

COPYRIGHT LAW REVISION

STUDIES

PREPARED FOR THE

SUBCOMMITTEE ON
PATENTS, TRADEMARKS, AND COPYRIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

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STUDIES 1

1. The History of U.S.A. Copyright Law Revision
From 1901 to 1954



Printed for the use of the Committee on the Judiciary

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¹ The late Hon. William Langer, while a member of this committee, died on Nov. 8, 1959.

FOREWORD

This is the first of a series of committee prints to be published by the Committee on the Judiciary Subcommittee on Patents, Trademarks, and Copyrights presenting studies 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).

The present copyright law is essentially 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 the subject matter of copyright; new uses of such works and new industries for their dissemination have grown up; and the organization of the groups and industries that produce or utilize such works has 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 studies of the copyright law and practices. A number of these have been completed and others are in the process of preparation. Four of the completed studies (comprising this first committee print), are general surveys of a background nature. The other studies (to appear in succeeding committee prints) deal with substantive problems which appear to call for consideration in a general revision of the law; they are designed to review the problems objectively and to present the major issues to be resolved, as well as alternatives for their resolution, together with the views submitted to the Copyright Office by various persons on these issues.

The subcommittee believes that these studies will be a valuable contribution to a better understanding of copyright law and practice and will be extremely useful in considering the problems involved in proposals to revise the copyright law.

The present committee print contains four general studies of a background nature: (1) "The History of U.S.A. Copyright Law Revision From 1901 to 1954," by Abe A. Goldman, Chief of Research of the Copyright Office, with a supplementary note on "Revision of Patent and Trademarks Laws"; (2) "Size of the Copyright Industries," by William M. Blaisdell, economist of the Copyright Office; (3) "The Meaning of 'Writings' in the Copyright Clause of the Constitution," prepared by staff members of the New York University Law Review

under the guidance of Prof. Walter J. Derenberg of the New York University School of Law; and (4) "The Moral Right of the Author," by William Strauss, attorney-advisor of the Copyright Office.

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 solely 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 and not of the Copyright Office.

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THE HISTORY OF U.S.A. COPYRIGHT LAW REVISION
FROM 1901 TO 1954

BY ABE A. GOLDMAN

July 1955

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THE HISTORY OF U.S.A. COPYRIGHT LAW REVISION FROM 1901 TO 1954

The first copyright law of the United States was enacted by the First Congress in 1790. Comprehensive revisions were enacted, at intervals of about 40 years, in 1831, 1870, and 1909. The present copyright law, title 17 of the United States Code, is basically the act of 1909 with a number of subsequent amendments of individual provisions.

I. GENERAL REVISION OF 1909

The history of copyright law revision in modern times begins with the general revision accomplished in the act of 1909.

In his annual report for each of the years from 1901 through 1904, Thorvald Solberg, then Register of Copyrights, mentioned the need for a general revision of the copyright law, and suggested the appointment by Congress of a commission, representing the different interests concerned, to prepare a draft of a new integrated copyright law. The Senate Committee on Copyrights, however, was dubious of the efficacy of such a commission and suggested instead that the Librarian of Congress, Dr. Herbert Putnam, call into conference representatives of the various interests concerned with copyright and draft a bill for general revision.

In December 1905, the President transmitted a message to the Congress reading in part as follows:

Our copyright laws urgently need revision. They are imperfect in definition, confused and inconsistent in expression; they omit provision for many articles which, under modern reproductive processes, are entitled to protection; they impose hardships upon the copyright proprietor which are not essential to the fair protection of the public; they are difficult for the courts to interpret and impossible for the Copyright Office to administer with satisfaction to the public. Attempts to improve them by amendment have been frequent, no less than twelve acts for the purpose having been passed since the Revised Statutes. To perfect them by further amendment seems impracticable. A complete revision of them is essential. Such a revision, to meet modern conditions, has been found necessary in Germany, Austria, Sweden, and other foreign countries, and bills embodying it are pending in England and the Australian colonies. It has been urged here, and proposals for a commission to undertake it have, from time to time, been pressed upon Congress.

The inconveniences of the present conditions being so great an attempt to frame appropriate legislation has been made by the Copyright Office, which has called conferences of the various interests especially and practically concerned with the operation of the copyright laws. It has secured from them suggestions as to the changes necessary; it has added from its own experience and investigations, and it has drafted a bill which embodies such of these changes and additions as, after full discussion and expert criticism, appeared to be sound and safe. In form this bill would replace the existing insufficient and inconsistent laws by one general copyright statute. It will be presented to the Congress at the coming session. It deserves prompt consideration.

Pursuant to the suggestion of the Senate committee, the Librarian of Congress invited representatives of some 30 organizations to meet with him and the Register of Copyrights in a series of conferences

held in June and November of 1905 and March of 1906. The organization participating in the conferences represented authors, dramatists, theater managers, architects, artists, composers, book publishers, directory publishers, newspaper publishers, periodical publishers, photoengravers, photographers, print publishers, lithographers, music publishers, printers, educational institutions, public libraries, advertising agencies, bar associations, and a few other miscellaneous groups. (For a full list of the participants, see June 1906 hearings on H.R. 19853, 59th Cong., pp. 4 and 5.)

The Copyright Office, serving as a secretariat during, between, and after the conferences, assembled data, prepared memos on the major issues, consulted and carried on a great volume of correspondence with the participants, kept them advised of the various proposals, received their comments and suggestions, and coordinated their views. Following the conferences, the Register of Copyrights prepared a draft of a bill which was sent to all the participants for comment and suggestion. After further correspondence and discussion with the participants, the Register of Copyrights redrafted the bill.

The bill was introduced on May 31, 1906, as H.R. 19853 and S. 6330 in the 59th Congress. Hearings were held before a joint committee of members of the House and Senate Committees on Patents on June 6, 7, 8, and 9, and December 7, 8, 10, and 11, of 1906.

The history of these conferences and their results are summarized in the testimony of the Librarian of Congress at the opening of the hearings in June 1906:

[The message of the President] did not contain what was the fact as to the origin of this project, that it did originate in an informal suggestion on the part of the chairman of this committee.

The conferences to which it refers were not open, public meetings; they were not conventions; they were conferences, and conferences of organizations—that is to say, associations representing a group of interests; and those organizations were specially invited, additions being made to the list later as suggestions were made of others that should be added.

The organizations selected were the most representative organizations that we could think of or that were brought to our attention as having practical concern in the amelioration of the law, but especially, of course, those concerned in an affirmative way—that is to say, in the protection of the right. They were nearly thirty in number.

