RICHARD BOWKER

COPYRIGHT: ITS HISTORY AND ITS LAW

Richard Bowker

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Copyright: Its History and Its Law

FOREWORD

Copyright progress

The American copyright code of 1909, comprehensively replacing all previous laws, a gratifying advance in legislation despite its serious restrictions and minor defects, places American copyright practice on a new basis. The new British code, brought before Parliament in 1910, and finally adopted in December, 1911, to be effective July 1, 1912, marks a like forward step for the British Empire, enabling the mother country and its colonies to participate in the Berlin convention. Among the self-governing Dominions made free to accept the British code or legislate independently, Australia had already adopted in 1905 a complete new code, and Canada is following its example in the measure proposed in 1911, which will probably be conformed to the new British code for passage in 1912. Portugal has already in 1911 joined the family of nations by adherence to the Berlin convention, Russia has shaped and

Holland is shaping domestic legislation to the same end, and even China in 1910 decreed copyright protection throughout its vast empire of ancient and reviving letters. The Berlin convention of 1908 strengthened and broadened the bond of the International Copyright Union, and the Buenos Aires convention of 1910, which the United States has already ratified, made a new basis for copyright protection throughout the Pan American Union, both freeing authors from formalities beyond those required in the country of origin. Thus the American dream of 1838 of "a universal republic of letters whose foundation shall be one just law" is well on the way toward realization.

Field for the present treatise

In this new stage of copyright development, a comprehensive work on copyright seemed desirable, especially with reference to the new American code. Neither Eaton S. Drone nor George Haven Putnam were disposed to enter upon the task, which has therefore fallen to the present writer. He hopes that his participation for the last twenty-five years in copyright development, – during which, as editor of the *Publishers' Weekly* and of the *Library Journal*, he has had occasion to keep watch of copyright progress, and as vice-president of the American (Authors) Copyright League, he has taken part in the copyright conferences and hearings and in the drafting of the new code, – will serve to make the present volume of use to his fellow members of the Authors Club and to like craftsmen, as well as to publishers and others, and aid in clarifying relations

and preventing the waste and cost of litigation among the coördinating factors in the making of books and other forms of intellectual property.

Authorities and acknowledgments

The present work includes some of the historical material of the Bowker-Solberg volume of 1886, "Copyright, its law and its literature." This material has been verified, extended and brought up to date, especially in the somewhat detailed sketch of the copyright discussions and legislation resulting in the "international copyright amendment" of 1891 and the code of 1909. The volume is in this respect practically, and in other respects entirely new. It has had the advantage of the cordial co-operation of the copyright authorities at Washington, especially the Librarian of Congress, Herbert Putnam, and the Register of Copyrights, Thorvald Solberg; also of helpful courtesy from the Canadian Minister of Agriculture in the recent Laurier administration, Sidney Fisher, and the Canadian Registrar of Copyrights, P. E. Ritchie, and of Prof. Ernest Röthlisberger, editor of the *Droit d'Auteur*, and one of the best authorities on international copyright. This acknowledgment of obligation is not to be taken as assuming for the work official sanction and authority, though so far as practicable, it reflects the opinions of the best authorities. The writer has also consulted freely – but it is hoped always within the limits of "fair use" – the best law book writers, especially Drone, Copinger, Colles and Hardy, and MacGillivray, to whom acknowledgment is made in the several

chapters. Acknowledgment is also made for the courtesies of Sir Frederick Macmillan, G. Herbert Thring, secretary of the British Society of Authors, and others numerous beyond naming. But most of all the writer is indebted to the intelligent and capable helpfulness of Carl L. Jellinghaus, who as private secretary, has been both right hand and eyes to the writer, and besides participating in the work of research, is largely responsible for the index and other "equipment" of the volume.

Method and form

Copyright law is exceptionally confused and confusing, and even the new American and British codes are not without such defects. Specific subjects are so interdependent that it has been difficult to make clear lines of division among the several chapters, and there is necessarily repetition; it has been the endeavor to concentrate the main discussion in one place, designated in the index by black face figures, with subordinate references in other chapters. Ambiguities in the text of this volume often reflect ambiguities in the laws, particularly of foreign countries. Where acts, decisions, etc., are quoted in the text or given in the appendix, spelling, capitalization, punctuation, headings, etc., follow usually the respective forms, thus involving apparent inconsistencies. Side-headings in the appendix follow usually the official form, unless shortened to prevent displacement. Translations of foreign conventions follow usually the official text of the translation, but have been corrected or conformed in case of evident error or variance. Citation of

cases is confined for the most part to ruling or recent cases or those of historic importance or interest. Though it has not been practicable to verify statements from the copyright laws of so many countries in divers languages, a fairly comprehensive and accurate statement of the *status* of copyright throughout the world is here presented. The present work, originally planned for publication in 1910, has been held back and alterations and insertions made to bring the record of legislation to the close of 1911. For those who wish to keep their copyright knowledge up to date, the *Publishers' Weekly* will endeavor to present information as to the English speaking world, and the monthly issues of the *Droit d'Auteur* of Berne, under the editorship of Prof. Röthlisberger, will be found a comprehensive and adequate guide.

Advocates of authors' rights

The preparation of this work brings a recurring sense of the losses which the copyright cause has suffered during the long campaign for copyright reform, beginning in the American Copyright League, under the presidency of James Russell Lowell, and continued under that of Edmund Clarence Stedman, both of whom have passed over to the majority. Bronson Howard, always active in the counsels of the League as a vice-president, and the foremost advocate of dramatic copyright as president of the American Dramatists Club, failed, like Stedman, to see the fulfillment of his labors in the passage of the act of 1909. George Parsons Lathrop, Edward Eggleston, Richard

Watson Gilder, "Mark Twain" and other ardent advocates of the rights of the author, gave large share of enthusiasm and effort to the cause. Happily the two men who for the last twenty years and more have labored at the working oar for the Authors League and for the Publishers League, are still active in the good work, ready to defend the code against attack and eager to forward every betterment that can be made; to Robert Underwood Johnson, the successor of the lamented Gilder as editor of the Century, and to George Haven Putnam, the head of the firm which still bears the name of his honored father, authors the world over owe in great measure the progress which has been made in America toward a higher ideal for the protection of authors' rights.

