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“To promote the Progress of Science and useful Arts”

Report to the Librarian of Congress

by the Register of Copyrights

THE COPYRIGHT OFFICE

Fiscal 1974 was an important transitional year in the history of the Copyright Office. Three of the top jobs changed hands, and it was necessary to place primary emphasis upon solution of a wide range of immediate management, personnel, and administrative problems. Registrations increased by well over 5 percent and are now approaching 400,000 annually. In addition to maintaining this huge workload on a reasonably current basis, the Copyright Office sought to build a strong foundation for future growth, partly through automation and expanded legal activities but, more important, through increased job satisfaction and staff development.

Following a landmark Supreme Court decision involving the copyright liability of cable television systems, the legislative impasse that had stalled general revision of the copyright law was broken, confronting the office with the immediate need to plan for implementing sweeping changes in its functions and activities. Significant international developments in which the Copyright Office played a leading role included U.S. adherence to the Geneva record-piracy convention and the adoption at Brussels of a new satellite-piracy convention.

ADMINISTRATIVE DEVELOPMENTS

The Librarian of Congress announced the appointment of Barbara Ringer as register of copy-

rights on September 7, 1973, as last year's report records, and she assumed her duties a few weeks later on November 19. Ms. Ringer came to the Copyright Office as examiner in 1949, served as chief of the Examining Division and assistant register for examining from 1960 to 1966, and was assistant register of copyrights from 1966 to 1972. At the time of her appointment as register, she was director of the Copyright Division of Unesco in Paris.

On December 31, 1973, Abe Goldman, general counsel of the Copyright Office from 1961 to 1973, retired after 37 years of federal service, 21 of which were in the Copyright Office where he had held a number of senior positions, including that of acting register of copyrights from March 1973 to November 1973. Mr. Goldman was one of the principal architects of the program for general revision of the copyright law and the office will miss his wisdom and experience.

Additional management appointments in fiscal year 1974 included that of L. Clark Hamilton, formerly assistant register of copyrights, as deputy register of copyrights and of Dorothy Schrader, formerly assistant chief of the Examining Division, as general counsel.

Upon assuming the post, the register placed primary emphasis on the administrative problems of managing the Copyright Office. She recognized that, important as they are, the general revision of the copyright law, the development of

international copyright, and the range of other legal problems facing the office could not be allowed to preempt her principal objectives as register: to serve the public as fully and efficiently as possible and to make the Copyright Office a good place to work. The kind of management framework and work environment necessary to achieve these goals will not be attained in a matter of weeks or months, and they must receive constant and devoted attention in the face of challenges and changing conditions.

Both in day-to-day decisionmaking and in the formulation of middle-range and long-range policy, the following were singled out as the general administrative goals of the office:

Development of leaders at all levels who can accept full responsibility for establishing an atmosphere of enthusiasm, job satisfaction, teamwork, mutual respect, and trust.

Complete equality of opportunity, tangible and early recognition of accomplishment, participation by the staff at every level of decisionmaking, and the generation, recognition, and adoption of fresh ideas.

Realistic evaluation of position qualifications in hiring and promotion, allowing flexibility in promotion for proven merit and accomplishment.

Treatment by the staff of every coworker and every member of the public as one would like and expect to be treated oneself, with emphasis on service beyond the minimum and excellence in every phase of the work.

The register is seeking to achieve this program by, among other things, concentrating efforts on implementing the Library's affirmative action program, initiating an extensive orientation training program for new staff members, opening up various channels of communication, including close contacts with the Copyright Office's Human Relations Committee, seeking to keep the staff as fully and frankly informed as possible about the status of openings and personnel actions, and the establishment of a wide range of

new procedures and policies aimed at improving understanding, fairness, and efficiency in personnel matters. Inevitably, there have been disappointments and frustrations during the year, but along with the problems some tangible progress was achieved.

In 1971, in collaboration with the Library of Congress Information Systems Office, the Copyright Office produced a comprehensive report and plan for an inprocess control system. Implementation of the first part of the plan began in 1972 with online cataloging of registrations for sound recordings, using computer terminals. The online cataloging system, known by the acronym COPICS (Copyright Office Publication and Interactive Cataloging System) was further developed during fiscal 1974. At the year's end, ISO and Cataloging Division personnel were installing the system for all classes of copyrighted works. The first major operational online cataloging system in the Library, it will eventually comprise over 100 video terminals.

A related study of the management and organizational activities of the Copyright Office was undertaken by contract with a management consulting firm. The firm submitted a final report and recommendations late in fiscal 1973, but a number of the recommendations proved controversial and were not well received by the staff. Others have been accepted and are being implemented by the various divisions. The newly created Program Analysis Staff, established in the Register's Office, will generally oversee the implementation of management and procedural improvements within the Copyright Office; it is also immediately concerned with planning for the automation of the fiscal control functions of the Service Division and determining resource requirements of the anticipated copyright revision bill.

COPYRIGHT BUSINESS AND PUBLICATIONS

Total copyright registrations reached nearly 373,000 in fiscal 1974, an alltime record and an increase of 5.4 percent over the previous year. The office processed almost 406,000 applica-

tions, deposited fees totaling \$2,312,000 in the U.S. Treasury, and processed more than 950,000 pieces of mail. The most significant increases in volume of work were in registrations for sound recordings, renewals, and musical compositions and in the recordings of copyright assignments and related documents.

In addition to the regular annual and semi-annual publications of the various parts of the *Catalog of Copyright Entries*, the office issued more than 40 new or revised publications. Most of these were information circulars, but notable among the revised titles was *Copyright Enactments: Laws Passed in the United States Since 1783 Relating to Copyright*. Other publications included the most recent collection of U.S. copyright decisions, compiled by Benjamin W. Rudd and covering cases reported in 1971 and 1972, as well as a cumulative index to all copyright decisions by U.S. courts from 1909 to 1970, prepared by Wilma S. Davis. The office also issued a supplement to its *Compendium of Copyright Office Practices*, including new subchapters dealing with works of art and photographs.

GENERAL REVISION OF THE COPYRIGHT LAW

Just after the fiscal year ended, the bill for general revision of the copyright law passed the 10th anniversary of its original introduction on July 20, 1964. There are some oldtimers in and out of the Copyright Office who remember that the current revision program actually goes back 20 fiscal years, to a special congressional appropriation launching the program in 1955. As fiscal 1974 began there was little optimism about the prospects for prompt enactment of general revision; after passage by the House and active consideration by a Senate Judiciary Subcommittee in 1967, the bill was sidetracked and lost most of its momentum.

As events proved, however, there was still some steam in the boiler; Senator John L. McClellan introduced the basic 1973 version of the bill (S. 1361), and identical versions were introduced in the House by Representatives Bertram L. Podell (H.R. 8186), and Joseph J. Maraziti and Jerome

R. Waldie (H.R. 14922 and 15522). The McClellan bill was different in some important respects from both the original 1964 version and the version that passed the House in 1967 but, considering the rapidly changing face of communications technology over the past decade, it was surprising how much of the language survived without change. Some provisions of the McClellan bill were extremely controversial, and it was reasonable to wonder whether the legislative package could continue to hold together much longer.

Hearings on what then seemed to be the most controversial provisions in the bill were held before the Senate Judiciary Committee on July 31 and August 1, 1973. Testimony was limited to five issues: library photocopying, a proposal for a general educational exemption, the cable television royalty schedule, a proposed exemption for recording religious music for authorized broadcasts, and the carriage of sporting events by cable television. Although acknowledged to be useful, the 1973 hearings did little to make proponents of general revision any more optimistic about the chances of early enactment.

A good many observers had been claiming that the main, if not the only, reason why the general revision bill made little progress for seven years was the controversy over the copyright liability of cable television systems. The assumption was that once the Supreme Court decided the question definitively, the impasse would be broken. Events in the last half of fiscal 1974 tended to bear out this theory; shortly after the Supreme Court's decision in *Teleprompter v. Columbia Broadcasting System, Inc.*, 415 U.S. 394 (1974), the Senate Judiciary Subcommittee resumed active consideration of the bill and on April 9, 1974, reported S. 1361, with some amendments, to the full Senate Judiciary Committee. On June 11, 1974, the full committee marked up the bill and ordered it reported with further amendments, which was done just after the close of the fiscal year, on July 3, 1974 (H.R. Rep. No. 93-983). It was passed by the Senate on September 9, 1974, with still further amendments, by a vote of 70 to 1. The 1974 amendments are almost entirely concerned with the scope of cer-

tain rights, notably those involving cable television and performances of sound recordings.

This flurry of activity, and the startling proportions of the final Senate vote, nudged a number of copyright veterans out of their apathy. Plenty of controversy remained, and it was apparent that the bill could not be enacted in any form before the 94th Congress (1975-76), since there was insufficient time for House action in the second session of the 93d. Nevertheless, it is clear that the program for general revision of the copyright law has regained a substantial amount of legislative momentum and that, unless something new comes along to derail it, the chances for enactment before the end of 1976 are fairly good.