* * * * *

The conference held three meetings in June and November of last year and in March of this year, but, of course, as a conference it included various minor consultations and much correspondence. At the outset of the meeting last June each organization was invited to state the respects in which it deemed the present law defective, or injurious, either to its own interest, or, in its opinion, to the general interest. The second conference had before it a memorandum prepared by the register embodying provisions deemed by the office important for consideration at that stage. The third conference, in March of this year, had before it a revision of this memorandum. The last conference, this third, resulted in the draft of a bill, which was sent to each participant for comment and suggestion, and the bill itself is before you.

We would have no misunderstanding as to what this bill is. It is a bill resulting from the conference, but it is not a conference bill; for the conference did not draw it, nor did it by explicit vote or otherwise determine its precise provisions. It is rather a copyright office bill. The office submits it as embodying what, with the best counsel available including the conferences, it deems worthy of your consideration, in accordance with your previously expressed desire. In calling the conferences and in submitting the draft it has proceeded upon your suggestion. Apart from the chapter relating to its own administration, it has no direct interest in the bill, except its general interest to secure a

general amelioration of the law. It does not offer the bill to you as the unanimous decision of a council of experts, for it contains certain provisions as to which expert opinion as well as substantial interest was divided. It does not offer to you the bill as one that has passed the test of public discussion, for it has only now come before the public. It knows already of objection to certain of its provisions—objection which will be entitled to be heard by your committee; and it is informed by one critic that his objections are sufficient to cover fully one-half of the provisions of the bill.

[The bill] is not an attempt at abstract and theoretic perfection, nor is it an attempt to transplant to this country theoretic or what might be charged to be sentimental provisions of foreign law. It tries to be a bill possible for this country at this time and under conditions local here. It contains, therefore, some provisions which are, in our judgment, neither theoretically sound nor according to modern usage abroad nor satisfactory to particular participants in the conference. These are a compromise between principle and expediency or between one interest and another at the conference, between which we could not decide for either extreme—I mean decide in the sense of bringing before you a suggestion in this particular form. We had not any decision in any other sense; we were not a commission. The bill is a compromise. I doubt if there is a single participant in the conferences whom it satisfies in every particular.

* * * * *

Finally, Mr. Chairman, notwithstanding the labor put upon it, the bill is doubtless still imperfect in expressing its intentions; and I have no doubt that while it is under consideration those especially concerned will ask leave to submit to you some amendments of phraseology. I understand that any such amendments proposed by participants in the conferences will be communicated first to the copyright office, so that they may be formulated by the register for your convenient consideration; and the office will gladly do the same for any that may reach it from any other source.

Representatives of the great variety of interests concerned with copyright, as exemplified by the variety of organizations participating in the Librarian's conferences, testified at the 1906 hearings. Some were willing to accept the bill in toto as a reasonable compromise on the numerous controversial issues; but many of the witnesses raised objections to particular features of the bill, mostly on relatively minor points. Two issues were the subject of major controversy: the use of copyrighted music on mechanical instruments such as piano rolls and phonograph records, and the importation by public libraries of books printed abroad.

After the close of the hearings, the Register of Copyrights collaborated with the House and Senate committees in redrafting the bill to meet some of the objections presented at the hearings, and a revised bill was introduced on January 29, 1907, as H.R. 25133 and S. 8190. These bills were reported favorably by the committees on January 30, 1907 (H. Rept. No. 7083, S. Rept. No. 6187, 59th Cong.), with a minority report in each case opposing principally the provision to give the copyright owner of music the right to record his music for use on mechanical instruments. No further action on the bills was taken in the 59th Congress.

In the 60th Congress, the bills favorably reported in the 59th Congress were reintroduced in the House on December 2, 1907 (H.R. 243) and in the Senate on December 16, 1907 (S. 2499) by the committee chairmen, Representative Currier and Senator Smoot. Bills reflecting the minority report in the 59th Congress were also introduced (H.R. 11794 on January 6, 1908, by Representative Barchfield, and S. 2900 on December 18, 1907 by Senator Kittredge). Hearings on these bills were held by the two committees meeting jointly on March 26, 27, and 28 of 1908. Again a large number of witnesses were heard and expressed opposing views on a number of features in the several bills.

the most important controversy being that regarding the use of music on mechanical instruments. At the close of the hearings the chairman, Representative Currier, suggested that the differing groups on this last issue meet and attempt to work out a compromise proposal.

After the hearings, a series of eight revised bills were introduced in the House: two by Representative Washburn (H. R. 21592 on May 4, 1908, and H.R. 27310 on January 28, 1909), two by Representative Sulzer (H.R. 21984 on May 12, 1908, and H.R. 22071 on May 12, 1908), one by Representative Barchfield (H.R. 24782 on December 19, 1908), and two by Representative Currier (H.R. 22183 on May 12, 1908, and H.R. 28192 on February 15, 1909). These bills were all similar in most respects but each contained some features of its own. On February 22, 1908, the House committee reported favorably (H. Rept. No. 2222, 60th Cong.) Representative Currier's last bill, H.R. 28192; and on that same day Senator Smoot introduced a companion bill, S. 9440, which the Senate committee reported favorably on March 1, 1909 (S. Rept. No. 1108, 60th Cong.).

On March 2, 1909, the Committee of the Whole House agreed to certain amendments of the Currier bill, H.R. 28192, and the bill as so amended was passed by the House on March 3 and by the Senate on March 4, the last day of the 60th Congress. It was approved by the President on March 4 and became Public Law 349, the Copyright Act of 1909.

II. REVISION FOR ADHERENCE TO BERNE CONVENTION

Between 1909 and 1924 a number of bills to amend particular provisions of the copyright law were introduced and four amendments were enacted.¹ None of these bills involved any broad revision of the law.

After the First World War, the growing market for American works abroad emphasized the shortcomings in our international copyright relations and gave impetus to a broad movement to have the United States adhere to the International Copyright Convention, commonly known as the Berne Convention, to which most of the European countries and a number of important countries in other parts of the world were parties. Bills for this purpose were first introduced in the 67th Congress in 1922² at the behest of the Authors' League of America; and similar bills were introduced during 1923 in the 67th Congress,³ and in the 68th Congress.⁴ These bills purported to amend the copyright law to the minimum extent thought necessary to permit adherence to the Berne Convention. No action was taken on any of these bills.

DALLINGER, PERKINS, AND VESTAL BILLS

Adherence to the Berne Convention required many fundamental changes in the copyright law, and some of the interests concerned felt that the revision of the law for that purpose should be extended

¹ Act of Aug. 24, 1912, 37 Stat. 488, ch. 356; act of Mar. 2, 1913, 37 Stat. 724, ch. 97; act of Mar. 28, 1914, 38 Stat. 311, ch. 47; act of Dec. 18, 1919, 41 Stat. 369, ch. 11.

