

# COPYRIGHT LAW REFORM

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## GROWTH OF COPYRIGHT LEGISLATION IN THE UNITED STATES

The beginnings of copyright legislation in the United States were due to the personal endeavors of one of Connecticut's most distinguished men, Dr. Noah Webster. He was directly instrumental in securing the enactment of our earliest copyright statute, passed by the General Court of Connecticut at its January session, 1783, under the title "An Act for the Encouragement of Literature and Genius." He had just completed his well-known spelling book and was concerned to secure protection for this work throughout the various States of the Union. This book ultimately attained an extraordinary popularity and sold in great numbers. Mr. Scudder, Noah Webster's biographer, is the authority for the statement that in 1814-15, the annual sales averaged 286,000 copies; in 1828, over 350,000 copies; that by 1847 over 24 million copies had been published; and the sales then amounted to a million each year, equally large annual sales being reported from 1866 to 1873.

About the year 1782 several distinguished Americans, among them another noted citizen of Connecticut, Mr. Joel Barlow, joined in presenting a memorial to Congress petitioning them to recommend to the several States the enactment of copyright laws. This agitation resulted in the passage of the Congressional resolution of May 2, 1783, reading in part:

"That it be recommended to the several States to secure to the authors or publishers of any new books not hitherto printed, being citizens of the United States, and to their executors, administrators and assigns, the copyright of such books for a certain time not less than fourteen years from the first publication, and a renewal copyright for another term of time not less than fourteen years."

Mr. Webster not only visited New York where the Congress was then sitting but various cities in the different States, including Kingston, N. Y., Trenton, Dover, Philadelphia, Baltimore, Washington, Richmond and Charleston. He visited General Washington at Mount Vernon, who gave him letters of introduction to Governor Harrison of Virginia, and to the Speakers of both houses of the legislature—a final result of his efforts in that State being the Copyright Act of 1785.

Massachusetts promptly followed the example of Connecticut in its Copyright Act of March 17, 1783. In the same year copyright laws were passed by Maryland, April 21; New Jersey, May

27; New Hampshire, November 7; and Rhode Island, in the December session. Acts were passed in 1784 by Pennsylvania on March 15, and South Carolina on March 26; in 1785, by Virginia, during October; North Carolina, on November 19; in 1786, by Georgia, February 3, and New York on April 29. Delaware alone of the original states failed to enact a copyright law, notwithstanding Mr. Webster's apparently successful visit to Dover in February 1785 or 1786. Not only were these copyright laws of the twelve original states secured very largely by reason of Mr. Webster's personal efforts; but the first Federal Copyright Act of May 31, 1790 was undoubtedly a direct outcome of his endeavors for literary property protection.

He was not satisfied, however, to rest upon his laurels in accomplishing this important first chapter in the history of copyright in the United States. When in England in 1825, he became interested in the new copyright legislation proposed for Great Britain, and especially in the extension of the term of protection for the author's work. On September 30, 1826 he appealed to Daniel Webster, writing him at considerable length and emphasizing his desire that while the latter was in Congress his talents might "be exerted in placing this species of property on the same footing as all property, as to exclusive right and permanence of possession."

Daniel Webster in his reply to Noah's letter, promised to lay it before the Senate Committee of the Judiciary in the next session of Congress "as that committee has in contemplation some important changes in the law respecting copyright," and while stating his own belief that there were objections to making copyright perpetual, expressed willingness to extend the term of protection further than at present. But Noah Webster was firmly convinced of the author's perpetual right in his work and on February 19, 1828, Mr. Van Buren presented to the House of Representatives the petition of Noah Webster and others praying Congress to give authors and their heirs the exclusive and *perpetual* property in their works.

In 1829 Dr. Webster applied to Mr. William M. Ellsworth, then a Member of Congress from Connecticut, to make efforts to procure the enactment of a new copyright law; and on January 21, 1830, Mr. Ellsworth reported a bill to amend the Copyright Act, which bill, subsequently amended, became the first Act of copyright revision of February 3, 1831. It doubled the first term of copyright, making it twenty-eight years, and continued the right of renewal for fourteen years more. In addition to extending the term of protection, this first Act of general revision enlarged the scope of copyright protection by adding "musical compositions" and "prints, cuts or engravings" to "maps, charts and books" of the 1790 Act. This law also provided more detailed conditions

and formalities, provisions against printing an author's manuscript without consent, and remedies in case of infringement.

It is worth noting, in passing, that both the 1790 and the 1831 Acts contained the provision that nothing in the Act shall be construed to prohibit the importation, vending, reprinting or publishing of works by authors not citizens or residents of the United States. It was not until 1891, more than one hundred years after the date of our first federal copyright statute, that this express permission to use the foreign author's work without his consent was eliminated from the copyright statutes.

Various minor ameliorations of the copyright law were secured by Amending Acts in 1834, 1846, 1855, 1856, 1859, 1861, 1865 and 1867. On July 8, 1870 there was approved "An Act to revise, consolidate and amend the statutes relating to patents and copyrights." Of this Act, sections 85 to 111 relate to copyright; and this Act constitutes the second general revision of the copyright laws, the first having been the Act of 1831.

Meanwhile, under the Act of Congress approved June 27, 1866, Commissioners "learned in the law" had been appointed "to revise, simplify, arrange and consolidate all statutes of the United States, general and permanent in their nature which shall be in force at the time such commissioners may make a final report of their doings." In carrying out their work the Commissioners printed in 1868 a preliminary draft of the text for patents and copyright; and revised drafts were printed in 1869 and 1872, on December 1, 1873, the final results of their labor meeting approval as the Revised Statutes of the United States. Of this work, title 60, chapter 3, covers copyright. A second revised edition of the Revised Statutes, edited by Mr. George S. Boutwell, duly appointed Commissioner for the purpose, was printed under authority of law in 1878, and chapter 3 of title 60, sections 4948 to 4971 cover copyright. This revision was confined to details, and did not enact any noticeable changes, retaining the term fixed by the Act of 1831. It retained also the provision permitting the printing, publishing, importing or selling of copyright works "written, composed, or made by any person not a citizen of the United States nor resident therein."

#### EFFORTS MADE TO SECURE PROTECTION FOR FOREIGN AUTHORS

The four general Copyright Acts of 1790, 1831, 1870, and the Revised Statutes all explicitly restricted to citizens and residents of the United States the copyright protection accorded. These statutes not only failed to contain any provisions for the protection of alien authors, but each in its turn included some provision which in substance was in agreement with section 5 of the first Federal Copyright Act of 1790 to permit importing, re-

printing, publishing and selling the foreign author's work. Notwithstanding this inclusion of a clause which permitted and encouraged literary piracy as late as the Revised Statutes of 1878, however, considerable agitation against this discreditable situation had developed by that time.