OTHER COPYRIGHT LEGISLATION

Although fiscal 1974 may eventually prove to be the turning point in the program for general revision of the copyright law, by far the most visible legal problems of the year in the copyright field arose from the phenomenon of record and tape piracy. One important manifestation was the enactment of state statutory provisions, often similar to copyright, against tape piracy. By the end of the fiscal year more than half of the states had enacted legislation on this subject. In addition to federal and state civil actions for copyright infringement, criminal prosecutions were being actively pursued at the national, state, and local levels.

In 1971 Congress adopted an amendment to the present copyright law which, among other things, brought sound recordings released after February 15, 1972, under the federal copyright statute and gave them limited protection against piracy (i.e., unauthorized duplication and unauthorized distribution of the unlawful duplicates). Partly on the assumption that the question would be dealt with in the general revision of the copyright law and partly to allow congressional review of how the piracy provisions were working, the amendment was made effective only through December 31, 1974, ceasing to apply to recordings made after that date. In

March 1974, when it was becoming evident that the general revision bill would not be enacted before the expiration date, Representative Robert W. Kastenmeier introduced a bill (H.R. 13364) to make the amendment permanent and to increase the criminal penalties imposed by it.

Identical or very similar bills were introduced by Representatives Waldie (H.R. 13681), George E. Danielson (H.R. 13765), Thomas F. Railsback (H.R. 13857), and Richard Fulton (H.R. 14423). On June 19, 1974, Senator Howard H. Baker, Jr., introduced a companion bill (S. 3672), identical in substance to the Kastenmeier bill. The Kastenmeier Subcommittee conducted a hearing on H.R. 13364 on June 3, 1974, at which the register of copyrights testified. Much of the testimony at the hearing involved the question of criminal penalties for record and tape piracy.

Two other copyright bills introduced in 1974 also involved the tape piracy issue. A bill by Senator William E. Brock (S. 3107) would redefine "counterfeit recordings" and make tape piracy a federal crime under the U.S. Criminal Code, and a bill by Representative Clem R. McSpadden (H.R. 14636) would permit copyright in "all prints or reproductions of any sound recordings of a particular performance of a musical composition."

Two bills introduced during the fiscal year concerned the impact of interruptions and disruptions of the postal service upon the requirements for timely filing of materials in connection with copyrights, trademarks, and patents. H.R. 11488, introduced by Representative Kastenmeier, was limited to patent and trademark cases, but S. 1360, introduced by Senator McClellan, would add a new section to the copyright law giving the register the authority to extend, for one month from the date of any general disruption in postal service, the time limits for submission of applications or other materials to the Copyright Office.

One of the most highly publicized cases of the year involved a suit by CBS against Vanderbilt University, claiming that the activities of the university's archive of videotapes of network newscasts constituted copyright infringement. The judicial controversy was reflected in the legisla-

tive forum as well. On September 27, 1973, Senator Baker introduced S. 2497, which would create in the Library of Congress a national archive of television and radio news and public affairs programing. Essentially similar legislation was also introduced by Representative Spark M. Matsunaga (H.R. 2853).

Shortly after the close of the fiscal year, as the Senate was in the process of passing the general revision bill, Senator Baker secured acceptance of an amendment relating to the problem in the Vanderbilt case. The effect of his amendment (No. 1803) would be to allow libraries and archives a right to reproduce and distribute a limited number of copies or excerpts from audiovisual news programs.

Among the many public issues raised by the Watergate affair is the status and ownership of the papers and other documentary materials accumulated by government officials while in office. Proposed legislation on this subject includes bills introduced by Representatives Thomas A. Luken (H.R. 14939, H.R. 15378, H.R. 15773, H.R. 16719, H.R. 16858), Jonathan B. Bingham (H.R. 16454), and Ella T. Grasso (H.R. 17025). Support for one or more of these bills has been broad, coming from Representatives Shirley Chisholm, Bob Eckhardt, William Lehman, Donald W. Riegle, John E. Moss, Bill Gunter, Alan Steelman, Herman Badillo, George E. Brown, Jr., Ken Hechler, George E. Shipley, Edward I. Koch, Morris K. Udall, John Conyers, Jr., Thomas L. Ashley, Michael J. Harrington, Patricia Schroeder, and Mike McCormack. Similar legislation was introduced in the Senate by Senator Birch Bayh (S. 2951).

At the heart of this problem lie a number of complicated and serious copyright issues which were being recognized and discussed as the fiscal year ended. Resulting from this concern were H.R. 16902, introduced by Representatives John Brademas and Orval Hansen, and S. 4053, introduced by Senator Claiborne Pell, which would establish a commission to study rules and procedures for the disposition and preservation of records and documents of federal officials.

The adherence of the USSR to the Universal Copyright Convention, reported last year, added

a dramatic dimension to fiscal 1974; opportunities for cooperation in the exchange of intellectual property were added to the broad political and economic situation that has been labeled "detente." With these opportunities came a host of new problems. Among other things, the Soviet Union's organization of its copyright licensing along centralized government lines raised special questions concerning the degree to which foreign copyright laws and regulations could be given effect in domestic judicial copyright proceedings.

A particularly troublesome issue—whether U.S. courts would apply the law of foreign states purporting to divest their authors of U.S. copyright—was the subject of S. 1359, introduced by Senator McClellan on March 26, 1973, and of H.R. 6214 and H.R. 6418, introduced by Representatives Alphonzo Bell and Mario Biaggi, respectively. The bills, substantially identical, would make it clear that in such cases the rights are retained by the authors as a matter of U.S. law.

INTERNATIONAL COPYRIGHT

Two important intergovernmental meetings were devoted to the preparation of a treaty aimed at preventing the international piracy of signals carrying television programs that are transmitted by communications satellites. The first of these, reported last year, was a final preparatory meeting, held in Nairobi, Kenya, in July 1973, and it marked a significant breakthrough in the approach the treaty would take toward solving this problem. It led the way to a full diplomatic conference, convened in Brussels in May 1974, which adopted the Convention Relating to the Distributing of Programme-Carrying Signals Transmitted by Satellite.

The Brussels Convention is aimed at preventing ground stations throughout the world from picking up and retransmitting programs not intended for them that they receive from a satellite. The extraordinary growth in the use of satellites for global communications has greatly increased the potential danger to broadcasters

and copyright owners of the type of piracy that the convention is intended to prevent. Fifteen countries, including the United States, signed the new convention on May 21, 1974. The general rapporteur of the conference was the register of copyrights, who also served as alternate head of the U.S. delegation. Dorothy Schrader, the general counsel of the Copyright Office, and Lewis Flacks, attorney-examiner, were also members of the delegation.

On October 1, 1973, the Senate, by unanimous vote, approved the ratification by the United States of the 1972 Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (the "Record Piracy" Convention). Aimed at combating the phenomenon of tape piracy on a worldwide scale, the convention came into force in the United States on March 10, 1974. As the fiscal year ended, the other adherents to the convention were Argentina, Australia, the Federal Republic of Germany, Fiji, Finland, France, Mexico, Panama, Sweden, and the United Kingdom. Three other states—Ecuador, Spain, and Monaco—deposited instruments of ratification during the fiscal year, their obligation not coming into force until the fall of 1974.

Shortly after assuming the duties of the position, the register of copyrights returned to Paris in December 1973 as alternate head of the U.S. delegation to the Twelfth Ordinary Session of the Intergovernmental Copyright Committee, the governing body of the Universal Copyright Convention. She also represented the United States, as an observer, at concurrent meetings of the Executive Committee of the International Copyright (Berne) Union and of the Intergovernmental Committee of the Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (the Rome Convention). The latter committee also held an extraordinary session immediately before the Brussels Satellite Conference in May 1974, which the register attended as an observer.

The most important item on the agendas of both the UCC and Berne committees was the question of reprographic reproduction (photocopying and other forms of facsimile copying

and reprography). It was agreed, after extensive debate, that an international instrument setting forth guidelines with respect to this problem would be feasible and desirable and that subcommittees should meet before the end of 1975 to make recommendations on the subject. Another important subject for discussion was a proposed model copyright law for developing countries that would encourage their adherence to either one or both of the 1971 texts of the Universal and Berne Conventions. It was agreed that the text of the model law, together with a detailed commentary, would be circulated for comment and that a worldwide meeting of developing countries would be convened later to consider it. Other items discussed at the meeting included protection of translators and works of folklore.

The principal matter of concern at the two meetings of the Rome committee was a draft model law on neighboring rights and its interrelationship with the proposed Brussels Convention on Satellite Piracy. At the second meeting the committee adopted the text of the draft model law and a commentary on it for submission to governments.