Copyright evolution

It may be noted that while throughout the British Empire English precedent is naturally followed, the more restrictive American copyright system has unfortunately influenced legislation in Canada and Newfoundland, and in Australia. France, open-handed to authors of other countries, has afforded precedent for the widest international protection and for the international term; while Spain, with the longest term and most liberal arrangements otherwise, has been followed largely by Latin American countries. The International Copyright Union has reached in the Berlin convention almost the ideal of copyright legislation, and this has been closely followed in the Buenos Aires convention of the Pan American Union. The world over, there seems to have been a general evolution of copyright protection

from the rude and imperfect recognition of intellectual property as cognate to other property, for a term indefinite and in a sense perpetual, almost impossible of enforcement in the lack of statutory protection and penalties. Systems of legislation, at first of very limited term and of restricted scope, have led up to the comprehensive codes giving wide and definite protection for all classes of intellectual property for a term of years extending beyond life, with the least possible formalities compatible with the necessities of legal procedure. Unfortunately in the United States of America the forward movement which produced the "international copyright amendment" of 1891 and the code of 1909, conspicuously excellent despite defects of detail, was in some measure offset by retrogression, as in the manufacturing restrictions. Until this policy, which still remains a blot on the 'scutcheon, is abandoned, as the friends of copyright hope may ultimately be the case, the United States of America cannot enter on even terms the family of nations and become part of the United States of the world.

R. R. Bowker.

December, 1911.

Postscript. Since this book has been passing through the press, Cuba has been added to the countries in reciprocal relations with the United States with respect to mechanical music by the President's proclamation of November 27, 1911; Russia has made with France its first copyright treaty, in conformity with the new Russian code of 1911; and the new British code, referred

to on p. 33, having passed the House of Commons August 17, passed the House of Lords December 6, and after concurrence by the House of Commons in minor amendments, mostly verbal, became law by Crown approval, December 16, 1911, as noted on p. 374. The text of the act in the appendix follows the official text as it now stands on the English statute books; the summary (pp. 374-80) describes the act as it became law – and the earlier references are in accordance therewith, with a few exceptions. These exceptions mostly concern immaterial changes, made in the House of Lords. Within January, 1912, Brazil has adopted a new measure for international copyright, and a treaty has been signed between the United States and Hungary, the twenty-fifth nation in reciprocal relations with this country.

CONSPECTUS OF COPYRIGHT BY COUNTRIES

Under the names of countries are given dates of the basic and latest amendatory laws. International relations are shown by the name in small caps of the convention city when a country is a party to the International Copyright Union or the Pan American conventions, and by the names of countries with which there are specific treaties, excepting those within the union or conventions. The general term of duration is entered, without specification of special terms for specific classes. Places of registration and deposit are indicated by R and D when these are not the same. The number of copies required and in some cases period after publication within which deposit is required are given in parentheses. Notice of copyright or of reservation is indicated. Special exceptions or conditions are noted so far as practicable under remarks. An asterisk indicates that specific exceptions exist.

The International Copyright Union includes (A) under the Berlin convention, 1908 (a) without reservation Germany, Belgium, Luxemburg, Switzerland, Spain, Monaco, Liberia, Haiti, Portugal, and (b) with reservation France, Norway, Tunis, Japan; (B) under the Berne convention, 1886, and the Paris additional act and interpretative declaration, 1896, Denmark, Italy; (C) under the Berne convention, 1886, and the Paris

additional act, 1896, Great Britain; (D) under the Berne convention, 1886, and the Paris interpretative declaration, 1896, Sweden. The Pan American conventions agreed on at Mexico City, 1902, Rio de Janeiro, 1906, and Buenos Aires, 1910, have not been ratified except that of Mexico by the United States and by Costa Rica, Guatemala, Honduras, Nicaragua, Salvador, and doubtfully by Cuba and Dominican Republic; that of Rio by a few states insufficient to make it anywhere operative; and that of Buenos Aires by the United States. The South American convention of Montevideo, 1889, has been accepted by Argentina, Paraguay and Uruguay, Peru and Bolivia, and has the adherence (in relation with Argentina and Paraguay only) of Belgium, France, Italy and Spain. The five Central American states have a mutual convention through their Washington treaty of peace of 1907.

Countries Dates of laws	International relations	Duration	Registration and Deposit	Notice	Remarks
					North America: English
North America (ENGLISH-SPEAKING)					
United States 1909	MEXICO, B. AIRES, Gt. Brit., Belg., China, Den., Fr., Ger., It., Jap., Lux., Nor., Sp., Swe., Switz., Aust., Hol., Port., Chile, Costa R., Cuba, Mex.	28 + 28	Library of Congress (2 "promptly")	"Copyright, 19—, by A. B." or statutory equivalent	Manufacture within U. S. for books, etc.
Canada 1875-1908 [1912 ?]	*See* Gt. Brit.* (Aus.-Hung. excepted)	28 + 14	Dept. of Agriculture: Copyright Branch (3)	"Copyright, Canada 19—, by A. B." or signature of artist	Printing and publ. within Canada.*
Newfoundland 1890-1899	*See* Gt. Brit.	28 + 14	Colonial Sec. (2)	"Entered, Newf.... by A. B." etc. or signature of artist	Printing and publ. within Newf.*
Canal Zone (U. S.)	*See* U. S.				
Porto Rico (U. S.)	*See* U. S.				
Jamaica (Br.) 1887	*See* Gt. Brit.	Life + 7 or 42*	(3 or 1* within mo.)	None	
Trinidad (Br.) 1888	*See* Gt. Brit.	Life + 7 or 42*	Registrar of copyright (3 within mo.)	None	
					Europe: English
Europe					
Great Britain & Ireland D 1842-1906 I 1844-1886	BERNE-PARIS A U. S., Aus.-Hung.*	Life + 7 or 42* [Life + 50*]	R Stationers Hall (before suit)* D British Museum (1) + 4 library copies (on demand)*	None* [None] [No registration]	First or simultaneous publication [In effect 1912]