On February 2, 1837 an address, signed by 56 distinguished British authors, was presented to the Senate by Henry Clay. This document pointed out the injury to reputation and property which a lack of legal security long had caused them in not affording them, within the United States, the exclusive right to their respective writings, and petitioned in behalf of the authors of Great Britain that a legislative remedy should be provided. The same petition was presented to the House of Representatives on February 13 of the same year, by Mr. Churchill C. Cambreleng of New York. In the Senate the petition was referred to a select committee consisting of Senators Clay; William C. Preston, of South Carolina; James Buchanan, of Pennsylvania; Daniel Webster, of Massachusetts; and Thomas Ewing, of Ohio. On February 16, Mr. Clay submitted a report which he accompanied by a bill, the first so-called International Copyright Bill, providing that the then existing copyright legislation "shall be extended to, and the benefits thereof may be enjoyed by, any subject or resident of the United Kingdom of Great Britain and Ireland, or of France, in the same manner as if they were citizens or residents of the United States." In his report Senator Clay explains that his bill limits the United States copyright accorded to subjects of Great Britain and France, "among other reasons" because "it will be but a measure of reciprocal justice for in both those countries, our authors may enjoy that protection of their laws for literary property which is denied to their subjects here." Senator Clay was persistent in keeping his bill before the Senate, reintroducing it on December 13, 1837, December 17, 1838, January 6, 1840, and January 6, 1842.

The visit to this country of Charles Dickens in the latter year, and his frank public criticism of the unjust treatment of British authors, concentrated attention on the subject; and the British petition was followed by a number of petitions by American authors, university professors, American publishers and others in favor of an international copyright law. Opposition was promptly voiced, however, and pressed upon Congress by the typographical societies and some publishers. Petitions in favor of protection for foreign authors were presented by Washington Irving and Nahum Capen, of Boston. On May 11, 1842, Senator Preston inquired of the Committee concerning Clay's bill; and in reply a statement was made that the report was delayed at Senator Clay's instance in order to secure further testimony, but that the report was ready and would be adverse to the bill.

It is noted that "Mr. Buchanan and several other Senators expressed, in an audible tone, their satisfaction at hearing that the Committee would report adversely to the passage of the bill." Evidently the time was not ripe for this step in advance in relation to copyright. Under date of October 8, 1843, the American Copyright Club (William Cullen Bryant, President; Cornelius Mathews, Corresponding Secretary) printed and circulated "An Address to the People of the United States," advocating legislation to grant copyright to foreign authors. Later on a new agitation was started in favor of justice to foreign, especially British authors, and the name of William Cullen Bryant headed a petition for international copyright presented to Congress on March 22, 1848, this petition including also the signature of John Jay. This was followed by more petitions of similar import from colleges and educational institutions. In 1852, Washington Irving and James Fenimore Cooper headed a petition for international copyright, the signatures including other authors, publishers, booksellers and even printers and editors. It was presented to the Senate by Charles Sumner, and was referred to the Committee on the Library.

In 1858 and again in 1860, Edward Joy Morris, of Pennsylvania, presented a bill to establish an international copyright law; and, during 1866, Charles Sumner presented to the Senate a number of petitions for the same purpose, including memorials from William Cullen Bryant and others, and from Henry W. Longfellow and others. The International Copyright Association was organized on April 9, 1868, with William C. Bryant as President and Edmund C. Stedman as Secretary. It promptly presented a Memorial to Congress signed by upwards of 150 persons, including many authors and some publishers. On January 16, 1868, Mr. Samuel M. Arnell, of Tennessee, submitted to the House a Resolution that the Committee on the Library be instructed to inquire into the "subject of international copyright and the best means for the encouragement and advancement of cheap literature and the better protection of authors." This move was immediately followed by the introduction, on February 21, 1868, of a bill "for securing to authors in certain cases the benefit of international copyright" by John Denison Baldwin, a Member of Congress from Massachusetts; and on December 6, 1871, a bill of the same title was presented by Samuel Sullivan Cox, of New York. Mr. Cox followed the introduction of his bill with a resolution that the Committee on the Library be directed to consider the question of international copyright and to report what, in their judgment, would be the wisest plan, by treaty or law, to secure the property of authors in their works.

On February 12, 1872, Mr. William D. Kelley, a Member of the

House from Pennsylvania, argued that it was expedient to facilitate the reproduction of foreign works of a *higher* character than those generally reprinted; and presented a resolution

“That the Joint Committee on the Library be, and it is hereby, instructed to inquire into the practicability of arrangements by means of which such reproduction may be facilitated, freed from the great disadvantages that must inevitably result from the grant of monopoly privileges such as are now claimed in behalf of foreign authors and domestic publishers.”

Copyright hearings were held by the Joint Committee on the Library in response to this resolution, but no further official action is recorded. Senator John Sherman, of Ohio, met this obviously adverse movement by presenting his bill (on February 21, 1872) “for securing to authors in certain cases the benefit of international copyright.” Mr. James B. Beck, of Kentucky, on the same day presented a bill providing the terms on which copyright may be granted to foreign authors. It was during this year 1872, that the first speeches in favor of international copyright were delivered in Congress. The earliest was by Stevenson Archer, Jr., of Maryland, on March 23, in the House of Representatives. He was eloquent in his advocacy of the rights of authors and emphatic in condemnation of the practices then prevailing in relation to literary property. He exclaims:

“What a melancholy spectacle is presented to the Christian and moralist in this day of boasted enlightenment by the two greatest nations on the globe in their dealings with each other in the matter of mental commodities. Two bands of literary pirates, virtually armed with letters of marque from their Governments, (for their Governments would most assuredly protect them if resistance were made to their piratical encroachments,) launch themselves boldly forth on the great sea of literature, and openly flaunting the black flag in the midday sun, swoop mercilessly down upon property which they know to be another’s, and selecting for capture the richest prizes there afloat, hurry them into port, where they find thousands of eager purchasers. These purchasers having, as one might think, no honest scruples, pro-pound no awkward queries about right and title, but buy and read and ponder and profit by their ill-gotten merchandise just as coolly and as calmly as if no crime had been committed against the laws of God and of justice.”

The second speech, delivered on Saturday, April 13, 1872, was by John B. Storm, Member of the House of Representatives from Pennsylvania. He presented a brief analysis of the development of copyright legislation in England, commented on and refuted the arguments presented by opponents of International Copyright and commended the bill presented by “Sunset” Cox stating his determination to vote for that bill. The usual sheaf

of petitions to Congress against international copyright had followed these various bills; and on February 7, 1873, Lot M. Morrill, of Maine, a Member of the Senate Committee on the Library, made an adverse report on Senator Sherman's bill, and on Mr. Morrill's motion the said bill was postponed indefinitely. But on February 9, 1874, Henry B. Banning, of Ohio, introduced a bill for international reciprocity in patents and copyrights. It was not reported, however.

In 1880 a new period of agitation for international copyright began, and on December 6 of that year Prof. Theodore D. Woolsey headed a petition presented to the House by Simeon B. Chittenden, of New York, for the enactment of a bill extending the privileges of copyright in the United States to foreign authors, composers and designers; which petition was followed by others of the same tenor, including some presented by members from Pennsylvania. These were all referred to the Committee on the Library.