² H.R. 11476 by Representative Tincher and S. 4101 by Senator Lodge.

³ H.R. 13676 by Representative Davis, H.R. 14035 by Representative Tincher.

⁴ H.R. 573 by Representative Tincher, S. 74 by Senator Lodge, H.R. 2663 by Representative Bloom, and H.R. 2704 by Representative Lampert.

to cover also other issues that had arisen. With this broader purpose in view, attorneys for the motion picture industry in 1924 drafted a complete revision of the law, modeled after the British Copyright Act, designed to adopt the principles of the Berne Convention and to amend the law in other respects. Representative Dallinger introduced this draft on March 24, 1924, as H.R. 8177, and introduced a modified version on May 9, 1924, as H.R. 9137. Some consideration was given to H.R. 9137 in hearings devoted principally to other bills for special amendments of the copyright law. At the hearings, objections to portions of the Dallinger bill were voiced by the Register of Copyrights and by representatives of authors, composers, and book and music publishers. No further action was taken on the bill.

In the following year, 1925, another version of a general revision bill including the major changes necessary to bring our law into conformity with the Berne Convention was introduced by Representative Perkins. This bill, H.R. 11258, 68th Congress, was sponsored by the Authors' League of America and had been drafted by the Register of Copyrights, Thorvald Solberg, at the request of the Authors' League. Hearings were held at which the bill was favored by representatives of authors, composers, artists, music publishers, and libraries, and by the Register of Copyrights; and opposed as to various features by representatives of the printers, book publishers, motion picture producers and exhibitors, periodical publishers, phonograph manufacturers, piano roll and record manufacturers, radio broadcasters, and art dealers.

At the close of these hearings, a subcommittee was appointed to attempt, during the summer recess of Congress, to reconcile the divergent views. The subcommittee arranged for a meeting of representatives of the various interested groups, most of whom had testified at the hearings, and at this meeting the representatives of those groups organized themselves into an informal "Committee on Copyright Revision" which held a number of further meetings and reconciled some, but not all, of the conflicts. The work of this informal committee resulted in a new draft bill which was introduced in March 1926 by Representative Vestal, chairman of the House Committee on Patents in the 69th Congress, as H.R. 10434. Meanwhile the Perkins bill had been reintroduced in the 69th Congress as H.R. 5841.

At the hearings in April 1926, the Vestal bill was supported by representatives of authors, composers, artists, book publishers, book sellers, printers, and motion picture producers and distributors. Some features of the bill were opposed by art groups, libraries, scholars, motion picture exhibitors, phonograph and record manufacturers, theatrical producers, and other miscellaneous persons. Two groups—the radio broadcasters and some of the periodical publishers—were opposed to any legislation adopting the Berne Convention system of automatic copyright without formalities. The American Bar Association favored the Perkins bill. No further action was taken in the 69th Congress.

Representative Vestal reintroduced his bill in the 70th Congress, H.R. 8912, but there were no further proceedings in that Congress. He again introduced the bill in the 71st Congress as H.R. 6990, and hearings were held in April and May 1930, at which the more impor-

tant controversies manifested in the 1926 hearings were aired again and various proposals were presented for modification of the bill to resolve these controversies. After the hearings Representative Vestal introduced a revised bill, H.R. 12549, which was reported out by the House Committee on Patents (H. Rept. No. 1689, 71st Cong.)⁵ The report summarized the development of the bill as follows:

H.R. 6690, introduced in the House of Representatives during the first session of the Seventy-first Congress, is a general revision of the national copyright law. A similar bill was introduced in the year 1926 and has been before the Patents Committee ever since its introduction in that year; and there have been many hearings upon it before the committee, a large amount of testimony taken and a multitude of conferences between various interests held. The committee has successfully reconciled the differences. The context of the bill has been changed in various particulars from time to time to meet valid suggestions on the part of one interest or another and the present bill, H.R. 12549, combines the results of all hearings and all conferences.

It has been found that practically all the industries and all the authors have united in support of this revision. The authors, playwrights, screen writers, composers, and artists support it. The book publishers, the motion picture producers, the newspapers and magazines, the allied printing trades unions, the librarians, the majority of the theatrical managers, all of these have appeared at the hearings and have supported the principles of the bill.

This general revision of the copyright law provides for—

- (1) Automatic copyright by which the copyright is conferred upon the author upon creation of his work, a right so limited by various provisions of the bill as to be made a privilege;
- (2) Divisible copyright, which permits the assignee, grantee, or licensee to protect and enforce any right which he acquires from an author without the complications incident to the old law;
- (3) International copyright, which enables American authors merely by complying with the provisions of this act, to secure copyright throughout all of the important countries of the world without further formalities.

One member of the House committee, Representative Sirovich, filed a minority report in opposition to the provision for divisible copyright which the theatrical producers opposed. After the debate⁶ the bill was passed by the House on January 5, 1931.

When the bill as passed by the House was referred to the Senate Committee on Patents, further hearings were requested by a few interested groups that continued to oppose some features of the bill. The chief opponents at the Senate hearings in January 1931 were the radio broadcasters who were opposed to the fundamental principle of automatic copyright; the theatrical producers who opposed divisible copyright; and the manufacturers of coin-operated phonographs who objected to the elimination of the jukebox exemption. Amendments to specific provisions were also urged by representatives of libraries, scholars, and motion picture exhibitors, and by the Register of Copyrights and a few other witnesses of miscellaneous affiliation. The Senate committee reported the bill on February 23, 1931 (S. Rept. No. 1732, 71st Cong.) with a number of minor amendments.⁷ Debate in the Senate began on February 26 and continued intermittently through March 2;⁸ but further debate was blocked by a filibuster on

⁵ The bill was twice recommitted for technical reasons and reported out anew in H. Rept. Nos. 1898 and 2016, 71st Cong.

⁶ Congressional Record, vol. 72, pp. 11994, 11996, 12018, 12478, 12474; vol. 74, pp. 2006, 2019, 2022, 2037, 2080, 2081.

⁷ Meanwhile, on Jan. 21, 1931, President Hoover had transmitted to the Senate, for advice and consent to ratification, the 1908 Berlin Revision of the Berne Convention. The Senate Committee on Foreign Relations voted to report it favorably but deferred further action pending approval of H.R. 12549.

⁸ Congressional Record, vol. 74, pp. 6102, 6234, 6237, 6244, 6449, 6458, 6463, 6470, 6474, 6480, 6486, 6640, 6654, 6706, 6709, 6712, 6717, 6721, 6722.

another matter and the session ended before the bill could be brought to a vote.