[1911]

Isle of Man 1907	*See* Gt. Brit.				
Channel Isles	*See* Gt. Brit.				
					French
France 1793-1910	BERLIN* MONTV.* U. S., Aus-Hung., Hol., Port., Mont., Roum., Lat. Amer.	Life + 50*	D Ministry of Interior or prefecture (2 before suit)*	None	
Belgium 1886	BERLIN, MONTV.* U. S., Aus., Hol., Port., Roum., Mex.	Life + 50	None*	None*	
Luxemburg 1898	BERLIN U. S.	Life + 50*	None*	None* (res. playr.)	
Holland 1881 [1912?]	U. S., Belg., Fr.	50 or life*	Dept. of Justice (2 within mo.)	None* (res. trans. playr.)	Printing within Holland
					German
Germany 1901-1910	BERLIN U. S., Aus.-Hung.	Life + 30*	None*	None*	
Austria 1895, 1907	Hung., U. S., Gt. Brit.,* Belg. Den, Fr., Ger., It., Roum., Swed.	Life + 30*	None*	None* (res. trans. photos, mus.)	
Hungary 1884	Aust., Gt. Brit.,*Fr., Ger., It.	Life + 50*	None*	None* (res. trans. photos)	
					Scandinavian
Switzerland 1874, 1883	BERLIN U. S.	Life + 30*	R. Office of Intel. Prop. optional*	None* (res. playr.)	
Denmark 1865-1911	BERNE-PARIS U. S., Aus.	Life + 50*	None*	None* (photos,res. music)	
Iceland (Den.) 1905	*See* Denmark				As in Denmark
Norway 1877-1910	BERLIN* U. S.	Life + 50*	None*	None* (photos, res. music)	
Sweden 1897-1908	BERNE-PARIS D U. S., Aus.	Life + 50*	None	None* (photos, res. playr.)	
					Russian
Russia 1911	France	Life + 50*		None* (photos,res. trans.mus.)	

Finland 1880	None	Life + 50*	None*	None*	
					Southern
Spain 1879-1896	BERLIN, MONTV.* U. S., Port., Lat. Amer.	Life + 80*	Register of Intel. Prop. (3 within one year*)	None*	Special provisions
Portugal 1867, 1886	BERLIN U. S., It., Sp., Bra.	Life + 50*	Pub. Lib.* (2 before pub.)	None	
Italy 1882, 1889, 1910	BERNE-PARIS MONTV.* U. S., Aus.-Hung., Mont., Port., Roum., San. Mar., Lat. Amer.	Life or 40* + 40*	Prefecture (3 within 3 months)*	None* (res. trans.)	Added 40 yrs. on royalty of 5 p. c.
					Europe: Minor States
San Marino	*See* Italy				As in Italy
Monaco 1889, 1896	BERLIN	Life + 50*	None	None*	
Greece 1833-1910	None	15 + *	D (4 within10 days*)		
Malta, Cyprus, etc. (Br.)	*See* Gt. Brit.	Life + 7 or 42*	D (3 within mo.)		
					Balkan States
Montenegro	Fr., It.				Uncertain protection
Bulgaria 1896?					Uncertain protection
Servia					No protection
Roumania 1862-1904	Aus., Belg., Fr., It.	Life + 10	R. Min. of Instruc.		
Turkey 1910	None	Life + 30*	Min. of Pub. Instruc. (3)*	None.	
					Asia
Asia					
Japan 1899, 1910	BERLIN* U. S.,* China	Life + 30*	R. Ministry of Int. (before suit)	None*	
Korea 1908	*See* Japan				As in Japan
China 1910	U. S.,* Japan	Life + 30*	Ministry of Int. (2)		

1910				
Hong Kong (Br.)	*See* Gt. Brit.	Life + 7 or 42*	D (3 within mo.)	
Philippines (U. S.)	*See* U. S.			
India, British 1847, 1867	*See* Gt. Brit.	Life + 7 or 42*	D (3 within mo.)	Printer's and publisher's name on work
Ceylon, etc. (Br.)	*See* Gt. Brit.	Life + 7 or 42*	D (3 within mo.) (4 within yr.)	
Siam 1901	None	Life + 7 or 42*		
Persia	None			No protection

Africa

Egypt	None	Indefinite		Court protection
Tunis 1889	BERLIN*	Life + 50*		As in France
Algeria (Fr.)	*See* France			
Sierra Leone, etc. (Br.) 1887	*See* Gt. Brit.	Life + 7 or 42*	D (3)*	
Liberia	BERLIN	Indefinite		Without specific law
Congo Free State	Belg., Fr. (extradition)			Punishes fraud only
So. Africa (Br.)	*See* Gr. Brit.* Aus.-Hung., excepted			
Cape Colony 1873-1895		Life + 5 or 30*	Registrar of Deeds D (4 within mo.)*	
Natal 1895-1898		Life + 7 or 42*	Colonial Sec., D (2 within 3 mos.)*	
Transvaal, etc. 1887		50 or life*	Registrator D (3 within 2 mos.)*	Reserv. of playr. and trans.