On March 27, 1882, a bill of an unusual character was presented to the House of Representatives by William E. Robinson, of New York, described by its title in part as "A bill to declare and define two species of personal rights of property in literary articles; to declare and define national rights and international rights, which the Government of the United States, for the people thereof, possesses in literary articles," etc. There is no record of any action regarding this bill, the detailed provisions of which filled 73 printed pages. In the year 1883, the American (Authors') Copyright League was founded with James Russell Lowell as President, and Edmund C. Stedman and R. R. Bowker as Vice-Presidents. Of this active Association, Robert Underwood Johnson became the Secretary and performed most effective work to forward the movement for justice to foreign authors. On December 10, 1883, Patrick A. Collins, of Massachusetts, presented a bill to grant copyright to "persons not citizens of nor domiciled in the United States"; and on January 8, 1884, Mr. William Dorsheimer, of New York, presented his international copyright bill. It attracted unusual attention and discussion. *The Publishers' Weekly* for that year not only printed the text of the bill but a considerable number of letters and articles, upwards of one hundred pages of comments. Mr. Dorsheimer reported from the Committee on the Judiciary an amended bill on April 16, 1884, submitted as a substitute bill; but no final action was secured.

The Dorsheimer bill was followed in the House, on January 5, 1885, by a bill granting copyright to citizens of foreign countries by William E. English, of Indiana, and on the next day, in the Senate, by a bill to establish international copyright submitted by Senator Joseph R. Hawley, of Connecticut, which was intro-

duced to the House of Representatives by John Randolph Tucker on January 6, 1886.

On January 13 of that year the Senate passed a resolution proposed by Senator Platt, of Connecticut, authorizing the Committee on Patents, to which Committee the copyright bill had been transferred from the Committee on the Judiciary, to take testimony relative to the subject-matter of the bill. On January 21, Senator Jonathan Chace, of Rhode Island, introduced his bill providing copyright in the United States for alien authors. This bill was destined to become famous, and finally, five years later to be enacted into law. Meanwhile, however, the Congress was deluged with petitions against his bill and adverse to international copyright of any kind—the typographical unions throughout the country sending in a flood of protests.

The Senate Committee on Patents held the hearings authorized by the Resolution of January 13 on January 28 and 29. They were noticeable because of the witnesses present in behalf of international copyright, including Mark Twain, Lowell, Howard Crosby, R. R. Bowker, Mr. Spofford, Librarian of Congress, George Haven Putnam and Henry Holt. The statements made were reported and printed. The discussions were largely on the relative merits of the bills submitted by Senators Hawley and Chace. At this time "A Memorial of American Authors" was presented to Congress, signed in autograph by one hundred and forty-four writers of distinction, including Aldrich, Beecher, Boyesen, Cable, Clemens, Eggleston, Gilder, Hale, Eret Harte, Higginson, Holmes, Howells, Senator Lodge, Lowell, Brander Matthews, Parkman, Stedman, Stockton, Warner, Burroughs, John Hay, Walt Whitman, and George Bancroft.

Notwithstanding the strong testimony in favor of international copyright, the Committee's report on May 21, on Senator Chace's bill was adverse, and it was ordered to be postponed indefinitely. On December 12, 1887, he presented a new copyright bill. It was supported by an unusual number of appeals for its enactment, and they were not only unusual as to number, but as to the quality and standing of the petitioners. A great number came from the faculties of colleges and universities throughout the country. The entire absence of petitions against the bill by the typographical people is noticeable, and was doubtless due to the inclusion of the typesetting clause of the bill requiring manufacture in the United States as a condition for obtaining copyright. Favorable recommendations by the typographers were now submitted from all over the country. Petitions and memorials endorsing the bill were also presented by both the Authors' and the Publishers' Copyright Leagues. On December 13, 1887, the American Publishers' Copyright League was organized with Mr. William H. Appleton as President and George



Haven Putnam as Secretary; and during the year 1888, international copyright associations were formed in various American cities, including Boston, Chicago and Washington. On March 19, 1888, Mr. William C. Breckinridge, of Kentucky, presented to the House his copyright bill, which was reported from the Committee on the Judiciary on April 21, 1888, with an amended bill, and apparently received no further consideration, as no further action is recorded. In the meantime Mr. Chace, on March 19, had submitted a report from the Committee on Patents on his bill with an amended text, supported by additional statements made at a hearing on March 9, 1880, before the Senate Committee on Patents, fifty-two pages. With this report (S. 622) was reprinted the Chace Report of 1886, and the testimony referred to above, one hundred and forty pages.

The Chace bill was finally debated in detail on April 23, 24 and 30, and on May 9, 1888, and was passed by the Senate on the latter day. Its passage was at once notified to the House, which on January 23, 1889, ordered printed 1000 copies of the Chace Act of 1888, and on January 31 ordered another 1000 copies.

On April 21, 1888, Mr. Collins from the Committee on the Judiciary had reported his bill (H.R. no. 8715) with recommendation that it be passed by the House. On December 3, 1889, President Harrison's Annual Message contained the following brief reference: "The subject of an international copyright has been frequently commended to the attention of Congress by my predecessors. The enactment of such a law would be eminently wise and just." On December 4, 1889, Senator Platt, of Connecticut, presented a Bill to Amend Title 60, Chapter 3, of the Revised Statutes of the United States relating to Copyright, which is an amended draft of the Senate Act of May 9, 1888. It was referred to the Senate Committee on Patents and was reported adversely from that Committee on January 21, 1890. Senator Platt's bill was presented to the House of Representatives by Mr. Breckinridge on January 6, 1890, and referred to the Committee on the Judiciary.

On February 9, 1890, the House Committee on the Judiciary held hearings, including testimony from the International Typographical Union Committee and representatives of the American Copyright League, which was printed. On February 15, Mr. George Everett Adams from that Committee reported a substitute bill (H.R. 6941). This bill was printed in full in the *Congressional Record* (51st Congress, vol. 21, part 5, pp. 4104-5). On February 18, 1890, Mr. Simonds from the Committee on Patents reported the bill H.R. 3812 and submitted a report thereon (H.R. no. 27); he also reported the bill H. R. 3914 with a report (H.R. 290) and submitted a substitute bill (H.R. 7213), which was the same as Mr. Adams' bill (H.R. 6941) and was referred to the

House calendar. On February 21, the Senate proceeded to consider, as in Committee of the Whole, Mr. Platt's bill (S. 2221). Mr. Platt moved as an amendment the introduction of a substitute bill (H.R. 6941). This bill came up for consideration in the House of Representatives on May 1 and 2, when it was debated and amended, but on motion for third reading the vote was in the negative.

On May 16, 1890, Mr. Simonds presented a new bill (H.R. no. 10254), on which he reported from the Committee on Patents on June 10, submitting a substitute bill (H.R. no. 10881) which was printed in full in the *Congressional Record*, was referred to the House Calendar, debated and amended on December 2 and 3, passed on December 3, 1890, and was at once presented to the Senate for concurrence. In the Senate it was read a first and second time, and voted to lie upon the table. In the meantime, Senator Teller presented "by request" on December 29, 1890, "A Bill to Provide for the Compensation of Foreign Authors for the use of Copyright in the United States," which was not reported from the Committee on Patents of the Senate; but on February 28, 1891, was presented to the House by Mr. Lewis E. Payson, of Illinois, as an amendment of or substitute for H. R. no. 10881; but it was not voted upon. On February 9, 1891, on motion of Senator Platt, the Senate proceeded to consider, as in Committee of the Whole, the bill H. R. 10881. Amendments were proposed on that day, the bill was further considered on February 10, 11, 12, 13, 14, 17 and 18, and was passed on this last date. Senators Platt, Hiscock and Gray were appointed conferees to confer with the House and the bill was ordered reprinted as it passed the Senate. On February 28, 1891, the House agreed to a conference with the Senate on the Copyright bills; and Mr. Simonds, Mr. Buchanan and Mr. Cowles were appointed as managers. A conference report was submitted to the House on Monday, March 2, 1891; and after debate the House insisted on its disagreements, a further conference being voted. On March 3, several conference reports were submitted to both House and Senate, and debated there; and agreement finally being secured, the bill was voted on that date and was promptly signed by the President on the same day.