The Vestal bill, coming so near to enactment in the 71st Congress, marked the high tide of the efforts to revise the law for adherence to the Berne Convention. Up to that time the 1908 Berlin Revision of the Convention had been open to adherence with reservations which had been embodied in the bill. Thereafter only the 1928 Rome Revision of the Convention, which permitted no reservations, was open to adherence.

THE SIROVICH BILL

In the 72d Congress Representative Vestal reintroduced his bill as H.R. 139 and Senator Hébert introduced the Senate version as S. 176. Representative Vestal died shortly thereafter and no action was taken on these bills. Instead, the new chairman of the House Committee on Patents, Representative Sirovich, began anew. He called hearings to discuss the problems involved in copyright law revision without reference to any particular bill, apparently to acquaint the new members of the committee with the subject. All the interested groups were invited to present their views at the extended hearings held intermittently from February 1 to March 14, 1932. On March 10 Representative Sirovich introduced a bill, H.R. 10364, which was similar to the Vestal bill with respect to the fundamental changes in the law to conform with the Berne Convention, but differed from the Vestal bill on a number of other points.

Hearings on the bill were held on March 21, 24, and 25. On March 22, during the course of the hearings, Representative Sirovich introduced a revised bill, H.R. 10740. At the hearings, the bill was generally supported by representatives of authors, artists, book publishers, periodical publishers, and photographers. Various features of the bill were opposed by representatives of map publishers, scholars, motion picture producers and distributors, motion picture exhibitors, phonograph and record manufacturers, broadcasters, and ASCAP. After these hearings, on May 30, Representative Sirovich introduced another revised version of the bill as H.R. 10976, which the Committee on Patents reported out on April 5 (H. Rept. No. 1008, 72d Cong.); however, a few of the interested groups—particularly the map publishers, the motion picture exhibitors, and ASCAP—indicated their objections to some of the last revisions and asked for further hearings. Representative Sirovich then introduced another version of the bill, H.R. 11948 on May 7, designed to meet some of these last objections, and supplemental hearings were held on May 12. At these hearings, the map publishers and motion picture exhibitors indicated their satisfaction with the bill as revised, but the motion picture producers and distributors objected to the new revisions, and ASCAP was still opposed to some features of the bill.

After these hearings, on May 16, Representative Sirovich once more revised his bill as H.R. 12094, which was reported out of the committee on May 18 (H. Rept. No. 1361, 72d Cong.), and a special order was requested (H. Res. 229). In the ensuing debate on the order Representative Lanham, who had been the ranking minority member of the Committee on Patents during Representative Vestal's chairmanship, attacked the Sirovich bill as a hasty and ill-considered measure, and argued that the committee should have taken up the

Vestal bill which represented 8 years of work "to reconcile and harmonize the divergent interests affected by copyright legislation," and which the House had passed at the preceding session.⁹ After the debate the bill was recommitted to the committee.

On June 2, 1932, Representative Sirovich introduced a fifth version of his bill as H.R. 12425, but no further action was taken in the 72d Congress.

THE DUFFY BILL

In the 73d Congress a movement was started to return to the objective that had first prompted the revision efforts 10 years earlier in the 67th Congress, namely, revision of the law only in those respects necessary for adherence to the Berne Convention. A bill for that purpose was introduced in 1933 by Representative Luce as H.R. 5853 and by Senator Cutting as S. 1928. On February 19, 1934, President Roosevelt transmitted to the Senate, for its advice and consent to adherence, the Berne Convention as revised at Rome in 1928 (Ex. E, 73d Cong.). On March 28 and on May 28 and 29, 1934, hearings were held before a subcommittee of the Senate Foreign Relations Committee on the Cutting bill and the convention. At the hearings adherence to the convention was favored by representatives of the State and Commerce Departments and the Copyright Office, and by representatives of authors, book publishers, educators, and map publishers, but was opposed by representatives of the motion picture producers, motion picture exhibitors, radio broadcasters, and periodical publishers. Changes in the Cutting bill were urged by the printing trades unions, by some of the proponents of adherence (particularly the book and map publishers), and by the various opponents of adherence; and a number of the witnesses urged that the efforts to revise the law completely be renewed along the lines of the earlier Perkins, Vestal, or Sirovich bills.

In explanation of the opposition to adherence to the Berne Convention by groups that had formerly favored adherence, it should be noted that the Berne Convention had previously permitted adherence with reservations, which was no longer possible, and that the 1928 Rome Revision of the Convention had added certain new features which some of the groups found unacceptable.

After the hearings on the Cutting bill, the Senate Committee on Foreign Relations, adopting a suggestion made at the hearings, requested the State Department to organize an informal interdepartmental committee to confer with the various interests in an endeavor to reconcile their divergent viewpoints as far as possible. This committee consisted of two representatives of the State Department, two of the Copyright Office, and one of the Commerce Department. The committee held a series of conferences with representatives of the various interests that had appeared at the hearings, drafted a bill which was circulated among the different interests for comment, and then prepared a revised draft which was introduced by Senator Duffy in the 74th Congress on March 13, 1935, as S. 2465.

On April 18, 1935, the Senate Committee on Foreign Relations reported favorably on adherence to the Berne Convention (Ex. Rept.

⁹ Congressional Record, vol. 75, pp. 11065-11066.

No. 4, 74th Cong.), and on April 19 the Senate voted to ratify the Convention; but this vote was reconsidered on motion by Senator Duffy on April 22 and the Convention was put back on the Executive Calendar by unanimous consent to await action on the Duffy bill.

On June 17, 1935, Senator Duffy introduced a revised version of his bill as S. 3047,¹⁰ and this bill was reported favorably by the Senate Committee on Patents (S. Rept. No. 896, 74th Cong.). During the debate in the Senate, provisions known as the "Vandenberg amendment" were added to the bill to provide copyright protection for industrial designs; and another amendment restored the requirement of domestic manufacture for foreign works, which would apparently have precluded adherence to the Berne Convention. On August 7, 1935, in the closing days of the 1st session of the 74th Congress, the Senate passed the bill with these amendments.

In the second session on January 27, 1936, Representative Daly introduced H.R. 10632, which was similar to the Duffy bill as passed by the Senate, plus additional new provisions to give performing artists copyright in their recorded renditions of music. On February 24, 1936, Representative Sirovich introduced a new bill, H.R. 11420, making a number of revisions in the law but abandoning some of the changes necessary for adherence to the Berne Convention, and this bill, too, included new provisions for the copyright protection of performing artists.

