copyright deposits unless the copyright owner reclaims them. Almost no deposits have been reclaimed in response to such notices for many years.

VII. SUMMARY OF ISSUES

The questions posed below, concerning the "Catalog of Copyright Entries" or possible substitutes therefor assume that a new copyright law, will provide for some kind of copyright-registration system. Any such system will require that registration records be maintained and made available to the public.

It seems clear that the Catalog is not needed for some of the purposes contemplated in the present law: to police illegal imports, to provide prima facie evidence of the facts shown in registration records, and to give notice of the intended destruction of deposits.

The Catalog serves to assure the safety of the registration records against destruction, but this could be accomplished by other means at much less cost, such as by reproducing the records in microform.

The following questions pertain to the need for the present printed Catalog or some substitute in order to make the registration records conveniently available to the public, as a source of copyright information or as a national bibliography:

1. Should the registration records be reproduced and made available outside of the Copyright Office? If so—
2. Would any combination of the following be an adequate substitute for the printed Catalog for some or all classes of works:
 - (a) Microform copies of the registration records, available for purchase;
 - (b) Duplicate sets of the Copyright Office card entries, available for purchase;
 - (c) Placement of microform copies in several regional centers;
 - (d) Record searches by the Copyright Office?
3. Should the printed Catalog be continued for some kinds of works (e.g., published music, unpublished music, motion pictures), with substitutes being provided for other kinds?
4. Should the statute require that the registration records for all or certain classes of works be published, and should it specify the form, frequency, and price of the publication; or should such publication be authorized, with the form, frequency, and price left to the Register's discretion?

COMMENTS AND VIEWS SUBMITTED TO THE
COPYRIGHT OFFICE
ON
THE CATALOG OF COPYRIGHT ENTRIES

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COMMENTS AND VIEWS SUBMITTED TO THE COPYRIGHT OFFICE ON THE CATALOG OF COPYRIGHT ENTRIES

John Schulman

MAY 20, 1960.

I have read with great interest the study made by Mrs. Dunne and Mr. Rogers concerning "The Catalog of Copyright Entries."

It is my opinion that the printed catalog should be continued, since the proposed substitutes would not be adequate.

The American Guild of Authors and Composers advises me that the catalog has been most useful, not only for music but also in connection with dramatic works and motion pictures. The usefulness of any system of registration, whether voluntary or otherwise, would be of small value without rapid, convenient, and inexpensive access to the registration data.

JOHN SCHULMAN.

Samuel Tannenbaum

MAY 31, 1960.

Mrs. Dunne and Mr. Rogers are to be complimented on the comprehensive study "The Catalog of Copyright Entries," undertaken under your efficient supervision.

My observations herein are based on many years of personal experience and that of my late partner Ligon Johnson, as one of the oldest continuous subscribers and daily users of the catalog.

The purpose and function of copyrights were aptly expressed in The Congressional Report No. 2222 of the 60th Congress (Feb. 22, 1909), accompanying the 1909 Copyright Act:

It is "not primarily for the benefit of the author, but primarily for the benefit of the public. * * *"

The late Thorvald Solberg, the first Register of Copyrights, an eminent bibliographer and a staunch champion of the continued and uninterrupted issuance of the Catalog, is quoted on page 58 of The Study thus: "the Catalog is the most available index to copyright business, used constantly in the Copyright Office itself and making the record available to the public without recourse to the Office * * * it is the official contemporaneous record of the country's intellectual production. * * *"

The study also states that the present Copyright Office finds the Catalog to be "a tool supplementary to the card catalog, especially to check original registration data in the processing of renewals or for other reasons when the date of publication or registration is known, and to check for entries possibly misfiled or removed from the card files" (p. 63). By thus insuring the accuracy of the public record, the catalog is invaluable.

Significantly, the Copyright Revision bills of 1924-40 provided for the continued publication of the Catalog with slight changes in former sections 56 and 57 (now secs. 210 and 211).

The Study demonstrates the indispensibility of the continued publication of the catalog not only to the Copyright Office but especially to the public. Practically the only argument advanced against its continued issuance is the cost of production as compared with the small amount realized from subscriptions.

The public benefit demonstrated over the past 50 years and prior thereto should be paramount. The small monetary return from subscriptions of the entire catalog or various parts thereof should not interfere with its continued publication.