#### THE "CHACE" COPYRIGHT ACT OF MARCH 3, 1891

The so-called Chace International Copyright Act went into effect on July 1, 1891. It was the first step taken by the United States towards securing international copyright; the first step accomplished to extend to alien authors, not actually domiciled or resident within the United States, the rights and privileges accorded by our copyright laws. This very important and widely

felt change was accomplished by the enactment of nine amended sections of the Revised Statutes relating to copyrights. The Act of 1891 contains no direct affirmative statement of the extension of copyright protection to foreign authors; but this results was secured by dropping from the law (section 4952 of the Revised Statutes) the words which limited the exclusive rights accorded to authors of copyright works to "any citizen of the United States or resident therein." By this mutation of the text, any foreign author of the works named as subject-matter of copyright became entitled to the rights accorded by the Act upon complying with its provisions, provided he were a citizen or subject of a foreign state or nation which permitted to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens. The Copyright Act of 1891 provided explicitly "that no person shall be entitled to a copyright" unless he (1) files a printed copy of the title of his book, etc., or a description of a work of art, or (2) deposits two copies of such book, or other work, in the Library of Congress. The Act further provided:

"That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom."

In order to make this requirement of manufacture within the United States as effective as possible, the Act provided that during the existence of such copyright the importation into the United States of any article not so made "shall be, and it is hereby, prohibited." These obligatory conditions and formalities together with the requirement of compulsory manufacture in this country have prevented the United States from becoming a member of the International Copyright Union established on September 5, 1887.

#### INTERNATIONAL COPYRIGHT BY TREATY OR CONVENTION

authors by means of a treaty or convention was entertained very

The possibility of securing reciprocal copyright protection for widely at the same time that these recorded endeavors were made to secure that end by legislation; and from time to time efforts were made to secure a copyright treaty, especially with Great Britain. The earliest definite proposal for such a treaty was made by Lord Palmerston, in a letter to our Minister at London dated March 6, 1839. It was transmitted to the Department of State; and Daniel Webster, then Secretary of State, submitted it to the President on April 9, 1842.

The correspondence between the United States and Great

Britain in relation to this treaty, together with its text, was communicated to the House of Representatives on April 12, and was referred to a committee appointed on the memorials from Washington Irving and others. This treaty of three short articles merely proposed reciprocal protection for the books of British and American authors.

A convention between the United States and Great Britain for the establishment of international copyright was actually concluded at Washington on February 17, 1853, and on the next day was transmitted by the President to the Senate for its ratification. It was referred to the Committee on Foreign Relations, and submitted to the Attorney General of the United States for his opinion, which was rendered on February 16, 1854, sustaining the convention. Through some indiscretion, its text had been made public before being released by the Senate, with the result that remonstrances against its ratification poured into the Senate from Pennsylvania, New York, Massachusetts, Ohio and Michigan. Under a resolution of the Senate there was an official inquiry, but without result; and the matter was allowed to drop, the convention never being put into force.

In 1870 Lord Clarendon proposed a draft for a copyright convention between the United States and Great Britain. This draft was submitted by the British Minister to Messrs. Harper & Brothers, who explained in a letter dated November 25, 1878, to Secretary of State William M. Evarts, that by their invitation a prominent member of the American International Copyright Association was present when Sir Edward Thornton read to them the draft of this proposed treaty and that to him, as to them, it seemed "that the scheme was more in the interest of British publishers than either of British or American authors." The considerable correspondence in relation to this proposal was published as a British blue book (Parliamentary Papers, V. 98) London, 1881, the volume including the text of Lord Clarendon's draft, with proposed American amendments in parallel columns. The chief change proposed was to provide that the author of any work should not be entitled to copyright unless such work was manufactured and published by a citizen of the United States within three months after its original publication in the country of the author or proprietor. The printing in one country from stereotype plates prepared in the other and imported for that purpose was to be permitted. In 1881 on December 6, the President in his Annual Message to Congress reported that "negotiations for an International Copyright Convention are in hopeful progress," but these negotiations evidently dragged along without actual results. On January 25, 1884, Hon. Frederick T. Frelinghuysen, Secretary of State, wrote to the American Copyright League:

"The difficulty in the way of negotiating a formal copyright treaty with any foreign country is that the copyright laws of the two countries are usually so different that a detailed reciprocal code cannot be agreed on. Such a codified treaty necessarily puts the foreign author on a different footing from the home author, more privileges in some things it may be, and less so in others . . . I am satisfied that a simpler solution of the question could be effected by some means which will give in each country to the foreign author the same right as a native author enjoys."

The Secretary of State on February 13, 1890, sent a communication to the Senate which was ordered to be printed and referred to the Committee on Foreign Relations. It transmitted a document which included the "Report on Copyright" by Charles Dudley Warner, dated Hartford, Conn., October 30, 1889. This report was prepared by request in connection with the International American Conference authorized by the Act of May 24, 1888, between the United States and Mexico, Central and South America, Haiti and San Domingo. It is very brief—only five pages—but it is clear, positive and convincing in favor of international copyright as the following quotations will show:

"Nearly all the nations of Europe have united in a convention by which an international copyright is granted to the citizens of all. From this arrangement the republics of the western hemisphere stand aloof, presenting the anomaly to the world of communities founded upon the acknowledgment of the rights of men lagging behind in one of the essentials of liberal and enlightened government.

It may not be in the province of the International American Congress to consider any relations with transatlantic nations, but it is certainly competent for it to unite in an act of justice and fellowship for the mutual protection and encouragement of one of the highest interests in any nation—its intellectual life and education. In this view, the following general considerations are offered:

The foundation on which the principle of copyright law rests is that the creator of an object should be recognized as its owner, with power to transfer it by gift or sale. This principle has always been recognized in all civilized nations. One of the provinces of good government is the protection and enforcement of property rights; not alone the possessions of its citizens, but those of all men of all nations, colors, and kinds. It is only semi-barbarous nations which extend protection to their own subjects alone and permit the robbery of aliens. . . ."