Extensive hearings on the Duffy, Daly, and Sirovich bills were held before the House committee on 27 days during the period of February 25 to April 15, 1936. The wide variety of controversial issues and divergent views presented at previous hearings on copyright revision bills was now complicated further by the interjection of the new issues involved in the two broad proposals to provide copyright protection for industrial designs and for recorded renditions of music. A number of new groups were now brought into the hearings and the conflicts of interest were multiplied.

Taking the Duffy bill alone without the Vandenberg amendment, it was generally favored at the hearings by representatives of the State Department, broadcasters, hotel owners, libraries, periodical publishers, jukebox manufacturers, and motion picture exhibitors. Some of the features of the Duffy bill (excluding the Vandenberg amendment) were opposed by representatives of the authors, composers, music publishers, phonograph record manufacturers, motion picture producers, book publishers, periodical publishers, and map publishers. It became apparent at the hearings that additional groups formerly advocating adherence to the Berne Convention—notably some of the author, composer, and publisher groups—had now become indifferent or opposed to adherence.

At these same hearings, representatives of the performing artists and the phonograph record manufacturers urged enactment of the provisions in the Daly and Sirovich bills to give copyright protection to recorded renditions of music, while the radio broadcasters opposed

¹⁰ No report of hearings on the original Duffy bill, S. 2465, has been found. Apparently the Committee on Patents held informal conferences on that bill before its revision as S. 3047. In the Congressional Record, vol. 79, p. 12188, Senator Duffy stated that the Committee on Patents had "held hearings and had conferences" on S. 2465. A companion bill to S. 3047 was also introduced in the House on June 19, 1935, by Representative Bloom as H.R. 8557.

those provisions and the other groups were generally noncommittal on this issue. The Vandenberg amendment in the Duffy bill was favored by representatives of the designers and of the manufacturers of silk and rayon fabrics, leather, pottery, furniture, upholstery and drapery fabrics, and women's apparel; and was opposed by representatives of the railroads, the manufacturers of automobiles, machine parts, glass containers, and popular price dresses, groups of retail merchants, and the Farm Bureau Federation.

After the hearings, a special subcommittee of the House Committee on Patents held several meetings, but the groups concerned showed little interest and no further action was taken in the 74th Congress.

The 1936 hearings were the last held on bills for general revision of the law. Senator Duffy reintroduced his bill in the 75th Congress as S. 7 and companion bills were introduced in the House by Representative Moser (H.R. 2695) and Representative Bloom (H.R. 3004). Representative Daly also introduced a somewhat modified version of his bill as H.R. 5275, and a companion bill was introduced by Senator Guffey as S. 2240. No action was taken on any of these bills. Likewise, no action was taken on similar bills introduced in the 76th Congress (H.R. 926 and 4871 by Representative Daly, and H. R. 6160 and 9703 by Representative McGranery).

THE SHOTWELL BILL

The last chapter in the attempts to revise the copyright law to conform with the Berne Convention was an undertaking by the National Committee of the United States of America on International Intellectual Cooperation, one of several such committees organized in various parts of the world in the early 1920's to collaborate with the Organization on Intellectual Cooperation of the League of Nations. In 1938 this national committee, of which Prof. James T. Shotwell of Columbia University was then chairman, activated a subsidiary Committee for the Study of Copyright to promote international copyright relations. Professor Shotwell and later Dr. Waldo G. Leland, director of the American Council of Learned Societies, acted as chairman of this latter committee, and Dr. Edith T. Ware served as its executive secretary. In 1938 the Committee for the Study of Copyright, commonly known as the Shotwell committee, inaugurated a series of conferences with the various groups concerned with copyright in an effort to work out revisions of the law looking toward adherence to the Berne Convention and the establishment of a better basis for a future Pan American Copyright Convention. Participating in these conferences were representatives of authors, publishers, the printing trades, motion picture producers, radio broadcasters, record manufacturers, libraries, and scholars. The Shotwell committee secured from each group a statement of the changes it desired in the law, circulated these statements among the various groups for comment, and then designated a number of smaller committees to attempt to reconcile the major conflicts. These conferences continued until the latter part of 1939 when the Shotwell committee drafted a bill for a complete revision of the law. The various groups agreed that the bill might be introduced, but a number of them indicated their in-

tention to present objections to various features of the bill. The bill was introduced by Senator Thomas as S. 3043 in the 76th Congress on January 8, 1940.

Meanwhile, on April 11, 1939, at the behest of Senator Thomas, the Senate Committee on Foreign Relations had again reported favorably on ratification of the 1928 Rome revision of the Berne Convention (Ex. Rept. No. 2, 76th Cong.), but further action on the report was deferred pending the necessary amendments of the law on which the Shotwell committee was working.

No hearings were held on the "Shotwell bill" introduced by Senator Thomas. According to a report in the January 24, 1940, issue of *Variety*, a leading journal of the entertainment industries, the bill was favored by the authors and book publishers, but opposed by the radio broadcasters, motion picture producers, periodical publishers, and record manufacturers.

The Register of Copyrights, who had not participated in the activities of the Shotwell committee, submitted his views on the bill at the request of Senator Bone, then chairman of the Committee on Patents, and expressed his opposition to many features of the bill.

No further action was taken on the bill.

SUMMARY OBSERVATIONS

It may be of interest to mention briefly the major issues on which the groups concerned differed during the efforts between 1924 and 1940 to revise the law.

Among the most important differences were those concerning provisions deemed essential for adherence to the 1928 Rome Revision of the Berne Convention: Automatic copyright in the author upon creation of the work (i.e., without formalities such as notice, deposit of copies, and registration); removal of the requirement for domestic manufacture of foreign books and periodicals; retroactive copyright protection of foreign works; the duration of copyright for the life of the author and a period of years after his death; copyright in oral speeches; and the "moral" rights of authors. Other important issues of controversy were proposals for divisible copyright (i.e., the assignment of separate rights); the removal of the "compulsory license" for the recording of music; the removal or diminution of the statutory minimum damages; the protection of "innocent" infringers; the removal of the privilege of scholars and libraries to import copies; and the restriction of performance rights. In the middle 1930's the proposals to extend copyright protection to industrial designs and to recorded performances of music opened by new areas of controversy.

It may be said in general that the major controversies were rooted in the conflicting interests of the various author and publisher groups on the one hand, and the users of copyright material—such as broadcasters, motion picture producers, and record manufacturers—on the other hand. Each effort to revise the law resolved itself into an attempt to reconcile this conflict of interests through extended discussion and negotiation with the various groups concerned in order to work out compromise solutions to the controversial issues. Such an attempt was successful in the enactment of the 1909 revision and almost succeeded with the Vestal bill in 1931.