The last issued Register's Report for the fiscal year ending June 30, 1959, states on page 2 that the "earned fees collected totaled 3.6 percent more or \$979,941" than in the previous fiscal year.

According to that report on page 16, the balance on hand July 1, 1958, was \$222,032.07 plus gross receipts from July 1, 1958, to June 30, 1959, of \$1,030,099.70, totaling \$1,252,131.77.

The efficient administration of The Copyright Office under the able stewardship of Hon. Arthur Fisher is reflected in the following comparative figures:

	1958	1959	Increase
Balance on hand.....	\$208,574.13	\$222,032.07	\$13,457.94
Gross receipts.....	992,865.59	1,030,099.70	37,234.11
Total to be accounted for.....	1,201,439.72	1,252,131.77	50,692.05

It is evident that the cost of the catalog is but a small segment of the Copyright Office business.

The fine public service rendered by The Copyright Office by the issuance of the catalog should not be interrupted, even though the revenue received from subscriptions falls short of the cost of production.

As neither the 1959 report nor any prior annual report of the Register contain a breakdown of cost of production or the net annual income, or deficit, if any, we are not in a position to determine what effect the deficit resulting from the catalog operation has on the net income derived from the overall operations of the Office.

The observations of Virginia C. Gildersleeve, Dean of Barnard College for 36 years before her retirement in 1947, in an article "The Lost Half Century," published in the SATURDAY REVIEW, May 14, 1960, on pages 45-46, are quite apt:

"I notice in the laments of librarians great alarm at the 'prohibitive cost' of some suggested expedients.

"They seem to feel presumably from 'bitter experience, that the richest country in the world will not be willing to spend enough money to embody its great books in a form destined to last.'"

Although Dean Gildersleeve was discussing the various means of preserving many of the valuable books of the past, her statement is quite appropriate in refutation of the arguments advanced that the Catalog should be dispensed with because the total cost in 1958 of publishing the Catalog was \$109,000 while the receipts from "Sales of the various parts of the Catalog totaled \$4,033" (p. 67).

Should public libraries, museums, and many of the public institutions be abandoned because income fails to pay for their operation?

The Copyright Office is not a private institution. It was conceived and established as a public service in language frequently quoted in The Study. The Catalog is a tool which implements copyrights granted by Congress which was established "for the benefit of the great body of people" (Rep. No. 2222, 60th Cong., 2d Sess., Feb. 22, 1909).

With respect to the queries stated on page 72 of The Study:

1. I do not believe that the registration records should be reproduced and made available outside of the Copyright Office, to the exclusion of the Catalog.

The Catalog is a convenient and readily accessible tool to the general public, for obtaining copyright registrations, checking renewals and obtaining other indispensable official data. Such service now rendered to subscribers supplementing the Catalog should continue to be made available for purchase.

2. The issuance of microform copies of registration records available for purchase would impose a burden on the public.

The requisite paraphernalia would be too costly to the average user. It would also be inconvenient, cumbersome, and impracticable.

Furthermore, to be of value, microfilm would require a complex and comprehensive index; without which the catalog would be practically useless.

In the aforementioned article by former Dean Gildersleeve, she discusses the possible use of microfilm and states on page 13: "and though microfilm will obviously be of great value in preserving records, its use presents grave administrative and practical difficulties."

DUPLICATE SETS OF COPYRIGHT OFFICE CARDS, ENTRIES, AVAILABLE FOR PURCHASE

According to the Register's 1959 report, page 14, there were 241,735 registrations of all classes in that year. Books comprised 59,009 registrations; periodicals, 62,246; musical compositions, 70,707; and renewals of all classes, 21,533.

It is obvious that the public generally could hardly afford the expense of subscribing to the card service. Only the few specializing in rendering such professional service have been compelled to bear the expense in order to supplement the Catalog due to its tardy publication of over a year.

Then too, the accumulation of the great volume of cards presents a serious space problem. The average drawer containing 3 x 5 cards holds 1,000 cards. It is obvious what increasing space would be required under prevailing and constantly increasing rentals.

PLACEMENT OF MICROFILM COPIES IN GENERAL REGIONAL CENTERS

This is both impractical and exceedingly inconvenient. Registration and renewal data to be useful must be handy and readily accessible.