#### LEGISLATION PRECEDING THE REVISION OF 1909

Following the Copyright Act of March 3, 1891, Amendatory Acts were passed during the years 1893, 1895, 1897, 1904 and 1905. The last two of these Acts were of special significance. That of January 7, 1904, was "An Act to afford protection to ex-

hibitors of foreign literary, artistic, or musical works at the Louisiana Purchase Exposition." It provided for a special term of protection of two years from the date of receipt of the copy of the work required to be deposited in the Copyright Office. But this *ad interim* term could be extended to the full period of copyright by producing the original foreign book or a translation of it in English "printed from type set within the limits of the United States or plates made therefrom." In the same way copyright could be extended for a photograph, chromo, or lithograph if "printed from negatives or drawings on stone" made in the United States. The Act of March 3, 1905, was also intended to enable the foreign author of a book written in a foreign language to comply with the manufacturing provisions and to encourage such compliance. It provided for the deposit of one copy of the foreign edition within thirty days after publication, and two copies within twelve months, of the original or of a translation into English, "printed from type set within the limits of the United States, or from plates made therefrom," in which case the copyright was to be extended for twenty-eight years. The Act could only apply to the citizen of a country permitting copyright to our citizens on substantially the same basis as to its own citizens.

#### PREPARATIONS FOR THE GENERAL REVISION AND CONSOLIDATION OF 1909

It must be fairly obvious from any careful examination of the above condensed record of the copyright legislation of the United States, that there finally had come into force a body of miscellaneous copyright enactments (following the general revision which resulted in the Revised Statutes of 1873) of such a character as to give rise to much criticism. After six years' administration of the Copyright Office the author of this article prepared a special "Report on Copyright Legislation," and therein pointed out that—

"The copyright legislation now in force is not flexible enough to meet the needs of the present age of great material development. It is also difficult of interpretation, application, and administration. Textual contradictions and inconsistencies not only abound, but the interpolation of the provisions of the amendatory acts into those of the Revised Statutes is frequently the cause of difficulty and doubt. Embarrassing questions also arise in relation to importation under the involved provisions especially of the Act of March 3, 1891, which have led to conflicting opinions by the law authorities. Moreover, the interests of literary and artistic producers are not guaranteed as they should be, and issues of practical importance which often arise between authors and publishers can not readily be met."

This Report was dated December 1, 1903. The conclusion reached was—

"That the subject ought to be dealt with as a whole, and not by further merely partial or temporizing amendments. The acts now in force should be replaced by one consistent statute, of simple and direct phraseology, of broad and liberal principles, and framed fully to protect the rights of all literary and artistic producers and to guard the interests of other classes affected by copyright legislation."

My recommendation at that time was the appointment of a copyright commission to whom should be entrusted the drafting of a proper statute. Six bills were then pending in Congress proposing partial amendments of the copyright laws, and this fact emphasized the recommendation for a general revision. The Senate Committee on Patents had made public (in Senate Report, 58 Cong., 3d sess. No. 3380, January 27, 1905) its purpose "To attempt a codification of the copyright laws;" and when my recommendation for a commission of revision was brought to the attention of that Committee, Senator Alfred B. Kittredge, Chairman, wrote the Librarian of Congress (January 27, 1905) that upon taking the matter up with the members of the Patent Committee, Senator Platt (of Connecticut) had expressed himself as strongly opposed to the establishment of such a commission, in which view the Committee acquiesced. But the Committee hoped that the Librarian would notify representatives of the Publishers' Copyright League and others to meet for the "purpose of preparing a complete copyright law for consideration at the next session of Congress." This was done; and two Conferences under the Chairmanship of the Librarian of Congress were held at the City Club in New York, on May 31-June 2; and November 1-4, 1905. Delegates were present representing 26 associations, including the American (Authors') Copyright League; American Publishers' Copyright League; American Bar Association; American Dramatists Club; American Library Association; American Newspaper Publishers' Association; Association of Theatre Managers; International Typographical Union; Union Typothetae of America; Music Publishers' Association; National Academy of Design; National Sculpture Society; and Society of American Artists.

President Roosevelt in his Message dated December 5, 1905, included a paragraph on the Copyright laws, declaring that they needed a complete revision; and referring to the Conferences held and the bill prepared by the Copyright Office, he said:

"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."

There had been placed in the hands of the attending delegates at the first Conference certain compilations by the Register of Copyrights which it was hoped might prove of use in considering the matters involved in such proposed legislation. These were: (1) The full text with index of the copyright laws of the United States in force on March 3, 1905; (2) a comparison of the Revised Statutes relating to copyrights with the provisions of the Act of July 8, 1870, and subsequent enactments; (3) a "Report on Copyright Legislation," with list of all copyright laws of the United States and Bibliographical list of Foreign Copyright Laws in force; (4) a compilation of the Provisions of the United States Copyright Laws with parallel provisions of the copyright laws of Foreign Countries; (5) a chronological arrangement of the full texts of all Copyright Enactments of the United States, from 1783 to 1900; and (6) "Copyright in Congress, 1789-1904," a record of all proceedings in Congress of whatever character in relation to copyright, an octavo volume of 468 pages.

At the second conference the delegates had in hand a "Memorandum draft of a Bill to Amend and Consolidate the Acts Respecting Copyright," (74 pp. 4°), prepared upon request by the Register of Copyrights and submitted as a basis for discussion. At that conference some 50 persons were present manifesting a lively interest; and the animated discussion of each section of this Memorandum Draft resulted in valuable suggestions which were embodied in a second entirely revised draft of 57 printed pages. A final, third conference, was held in New York on March 13-16, 1906, at which meeting each section of this tentative draft was fully discussed and debated, provisions agreed to or disapproved by vote, or amended upon motion, discussion and vote. The deliberations at these three conferences were followed by several special meetings in the Librarian's office attended by experienced copyright lawyers including Paul Fuller, of New York, Arthur Steuart, of Baltimore, and many others. These activities resulted in a final draft for a bill dated May 19, 1906, which was introduced in the Senate and House on May 31, 1906, as Bill S. 6330 and H. R. 19853.

This is not the place for recording in detail the unusual mutations of this bill, which resulted in the presentation to Congress of no less than twenty-five official prints of the measure. A first joint public hearing by the Committees on Patents of the House and Senate was held June 6-9, 1906. After this hearing, on



June 12, the Senate Committee on Patents passed a resolution to the following effect:

"Pending further hearings upon the bill (S. 6330; H.R. 19853), the Register of Copyrights is requested to keep record of the discussion of its provisions; and to receive in behalf of the Committee, as well as of the Copyright Office, suggestions for its amendment, whether in form or substance, and to digest these for convenient consideration by the Committee."

This laborious task was conscientiously performed; and in addition to acknowledging the receipt of all such suggestions and transmitting them to the Committees, they were carefully summarized, and all amendments proposed and comments upon the bill were arranged and printed in 5 parts, 312 pages. A further volume was prepared (Bulletin no. 12 of the Copyright Office) entitled "The Copyright Bill compared with the Copyright Statutes now in force and earlier United States Copyright Enactments." It was printed on December 3, 1906, 86 pages, quarto. Further copyright hearings were held on December 7, 8, 10, 11, 1906, and on March 26-28, 1908, by both Committees on Patents sitting together in the Senate Reading Room of the Library of Congress. The stenographic report fills more than eleven hundred pages. The bill was finally passed by both House and Senate on March 3, 1909, and the law went into effect on July 1, of that year.