One of the most significant developments in the history of international copyright was adherence of the Union of Soviet Socialist Republics to the Universal Copyright Convention, which came about shortly before the beginning of the fiscal year and was reported last year. The Soviet Union was represented by observer delegations at Nairobi and Paris and participated actively in the Brussels conference. New legislation implementing the Soviet adherence to the UCC was promulgated during the fiscal year, including a decree establishing a new copyright agency, the All-Union Copyright Agency, known by its Russian acronym VAAP. This agency, which came into existence on January 1, 1974, was created to deal exclusively with foreign rights in Soviet works and rights under Soviet copyright law in foreign works. The implications of the USSR adherence to the UCC and of the implementing legislation was the subject of much discussion in the United States, including speculation in the press, and the Copyright Office undertook studies of various aspects of the prob-

lem. The register, deputy register, general counsel, and other Copyright Office officials participated in discussions between representatives from the Soviet Union and the U.S. government.

In June 1974 the director-general of the World Intellectual Property Organization convened a meeting in Geneva of nongovernmental experts to consider problems in the protection, including copyright, of computer software. Governments were also invited to send representatives. The deputy register of copyrights and the general counsel of the Copyright Office attended for the U.S. government.

LEGAL AND OPERATIONAL PROBLEMS

Both traditional and contemporary means of communication merited copyright consideration during the year. Among topics of continuing discussion were motion picture soundtracks, typefaces, and computer programs.

Motion Picture Soundtracks

A significant development involved the preparation of a proposed regulation covering the registration of claims to copyright in motion picture soundtracks, including the material recorded on them. After two legal studies on different aspects of the problem, the Copyright Office decided to modify its formerly neutral position on the copyright status of soundtracks in published motion pictures. The proposed regulation would take the affirmative position that a sound motion picture is a copyrightable entity, and that copyright in the motion picture as an entity extends to all of its copyrightable components, including those produced on the soundtrack. Discussions and requests for comments are planned before a regulation on this subject is finally adopted.

Designs for Typefaces

The issue of the registrability of original typeface designs entered a new phase during this fiscal

year. The office's traditional position that "mere variations of typographic ornamentation" were not subject to copyright was directly challenged, and the problem was reopened for further study and consultations. Preparations for a public hearing on the possibility of amending the office's regulations on this subject were under way at the close of fiscal 1974.

Computer Programs

Although the number of computer programs submitted for copyright registration remains modest, the applications submitted continue to increase from year to year. As experience with the problems of examining, processing, and storing this material grows, the need for uniform policies and guidelines becomes more apparent. Fiscal 1974 saw meetings with industry representatives to consider the meaning of "publication" and "best edition" as applied to computer programs, and these issues were made the subject of legal studies and office discussion throughout the year.

JUDICIAL DEVELOPMENTS

Two decisions dominated judicial developments in the copyright field during the year: the ruling of the U.S. Supreme Court in *Teleprompter Corp. v. Columbia Broadcasting System, Inc.*, dealing with the copyright liability of cable television systems, and the decision of the U.S. Court of Claims in *Williams & Wilkins Co. v. The United States*, involving the copyright consequences of library photocopying. The *Teleprompter* decision had immediate consequences with respect to the progress of the bill for general revision of the copyright law. The U.S. Supreme Court agreed to hear an appeal from the decision in the *Williams & Wilkins* case, emphasizing the public importance of the photocopying issue. The public issues presented by a third case, involving a suit by CBS against Vanderbilt University over the latter's archive of videotapes made from live network newscasts, attracted much

attention and comment, but the case had not yet been argued as the year ended.

The most active field of copyright litigation during the year arose from widespread efforts to combat record and tape piracy. These produced a number of decisions, some of which will be of lasting importance in copyright jurisprudence.

Of particular interest to the office was an opinion by the attorney general of the United States concerning copyright renewal registration practices.

Cable TV and the Right of Public Performance

Over the past several years, the Supreme Court has decided cases affecting the rapidly expanding cable television industry. *Teleprompter Corp. v. Columbia Broadcasting System, Inc.*, 415 U.S. 394 (1974), resolved an important question, left unanswered in the Court's first cable-copyright case, *Fortnightly Corp. v. United Artists Corp.*, 392 U.S. 390 (1968).

Fortnightly held that a CATV system's retransmission of copyrighted television broadcasts did not constitute an infringing performance of the works originally broadcast. It reached this result by applying what Justice Potter Stewart, writing for the majority, termed a "functional test," distinguishing the activities of broadcasters, who "perform," and passive viewers, who do not. *Fortnightly's* facts, however, primarily involved the activities of so-called classic CATV systems, in that their retransmissions were essentially of locally receivable signals. Such systems, rather than bringing programming to the viewer, were seen as enhancing reception of signals in disadvantageously located communities within a service area generally covered by a terrestrial signal.

What *Fortnightly* left unresolved was the question of whether a cable system that imports distant signals, that originates its own programming, that sells advertising, and that makes its programming available on a network could still be regarded as essentially a "viewer" rather than as a broadcaster or "performer." Some limiting language in the *Fortnightly* opinion suggested the possibility that the Court might find that im-

portation of distant signals constituted a "performance" of the programming so carried. However, *Teleprompter* ultimately affirmed and extended the *Fortnightly* ruling rather than confining it to its special facts.

Although plaintiffs in *Teleprompter* urged a variety of reasons why the defendant's systems functioned as broadcasters, the issue rapidly reduced itself to the importation of distant signals. Speaking for the majority, Justice Stewart denied that such activities created a qualitative difference from the retransmissions sanctioned in *Fortnightly*:

By importing signals that could not normally be received with current technology in the community it serves, a CATV system does not, for copyright purposes, alter the function it performs for its subscribers. When a television broadcaster transmits a program, it has made public for simultaneous viewing and hearing the contents of that program. The privilege of receiving the broadcast electronic signals and of converting them into the sights and sounds of the program inheres in all members of the public who have the means of doing so. The simultaneous viewing is essentially a viewer function, irrespective of the distance between the broadcasting station and the ultimate viewer.

Even further, Justice Stewart insisted that the active importing of signals into areas where they could not be received was still, as a matter of copyright law, merely a case of a CATV system doing for a viewer what he could do for himself:

While the ability or inclination of an individual to erect his own antenna might decrease with respect to distant signals because of the increased cost of bringing the signal to his home, his status would remain unchanged. Similarly, a CATV system does not lose its status as a non-broadcaster, and thus a non-performer for copyright purposes, when the signals it carries are those from distant rather than local sources.

Copyright owners have feared that unrestricted CATV retransmissions of their programming into markets not covered by their broadcast licenses would seriously diminish the value of their works at the point of later licensing or syndication. The Court rejected arguments predicated upon the system of geographic licensing, which lies at the

heart of the exploitation of copyrighted works by television, by noting that the increased coverage due to CATV could be reflected in the broadcaster's advertising rate card.

Justice William O. Douglas, joined by the Chief Justice, dissented from the Court's ruling, concluding that the CATV systems in question were "functionally the equivalent to a regular broadcaster." Stating that "[i]t would be difficult to imagine a more flagrant violation of the Copyright Act," Justice Douglas argued that the majority's rule "... reads the Copyright Act out of existence for CATV."

In a short dissent, Justice Harry A. Blackmun indicated his own lack of support for the rule first enunciated in *Fortnightly* and agreed with Justice Douglas' argument that the earlier case should be strictly limited to its facts.

Teleprompter, in extending the *Fortnightly* ruling to distant signals, has raised serious uncertainties over how much vitality the jurisprudence enunciated in *Buck v. Jewell-LaSalle Realty Corp.*, 283 U.S. 191 (1931), still retains. The dissenters in both *Fortnightly* and *Teleprompter*, noting that the Court did not overrule the *Buck* decision, were at a loss to reconcile the new "functional" test for determining "performance" with the established law.

The question of whether copyrighted musical compositions are "performed" by a restaurateur who makes them available to patrons by means of a single radio tuned to regular broadcasts and connected to four separate loudspeakers was presented to the court in *Twentieth Century Music Corp. v. Aiken*, 182 USPQ 388 (3d Cir. 1974). Reversing a judgment for the plaintiff, the court relied upon the Supreme Court's rationale in *Teleprompter* and *Fortnightly* as limiting the doctrine of *Buck v. Jewell-LaSalle Realty Co.* concerning "performances" from broadcasts in hotels and other public places.

Referring to the *Teleprompter* case the court observed that "not only did the Supreme Court reemphasize the functional test announced in *Fortnightly*, but to the extent that it applied that test to 'distant signals' and held that even these did not constitute 'performance,' it supports the position taken by the ... [defendant] here. If

Fortnightly with its elaborate CATV plant and *Teleprompter* with its even more sophisticated and extended technological and programming facilities were not 'performing,' then logic dictates that no 'performance' resulted when the defendant Aiken merely activated his restaurant radio ... [and] that mere extension of the range of audibility of a broadcast program as 'extended' here by the appellant Aiken, cannot be said to constitute 'performance.'"