How much more useful is a bound catalog within easy reach than records at points distant from the user?

RECORD SEARCHES BY THE COPYRIGHT OFFICE

The present system of record searches by The Copyright Office should be continued as a supplement to, but by no means in lieu of the Catalog.

The elimination of the catalog would impose a great burden on the Copyright Office. The tremendous flood of inquiries would not only delay the service to the public, but would necessarily increase the personnel of the Office.

As to Item 4 on page 72 of The Study: Assuming a system of registration is continued, the statute should prescribe the classes of works, form and frequency of publication of the Catalog. The price should be left to the Register's discretion, except that a price limit should be set. The present price is admittedly low and a reasonable increase would be justified.

The importance of issuing the Catalog more expeditiously cannot be over-emphasized. Delayed publication seriously affects its usefulness and dependability.

CONCLUSION

In conclusion, in my opinion, based on many years of the use of the Catalog, the Catalog should not be discontinued for the following reasons:

1. It is a convenient, accessible, and important (in many cases daily) tool. With the tremendous increase in the Arts and Sciences and culture generally, and the economic exploitation thereof, its elimination would result in a serious disservice to the public, violative of the purpose for which it was established for over 50 years of its existence.

2. Its abandonment would immeasurably increase visits and communications to the Copyright Office, imposing a serious burden on the staff, increasing operational costs, and preventing expeditious service to the public.

3. If adequately publicized, in my opinion, the number of subscribers would increase not only for the entire Catalog but also the separate parts.

4. It is an indispensable source of evidence in litigation, without which litigants would be prejudiced and trials would be delayed.

5. In view of the pending proposed Program of Revision of the Copyright Act, especially with respect to notice of copyright, registration, term of copyright and other items, the final decision with respect to the Catalog must await the conclusion of the revision program.

SAMUEL TANNENBAUM.

Foster Palmer (Harvard University Library)

MAY 19, 1960.

1. It is perhaps superfluous to point out that the argument made in the 1830's (pp. 55-56) to the effect that a published record of copyrights is as important as a published record of patents is not valid. Every invention for which a patent is sought must be compared with other inventions; no such comparison is necessary or, in effect, possible in the case of copyright.

2. The "*Catalog of Copyright Entries*" is used in this library principally in two connections. Literary historians sometimes find the exact date of copyright of interest in tracing the history of a particular publication. Persons wishing to reprint material wish to know whether it is in the public domain; the principal use of the "*Catalog of Copyright Entries*" here is to determine whether a copyright was renewed. These are the two uses of the section on books which have

come to my attention. No doubt the sections on moving pictures, maps, etc., are of much more common use to those concerned with these forms, as indicated in the paper.

3. Another type of information which is sought, but which is not provided by the *Catalog*, is the present holder of a copyright which has been assigned. It is very vexatious for an author to have his publisher insist on a release for certain material which is still in copyright, but whose owner cannot be traced.

4. I have only one major reason for hesitating to agree that publication of at least the book section of the *Catalog* could be dropped, and replaced by a search service charging nominal fees. However efficiently run and adequately staffed the Copyright Office may be at the present time, we must face the possibility that it may not always be so and that extreme delays in the searching service might develop. Were it not for this hazard, I would be quite ready to agree with the last suggestion on page 72, that publication be authorized with the form, frequency, and price left to the Register's discretion.

FOSTER PALMER.

Robert L. Talmadge (The University of Kansas Libraries)

MAY 23, 1960.

I am grateful for the opportunity granted me to read and comment upon the excellent statement on "The Catalog of Copyright Entries," by Elizabeth K. Dunne and Joseph W. Rogers.

Allow me to present my views within the framework of the questions presented in section VII of the Dunne-Rogers study:

1. It seems to me indispensable that registration records be reproduced and made available outside of the Copyright Office, in part for the sake of accessibility but more especially from the standpoint of safety. However—

2. It appears that the amount of use made of some sections of the printed *Catalog* does not justify the very considerable cost involved in their publication. (This is borne out by the very limited use several sections of the *Catalog* have received in research libraries with which I have been associated.) A large part of this expense could be avoided by printing only those sections which are heavily used. As for alternative methods of reproduction, it seems to me that all three of the modes of access listed under question 2 would need to be provided: microform (both for placement in regional centers, and for purchase); duplicate sets of card entries for the sake of those already maintaining such files; and, of course, the ability to have record searches made by the Copyright Office.