INDIVIDUAL AMENDMENTS

Between 1926 and 1941, five acts were passed amending individual provisions of the copyright law: Act of July 3, 1926, 44 Stat. 818; act of May 23, 1928, 45 Stat. 713; act of July 31, 1939, 53 Stat. 1142; act of March 15, 1940, 54 Stat. 51; and act of September 25, 1941, 55 Stat. 732.

III. REVISION FOR ADHERENCE TO THE UNIVERSAL COPYRIGHT CONVENTION

After World War II, with the further expansion of the foreign market for U.S. copyright material, a movement for more effective international copyright relations was revived. It was now clear that the United States would not adhere to the Berne Convention. As stated in the report of the Senate Committee on Foreign Relations dealing with the Universal Copyright Convention (Ex. Rept. No. 5, 83d Cong., June 11, 1954):

[The United States] has found it impossible to subscribe to the [Berne] Convention * * * because it embodied concepts at variance with American Copyright Law. These concepts involved such matters as the automatic recognition of copyright without any formalities, the protection of "moral" rights and the retroactivity of copyright protection with respect to works which are already in the public domain in the United States. This revival of copyright under the retroactivity doctrine would have worked considerable prejudice to American motion picture, music, and publishing houses * * *. Finally it was claimed that Berne's protection of "oral" works, such as speeches, would have conflicted with Article I, Section 8 of the Constitution, which refers only to "writings" as material to be protected.

The new effort was directed at preparing a new international convention to which both the member countries and the nonmembers of the Berne Union might adhere. In September 1947, an intergovernmental committee of copyright experts assembled by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) at a meeting in Paris, proposed that UNESCO undertake a survey of the international copyright relations of all the countries of the world. Beginning in 1948, UNESCO assembled information on the international copyright situation in all countries by means of questionnaires sent to the various countries. UNESCO submitted its report to an intergovernmental Committee of Experts which met in Paris in July 1949. This second Committee of Experts proposed the preparation of a new Universal Copyright Convention and formulated the basic principles for such a convention. This proposal and statement of basic principles was then sent to the governments of all countries for comment. The replies of the governments were submitted to a third Committee of Experts meeting in Washington in October and November 1950, and this Committee developed a revised and more detailed statement of principles to be embodied in the new convention. This second statement of principles was circulated among all the governments; and on the basis of their comments, a fourth Committee of Experts met in Paris in June 1951 and prepared a preliminary draft of the convention which was submitted to all the countries. A special committee of representatives of the pan-American countries met in Washington early in 1952 to consider the effect of the new draft convention on copyright relations among the American Republics.

An Intergovernmental Conference was held in Geneva in August and September 1952 at which the Universal Copyright Convention was drafted in final form. The new Convention was signed by 40 countries including the United States, and was open to adherence by other countries as well.

Throughout this process of formulating the Convention, the Librarian of Congress, the Register of Copyrights, and the State Department, working through a Panel on International Copyright, met and consulted with representatives of all the various interests in the United States concerned with copyright. This Panel was established as an auxiliary of the State Department's U.S. National Commission for UNESCO, with the Librarian of Congress as chairman of the Panel. At each stage of the development of the Convention, before and after each meeting of the international Committee of Experts, the views of all the interests were secured and exchanged at meetings of the Panel and through informal conferences and correspondence carried on by the State Department and the Register of Copyrights. From 1948 to 1953 fourteen meetings of the Panel were held. In addition to more than 60 representatives of the various industries and interests concerned, representatives of other Government agencies, including the Justice, Commerce, and Labor Departments, attended some of the Panel meetings. On the basis of these meetings and other exchanges of views, the position of the U.S. Government was developed before each meeting of the international Committee of Experts and before the Geneva Conference in 1952. Every effort was made to secure the agreement of the various interests on the position to be taken by the U.S. Government at each stage of the development of the Convention.

The Librarian of Congress, the Register of Copyrights, a representative of the State Department, and some of the attorneys representing various interests participated in the several international meetings of experts. At the Geneva Conference in 1952 which completed the Convention, the U.S. delegation consisted of the Librarian of Congress as chairman, the Register of Copyrights, a representative of the State Department, two Congressmen, and four leading copyright attorneys who represented a diversity of private interests. The position taken by the U.S. delegation at the conference had the unanimous approval of the members of the delegation on every point.

On June 10, 1953, President Eisenhower submitted the Universal Copyright Convention to the Senate for its advice and consent to ratification (Ex. M, 83d Cong.). Ratification required major changes in the copyright law to make it conform with the Convention in respect to the protection afforded works created by citizens of, or first published in, other member countries. A bill to amend the law accordingly was drafted by the Copyright Office in collaboration with the State Department, and was introduced by Representative Crumpacker (H.R. 6616), Representative Reed (H.R. 6670), and Senator Langer (S. 2559) during July and August 1953.

On March 15 and 17 and April 9, 1954, hearings on the House bills were held before a subcommittee of the House Judiciary Committee. On April 7 and 8, 1954, hearings on the Convention and the Senate bill were held before a joint subcommittee of the Senate Foreign Relations and Judiciary Committees. At these hearings, the Convention and the bills were supported by representatives of the authors, com-

posers, book publishers, music publishers, periodical publishers, bar associations, libraries, scholars, radio and television broadcasters, record manufacturers, motion picture producers and exhibitors, and photographers. Adoption of the Convention and bills was also urged by the Librarian of Congress, the Register of Copyrights, and representatives of the State, Commerce, and Labor Departments.

The Convention and bills were opposed only by the printing and binding trades unions of the American Federation of Labor because of the removal of the requirement for domestic manufacture of books by foreign authors published in other member countries of the Convention. The removal of this requirement was essential for adherence to the Convention. The Congress of Industrial Organizations, however, filed a statement favoring adoption of the Convention and bills. After the hearings, representatives of some of the motion picture producers indicated their objection to one feature of the Convention; but as indicated in the Senate report (No. 1936, 83d Cong.), they subsequently withdrew their objection and favored adoption of the Convention and bills.

The Senate Committee on Foreign Relations reported favorably on ratification of the Convention on June 11, 1954 (Ex. Rept. No. 5, 83d Cong.), and on June 25, 1954, ratification of the Convention was approved by a 65-3 vote of the Senate.

On July 19, 1954, the Senate Judiciary Committee reported S. 2559 favorably (S. Rept. No. 1936, 83d Cong.). On August 3, 1954, the House Judiciary Committee reported H.R. 6616 favorably (H. Rept. No. 2608, 83d Cong.), and on that same day the House passed the bill. On August 18, 1954, the Senate passed H.R. 6616. It was signed by the President on August 31, 1954, as Public Law 743. On December 6, 1954, the President deposited with UNESCO the instrument ratifying the Convention.