The performance of copyrighted musical compositions in an establishment licensed under local law as a "private" club which charged no admission fee and in fact made no profit was held to be a "public performance for profit" in *Broadcast Music, Inc. v. Walters*, 181 USPQ 327 (N.D. Okla. 1973). Granting the plaintiff's motion for summary judgment, the court argued that the licensing of the club as "private" was not controlling because the "substantive applications of the Copyright Act are not based upon a *status created by local law.*" Moreover, the opinion noted, the club in general operated for profit-making purposes, exacted no dues, and had no membership screening, no printed rules or regulations, no constitution, and no officers or directors.

Library Photocopying

The need for prompt resolution of the controversial and increasingly important issue of library photocopying of copyrighted works was dramatically brought into focus by the groundbreaking decision of the court of claims in *Williams & Wilkins Co. v. The United States*, 487 F.2d 1345 (Ct. Cl. 1973), *cert. granted* 182 USPQ 1, 42 USLW 3652 (U.S., May 28, 1974).

In holding that the photocopying activities of the National Institutes of Health and National Library of Medicine constituted a "fair use," the court, speaking through Judge Oscar Davis, reversed the earlier conclusions of Trial Judge James Davis, who found widespread copyright infringement in the "lending" operations of NIH and NLM. The rationale for the full court's re-

versal of Judge Davis' opinion was posited on eight factors:

1. The NIH and NLM are both nonprofit organizations, whose mandate encompasses the socially significant activity of medical and scientific research. Copying for such purposes, it was suggested, is and should be accorded a wider latitude than permitted in other fields.
2. The defendant agencies promulgated and enforced "reasonably strict limitations" intended to confine copying to single-copy, individual service.
3. The long history of library photocopying, without substantial objection from copyright proprietors until recently, was suggestive of the proposition that photoduplication cannot be deemed a per se infringement but must be evaluated in full context.
4. It was feared that the progress of medical science might be seriously hurt if photocopying were stopped.
5. In the majority view, the plaintiff had failed to demonstrate, adequately and clearly, economic injury causally related to photocopying activities.
6. Section 1 of the 1909 Copyright Act, by not specifying which of the exclusive rights enumerated apply to particular classes of copyrightable works, creates, in historic perspective with earlier copyright enactments, a "grave uncertainty" as to whether the proscription against "copying" actually applies to books and periodicals.
7. The legislative history of the pending copyright revision bill contains influential, though not binding, authority that photocopying can be "fair use" and that such determinations must be decided on a case-by-case basis, with full evaluation of the context of the copying.
8. The law and practices of foreign countries suggest that the activities of the NIH and NLM would not, under other modern systems, constitute an infringement.

Refusing to emphasize one or more of these eight points as central to the court's ruling, Judge

Oscar Davis stressed the limitations within which the ruling should be read:

... the conclusion that defendants' particular use of plaintiff's copyrighted materials has been "fair" rests upon all of the elements discussed . . . and not upon any one, or any combination less than all.

Similarly, the court refused to expand the analogical force of its holding beyond the special facts of NIH and NLM activities:

... our holding is restricted to the type and context of use by NIH and NLM, as shown by this record . . . [W]e do not pass on dissimilar systems or uses of copyrighted materials by other institutions or enterprises, or in other fields, or as applied to items other than journal articles.

Chief Judge Wilson Cowen and Judge Philip Nichols, Jr., wrote strong dissents to the majority opinion, the former noting that the case involved not the limited appropriations of copyrighted material usually encountered in "fair use" disputes, but rather

... a case of wholesale machine copying and distribution of copyrighted materials by defendant's libraries on a scale so vast that it dwarfs the output of many small publishing companies.

Judge Cowen was not persuaded that the scope of the author's exclusive right to copy under the 1909 act was somehow qualified as applied to books and periodicals. Further, he was unwilling to accept the apparent view of the majority that the issue of liability for infringement could turn, even in part, on the purported absence of unequivocal proof of specific monetary damage.

Judge Nichols, in a short dissent, protested that, despite the majority's attempts to limit the impact of the ruling, the effect would be disastrous:

However hedged, the decision will be read, that a copyright holder has no rights a library is bound to respect. We are making the Dred Scott decision of copyright law.

Both the majority and minority agreed on one point: the judicial forum was not well tailored

for securing an effective solution to the complex questions posed by library photocopying. Judge Oscar Davis, underlining the need for congressional treatment of the problems of photocopying, closed the majority opinion with the hope that:

... the result in the present case will be but a "holding operation" in the interim period before Congress enacts its preferred solution.

With no little irony, Judge Cowen agreed:

Nowhere else in its opinion is the court on more solid ground than when it declares that "the choices involve economic, social and policy factors which are far better sifted by a legislature."

While library groups were heartened by their victory before the full court of claims and copyright proprietors were overheard muttering the old chestnut that "hard cases make bad law," both sides seemed to realize that relatively little had been decisively settled. The strict limitations imposed by the court on its own ruling, the strong dissents and, perhaps most important, the exhaustive findings and opinion of Trial Judge James Davis that were overruled, all left much doubt as to what law had in fact emerged from the litigation.

As the fiscal year drew to a close, the Supreme Court granted certiorari in *Williams & Wilkins* and, once again, the High Court will entertain a case going to the heart of copyright. Indeed, the fact that the Court has been deeply involved in copyright matters during the last decade is symptomatic of the state of health of our copyright jurisprudence. In the *Fortnightly*, *Teleprompter*, and now the *Williams & Wilkins* decisions, the courts have struggled to fit modern technology into the framework of an act that was drafted mainly with printed books in mind and that predates the great bulk of other modern means of disseminating copyrighted materials. To paraphrase Cardozo, in the hands of the courts the written law tends to expand to the limits of its logic; the limits seem to have been reached in the case of the 1909 Copyright Act.

Subject Matter of Copyright

The copyrightability of street maps came under consideration in *Alaska Map Service, Inc. v. Roberts*, 368 F. Supp. 578 (D. Alaska 1973). While denying a preliminary injunction, the court conceded that the plaintiff had "expended considerable time, money and effort in producing the . . . maps" but emphasized that no evidence had been adduced showing that plaintiff had "performed that amount of original work required to make its map copyrightable." Suggesting the possibility of relief under a theory of unfair competition, the court explained its view of copyright authorship: "Merely synthesizing a map from those previously published by various governmental agencies is insufficient. . . . There must be originality resulting from the independent effort of the maker to acquire a reasonably substantial portion of the information. . . . Some actual original work of surveying, calculating or investigating must exist; merely obtaining the names of streets from real estate developers is insufficient."

On the other hand, in *Newton v. Voris*, 364 F. Supp. 562 (D. Ore. 1973), copyright in a city street map was upheld on the ground that the plaintiff "combined personal research in the records of public authorities with personal investigations as to the actual location of new buildings, streets and suburban developments" and, in so doing, produced "original work" through "the exercise of his creative faculties." In the view of the court, the process of producing maps that are current requires "a constant effort to revise the information" gathered by the mapmaker.

The effect upon copyrightability of a work whose content is deemed deceptive and fraudulent was presented to the court in *Belcher v. Tarbox*, 486 F.2d 1087 (9th Cir. 1973), an action for infringement of copyrighted handicapping systems for betting on horseraces. It was argued in defense that the works were not entitled to copyright because they fraudulently represented to the public that users of the system could win on the horses and that the author had in fact done so successfully. Rejecting the argument, the

court said: "There is nothing in the Copyright Act to suggest that the courts are to pass upon the truth or falsity, the soundness or unsoundness, of the views embodied in a copyrighted work." In a dissenting opinion Judge Robert H. Schnacke pointed out that, by according copyright protection to such material, "the law is not only condoning fraud but is placing its power, endorsement and support behind fraudulent works." Thus, the composers of fraudulent literature can "seek solace in the law as the protector of their copyrighted fraud . . . [a result] detrimental to our legal system and not in the public interest."

In *Freedman v. Grolier Enterprises, Inc.*, 179 USPQ 476 (S.D.N.Y. 1973), the plaintiff had copyrighted a deck of cards bearing numbers used in a "point count" system for playing bridge. Dismissing the complaint in action for infringement of the copyright, the court held that use of a single number is not a copyrightable form of expression. Distinguishing between uncopyrightable ideas and their copyrightable expression, Judge Thomas P. Griesa observed that the idea conceived by the plaintiff was to make continually evident to the novice bridge player the value of each honor card held in his hand, and that, basically, "the only means of expressing this idea is the way plaintiff employed." He noted that copyright protection will not be given to a form of expression necessarily dictated by the underlying subject matter, and added, "When an idea is so restrictive that it necessarily requires a particular form of expression, that is, when the idea and its expression are functionally inseparable, to permit the copyrighting of the expression would be to grant the copyright owner a monopoly of the idea."