3. The following sections of the *Catalog* should continue to be printed as at present: published and unpublished music, dramas, maps, and motion pictures.

4. In my opinion, decisions regarding publication should be left to the Register's discretion. The public interest may well change from time to time, and it is desirable that the law provide for flexibility to permit prompt adjustment to altered circumstances as they occur.

ROBERT L. TALMADGE.

Frederick H. Wagman (University of Michigan Library)

MAY 23, 1960.

In reply to your letter of May 6 I am pleased to tell you that I have read Mrs. Dunne's and Mr. Rogers' paper on "The Catalog of Copyright Entries" with great interest.

It would seem to me that without belaboring the point, they make a very strong case for the practical inutility of most of the catalog and, unless you have reason to find your analysis of the use of the catalog suspect, it would seem to me that the new statute should require only that the registration records for all or certain classes of works be authorized with the form, frequency and price left to the Register's discretion. Whether or not the printed catalog should be continued for some kinds of works, e.g., published music, unpublished music, motion pictures, etc., I would base entirely upon the demonstrated need as observed by or reported to you. I don't think that the statute should compel such publication however, if at any time you find it to be impractical relative to the cost.

The only other consideration that enters my mind is the value of this record as a substitute for a more formal national bibliography. As far as I can make

out such value if any would be appreciated only in foreign countries and I very much doubt that the copyright catalog as a whole is used for acquisitions checking, let us say, by foreign libraries, since we have alternatives available that are probably more useful from the libraries' point of view.

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FREDERICK H. WAGMAN.

Ralph E. Ellsworth (University of Colorado Libraries)

MAY 27, 1960.

Attached are the comments of Miss Ellen Jackson, our Documents Librarian. I think her remarks make sense. We agree that the catalog isn't essential for books but that for other types of material it does serve a useful purpose and should be continued.

RALPH E. ELLSWORTH.

Ellen Jackson

Our holdings of the publication extend from 1906 to the present and occupy 56 feet of shelf space. All issues are unbound, a fact which has probably contributed to discouraging possible users.

For the use of the section on books and periodicals, we occasionally have an enthusiastic bibliophile who, having heard of this wonderful collection, arrives eagerly prepared to have all his questions answered immediately. When faced with the expanse of separate indexes, his enthusiasm almost invariably dims and, after a short time of desultory poking about, he goes off to use the "National Union Catalog" or the CBI. The prospect of searching between fifty and one hundred separate indexes unless copyright date of the title sought is known discourages use, as Mrs. Dunne points out.

It is true, as she also says, that the lists of motion pictures, music, and maps are used more than the other lists. The University Film Committee (in the person of Jim Sandoe) used the cumulated volume of motion-pictures entries. Mr. Clendenin puts high value on the music section. In a telephone conversation May 24, 1960, he said that it is of great importance both as a bibliographical record and as a source of information on copyright status for the guidance of performers. The map section has not been used a great deal. The Geology Department some years ago ordered one issue of it, apparently under the impression that it was a separate work (not one issue of a serial), but has not shown any further interest that I know of. The map section should be used more if we are able to develop our map collection as we now hope to do. It has an area list that should be very useful as an acquisition guide.

Mr. Sandoe feels very strongly that the section "*Dramas and Works Prepared for Oral Delivery*" should also be continued. Much of the material listed is ephemeral (e.g., radio and television scripts), and no other listing of this kind is made. Mr. Sandoe observed that the fact that little use of the lists is made now should not be the deciding factor. Research in this field is only beginning, and it is better to maintain the lists currently than to discover 10 years hence that they would be of very great use if they had been maintained.

On the basis of present use, and of potential research value, I feel that the sections on drama, motion pictures, music, and maps and atlases should be continued in their present form. Microcopies of bibliographies are most difficult to use and would not be a satisfactory substitute. Regional depositories are a poor consolation to the scholar who needs to consult bibliographies repeatedly over an extended time.

Copyright status of books could be more easily determined through search service by the Copyright Office than through searching the printed indexes.

ELLEN JACKSON.

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