The almost unanimous support of the Convention and bill by the many diverse interests concerned, was summarized by Senator Hickenlooper, in presenting the Convention to the Senate on June 25, 1954, as follows:

Few treaties which have been presented to the Senate have had such widespread endorsement by so many different elements of the American public as this Convention has received * * *. The Convention has been drafted with the greatest of care and skill. Its clauses were painstakingly developed in extensive consultations between copyright experts here and abroad * * *. The result of the [Geneva] Conference was a document which not only embodies the most acceptable concepts of American and European practice, but which recognizes the basic principles governing the Law of Copyright in the United States.

INDIVIDUAL AMENDMENTS

No copyright legislation was enacted during the years 1942 to 1946. By the act of July 30, 1947 (61 Stat. 652), the Copyright Act of 1909, as amended, was codified and enacted into positive law as title 17 of the United States Code. Since then five acts have been passed amending individual provisions of the copyright law, some of considerable substantive importance: Act of April 27, 1948, 62 Stat. 202; act of June 3, 1949, 63 Stat. 153; act of October 31, 1951, 65 Stat. 710; act of July 17, 1952, 66 Stat. 752; and act of April 13, 1954, 68 Stat. 52.

The act of August 31, 1954, 61 Stat. 655, amending the copyright law to implement the Universal Copyright Convention, has already been mentioned.

SUPPLEMENTARY NOTE

REVISION OF PATENT AND TRADEMARK LAWS

In a number of respects the patent and trademark laws parallel the copyright law. The patent and copyright laws are founded on the same provision of the U.S. Constitution, article I, section 8, eighth clause; the trademark law is founded on article I, section 8, third clause (the commerce clause). All three laws deal with intangible property rights of a special character. All three are under the jurisdiction of the same subcommittee of the Judiciary Committee of the respective Houses of Congress.

In connection with the history of copyright law revision, therefore, it may be enlightening to summarize briefly the history of the recent revisions of the patent and trademark laws.

I. PATENT LAW REVISION

The first patent law of the United States, like our first copyright law, was enacted in 1790 by the First Congress. Aside from amendments of particular items, general revisions of the patent law were made in 1836 (5 Stat. 117), in 1861 (12 Stat. 246), and in 1870 (16 Stat. 198). After 1870 there was no general revision until the recent act of July 19, 1952 (66 Stat. 792) which enacted the new patent law as title 35 of the United States Code.¹¹

For some years prior to 1952 the patent bar had been urging that the existing law—basically the law of 1870 with a number of amendments—had become outmoded and should be revised in a number of respects. At the same time, the codification of the patent statutes was being contemplated as a part of the general program for codification of all the laws of the United States. These two movements came to a head in 1949 when the Subcommittee on Patents of the House Judiciary Committee, under the chairmanship of Representative Bryson, inaugurated a comprehensive study of the patent law with a view to its complete revision and codification. The subcommittee enlisted the aid of Mr. P. J. Federico of the Patent Office to assemble reports on prior laws and legislative proposals and suggestions which had been made by various groups for changes in the law, and to draft preliminary alternative proposals for a new law as a basis for discussion. In February 1950, these reports and proposals were circulated by the subcommittee to a great number of patent attorneys and others interested for their comments and suggestions.

¹¹ The history of this act of 1952 is summarized in the hearings on H.R. 3760, 82d Cong., June 13-15, 1951, and in the House and Senate reports on H.R. 7794, 82d Cong. (H. Rept. No. 1923; S. Rept. No. 1979). Its history is also summarized in pp. 6-9 of the "Commentary on the New Patent Act" by P. J. Federico, Examiner-in-Chief of the U.S. Patent Office, appearing in title 35 of the United States Code Annotated.

The various patent law associations organized a coordinating committee of patent attorneys which coordinated the views of the patent groups on the preliminary proposals and the subsequent draft bills. This coordinating committee prepared reports and recommendations which it submitted to the subcommittee of the House Judiciary Committee.

On the basis of the comments and suggestions received on the preliminary proposals, the subcommittee, with the technical assistance of Mr. Federico and others, prepared a bill which was introduced by Representative Bryson on July 17, 1950, as H.R. 9133, 81st Congress.¹² Over 6,000 copies of this first bill were distributed by the subcommittee to all who were thought to be concerned for their further comment and suggestions, after which the bill was revised and reintroduced by Representative Bryson on April 18, 1951, as H.R. 3760, 82d Congress.

Hearings on H.R. 3760 were held before the subcommittee of the House Judiciary Committee on June 13, 14, and 15, 1951. A large number of persons representing Government agencies, bar groups, inventors, industries, and other miscellaneous interests concerned with patent law, presented their views at the hearings.

On the basis of these hearings and further comments received thereafter, the subcommittee prepared another revised bill. Representative Bryson introduced this revised bill on May 12, 1952, as H.R. 7794, 82d Congress, and on the same day the bill was reported favorably by the House Judiciary Committee (H. Rept. No. 1923, 82d Cong.). The bill was passed by the House on May 19, 1952, by unanimous consent. The Senate Judiciary Committee reported the bill favorably, with a few minor amendments, on June 27, 1952 (S. Rept. No. 1979, 82d Cong.), and the bill was passed by the Senate on July 4, 1952, by unanimous consent. The House concurred in the Senate amendments later the same day, and the bill was signed by the President on July 19, 1952, becoming Public Law 593, 82d Congress.

II. TRADEMARK LAW REVISION

The first trademark law of the United States was enacted in 1870 as part of an act to revise and consolidate the patent and copyright laws (16 Stat. 198, at 210). Based on the patent and copyright clause of the Constitution (art. I, sec. 8, eighth clause), the trademark provisions of that act were held unconstitutional by the U.S. Supreme Court in 1879 (*Trademark Cases*, 100 U.S. 82). In 1881 a new trademark law was enacted (21 Stat. 502) limited to trademarks used in commerce with foreign nations or with the Indian tribes. It was not until 1905 (33 Stat. 724) that a trademark statute was enacted covering interstate commerce generally, and for 42 years this was the basic Federal statute on trademarks. The 1905 act was amended a number of times, and was supplemented by a statute enacted in 1920 (41 Stat. 533) to provide for the registration of certain trademarks not otherwise registrable, in order to qualify them for protection in foreign countries under international conventions.

¹² It should be noted that in drafting the bill, some of the earlier proposals for substantive changes in the law were eliminated as too controversial for consideration in the general revision and codification.