The copyright status of the *Official Compilation of Codes, Rules, and Regulations of the State of New York* was reviewed in *Opinion of New York Attorney General*, 180 USPQ 331 (1973). Concluding that "the text of the codes, rules and regulations of departments and agencies of the State of New York" are clearly in the public domain, the opinion took note that similar determinations had been previously made with respect to "messages of governors to the

State Legislature and reports of legislative committees" as well as "the texts of opinions of the courts of this State." On the other hand, judicial headnotes may be copyrighted, and the same was deemed true of "the editorial notes and comments which appear in the Official Compilation but which are not contained in the text of the rules themselves."

In *Time-Saver Check, Inc. v. Deluxe Check Printers, Inc.*, 178 USPQ 510 (N.D. Tex. 1973), printed commercial bank checks with attached separate duplicates used with carbon paper were held uncopyrightable inasmuch as they lacked "original creative artistic characteristics." The fact that the check forms appeared in a copyrighted book was not enough to offer them protection in the estimation of the court, which quoted the text of Copyright Office Circular 32 and pertinent sections of the Regulations of the Copyright Office in support of its position.

In a case important to the Copyright Office, *Soptra Fabrics Corp. v. Stafford Knitting Mills, Inc.*, 365 F. Supp. 1199 (S.D.N.Y. 1973), *rev'd*, 490 F.2d 1092 (2d Cir. 1974), the Second Circuit implied that color patterns may be a copyrightable element under certain circumstances. In deciding an infringement issue, the trial court had ruled that color was not a consideration in applying the "ordinary observer" test. The court of appeals reversed this position by holding the use of identical colors constitutes additional evidence of actual copying.

In *In re Yardley*, 493 F.2d 1389 (C.C.P.A. 1974), the court of customs and patent appeals held that copyright protection in a watch face portraying a caricature of Spiro Agnew did not preclude the issuance of a design patent. The Patent Office had refused issuance of the design patent on the ground that both design patent and copyright protection could not cover the same work. The court reversed the Patent Office, holding that the natural overlapping of subject matter protectible by either copyright or design patent did not in itself necessitate an election between the two forms of protection.

In an action for the copyright infringement of scale model plastic airplane kits, *Monogram Models, Inc. v. Industro Motive Corp.*, 492 F.2d

1281 (6th Cir. 1974), Judge Paul C. Weick explored the basis of copyright:

It is the originality in the expression and embodiment of the design and structure of the kit that satisfies the originality requirement of copyrightability as stated in *Mazer v. Stein*, 347 U.S. 201 . . . [1954]. Thus it is neither the assembled plane, as a structure, nor the individual pieces of the unassembled plane, that are the proper subject for copyright protection. It is the scale model airplane kit, as a kit, that is copyrightable.

Copyright in a telephone directory was upheld in *Southwestern Bell Telephone Co. v. Nationwide Independent Directory Service, Inc.*, 371 F. Supp. 900 (W. D. Ark. 1974). Although the judge made clear that the plaintiff's copyright did not extend to the individual names and addresses listed in its directory, but rather to the compilation, he acknowledged that there is "nothing to stop another compiler obtaining this information, which is in the public domain, by independent research." Dismissing the contention that telephone directories cannot be copyrighted because of the public nature of their content, the judge observed:

The copyright law specifically states that directories may be copyrighted, 17 U.S.C. Secs. 3, 5, and 7. Moreover, the case law is well settled that telephone directories, as well as other similar compilations, are copyrightable and that suits for copyright infringement will lie when such compilations are copied without consent.

Judicial reaction toward protection for fictitious characters was mixed during the year. In *Booth v. Colgate-Palmolive Co.*, 362 F. Supp. 343 (S.D.N.Y. 1973), the Southern District Court of New York refused to protect the television character "Hazel" under theories of unfair competition and defamation. On the other hand, in *DeCosta v. Columbia Broadcasting System, Inc.*, Civil Action No. 3130 (D. R.I. 1974) an unpublished magistrate's report recommended the court should rule in favor of the originator of the television character "Paladin" and hold CBS liable under a theory of unfair competition.

Tape Piracy Decisions

Cases involving tape piracy were prominent during the fiscal year, and it has been interesting to note the lower court treatment of the leading decision in this area, *Goldstein v. California*, 412 U.S. 546 (1973), decided near the end of the last fiscal year, which involved the constitutionality of a California criminal statute outlawing tape piracy. The defendants were convicted of pirating sound recordings fixed before February 15, 1972, the date federal copyright protection was first extended to such works. The defendants argued that the federal copyright act preempted the field, and since sound recordings were not protected under federal law, no action could be maintained. In a 5-to-4 decision, the Supreme Court rejected this argument on the ground that there was no congressional intent to preempt the field in enacting the sound recording amendment.

In *International Tape Manufacturers Assn. v. Gerstein*, 494 F.2d 25 (5th Cir. 1974), a district court decision declaring a Florida statute unconstitutional was reversed and the case was remanded for consideration on the issue of justifiability and in light of the *Goldstein* case.

In addition to being subjected to criminal prosecutions under state law, tape pirates were successfully prosecuted under a federal statute relating to mail fraud in *United States v. Schultz*, 482 F.2d 1179 (6th Cir. 1973). Although there were no reported decisions in federal prosecutions of tape pirates under title 17, there was a significant increase in the use of federal criminal prosecution under section 104 to deter tape piracy, an unusual development in copyright law.

A variety of other remedies were available to thwart such piracy, and the plaintiffs prevailed, with one exception. In *United Artists Records, Inc. v. Eastern Tape Corp.*, 198 S.E. 2d 452 (N.C. Ct. App. 1973), the North Carolina Court of Appeals held that tape piracy constituted unfair competition under North Carolina law. The Tenth Circuit reversed a district court in *Warner Bros. Records, Inc. v. R. A. Ridges Distributing Co.*, 177 USPQ 299 (10th Cir. 1973), and reinstated a Utah state court decision which had pro-

tected sound recordings under a common law copyright theory.

A preliminary injunction was sought against a distributor of a coin-operated magnetic tape duplication system in *Elektra Records Co. v. Gem Electronic Distributors, Inc.*, 360 F. Supp. 821 (E.D.N.Y. 1973). The defendant's "Make-a-Tape" system was distributed through music stores and enabled the reproduction of full-length tape recordings in only two minutes. The court rejected the defendant's analogy to a photocopier in a public library and issued the injunction.

The judiciary remained divided as to whether the copyright proprietor of a musical composition can enjoin tape piracy in which the pirate has filed a notice of intention to use and tendered royalties pursuant to the compulsory licensing provisions. In *Jondora Music Publishing Co. v. Melody Recording, Inc.*, 362 F. Supp. 494 (D.N.J. 1973), the only victory for the unauthorized duplicators this fiscal year, the court concluded that compliance with the compulsory licensing provisions was a defense against infringement action by copyright owners of a musical composition. Cited as one of the primary authorities for this position was *Goldstein v. California*, 412 U.S. 546 (1973). The Tenth Circuit came to the opposite conclusion in *Marks Music Corp. v. Colorado Magnetics, Inc.*, 181 USPQ 129 (10th Cir. 1974), and cited *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9th Cir. 1972), cert. denied, *Rosner v. Duchess Music Corp.*, 409 U.S. 847 (Sup. Ct. 1972).

The fiscal year closed with another signa victory for recording companies, this time in Wisconsin. The state supreme court in *Mercury Record Productions, Inc. v. Economic Consultants, Inc.*, 218 N.W. 2d 705 (Wisc. Sup. Ct. 1974), reversed a Milwaukee County circuit court decision that had dismissed the complaint of the recording companies for relief under theories of unfair competition and common law copyright. The plaintiffs made their appeal solely on the ground of unfair competition. The court held that, under the standards of *Goldstein v. California*, state law may be applied to recordings issued before February 15, 1972, whether the

state law be statutory or common law. The *Goldstein* case was further interpreted as a repudiation of the line of cases critical of *International News Service v. Associated Press*, 248 U.S. 215 (1918), which established the misappropriation theory of unfair competition relief, and the court elected to grant relief under this doctrine, thus placing Wisconsin on the same side of the record piracy ledger as California, Illinois, New York, North Carolina, and South Carolina.

Notice of Copyright

In *Freedman v. Grolier Enterprises, Inc.*, 179 USPQ 476 (1973), involving a set of playing cards, a single notice of copyright appearing on the ace of spades was held sufficient. The court reasoned that "a deck of playing cards is a single commercial unit, the parts of which—the individual cards—cannot be separately used or exploited in the play of bridge or the other games in which playing cards are employed."