Latin America

Mexico 1871, 1884	U. S., Dom. Rep., Ecu., Belg., Fr., It., Sp.	Perpetuity*	R. Min. Pub. Instruc. D (2)*	None* (res. trans.)	
Costa Rica 1880-1896	MEXICO U. S., Sp., Fr. Guat., Sal., Hon.	Life + 50*	Office of Pub. Libs. (3) * within yr.*	None	
Guatemala 1879	MEXICO Sp., Fr., Costa R.	Perpetuity	Min. of Pub. Educ. (4)*	(res. trans.)	
Honduras 1894, 1898	MEXICO Costa R.	Indefinite			No specific law
Nicaragua 1904	MEXICO It.	Perpetuity*	Min. of Agric. (6*)	(res. trans.)	
Salvador 1886, 1900	MEXICO Sp., Fr., Costa R.	Life + 25*	D Min. of Agric. (1 before pub.)	None	Publication within country
Panama 1904	None	Life + 80			As in Colombia
					West Indies
Cuba 1879-1909	MEXICO? U. S., It.	Life +80*	Dept. of State (3)	None	
Haiti 1885	BERLIN	Life + *	D Dept. of Int., (5 within yr.)	None	
Dominican Rep. 1896	MEXICO? Mex.	Uncertain			
					South America
Brazil 1891-1901	Portugal	50* from the 1st Jan. of yr. of pub.	Nat. Lib. (1 within 2 yrs.)	None* (res. playr.)	
Argentina 1910	MONTEVIDEO Belg., Sp., Fr., It.	Life + 10*	Nat. Lib. (2 within 15 or 30 days)	None*	
Uruguay 1868	MONTEVIDEO	Indefinite			No specific law
Paraguay 1870, 1881, 1910	MONTEVIDEO Belg., Sp., Fr., It.		Public registries	Under penal code	
Chile 1833-1874	U. S.	Life + 5*	D Nat. Pub. Lib. (3)*	None	

Peru 1849, 1860	MONTEVIDEO	Life + 20*	D Pub. Lib. (1) + Dept. Pref. (1)	None
Bolivia 1834, 1909	MONTEVIDEO Fr.	Life + 30*	R Min. of Pub. Instruc. D Pub. Lib. (1 within yr.)	
Ecuador, 1884, 1887	Sp., Fr., Mex.	Life + 50*	Min. of Pub. Educ. (3 within 6 mos.)*	None* (res. playr.)
Colombia 1886, 1890	Sp., It.	Life + 80*	Min. of Pub. Educ. (3 within yr.)*	None
Venezuela 1894, 1897	None.	Perpetuity	Registry (6)	Notice of patent

Australasia

Australia (Br.) 1905	*See* Gt. Brit.* Aus.-Hung. excepted	Life + 7 or 42*	Commonwealth Copyr. Office D (2)	Reserv. performing right
New Zealand (Br.) 1842-1903	*See* Gt. Brit.	28 or life*	R Registrar of Coprs.* D libr. of Gen. Assem. (for plays only)	
Hawaii (U. S.)	*See* U. S.			

COPYRIGHT
ITS HISTORY AND ITS LAW

I
THE NATURE AND ORIGIN OF COPYRIGHT

Copyright, meaning

Copyright (from the Latin *copia*, plenty) means, in general, the right to copy, to make plenty. In its specific application it means the right to multiply copies of those products of the human brain known as literature and art.

There is another legal sense of the word "copyright" much emphasized by several English justices. Through the low Latin use of the word *copia*, our word "copy" has a secondary and reversed meaning, as the pattern to be copied or made plenty, in which sense the schoolboy copies from the "copy" set in his copy-book, and the modern printer calls for the author's "copy."

Its two senses

Copyright, accordingly, may also mean the right in copy made (whether the original work or a duplication of it), as well as the

right to make copies, which by no means goes with the work or any duplicate of it. Said Lord St. Leonards in the case of Jefferys v. Boosey in 1854: "When we are talking of the right of an author we must distinguish between the mere right to his manuscript, and to any copy which he may choose to make of it, as his property, just like any other personal chattel, and the right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two things. The common law does give a man who has composed a work a right to that composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of forever copying his own composition after he has published it to the world, is a totally different thing." Baron Parke, in the same case, pointed out expressly these two different legal senses of the word copyright, the right *in* copy, a right of possession, always fully protected by the common law, and the right *to* copy, a right of multiplication, which alone has been the subject of special statutory protection.

Blackstone

Blackstone in his Commentaries of 1767, in which the word copyright seems to have been first used, lays down the fundamental principles of copyright as follows: "When a man, by the exertion of his rational powers, has produced an original work, he seems to have clearly a right to dispose of that identical work as he pleases, and any attempt to vary the disposition he

has made of it appears to be an invasion of that right. Now the identity of a literary composition consists entirely in the sentiment and the language; the same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited; and no other man (it hath been thought) can have a right to exhibit it, especially for profit, without the author's consent. This consent may, perhaps, be tacitly given to all mankind, when an author suffers his work to be published by another hand, without any claim or reserve of right, and without stamping on it any marks of ownership; it being then a present to the public, like building a church or bridge, or laying out a new highway."

Property by creation

There is nothing which may more rightfully be called property than the creation of the individual brain. For property (from the Latin *proprius*, own) means a man's very *own*, and there is nothing more his own than the thought, created, made out of no material thing (unless the nerve-food which the brain consumes in the act of thinking be so counted), which uses material things only for its record or manifestation. The best proof of *own*-ership is that if this individual man or woman had not thought this individual thought, realized in writing or in music or in marble, it would not exist. Or if the individual thinking it had put it aside

without such record, it would not, in any practical sense, exist. We cannot know what "might have beens" of untold value have been lost to the world where thinkers, such as inventors, have had no inducement or opportunity thus to materialize their thoughts.

Are thoughts created?

It is sometimes said, as a bar to this idea of property, that no thought is new – that every thinker is dependent upon the gifts of nature and the thoughts of other thinkers before him, as every tiller of the soil is dependent upon the land as given by nature and improved by the men who have toiled and tilled before him, – a view of which Henry C. Carey has been the chief exponent in this country. But there is no real analogy – aside from the question whether the denial of individual property in land would not be setting back the hands of progress. If Farmer Jones does not raise potatoes from a piece of land, Farmer Smith can; but Shakespeare cannot write "Paradise lost" nor Milton "Much ado," though before both Dante dreamed and Boccaccio told his tales. It was because of Milton and Shakespeare writing, not because of Dante and Boccaccio who had written, that these immortal works are treasures of the English tongue. It was the very self of each, *in propria persona*, that gave these form and worth, though they used words that had come down from generations as the common heritage of English-speaking men. Property in a stream of water, as has been pointed out, is not in the atoms of the water but in the flow of the stream.