It is not my purpose here to deal with all the changes of law effected by this Act, but two major improvements deserve special notice. The first is the extension of the period of copyright protection, secured by doubling the length of the former renewal term from fourteen to twenty-eight years. The second is the releasing of the foreign continental author from the obligatory re-manufacture of his book in the United States. This very important advance in international copyright was largely due to the personal efforts of the Hon. Robert Underwood Johnson. The amendment was very simply accomplished by inserting the words "except the original text of a book of foreign origin in a language or languages other than English" in section 15 of the Act which requires the deposit in the case of books and periodicals of copies type-set in the United States. Governor McCall introduced a bill in the House proposing this single amendment on May 12, 1908, (H.R. 22098). The amendment was thereafter incorporated in Governor Sulzer's draft of the general bill on January 5, 1909, and in that introduced by Mr. Charles G. Washburn, of Massachusetts, on January 28, 1909, and thereafter appeared in each succeeding print of the bill and in the final Act. That this amendment was so promptly accepted was due to the fact that Mr. Johnson could submit to Congress the following letter addressed to himself, dated December 18, 1908:

“Dear Sir :

Referring to our interview this morning, we desire to say that, after consideration of the arguments you presented relative to the obtaining of copyright for books originating in and published in a foreign language, in a foreign country and with foreign authorship, we will not oppose your proposition for copyright for such publications, providing, of course, we secure the coöperation of the American Copyright League for the features of the new bill in which we are vitally interested.

You will understand that in this connection we speak only for the International Typographical Union.

Sincerely,

JAMES M. LYNCH,  
President, International Typographical Union.

JAMES J. SULLIVAN,  
Copyright Law Representative,  
International Typographical Union.”

Mr. Johnson remarks that the inference might be made from the wording of this letter, that a bargain had been made for other advantages in the bill in exchange; “but in our interview I had taken particular pains to say that I was not authorized by our Council to make any such arrangement.”

The above summary of the procedure resulting in the final draft of the Copyright Bill submitted to Congress, indicates clearly to how great an extent it was a compromise measure. This detailed statement is made not only for the sake of historical accuracy, but to make clear the extraordinary efforts made to secure, in the framing of the revision of 1909, the most careful consideration of every factor then existent rightly entering into copyright legislation. It seems not impossible that this endeavor was carried over-far, and there was some criticism of that character at the time. In an editorial article in *The Publishers' Weekly* (July 3, 1909) commenting on the bill, this language is used :

“It is most fair and fitting that the new measure should be known as the Currier Law, for to the concentration, industry, patience and persistence of Chairman Currier is due, in chief measure, the progress and passage of the new copyright law. It was in some respects unfortunate that, in his desire to assure the passage of the bill without jeopardy, he carried compromise with insistent interests such as the pirates and the representatives of the Typographical Unions, almost to the point of surrender of private rights.”

It is unquestionably because of this surrender in 1909 to the urgency of the special interests benefited by the compromises then made that now, in 1925, Congress has to face again the same problems. The Act of 1909, just to the extent that it was a compromise, was no real solution of the questions of principle in-

volved, which again demand consideration and a just determination.

Since the Act of March 4, 1909, which went into effect on July 1, 1909, four Amendatory Copyright Acts have been passed—to protect motion-pictures; to require the insertion of certain additional facts in the certificate of copyright registration; to require the deposit of but one copy of a work by a foreign author published abroad in lieu of two copies, and, finally, to secure protection for foreign works produced during the war and by reason thereof failing to secure copyright registration.

#### THE INTERNATIONAL COPYRIGHT UNION

During the last few years the need of the United States to accede to the International Copyright Convention and to enter the International Copyright Union, has been greatly accentuated; and there has been a considerable increase of feeling that it is no longer creditable to our country to remain outside of this Union for the protection of the world's literary and artistic producers.

The idea of replacing the great number of separate copyright treaties in force between the different European countries by one general international copyright convention originated with the International Literary and Artistic Association founded in 1878 at Paris under the presidency of Victor Hugo. At the annual meeting of that association in Rome in 1882, under authority of a formal resolution then adopted, steps were taken to secure an international conference composed of representatives of interested bodies for the purpose of creating an International Copyright Union. This conference took place at Berne, Switzerland, in 1883, and a draft convention for the proposed Union was there formulated. On September 8, 1884, an International Copyright Conference was held at Berne for further discussion and consideration, and a final draft for the convention of union was agreed upon. The United States was invited to participate in this Conference. President Arthur in his Message of December 1, 1884, makes reference to it and explains why no delegate was sent:

“The question of securing to authors, composers, and artists copyright privileges in this country in return for reciprocal rights abroad is one that may justly challenge your attention. It is true that conventions will be necessary for fully accomplishing this result, but until Congress shall by statute fix the extent to which foreign holders of copyright shall be here privileged, it has been deemed inadvisable to negotiate such conventions. For this reason the United States were not represented at the recent conference at Berne.”

The 1884 conference was followed by one beginning September 7, 1885, also at Berne. Again the United States was invited

to send a representative. In President Cleveland's Annual Message December 8, 1885, he refers to the matter in the following words:

"An international copyright conference was held at Berne in September on the invitation of the Swiss Government. The envoy of the United States [Hon. Boyd Winchester] attended as a delegate, but refrained from committing this Government to the results, even by signing the recommendatory protocol adopted. The interesting and important subject of international copyright has been before you for several years. Action is certainly desirable to effect the object in view. And while there may be question as to the relative advantage of treating it by legislation or by specific treaty, the matured views of the Berne conference can not fail to aid your consideration of the subject."

A third conference was arranged to convene at Berne on September 6, 1886, and the United States was again invited to send a delegate. The correspondence exchanged between the Department of State and Switzerland relative to this matter had been transmitted to Congress by President Cleveland on July 9, 1886, and he returned to this subject of international copyright in his Annual Message of December 6, 1886, in the following words:

"The drift of sentiment in civilized communities toward full recognition of the rights of property in the creations of the human intellect has brought about the adoption by many important nations of an International Copyright Convention, which was signed at Berne on the 9th of September, 1886. Inasmuch as the Constitution gives to the Congress the power 'to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,' this Government did not feel warranted in becoming a signatory pending the action of Congress upon measures of international copyright now before it; but the right of adhesion to the Berne Convention hereafter has been reserved. I trust the subject will receive at your hands the attention it deserves, and that the just claims of authors, so urgently pressed, will be heeded."

At this meeting in 1886 the Convention creating an International Union for the protection of Literary and Artistic Works was signed on September 9, 1886. It was ratified and put into effect on September 5, 1887. A conference for the amendment of the International Copyright Convention was held at Paris from April 15 to May 4, 1896, and an "Additional Act" was adopted and agreed to on May 4. In 1908 a second conference for revision of the Convention met at Berlin, October 14 to November 14; and a text was adopted and signed on November 13, which is virtually a substitute for the text of 1887 and is now in force. At this conference thirty-four countries were represented by seventy-four delegates, including the Director of the International

Copyright Bureau at Berne, who was also in attendance. The United States was represented as a "listening delegate" by the Register of Copyrights. On March 20, 1914, there was signed at Berne an "Additional Protocol," section 1 of which reads as follows:

"When a country not belonging to the Union does not protect in a sufficient manner the works of authors within the jurisdiction of a country of the Union, the provisions of the Convention of November 13, 1908, can not prejudice, in any way, the right which belongs to the contracting countries to restrict the protection of works by authors who are, at the time of the first publication of such works, subjects or citizens of the said country not being a member of the Union, and are not actually domiciled in one of the countries of the Union."