A copyright notice affixed to container boxes and instruction sheets for scale model airplane kits was held to "comply with Section 10 [of the copyright law]" in *Monogram Models, Inc. v. Industro Motive Corp.*, 492 F.2d 1281 (1973). Remarking that the plaintiff's notices met the statutory requirements as to form, the opinion also noted that, since "the instruction sheets and the container boxes are integral parts of the model airplane kits and the notice on these parts complies with the necessary form for notice of copyright, the notices of copyright on the two kits were adequate."

In a case involving copyright protection for a map, *Newton v. Voris*, 364 F. Supp. 562 (D. Ore. 1973), the defendant argued that the plaintiff's copyright had been invalidated because of the publication of a subsequent edition which had a notice postdated by one year. The court summarily rejected the argument, indicating that the mistake had been "innocent."

The sufficiency of the copyright notice on lace initially sold to jobbers in wholesale lots was considered by the court in *Klauber Bros. Inc. v. Westchester Lace Works, Inc.*, 181 USPQ 523

(S.D.N.Y. 1974), in which the plaintiff's motion for preliminary injunction was denied. Commenting on the use of a licensee's name in the copyright notice on one of the plaintiff's laces, the court said: "A licensee does not have standing to sue for copyright infringement unless the license is exclusive and the owner of the copyright is joined as a plaintiff." The court noted, however, that even if the agreement amounted to an assignment and not merely a license, the failure to record the assignment before using the licensee's name in the notice posed a serious problem under section 32 of the copyright law: "This section has been interpreted to mean that the substitution of the assignee's name in the notice of copyright before the recordation of the assignment results in an abandonment of the copyright and a dedication of the work to the public."

Further, the court expressed doubts about the sufficiency of a notice which, according to the defendant, appeared only at the beginning of each spool of 100 to 500 yards of lace: "The notice consists of two gummed labels affixed to the lace back-to-back. The question of whether one label at the beginning of a 100-500-yard spool of lace is sufficient notice is an important one. There is authority to support the position that such notice is insufficient, especially where the specimen deposited with the Copyright Office is no longer than 38 inches. *H. M. Kolbe Co. v. Armgus Textiles Co.*, 315 F.2d 70 . . . (2d Cir. 1963) indicates that the notice must be repeated at least every 38 inches in this case."

The court in *Foreign Car Parts, Inc. of New England v. Auto World, Inc.*, 366 F. Supp. 977 (M.D. Pa. 1973), taking a conservative view, refused to uphold copyright in a brochure consisting of a rectangular piece of paper with artwork and writing on both sides folded into fourths to make eight folds or pages, because the notice had been misplaced. Said the court: "[U]pon opening the brochure . . . , the notice of copyright appears on the right inside page. This is not the page immediately following the title page, and . . . renders the notice of copyright improper." For purposes of determining the proper location of the notice, the court apparently considered each fold of a brochure

equivalent to a page: "Since only one page in each of the brochures bears the full title, that page is the 'title page' . . . the first outside page of the brochure when properly folded." The court held that, "[i]n the absence of statutory language specifically applicable to such folded material, the language . . . [of section 20 of title 17, U.S. Code] applies to these brochures since they must be considered as 'other printed publication[s].'" "

Registration

The certificate of registration issued by the Copyright Office to show the information that has been made a part of the official record was held to be prima facie evidence not only of the facts of registration but also of the validity of the copyright claim in *Southwestern Bell Telephone Co. v. Nationwide Independent Directory Service, Inc.*, 371 F. Supp. 900 (W.D. Ark. 1974). According to the opinion, "the burden of overcoming this presumption" lies with the defendants. Similarly, in *Foreign Car Parts, Inc. of New England v. Auto World, Inc.*, mentioned earlier, the court ruled that "the certificate of copyright registration, in the absence of contradictory evidence, makes out a prima facie case of originality and copyright validity."

The Sixth Circuit rejected the argument that model airplane kits did not fit within the classification system and were therefore not copyrightable in *Monogram Models, Inc. v. Industro Motive Corp.*, 492 F.2d 1281 (6th Cir. 1974). Protection had been secured in two kits—one registered in class A and the other in class G.

Foreign Car Parts, Inc. of New England v. Auto World, Inc. indicated, however, that classification may be important in cases where there are differing statutory standards applicable to overlapping classes. In this case, an advertising brochure was registrable in either class A or class K, form KK. The applicant chose to register the work in class A and in a subsequent action the copyright was declared invalid because of a misplaced book notice.

Renewal and Ownership of Copyright

An opinion, as yet unreported, of the attorney general of the United States confirms a long-standing practice of the Copyright Office with respect to renewal registrations. Beginning in 1967 the office received a number of renewal applications on which the claimant asserted his right to renew claims to copyright in a group of comic books both as "proprietor of copyright in a composite work" and as "proprietor of copyright in a work made for hire." The Copyright Office refused to register the applications on the ground that each application contained dual, contradictory, and therefore mutually exclusive claims. The claimant questioned the register's authority to refuse registration, and an advisory opinion was sought from the attorney general. On June 10, 1974, the attorney general observed that the language of the Copyright Act, its legislative history, and the longstanding practice of the Copyright Office in dealing with matters of this kind led to the conclusion that one who claims in the same application as a "proprietor of a copyright in a composite work" and as the "employer of a work made for hire" is asserting mutually exclusive claims and that the register of copyrights has the discretion to refuse registration of such an application.

The ownership of copyright renewal rights in the comic strip "Superman" was the point of contention in *Siegel v. National Periodical Publications, Inc.*, 364 F. Supp. 1032 (S.D.N.Y. 1973), an action for declaratory judgment. Granting the defense motion for summary judgment dismissing the complaint, the court held that the cartoons were a "work for hire" within the meaning of section 26 of the Copyright Law. According to the opinion, employment for hire involves four basic elements: 1) existence of an arrangement beyond a mere assignor-assignee relationship; 2) payment of wages or other remuneration; 3) the right of an employer to direct and supervise the manner in which the work is performed; and 4) existence of an express contract for hire, especially one calling for an author to devote his exclusive artistic services to his employer.

In *Klauber Bros., Inc. v. Westchester Lace Works, Inc.*, 181 USPQ 523 (S.D.N.Y. 1974), the court refused to issue a preliminary injunction on the ground that a licensee lacks standing unless the license was exclusive and the owner of the copyright is joined as plaintiff.

In *Krahmer v. Luing*, 317 A.2d 96 (N.J. Super. Ct. 1974), architectural plans commissioned under a contract stipulating that they were the property of the architect were held to be jointly owned as tenants in common by the architect and the person who commissioned the work.

In *Hughes Tool Co. v. Fawcett Publications, Inc.*, 315 A.2d 577 (Del. Sup. Ct. 1974), a close associate of Howard Hughes, and one who had been in his employ for many years, wrote a book on Hughes' life. The author had ended his relationship with a contract stipulating that he would not divulge any information concerning Hughes or his companies. Upon learning of the imminent publication, Hughes sought to compel transfer of the copyright in a court of equity. The trial court dismissed on the ground that there was an adequate remedy at law. The Supreme Court of Delaware reversed on the ground that only an action in equity could force the transfer of an incorporeal right such as copyright.

Publication

In *Krahmer v. Luing*, 317 A.2d 96 (N.J. Super. Ct. 1974), the filing of architectural drawings with the building inspector and the subsequent construction of the building did not divest the copyright owners of their common law protection, constituting only a limited publication since there was no intention to abandon the copyright or dedicate it to the public.

Federal Preemption of Protection for Intellectual Property

Ten years ago the Supreme Court appeared to have put the brakes on an expanding state law of unfair competition predicated upon the mis-

appropriation doctrine of *International News Service v. Associated Press*, 248 U.S. 215 (1918), when it decided the companion cases of *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964), and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964). *Sears-Compco* seemed to establish federal preemption in the patent and copyright fields and to prevent state law from prohibiting simple copying of subject matter unprotected by the federal patent and copyright laws. Since the Court failed, however, to overrule its earlier *INS* decision, the door remained open for state courts to apply the misappropriation doctrine in selected cases, and some of them vigorously embraced this opportunity to stamp out tape piracy. In *Goldstein v. California*, discussed earlier in this chapter, the Supreme Court gave its imprimatur to this line of cases and retreated from the doctrine of federal preemption. Further retreat can be seen in a related area of intellectual property—trade secrets law.

In *Kewanee Oil Co. v. Bicron Corp.*, 181 USPQ 673 (Sup. Ct. 1974), the Court reversed the Sixth Circuit Court of Appeals and held that the Ohio law of trade secrets did not clash with the federal patent law. In upholding local law not clearly in conflict with a specific federal law, the majority opinion reflects the same view of federalism as in the *Goldstein* case, although the Court obviously experienced greater difficulty in reaching this result a second time without overruling the *Sears* and *Compco* cases. The dissent considered the *Kewanee* majority view to be “at war with the philosophy” of *Sears* and *Compco*.