Property in unpublished works

Property right in unpublished works has never been effectively questioned – a fact which in itself confirms the view that intellectual property is a natural inherent right. The author has "supreme control" over an unpublished work, and his manuscript cannot be utilized by creditors as assets without his consent. "If he lends a copy to another," says Baron Parke, "his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it or publish it, he has a right to enforce that undertaking." The receiver of a letter, to whom the paper containing the writing has undoubtedly been given, has no right to publish or otherwise use the letter without the writer's consent. The theory that by permitting copies to be made, an author dedicates his writing to the public, as an owner of land dedicates a road to the public by permitting public use of it for twenty-one years, overlooks the fact that in so doing the author only conveys to each holder of his book the right to individual use, and not the right to multiply copies, as though the landowner should not give but sell permission to individuals to pass over his road, without any permission to them to sell tickets for the same privilege to other people. The owner of a right does not forfeit a right by selling a privilege.

The question of publication

It is at the moment of publication that the undisputed possessory right passes over into the much disputed right to

multiply copies, and that the vexed question of the true theory of copyright property arises. The broad view of literary property holds that the one kind of copyright is involved in the other. The right to have is the right to use. An author cannot use – that is, get beneficial results from – his work, without offering copies for sale. He would be otherwise like the owner of a loaf of bread who was told that the bread was his until he wanted to eat it. That sale would seem to contain "an implied undertaking" that the buyer has liberty to use his copy, but not to multiply it. Peculiarly in this kind of property the right of ownership consists in the right to prevent use of one's property by others without the owner's consent. The right of exclusion seems to be indeed a part of ownership. In the case of land the owner is entitled to prevent trespass, to the extent of a shot-gun, and in the same way the law recognizes the right to use violence, even to the extreme, in preventing others from possession of one's own property of any kind. The owner of a literary property has, however, no physical means of defence or redress; the very act of publication by which he gets a market for his productions opens him to the danger of wider multiplication and publication without his consent. There is, therefore, no kind of property which is so dependent on the help of the law for the protection of the real owner.

Inherent right

The inherent right of authors is a right at what is called common law – that is, natural or customary law. The common law, says Kent, "includes those principles, usages, and rules of

action applicable to the government and security of person and property which do not rest for their authority upon any express and positive declaration of the will of the legislature." "The common law or *lex non scripta*," says Blackstone, "depends upon its having been used time out of mind; or, in the solemnity of our legal phrase, time whereof the memory of man runneth not to the contrary." So far as concerns the undisputed rights before publication, the copyright laws are auxiliary merely to common law. Rights exist before remedies; remedies are merely invented to enforce rights. "The seeking for the law of the right of property in the law of procedure relating to the remedies," says Copinger in his standard English work on "The law of copyright," "is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein."

Statutory penalties

After the invention of printing it became evident that new methods of procedure must be devised to enforce common law rights. Copyright became, therefore, the subject of statute law, by the passage of laws imposing penalties for a theft which, without such laws, could not be punished.

Statute of Anne
Supersedure of common law right

These laws, covering naturally only the country of the author, and specifying a time during which the penalties could be

enforced, and providing means of registration by which authors could register their property rights, as the title to a house is registered when it is sold, had an unexpected result. The statute of Anne, which is the foundation of present English copyright law, intended to protect authors' rights by providing penalties against their violation, had the effect of limiting those rights. It was doubtless the intention of those who framed the statute of Anne to establish, for the benefit of authors, specific means of redress. Overlooking apparently the fact that law and equity, as their principles were then established, enabled authors to use the same means of redress, so far as they held good, which persons suffering wrongs as to other property had, the law was so drawn that in 1774 the English House of Lords (against, however, the weight of one half of English judicial opinion) decided that, instead of giving additional sanction to a formerly existing right, the statute of Anne had substituted a new and lesser right to the exclusion of what the majority of English judges held to have been an old and greater right. Literary and like property to this extent lost the character of copy-*right*, and became the subject of copy-*privilege*, depending on legal enactment for the security of the private owner. American courts, wont to follow English precedent, have rather taken for granted this view of the law of literary property, and our Constitution, in authorizing Congress to secure "for limited times to authors and inventors the exclusive right to their respective writings and discoveries," was evidently drawn from the same point of view, though it does not in itself

deny or withdraw the natural rights of the author at common law.

II
THE EARLY HISTORY OF COPYRIGHT

In classic times

Our traditions of the blind Homer, singing his Iliad in the multitudinous places of his protean nativity, do not vouchsafe us any information as to the *status* of authors in his day. There seems indeed to be no indication of author's rights or literary property in Greek or earlier literatures. But there is mention in Roman literature of the sale of playright by the dramatic authors, as Terence; and Rome had booksellers who sold copies of poems written out by slaves, and who seem to have been protected by some kind of "courtesy of the trade," since Martial names certain booksellers who had specific poems of his for sale. Horace complains that the Sosius brothers, his publishers, got gold while he got only fame – but this may have been a classic "author's grumble." Cicero in his letters indicates that there was some notion of literary property, and it is probable that some kind of payment was made to authors.

Roman law

The Roman jurist Gaius, probably of the second century, held that where an artist had painted upon a *tabula*, his was the

superior right. And this opinion was adopted by Tribonian, chief editor of the code of Justinian, in the sixth century, and was applied in a modern question in respect to John Leech's drawings upon wood.