This Union, which at the time of the ratification of the Convention in 1887, embraced the seven important countries of Belgium, France, Germany, Great Britain, Italy, Spain and Switzerland and the two minor countries of Haiti and Tunis, now includes twenty-seven states. Of the large countries of the world only China, Russia and the United States are still not members.

#### FUNDAMENTAL PRINCIPLES OF COPYRIGHT LAW REFORM

There are four matters in relation to any proposed revision of our copyright laws which are fundamental and should be rightly determined. They are, briefly stated: 1. The question of the requirement of American manufacture of copyright works; 2. The copyright owner's right to control the use of music for reproduction by means of mechanical musical contrivances; 3. His right to fix the price for such use of his music when it has been authorized; 4. The abrogation of all formalities as a *condition* for securing copyright, such as, (a) Insertion in copies of the work of any notice of the reservation of the copyright; (b) Deposit of copies of the works in which copyright is claimed; (c) Obligatory registration of the copyright work or of a claim to copyright in such work.

While the earlier copyright statutes contained no provisions requiring manufacture in the United States, as soon as proposals were made to extend copyright protection to foreign authors the notion took root that in that event the printing of their books should be required to be done in the United States. The very first bill proposing copyright privileges for foreign authors, that of Senator Henry Clay in 1837, made such privilege conditional upon the simultaneous reprinting of their books in the United States. No doubt this demand originated with the printers and publishers rather than with the authors. But as time went on and the question of international copyright was debated and discussed, many leading American publishers were found to be ad-

verse to any unqualified and arbitrary requirement of this sort, and clear and positive in their expressions of approval of the entry of the United States into the Copyright Union.

In 1921, *The Publishers' Circular* of London made public this frank statement by one of the most persistent champions for international copyright, the head of one of our foremost publishing houses, Major George Haven Putnam :

"It is the conclusion of the American authors and publishers that, on the grounds of comity and prestige, the United States ought now, after waiting for one-third of a century, to accept membership in the Convention of Berne. It is further the conclusion of the American publishers, who are naturally interested in the development of book manufacturing—and many of whom are, like myself, owners of book-manufacturing establishments,—that under existing conditions there need be no apprehension of interference in any way with the book-manufacturing interests in this country through a measure that should remove the restriction now placed upon securing American copyright protection for books produced outside of the country. The book-manufacturing trades have a direct interest in furthering the extension of American publishing undertakings. I trust that the representatives of these trades will decide that they are quite able, under conditions now obtaining, to hold their own against any Transatlantic competition, and that they have a business interest, as well as a citizen's interest, in the removal of all restrictions on American publishing undertakings."

During the discussions following the proposal of the so-called publishers' copyright treaty, the American Copyright League, expressing itself in opposition to the convention proposed as a treaty recognizing the English author's copyright in his work here, provided he would sell it to an American publisher within a limited time, inquired directly of the Secretary of State what his opinion was concerning the matter. Mr. Frelinghuysen in his letter of reply on January 25, 1884, after explaining the treaty proposal (as quoted above) continued as follows :

"I am satisfied that a simpler solution of the question could be effected by some means which will give in each country to the foreign author the same right as a native author enjoys. The domestic copyright law does not attempt to legislate upon the relations between the author and his publisher, and it is not easy to see why an international compact should legislate upon a point which in each country is left to the course of trade. I think the foreigner owning a copyright should have here the same privilege as our own citizens, provided our citizens have in the foreigner's country the same rights as the natives thereof; and thereupon I would leave to the mutual convenience of the holder of the copyright and the publisher the adjustment of their contract, and leave to the tariff the task of protecting the paper makers, type founders, printers, and other artisans who join in producing the book as a marketable article."

The ethics involved in the requirement of American manufacture were excellently stated by Charles Dudley Warner, (a citizen of Connecticut) in his report on Copyright prepared in 1889, in relation to the International American Congress:

"In view of the fact that the International American Congress is concerned with the question of trade extension and the stimulation of commercial intercourse, it is necessary to guard against misapprehension by referring to an error in the minds of those who have not given the matter attention, namely, that the subject of international copyright involves the subject of protection of home manufactures. The two subjects have no necessary relation to each other. If, for example, citizens of Great Britain were as free as citizens of the United States to take out copyright in the latter country, American authors would not be affected thereby; no home book-making would be injured by the foreign competition. No authority has ever been found to imagine or suggest such protection. The suggestion seems to have originated with manufacturers, who desire protection against foreign manufacturers of books. But such protection is a subject wholly distinct from copyright, which relates exclusively to the question what ownership shall the producer of literature have in his products. If manufactured books, or stereotype plates or electrotypes are to be taxed on importation, for the purpose of protecting home manufacturers, this can and should be done in the ordinary course of legislation, as other manufacturers are protected. The very simple and intelligible subject of copyright should not be clouded and made a matter of political controversy by annexing to it the subject of protective law, with which it has no relation."

A more recent and weighty expression of opinion on this matter is contained in the "Special Report on the proposed entry of the United States into the International Copyright Union," prepared by Everett N. Curtis, Chairman of the Committee on Copyright of the New York Patent Law Association. The statement reads in part as follows:

"Under the existing Copyright Law of the United States the fundamental rights of an author granted under the Constitution are seriously invaded by the requirement under our present law that all books in the English language subject to United States copyright must be printed and bound within the limits of the United States, and that importation of books printed in the English language be prohibited with certain exceptions. These provisions are referred to by Copinger in his work on the Law of Copyright as the 'notorious manufacturing provisions of the Act,' and have been effectual in keeping the United States out of the International Convention. It seems impossible to justify them either on moral or economic grounds. In fact the only reasons for their existence seem to be those of a political nature or based upon expediency. The granting of special privileges arising out of copyrights or inventions to any class of people except authors and inventors is against the spirit and purpose of

our institutions and should be left out of our Copyright Statute.

"It would seem, all things considered, that if protection must be accorded American printers, it should be granted under a tariff upon importations of foreign made books and not made part of the existing Copyright Law. . . ."

The elimination of the manufacturing requirements is absolutely necessary, so far as works by foreign authors are concerned, in order to permit the United States to enter the Copyright Union. It is understood, however, that if these requirements are confined to authors who are citizens or residents of the United States, the articles of convention would not prohibit that arrangement.

The commercial value of the phonograph, player piano, and other machines for reproducing music did not develop to importance until after the Act of 1891. During the following decade, however, a rapid change took place. Improvements in the manufacture of instruments and appliances for mechanical reproduction of music and the business ability shown in the organization of industries manufacturing such articles, made this method of exploitation of the works of composers of great importance both financially and artistically. The copyright owners of musical compositions came to feel strongly that their works should be protected against this kind of unauthorized use, and that they should share in the returns from the sale of phonograph records and piano player rolls; and the composers and musical publishers therefore insisted upon the inclusion of a provision in the Act of 1909 giving them the full control of their works for use on mechanical instruments. The manufacturers of such instruments, on the other hand, who had been enjoying the unrestricted use of all music, strenuously opposed the requirement. The result was a compromise.