The act of 1905 was merely a procedural statute providing for registration of trademarks to establish prima facie evidence of ownership and for remedial actions in the Federal courts. The substantive rights of trademark owners were left to the common law or statutes of the several States. By the 1920's, many people had become dissatisfied with the act of 1905 and a movement began to revise and enlarge the Federal trademark law. Committees of several bar associations worked together in drafting a bill for complete revision of the law, which was first introduced in 1924 in the 68th Congress, and successive bills were introduced in the 69th through the 72d Congresses.¹³ Hearings were held in each Congress before the House or Senate Committee on Patents at which many of the features of the bills were in controversy. In the 69th and 70th Congresses, bills introduced by Representative Vestal, as redrafted and reintroduced after the hearings, passed the House but died in the Senate committee. In the 71st Congress in 1931, the Vestal bill passed the House; it was reported by the Senate committee and brought under debate in the Senate, but was not reached for a vote before adjournment.¹⁴

In the 72d Congress Representative Vestal reintroduced his bill as H.R. 7118 and hearings were held but, after his death during that session, no further action was taken.

No bills to revise the trademark law were introduced during the 73d or 74th Congress. Some of the bar groups, however, becoming disturbed at the trend in the States to enact laws requiring local registration of trademarks, reactivated their committees on revision of the Federal trademark law and these committees drafted a bill for complete revision which Representative Lanham introduced in the 75th Congress in 1938 as H.R. 9041. Hearings were held before the House Committee on Patents on March 15-18, 1938, at which this bill was discussed section by section in order to apprise the House committee of the different views of the various groups concerned. Differences of opinion on a number of important issues were brought out at the hearings. On the basis of these hearings the bar committees prepared a revised draft which Representative Lanham introduced in the 76th Congress as H.R. 4744. Hearings on this bill were held on March 28-30, 1939, after which it was revised to reconcile differences of opinion and reintroduced as H.R. 6618, 76th Congress. Further hearings were held on June 22, 1939, and H.R. 6618 was reported favorably by the House committee on June 27, 1939 (H. Rept. No. 944, 76th Cong.), and was passed by the House on July 17, 1939. The Senate Committee on Patents, after extended consultation with the members of the House committee, reported the bill on May 1, 1940, with several amendments including some on controversial points (S. Rept. No. 1562, 76th Cong.). The Senate first voted to pass the bill but then adopted a motion to reconsider. No further action was taken.

¹³ In the 68th Cong., S. 2679. In the 69th Cong., H.R. 6248, H.R. 13486, S. 2547, and S. 4811. In the 70th Cong., H.R. 6633, H.R. 11988, H.R. 13109, and S. 2744. In the 71st Cong., H.R. 2828. In the 72d Cong., H.R. 7118 and S. 2679.

¹⁴ It is interesting to note the parallel between these efforts to revise the trademark law during this period of 1924-31 and the efforts during the same period by the same House committee under the leadership of Representative Vestal to revise the copyright law. See pp. 4-7 of the accompanying "The History of U.S.A. Copyright Law Revision From 1901 to 1954."

In the 77th Congress in 1941, Senator Bone introduced S. 895, the bill as modified by the Senate committee in the preceding Congress, and Representative Lanham introduced an identical bill as H.R. 102. The Senate bill was reported out on July 22, 1941 (S. Rept. No. 568, 77th Cong.), and was passed by the Senate on September 17, 1941.

Meanwhile, in the autumn of 1940, a number of trade associations (the National Association of Manufacturers, the Association of National Advertisers, the United States Trademark Association, and others) had joined with the trademark bar groups in organizing a coordinating committee to reconcile the differing views on the remaining points of controversy and draft a revised bill that all might support. That draft, with some changes, was introduced by Representative Lanham on July 31, 1941, as H.R. 5461. In November 1941, after the Senate had passed S. 895, hearings were held before the House committee on the three bills (H.R. 102, H.R. 5461, and S. 895) at which a number of amendments to H.R. 5461 were suggested. The House committee adopted some of those suggestions, revised S. 895 in numerous respects to conform with the amended version of H.R. 5461, and reported out S. 895 as so revised on June 25, 1942 (H. Rept. No. 2283, 77th Cong.). The revised S. 895 was passed by the House on September 24, 1942.

In the 78th Congress, Representative Lanham introduced, as H.R. 82, the bill passed by the House in the preceding Congress with a few amendments that had been suggested by the Senate committee. Hearings before the House committee on April 7 and 8, 1943, were confined to a few particular points of controversy in view of anticipated hearings by the Senate committee. H.R. 82 was reported favorably by the House committee on June 25, 1943 (H. Rept. No. 603, 78th Cong.), and passed the House on June 28, 1943. The Senate committee held hearings on November 15 and 16, 1944, and reported the bill with several amendments on December 4, 1944 (S. Rept. No. 1303, 78th Cong.). The bill was not reached for a vote in the Senate before adjournment.

Representative Lanham reintroduced his bill on January 22, 1945, in the 79th Congress as H.R. 1654. On February 26, 1945, the House committee reported the bill with a few minor amendments (H. Rept. No. 219, 79th Cong.), and the bill was passed by the House on March 5, 1945. The Senate committee reported the bill with several amendments on May 14, 1946 (S. Rept. No. 1333, 79th Cong.), and the Senate passed the bill on June 14, 1946, with some further amendments. A conference committee met on June 21 and filed its report on June 24 (H. Rept. No. 2322, 79th Cong.), which was agreed to by the House on June 25 and by the Senate on June 28, 1946. The act was signed by President Truman on July 5, 1946, and became Public Law 489, 79th Congress, effective July 5, 1947.

As stated in the House report (No. 219, 79th Cong.) submitted by Representative Lanham on H.R. 1654, on the bill finally enacted:

Besides the official recorded action of Congress concerning the proposed legislation, many hours of time were devoted to the perfecting of this legislation by the Members of Congress in conference with officials of various Government departments, lawyers, trademark owners, manufacturers, and others interested in securing the enactment of a modern concise trademark statute. It might also be mentioned that various committees (of bar and trade associations) studied and debated the various bills, and presented their conclusions for official consideration at various times.

The activities of the bar and trade associations and of the committees organized by them have been outlined in the foregoing summary. The Government agencies that participated in various hearings and presented their views to the congressional committees included the Justice Department, the Federal Trade Commission, the Food and Drug Administration, and the Navy Department, as well as the Patent Office. Officials of the Patent Office were consulted by the bar and trade associations in the drafting of proposed bills, were present at the various hearings as advisers of the congressional committees, and assisted the committees in revising the successive bills.