Monastic copyists
St. Columba and Finnian

In the early Christian centuries, the monasteries became the seats of learning, and the *scriptorium* or writing room, in connection with the *librarium* or *armarium*, – the armory in which the weapons of the faith were kept, – was the work-shop of the monkish copyists, sometimes working as a publishing staff under the direction of the *librarius* or *armarius* as chief scribe. The first record of a copyright case is that of Finnian *v*. Columba in 567, chronicled by Adamnan fifty years later and cited by Montalembert in "The monks of the West." St. Columba, in his pre-saintly days, surreptitiously made a copy of a psalter in possession of his teacher Finnian, and the copy was reclaimed, so the tradition relates, under the decision of King Dermott, in the Halls of Tara: "To every cow her calf." The authenticity of the tradition is questioned by other writers, but the phrase gives the pith of the common law doctrine of literary property and indicates that in those early centuries there was a sense of copyright. Monks from other monasteries came to a noted *scriptorium* where a specially authentic or valuable manuscript could be copied, and the privilege of copying sometimes became the basis of an exchange of copies or of a commercial charge.

Finally different texts of the same work were compared to obtain a certain or standard text, and the multiplication of such copies became the basis of a publishing and bookselling trade, in secular as well as sacerdotal hands, the development of which is traced in detail by George Haven Putnam in "Books and their makers in the Middle Ages."

University protection

This development is illustrated in the statutes of 1223 of the University of Paris, providing that the "booksellers of the University" should produce duplicate copies of the texts authorized for the use of the University, and there is indication that payment was made by the University to scholars for the annotation and proof-reading of such texts. In fact, there existed in France in those days a kind of guild of *libraires jurés* or legalized booksellers, under regulation of the University, as a body of publishers and writers having jurisdiction over the copying and censorship of manuscripts. "Letters of patent" of Charles V, 1368, specified fourteen *libraires* and eleven *écrivains* as registered in Paris, and four chief *libraires* had jurisdiction over the calling of the *librarius* and the *stationarius*. The certificate of the correctness of a copy, and perhaps of the right to copy or sell it, may be considered the primitive form of copyright certificate.

Invention of printing

The invention of printing, prior to 1450, made protection of

literary property a question of rapidly increasing importance. The new art raised, of course, many new questions wherever the guardians of the law were set to their chronic task of applying old ideas of right to new conditions. The earliest copyright certificate, if it may be so called, in a printed book was that in the reissue of the tractate of Peter Nigrus printed in 1475, at Esslingen, in which the Bishop of Ratisbon certified the correctness of the copy and his approval. At first "privileges" were granted chiefly to printers, for the reproduction of classic or patristic works, but possibly in some cases as the representatives of living writers; and there are early instances of direct grants to authors, the earliest known being in 1486 in Venice to Sabellico.

In Germany

In Germany, the cradle of the art of printing, whence come the earliest *incunabula* or cradle-books, printing privileges were developed some decades later than in Italy. Koberger, the early Nuremberg printer, whose imprint dates back to 1473, relied rather on the "courtesy of the trade," and indeed made an agreement in 1495 with Kessler of Basel to respect each other's rights. Yet a suit brought in 1480 by Schöffer, who with Fust had established the first publishing and bookselling business, brought in connection with Fust's heirs against Inkus of Frankfort for the infringement of property rights in certain books, and the issue of a preliminary injunction by a court at Basel, indicated some definite legal *status*.

The first recorded privilege in Germany was issued by the

imperial Aulic Council in 1501, to the Rhenish Celtic Sodalitas for the printing of dramas of the nun-poet, Hroswitha, who had been dead for 600 years, as prepared by Celtes of Nuremberg. The imperial privilege covered only the imperial domain, and Celtes in the same year obtained a similar privilege from the magistracy of Frankfort, then the seat of the book-fair, organized there about 1500, afterwards superseded by that at Leipzig. Later, imperial privileges were issued by the Imperial Chancellor in the name of the Emperor, as one in 1510 to the printer Johann Schott of the "*Lectura aurea*." In 1512 Maximilian I granted to the historiographer Johann Stab in Lintz a privilege covering "all works" which he "might cause to be printed," under which he issued licenses on particular books for ten years or less. This grant, however, some authorities consider not a privilege or copyright, but an authorization to license, possibly similar to that which had been granted in 1455 by Frederick III and confirmed later by Maximilian I to Dr. Jacob Össler at Strasburg, perhaps the earliest centre of printing and bookselling, as imperial supervisor of literature and superintendent of printing. In 1512 also, copies or imitations or engravings by Albert Dürer, with forged signature, were ordered confiscated by the magistrates of Nuremberg, though perhaps on grounds of fraud rather than of copyright. But in 1528 Dürer's widow obtained from the Nuremberg authorities exclusive privilege for his works, and in that year the magistrates went so far in protecting Dürer's "Proportion" as to restrain another work of the same title

and subject, presumably though mistakenly inferred to be an adaptation or imitation, until after the completion and sale of the original work. In 1532 reëngravings of some of Dürer's works were restrained, and when a Latin edition of his "Perspective," printed in Paris, found its way to Nuremberg, the magistrates called the booksellers together, warned them against keeping or selling the unauthorized edition, and sent letters to the magistracy of Strasburg, Frankfort, Leipzig and Antwerp, requesting similar action. Luther in his reforming zeal was the first protestant against authors' wrongs, and in a letter of 1528 complained that "there are many now busying themselves with the spoiling of books through misprinting them," and pleaded for legislation to protect literary producers. In 1531 the city council of Basel enjoined all booksellers from reprinting the books of each other for three years from publication under penalty of one hundred gulden, which illustrates the nature of local legislation, privileging printers as well as other guilds within a city. The protection was usually for short terms and sometimes covered the subject as well as the book, as indicated in the Dürer case.

The coördinate jurisdiction of imperial and local authority continued into the seventeenth century, and besides a special protection of official publications, including church texts and school books, there developed a differentiation between privileged books and protected authors. The imperial city of Frankfort in 1660 passed an ordinance for the protection of "*bücher*" and "*autores*" and an imperial patent of 1685 made

the curious distinction between "privileged" and "unprivileged" works, which Pütter, reputed the German apostle of the modern theory of property in literary productions, writing in 1764, explains as meaning respectively "non-individual" and "individual" (*eigenthümlich*) works, the former those issued under printers' privileges, the latter the works of contemporary authors, copyrightable in our modern sense. At the close of the seventeenth century, the book-fair at Leipzig began to assume dominating importance, and the privileges from the Commission of the Elector of Saxony became more authoritative, perhaps, than the imperial privileges issued from Frankfort.