A trade secret is any information, device, or formula that a company holds secret but may license to another in confidence, under an explicit or implicit obligation not to disclose it. A potentially serious conflict exists between this form of state law, which encourages nondis-

closure of discoveries or inventions, and the federal patent system, which encourages disclosures to benefit the public.

The majority of the Supreme Court in the *Kewanee* case saw no clash at all between its decision and the cases where the trade secret is clearly not patentable subject matter or clearly fails to meet the standards of patentability. It struggled somewhat with the case where patentability is in doubt. While conceding that denial of trade secrets protection might encourage greater patent filings, and hence greater disclosure, the Court paradoxically concluded that, in view of differences in the patentability standards applied by the Patent Office and the courts, any possible gain through additional disclosures would be overbalanced by the deleterious effect on the patent system of encouraging issuance of “invalid” patents.

Finally, the most difficult category was that of trade secrets clearly eligible for federal patents. While recognizing that the federal interest in disclosure is greatest in this case, the majority of the Court again concluded that extension of trade secrets protection by state law did not conflict with federal patent policy, basically because the possibility of election of trade secret over patent in the clearly eligible category was remote.

Obviously, the last word from the Supreme Court on federal preemption in the intellectual property field has not been heard. A divided court could swing back toward the *Sears* and *Compco* philosophy if only one or two seats on the bench change. Meanwhile, the Court has indeed erected a maze for practitioners to meander in. The decisions in *INS*, *Sears* and *Compco*, and *Goldstein* and *Kewanee* all represent valid law, yet their inconsistencies, contradictions, and complexities will challenge the wizardry of lawyers and judges in situations involving intellectual property for generations to come.

Respectfully submitted,

BARBARA RINGER
Register of Copyrights

International Copyright Relations of the United States as of July 10, 1974

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

Bilateral	Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.
BAC	Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.
UCC Geneva	Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955.
UCC Paris	Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974.
Phonogram	Party to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974.
	<i>Foreign sound recordings fixed and published on or after February 15, 1972, with the special notice of copyright prescribed by law (e.g., © 1974 Doe Records, Inc.), may be entitled to U.S. copyright protection only if the author is a citizen of one of the countries with which the United States maintains bilateral or phonogram convention relations as indicated below.</i>
Unclear	Became independent since 1943. Has not established copyright relations with the United States but may be honoring obligations incurred under former political status.
None	No copyright relations with the United States.

Afghanistan	Bahrain	Burma
None	None	Unclear
Albania	Bangladesh	Burundi
None	Unclear	Unclear
Algeria	Barbados	Cambodia
UCC Geneva Aug. 28, 1973	Unclear	(Khmer Republic)
UCC Paris July 10, 1974	Belgium	UCC Geneva Sept. 16, 1955
Andorra	Bilateral July 1, 1891	Cameroon
UCC Geneva Sept. 16, 1955	UCC Geneva Aug. 31, 1960	UCC Geneva May 1, 1973
Argentina	Bhutan	UCC Paris July 10, 1974
Bilateral Aug. 23, 1934	None	Canada
BAC April 19, 1950	Bolivia	Bilateral Jan. 1, 1924
UCC Geneva Feb. 13, 1958	BAC May 15, 1914	UCC Geneva Aug. 10, 1962
Phonogram June 30, 1973	Botswana	Central African Republic
Australia	Unclear	Unclear
Bilateral Mar. 15, 1918	Brazil	Chad
UCC Geneva May 1, 1969	Bilateral Apr. 2, 1957	Unclear
Phonogram June 22, 1974	BAC Aug. 31, 1915	Chile
Austria	UCC Geneva Jan. 13, 1960	Bilateral May 25, 1896
Bilateral Sept. 20, 1907	Bulgaria	BAC June 14, 1955
UCC Geneva July 2, 1957	None	UCC Geneva Sept. 16, 1955
Bahamas, The		
Unclear		

China Bilateral Jan. 13, 1904	France Bilateral July 1, 1891 UCC Geneva Jan. 14, 1956	Indonesia Unclear
Colombia BAC Dec. 23, 1936	UCC Paris July 10, 1974 Phonogram Apr. 18, 1973	Iran None
Congo Unclear	Gabon Unclear	Iraq None
Costa Rica ¹ Bilateral Oct. 19, 1899 BAC Nov. 30, 1916 UCC Geneva Sept. 16, 1955	Gambia, The Unclear	Ireland Bilateral Oct. 1, 1929 UCC Geneva Jan. 20, 1959
Cuba Bilateral Nov. 17, 1903 UCC Geneva June 18, 1957	Germany Bilateral Apr. 15, 1892 UCC Geneva with Federal Republic of Germany Sept. 16, 1955 UCC Paris with Federal Republic of Germany July 10, 1974 Phonogram with Federal Republic of Germany May 18, 1974 UCC Geneva with German Demo- cratic Republic Oct. 5, 1973	Israel Bilateral May 15, 1948 UCC Geneva Sept. 16, 1955
Cyprus Unclear	Ghana UCC Geneva Aug. 22, 1962	Italy Bilateral Oct. 31, 1892 UCC Geneva Jan. 24, 1957
Czechoslovakia Bilateral Mar. 1, 1927 UCC Geneva Jan. 6, 1960	Greece Bilateral Mar. 1, 1932 UCC Geneva Aug. 24, 1963	Ivory Coast Unclear
Dahomey Unclear	Grenada Unclear	Jamaica Unclear
Denmark Bilateral May 8, 1893 UCC Geneva Feb. 9, 1962	Guatemala ¹ BAC Mar. 28, 1913 UCC Geneva Oct. 28, 1964	Japan ² UCC Geneva Apr. 28, 1956
Dominican Republic ¹ BAC Oct. 31, 1912	Guinea Unclear	Jordan Unclear
Ecuador BAC Aug. 31, 1914 UCC Geneva June 5, 1957	Guyana Unclear	Kenya UCC Geneva Sept. 7, 1966 UCC Paris July 10, 1974
Egypt None	Haiti BAC Nov. 27, 1919 UCC Geneva Sept. 16, 1955	Korea Unclear
El Salvador Bilateral June 30, 1908, by virtue of Mexico City Convention, 1902	Honduras ¹ BAC Apr. 27, 1914	Kuwait Unclear
Equatorial Guinea Unclear	Hungary Bilateral Oct. 16, 1912 UCC Geneva Jan. 23, 1971 UCC Paris July 10, 1974	Laos UCC Geneva Sept. 16, 1955
Ethiopia None	Iceland UCC Geneva Dec. 18, 1956	Lebanon UCC Geneva Oct. 17, 1959
Fiji UCC Geneva Oct. 10, 1970 Phonogram Apr. 18, 1973	India Bilateral Aug. 15, 1947 UCC Geneva Jan. 21, 1958	Lesotho Unclear
Finland Bilateral Jan. 1, 1929 UCC Geneva Apr. 16, 1963 Phonogram Apr. 18, 1973		Liberia UCC Geneva July 27, 1956
		Libya Unclear
		Liechtenstein UCC Geneva Jan. 22, 1959
		Luxembourg Bilateral June 29, 1910 UCC Geneva Oct. 15, 1955

Madagascar (Malagasy Republic) Unclear	Nigeria UCC Geneva Feb. 14, 1962	Sierra Leone None
Malawi UCC Geneva Oct. 26, 1965	Norway Bilateral July 1, 1905 UCC Geneva Jan. 23, 1963	Singapore Unclear
Malaysia Unclear	Oman None	Somalia Unclear
Maldives Unclear	Pakistan UCC Geneva Sept. 16, 1955	South Africa Bilateral July 1, 1924
Mali Unclear	Panama BAC Nov. 25, 1913 UCC Geneva Oct. 17, 1962 Phonogram June 29, 1974	Soviet Union UCC Geneva May 27, 1973
Malta UCC Geneva Nov. 19, 1968	Paraguay BAC Sept. 20, 1917 UCC Geneva Mar. 11, 1962	Spain Bilateral July 10, 1895 UCC Geneva Sept. 16, 1955 UCC Paris July 10, 1974
Mauritania Unclear	Peru BAC April 30, 1920 UCC Geneva Oct. 16, 1963	Sri Lanka Unclear
Mauritius UCC Geneva Mar. 12, 1968	Philippines Bilateral Oct. 21, 1948 UCC status undetermined by Unesco. (Copyright Office considers that UCC relations do not exist.)	Sudan Unclear
Mexico Bilateral Feb. 27, 1896 BAC Apr. 24, 1964 UCC Geneva May 12, 1957 Phonogram Dec. 21, 1973	Poland Bilateral Feb. 16, 1927	Swaziland Unclear
Monaco Bilateral Oct. 15, 1952 UCC Geneva Sept. 16, 1955	Portugal Bilateral July 20, 1893 UCC Geneva Dec. 25, 1956	Sweden Bilateral June 1, 1911 UCC Geneva July 1, 1961 UCC Paris July 10, 1974 Phonogram Apr. 18, 1973
Mongolia None	Qatar None	Switzerland Bilateral July 1, 1891 UCC Geneva Mar. 30, 1956
Morocco UCC Geneva May 8, 1972	Romania Bilateral May 14, 1928 Bilateral Sept. 15, 1947	Syria Unclear
Nauru Unclear	Rwanda Unclear	Tanzania Unclear
Nepal None	San Marino None	Thailand Bilateral Sept. 1, 1921
Netherlands Bilateral Nov. 20, 1899 UCC Geneva June 22, 1967	Saudi Arabia None	Togo Unclear
New Zealand Bilateral Dec. 1, 1916 UCC Geneva Sept. 11, 1964	Senegal UCC Geneva July 9, 1974 UCC Paris July 10, 1974	Tonga None
Nicaragua ¹ BAC Dec. 15, 1913 UCC Geneva Aug. 16, 1961		Trinidad and Tobago Unclear
Niger Unclear		Tunisia UCC Geneva June 19, 1969
		Turkey None