The Copyright Act of March 4, 1909, gives to the copyright owner of a musical work the exclusive right not only "to print, reprint, publish, copy and vend" it, but the exclusive right to perform it "publicly for profit" and "to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced." Thus Congress tacitly admitted the justice of the author's claim to the exclusive control of his work, but limited that control as a practical measure by way of a compulsory license, adding a proviso to the Act to the effect that if the copyright owner of a musical work had used, or permitted "or knowingly acquiesced" in such use of his work upon the parts of instruments serving to reproduce mechanically the musical work, then any other person might make similar use of the copyright work upon payment to the copyright



proprietor of a royalty of two cents for each such part manufactured.

There are two obvious wrongs here. The first is the throwing open to every one the use of the copyright work, after the exclusive right to use has been accorded by the Act to the author or copyright owner. It does not matter how unreliable financially such user may be; the law permits him to proceed to help himself to the composer's work, and puts upon the latter the burden of obtaining the fixed statutory royalty if he can. The second unfairness is, that the royalty is fixed at this minimum sum without regard to the quality of the music used. If the two cents is proper remuneration for ordinary popular music, it is obviously not a proportionate return for elaborate music by composers of perhaps world-wide fame and reputation.

It would seem that the time has now come when this make-shift should be abandoned in favor of the entirely equitable plan of granting complete control of the rights in question to the author along with his other rights. This is the more necessary because the use of various reproducing and transmitting appliances have now grown to such an extent that the author must begin to look to these sources for his return, rather than to the obsolescent printed sheet. The industries which feared fatal damage to their interests in 1909 have prospered greatly since that time, and much of their prosperity has been due to the comparatively small proportion of expenses incurred by them for the rights in the music which they have used. It does not now seem as though they would have any reasonable cause for complaint on being required to pay a price, reached by agreement, for the composer's commodity just as they do for the other materials which they use in making their wares.

One of the questions for serious consideration in regard to new copyright legislation is the abolition of the requirement of notice. Under our present Copyright Act of 1909 publication *with notice of copyright* is a condition precedent to obtaining protection. Notice of copyright is not required generally in the copyright laws of foreign countries and in England it has been abolished for some time. On this point, and also in relation to compulsory registration, the remarks of Mr. Curtis in his Report are of interest and weight. He acknowledges that the suggestions of producers who argue against the abolition of notice and registration are not without force, but he adds:

"It is to be borne in mind that during the seventeen years or more that the provisions of the International Convention have been in force in the principal countries in the world, no serious difficulty appears to have been encountered in the practical administration of the law. . . . The principle of a general protection to authors without the requirement of any formalities

throughout the countries of the civilized world appears to be approved by the best thinkers upon such subject-matter. After all is said and done, approaching the question from the standpoint of sound business morals, there does not appear to be any ethical reason why any person should use the original output of an author without compensating him for such work, provided there has been a substantial taking of the author's labors. There is no general requirement of registration or of notice of ownership with reference to personal property. It is not an ordinary incident to the ownership of such property to require the same to be tagged. Any person appropriating this kind of property, the ownership of which is in question, does so at his peril. There is no fundamental reason why the work of an author should be any exception."

The requirement of deposit of copies is a survival from ancient times when it was an aid to censorship or required in relation to special printer's "privilege" in times anterior to copyright. Its chief use now is as "feeder" to government or other official libraries; and it is no longer generally required as a condition of copyright. In Great Britain the deposit of copies is wholly a matter of Library privilege; and in France the recent law of legal deposit enacted this year abrogates the provisions of the former law making such deposit obligatory before suit could be brought. Observation shows that while the United States, the Latin American Republics, Spain, Italy, Portugal, together with China, Liberia, Siam and Turkey require deposit, and only the United States, Chile, Guatemala, Mexico and Nicaragua require copyright notice, in the majority of the great countries of the world, the countries where literary and artistic production is most intense—there the fewest formalities are required.

Registration of the claim of copyright or of the work in which copyright is claimed has generally been required by our copyright laws. The Act now in force makes the deposit of all works and the registration of such works, a condition precedent to maintaining actions or proceedings for infringement of the copyright. These requirements have been insisted upon without careful consideration of the heavy cost of this burden in proportion to its usefulness. Up to June 30, 1925, the registrations actually made since July 1, 1897, when the present system of registration was instituted, amount to more than three and a quarter million entries. Out of this great mass of registered copyright claims the actually reported cases brought into court number only a few hundred! All these millions of entries have been required in order that recorded evidence of ownership could conveniently be found in less than five hundred cases at most in dispute. What possible benefit, so far as copyright is concerned, accrued to any one from this enormous registration? It may be answered that there was the satisfaction felt by hundreds of thousands of claim-

ants in the possession of their certificates of copyright. But the evidence of the Copyright Office is to the effect that prior to the invention of the easily filed card certificate these documents were practically never preserved, or if preserved were not available. A new argument is now put forward that this registration is essential for the legitimate needs of producers in relation to purchased rights of reproduction. But again it is a benefit involving a few thousand titles out of the many hundreds of thousands of titles recorded, and at the expense of the claimants who have paid these registration fees, and the Government which has met the considerable administrative cost involved in this very large recordation.

The experience of the great countries of Europe which has led to the abrogation of copyright registration is instructive and convincing. In 1908 the revised International Copyright Convention provided, as regards the rights secured under the Articles of Convention, that "the enjoyment and the exercise of such rights are not subject to any formality." It was at first thought possible that this would lead to a great deal of litigation. The able director of the International Copyright Bureau at Berne in a summary published in 1921, shows, however, that a careful listing of all copyright lawsuits of an international character during the ten years from 1910 to 1919 indicated that there were only eighty-eight cases reported in all; six of controversies between citizens of non-unionist countries; twenty-seven between citizens of unionist countries and citizens of non-unionist countries; and fifty-five between citizens of various unionist countries, an annual average of but five or six lawsuits in the whole of the Copyright Union, at that time embracing eighteen countries, and only one dozen cases in 1914, when the highest number of suits were recorded. What has been found practical and sufficient throughout the countries of the Union, should be sufficient in the United States.

Another serious consideration is the reverse side of the shield. Hardly a week passes that does not bring to the Copyright Office evidence of the entire loss of copyright due to failure to comply exactly with the statutory formalities. The gross injustice of such loss should be a sufficient argument to support the proposal to abrogate the requirement of compulsory registration. A provision to permit optional registration should sufficiently satisfy the actual owner of the copyright whose interests are primarily to be considered. Such a provision for optional registration should afford a sane and sensible means for trying out the question. If there is found a real need for copyright registration it will be shown in the number of registrations actually made. If registrations are not made, whatever inconvenience is found to

result, there will at least not have followed, as is lamentably frequent now, a total loss of the author's literary property.

The bill introduced by Mr. Perkins in the House and by Mr. Ernst in the Senate, undertakes to remedy these deficiencies in the present copyright law. It proposes the elimination of the manufacturing requirements; the abrogation of the elaborate, unjust and cumbersome provisions relating to the mechanical reproduction of music; the composer and his assigns are left free to exercise this right as they do the other rights granted, without restrictions, either by way of compulsory license or the price to be received for the concessions granted. The formality of inscribed notice is done away with; deposit of copies is only required with relation to the needs of the Library of Congress; registration is not required, but may be made at the option of the copyright owner.