In Italy: Venice

Venice, among whose chief glories were to be the master printers Aldus, was the first and foremost of the Italian states to encourage the new art. The first privilege granted by her Senate, in 1469, indeed ante-dated the first in Germany by thirty-two years, the first in France by thirty-four years, and the first in England by forty-nine years. This was to John of Speyer, a German printer, for a monopoly for printing in Venice for five years, with prohibition of importation of works printed elsewhere, which he did not live to enjoy. The first known author's copyright was granted September 1, 1486, to Antonio Sabellico, historian to the Republic, of the sole right to publish or authorize the publication of his "Decade of Venetian affairs," not limited in time, with a penalty of five hundred ducats for infringement. In 1491 the Senate gave to the publicist Peter of

Ravenna and the publisher of his choice the sole right, without mention of term, to print and sell his "Phœnix," usually cited as the first instance of copyright. In 1493 one Barbaro was granted a privilege for ten years in the work of his deceased brother, and in the same year an editor's copyright was granted to Joannes Nigro for his edition of "Haliabas," his application being accompanied by a certificate from learned doctors of Padua of its value for the community, and a publisher's copyright to Benaliis on Giustiniani's "Origin of the city of Venice," both apparently without term. In 1494 a privilege to Codeca contained the condition of fair price, and another privilege required publication within a year or at the rate of a folio a day. In 1496 Aldus himself was given the privilege for twenty years of printing any Greek texts, and in 1501, another for ten years of printing in cursive or italic characters, an invention of his own modeled on the handwriting of Boccaccio, a *quasi* patent right; and rights for other languages were granted to other printers.

From 1505 renewals were granted for good cause, as in 1508 to Crasso for his edition of the works of Polifilo, because the wars had prevented due return. The privilege dated sometimes from application, sometimes from publication, and varied in term from one year up, averaging perhaps ten years at the beginning and twenty years toward the close of the sixteenth century. Many of the privileges were conditioned on printing within Venice. Copyright to authors became frequent, as in 1515 on his "Orlando" for his lifetime, to Ariosto, on whose poems an extra

term for ten years was granted, in 1535, to his heirs. In 1521 Castellazzo obtained a copyright for his engravings illustrating the Pentateuch and for others which he had in plan; and many musical works were also copyrighted.

It will be seen that before or early in the sixteenth century most of the copyright conditions of later legislation, even in the American code of 1909, had been prophesied in Venice. But the privileges had become so complicated and perplexing that in 1517 the Venetian Senate abolished all printing privileges previously granted and decreed that privileges should thereafter be granted only by two-thirds vote and for a new work (*opus novum*) "never published before," or works hitherto unprivileged. This attempt at reform proved inadequate and indefinite, and in 1533 the first real copyright code was decreed, under which printing was required within Venice, and publication within a year – later modified for larger works to a folio a day. No publisher could apply twice for the same copyright, and a maximum price was fixed from an advance copy by the Bureau of Arts and Industries. Under the restriction of competition, Venetian printers, once the best in the world, fell into "the ruinous and disgraceful practice," according to a decree of 1537, "for the sake of gain" of using "vile paper that would not hold the ink" or permit marginal notes; and the use of good paper that could be written upon without blotting was required, except for works priced under 10 soldi, on penalty of forfeiture of copyright and a fine of 100 ducats. Under the earlier privileges publishers

had printed books without consent of the authors or against their will, but in 1545 it was decreed that no copyright should issue unless documentary evidence of the consent of the author or his representatives had been submitted to the Rifformatori, the commission from the University of Padua, appointed the year before as censors upon non-theological works, not covered by the ecclesiastical censors.

A decree in 1548 established a guild of printers and publishers, antedating the charter granted by Queen Mary to the Stationers' Company in London, though later than the organization of the book-fair of Frankfort and of the *libraires jurés* in France; and its regulations, aiding the censorship, incidentally defined literary property and protected copyrights. About 1566 there was a provision that works should be registered before publication without charge, and a complete registry of published works was kept in Venice. In 1569 as many as 117 copyright entries were made in Venice, and so few, after the plague years, as seven in 1599. Only two applications are recorded as refused by the Senate. The one recorded instance of punishment for piracy was that on the work of Pappa Alesio of Corfu, wherein the infringer was fined 200 ducats, besides ten ducats for each unauthorized copy printed, and was forbidden to print for ten years.

About 1600 the exodus of printers from Venice was checked by legislation, and in 1603 an elaborate decree provided copyright for twenty years on books first published in Venice,

for ten years on books first published in Italy but registered in Venice, or on books not printed in Venice within the previous twenty years, and for five years on books not printed within ten years previous, and also a fine of twenty-five ducats for the false use of "Venetia" in the imprint. Later, as is evidenced by complaints in 1671, deposit copies were required for the libraries of St. Mark and of Padua. By the close of the seventeenth century the provisions for copyright in Venice had become so complicated, according to Putnam, following Brown's historical study of "The Venetian printing press," as to require the following processes, most of them involving a fee: "*testamur* from the ducal secretary; certificate from the Rifformatori of the University of Padua; *imprimatur* from the Chiefs of the Ten; revision by the Superintendent of the Press; revision by the public proof-reader; collation of the original text with the text as printed, by the secretary to the Rifformatori; certificate from the librarian of St. Mark that a copy had been deposited in the library; examination by experts appointed by the Proveditori to establish the market price of the book."

Florence

Florence was second only to Venice in the production of books and the protection of authors, and the records of Florentine printing show that in the sixteenth century international privileges were sought and obtained. Thus the printer of a Florentine edition of the Pandects, in 1553, obtained privileges also in Spain, France and the two Sicilies, possibly

through a Papal grant.