Uganda Unclear	Uruguay BAC Dec. 17, 1919	Yemen (Aden) Unclear
United Arab Emirates None	Vatican City (Holy See) UCC Geneva Oct. 5, 1955	Yemen (San'a) None
United Kingdom Bilateral July 1, 1891 UCC Geneva Sept. 27, 1957 UCC Paris July 10, 1974 Phonogram Apr. 18, 1973	Venezuela UCC Geneva Sept. 30, 1966	Yugoslavia UCC Geneva May 11, 1966 UCC Paris July 10, 1974
Upper Volta Unclear	Vietnam Unclear	Zaire Unclear
	Western Samoa Unclear	Zambia UCC Geneva June 1, 1965

¹ Effective June 30, 1908, became a party to the 1902 Mexico City Convention, to which the United States also became a party effective the same date. As regards copyright relations with the United States, this convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

² Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the Universal Copyright Convention, Geneva, 1952, effective April 28, 1956.

Number of Registrations by Subject Matter Class, Fiscal Years 1970-74

Class	Subject matter of copyright	1970	1971	1972	1973	1974
A	Books, including pamphlets, leaflets, etc. . . .	88,432	96,124	103,231	104,523	104,806
B	Periodicals (issues)	83,862	84,491	84,686	88,553	92,224
	(BB) Contributions to newspapers and periodicals	1,943	1,884	2,004	2,074	2,172
C	Lectures, sermons, addresses	1,669	1,855	1,940	1,714	1,631
D	Dramatic or dramatico-musical compositions . .	3,352	3,553	3,838	3,980	4,016
E	Musical compositions	88,949	95,202	97,482	95,296	104,511
F	Maps	1,921	1,677	1,633	1,914	1,549
G	Works of art, models, or designs	6,807	7,916	7,901	8,621	8,525
H	Reproductions of works of art	3,036	3,047	3,434	3,190	3,612
I	Drawings or plastic works of a scientific or technical character	835	924	1,059	1,114	809
J	Photographs	1,171	1,160	1,140	1,354	1,409
K	Prints and pictorial illustrations	3,373	4,209	4,524	4,441	4,716
	(KK) Commercial prints and labels	5,255	4,424	4,118	4,216	4,964
L	Motion-picture photoplays	1,244	1,169	1,816	1,449	1,321
M	Motion pictures not photoplays	1,301	1,226	1,388	1,420	1,741
N	Sound recordings			1,141	6,718	9,362
R	Renewals of all classes	23,316	20,835	23,239	23,071	25,464
	Total	316,466	329,696	344,574	353,648	372,832

Number of Articles Deposited, Fiscal Years 1970-74

Class	Subject matter of copyright	1970	1971	1972	1973	1974
A	Books, including pamphlets, leaflets, etc. . . .	174,519	189,887	203,875	206,671	206,905
B	Periodicals	166,976	168,114	168,463	176,142	183,474
	(BB) Contributions to newspapers and periodicals	1,943	1,884	2,004	2,074	2,172
C	Lectures, sermons, addresses	1,669	1,855	1,940	1,714	1,631
D	Dramatic or dramatico-musical compositions . .	3,751	3,993	4,216	4,538	4,567
E	Musical compositions	110,010	116,537	117,425	114,378	124,481
F	Maps	3,840	3,352	3,264	3,786	3,098
G	Works of art, models, or designs	11,736	13,894	13,590	14,843	14,611
H	Reproductions of works of art	6,046	6,056	6,821	6,313	7,126
I	Drawings or plastic works of a scientific or technical character	1,267	1,419	1,614	1,873	1,226
J	Photographs	2,080	2,056	2,063	2,471	2,481
K	Prints and pictorial illustrations	6,740	8,417	9,036	8,873	9,427
	(KK) Commercial prints and labels	10,510	8,846	8,235	8,408	9,920
L	Motion-picture photoplays	2,448	2,305	3,593	2,855	2,562
M	Motion pictures not photoplays	2,460	2,318	2,648	2,654	3,115
N	Sound recordings			2,282	13,388	18,431
	Total	505,995	530,933	551,069	570,981	595,227

*Number of Articles Transferred to Other Departments of the Library of Congress*¹

Class	Subject matter of articles transferred	1970	1971	1972	1973	1974
A	Books, including pamphlets, leaflets, etc.	92,664	107,468	115,242	120,452	² 122,157
B	Periodicals	175,301	176,259	176,161	183,755	190,359
	(BB) Contributions to newspapers and periodicals	1,943	1,884	2,004	2,074	2,196
C	Lectures, sermons, addresses	0	0	0	7	0
D	Dramatic or dramatico-musical compositions	100	41	226	179	184
E	Musical compositions	25,235	25,567	21,275	22,517	20,558
F	Maps	3,946	3,352	3,264	3,796	3,100
G	Works of art, models, or designs	286	376	1,252	2,957	1,928
H	Reproductions of works of art	431	845	1,620	2,933	2,579
I	Drawings or plastic works of a scientific or technical character	0	0	0	10	0
J	Photographs	28	42	65	66	188
K	Prints and pictorial illustrations	370	614	499	52	65
	(KK) Commercial prints and labels	98	409	220	38	13
L	Motion-picture photoplays	63	4	64	67	322
M	Motion pictures not photoplays	153	111	183	331	206
N	Sound recordings			2,282	13,405	18,321
	Total	300,618	316,972	324,357	352,639	362,176

¹ Extra copies received with deposits and gift copies are included in these figures. For some categories, the number of articles transferred may therefore exceed the number of articles deposited as shown in the preceding chart.

² Of this total, 28,732 copies were transferred to the Exchange and Gift Division for use in its programs.

Gross Cash Receipts, Fees, and Registrations, Fiscal Years 1970-74

	Gross receipts	Fees earned	Registrations	Increase or decrease in registrations
1970	\$2,049,308.99	\$1,956,441.37	316,466	+15,208
1971	2,089,620.19	2,045,457.52	329,696	+13,230
1972	2,313,638.14	2,177,064.86	344,574	+14,878
1973	2,413,179.43	2,226,540.96	353,648	+9,074
1974	2,411,334.59	2,312,375.71	372,832	+19,184
Total	11,277,081.34	10,717,880.42	1,717,216	

Summary of Copyright Business

Balance on hand July 1, 1973		\$ 577,982.66
Gross receipts July 1, 1973, to June 30, 1974		2,411,334.59
Total to be accounted for		2,989,317.25
Refunded	\$ 107,686.33	
Checks returned unpaid	3,836.55	
Deposited as earned fees	2,271,683.16	
Deposited as undeliverable checks	1,713.21	
Deposited as unclaimed monies	81.32	
Balance carried over July 1, 1974		
Fees earned in June 1974 but not deposited until		
July 1974	\$201,065.11	
Unfinished business balance	115,589.89	
Deposit accounts balance	283,045.00	
Card service	4,616.68	
		604,316.68
		2,989,317.25
	Registrations	Fees earned
Published domestic works at \$6	237,797	\$1,426,782.00
Published foreign works at \$6	5,116	30,696.00
Unpublished works at \$6	92,182	553,092.00
Renewals at \$4	25,464	101,856.00
Total registrations for fee	360,559	2,112,426.00
Registrations made under provisions of law permitting registration without payment of fee for certain works of foreign origin	12,264	
Registrations made under Standard Reference Data Act, P.L. 90-396 (15 U.S.C. §290), for certain publications of U.S. government agencies for which fee has been waived	9	
Total registrations	372,832	
Fees for recording assignments		41,668.50
Fees for indexing transfers of proprietorship		16,470.00
Fees for recording notices of use		20,408.00
Fees for recording notices of intention to use		30,413.50
Fees for certified documents		8,667.00
Fees for searches made		68,940.00
Card service		13,382.71
Total fees exclusive of registrations		199,949.71
Total fees earned		2,312,375.71