Control by the Church

By 1515, under Leo X, patron of art and letters, the Holy See had asserted its jurisdiction over copyrights and privileges, not only in its own territory, but throughout Italy and Germany, and elsewhere, under pain of spiritual punishments. Fra Felice of Prato, a converted Jew, had obtained from the Pope a privilege for certain Hebrew works valid throughout all Europe, the denial or infringement of which was punishable by excommunication; but he took the precaution to obtain a privilege also from the Venetian authorities. There is other evidence of a compromise policy involving approval from the Church before a secular privilege was granted, especially of theological works. Throughout Catholic countries the *index expurgatorius* banned for the most part the printing of forbidden books; and this made Holland later the chief centre of printing, since the placing of a work in the *index* invited prompt reprint by Dutch publishers. It was perhaps a survival of a requirement for deposit of such books that Holland so long remained the only nation in Europe conditioning copyright on deposit of a copy printed within the country.

In France

In France, after the invention of printing, the functions of the *libraires jurés*, under the authority given by the King through the University of Paris, naturally came to include books, and this

relation was continued until the Revolution of 1789. Copyrights throughout this period seem to have been in perpetuity. At the beginning of the fifteenth century, in the times of Louis XII, "letters of the King" forbade booksellers, printers and other persons to "introduce foreign impressions" of the books to which such letters were appended. They were usually issued to printers. In 1537, under Francis I, a work had first to secure "the King's approval given through the royal librarian," a copy must be deposited in the library of the royal château of Blois, and the selling of foreign works was permitted only after approval as worthy of a place in the royal library, – but for these last the library was to pay the usual price. In 1556 a general ordinance of Henry II defined literary property, and publication of condemned books was declared treason. In 1566 the "Ordinance de Moulins" of Charles IX made further definition; and letters patent of Henry III, in 1576, referred back to these earlier ordinances. Infringement of such privileges was punished with especial severity in France, for, as quoted by Lowndes, such conduct was thought "worse than to enter a neighbor's house and steal his goods: for negligence might be imputed to him for permitting the thief to enter: but in the case of piracy of copyright, it was stealing a thing confided to the public honor." Louis XIV in 1682 visited it with corporal punishment, and for a second offence decreed in 1686 also that the offender should be forever disabled from exercising his trade of bookseller or printer.

Copyrights continued in perpetuity until all royal privileges were abolished in 1789 by the National Assembly, after which in July, 1793, a general copyright law was passed, granting copyright to an author for his life and to his heirs for ten years thereafter.

In England

In England, a Royal Printer was appointed in 1504, and to his successor, Richard Pynson, in 1518, the first printing "privilege" was issued, in the form of a prohibition for two years of the printing by any other person of a certain speech to which this first English copyright notice was appended. Bishop Fell, in his memoirs on the state of printing in the University of Oxford, states that this University had been granted certain exclusive privileges of transcribing and multiplying books by means of writing; and Lowndes in his early "Historical sketch of the law of copyright," published in 1840 and 1842, cites many early privileges, most commonly for seven years, granted after the invention of printing.

An early enactment of Richard III, in 1483, had encouraged the circulation of books by exempting from certain restraints on aliens "any artificer, or merchant stranger, of what nation or country he be, for bringing into this realm, or selling by retail or otherwise, any books written or printed, or for inhabiting within this said realm for the same intent, or any scrivener, alluminor, reader, or printer of such books." But fifty years later, under Henry VIII, this exemption was repealed by an act, "for

printers and binders of books," which provided that no persons "resident or inhabitant within this realm shall buy to sell again, any printed books brought from any parts out of the King's obeysance, ready bound in boards, leather, or parchment," or buy "of any stranger born out of the King's obedience, other than of denizens, any manner of printed books brought from any parties beyond the sea, except only by engross, and not by retail" – the buyer to be punished by a fine, of which a moiety was to go to the informer. The act also contained provisions to "reform and redress," through the Chancery judges with "twelve honest and discreet persons," "too high and unreasonable prices."

Book restriction

The quaint preamble of this act of 1533 sets forth as its "whereas," in reference to the act of Richard III, that "there hath come to this realm sithen the making of the same, a marvelous number of printed books, and daily doth; and the cause of the making of the same provision seemeth to be, for that there were but few books, and few printers within this realm at that time, which could well exercise and occupy the said science and craft of printing; nevertheless, sithen the making of the said provision, many of this realm, being the King's natural subjects, have given them so diligently to learn and exercise the said craft of printing, that at this day there be within this realm a great number cunning and expert in the said science or craft of printing, as able to exercise the said craft in all points, as any stranger in any other realm or country; and furthermore, where there be a great

number of the King's subjects within this realm, which live by the craft and mystery of binding of books, and that there be a great multitude well expert in the same, yet all this notwithstanding, there are divers persons that bring from beyond the sea great plenty of printed books, not only in the Latin tongue, but also in our maternal English tongue, some bound in boards, some in leather, and some in parchment, and them sell by retail, whereby many of the King's subjects, being binders of books, and having no other faculty wherewith to get their living, be destitute of work and like to be undone, except some reformation herein be had." This is interesting in connection with the American manufacturing clause.

Early English protection

Henry VIII granted many printing privileges, and in 1530 the first English copyright to an author was issued to John Palsgrave, who, having prepared a French grammar at his own expense, received a privilege for seven years. In 1533 appeared the first complaint of piracy, that of Wynken de Worde, who obtained the King's privilege for his second edition of Witinton's Grammar, because Peter Trevers had reprinted it from the edition of 1523. Up to the middle of the sixteenth century copyrights were in form printers' licenses, and even in the case cited Palsgrave seems to have been recognized rather because he published his own book than because he wrote it.

The Stationers' Company

The Stationers' Company, created by Henry VIII and chartered under Queen Mary in 1556, though the development of an earlier guild dating from 1403, was in part a device to prevent seditious printing, by prohibiting any printing in England except by those registered in its membership. In 1558, under a second charter, its by-laws provided that every one who printed a book should register it and pay a fee, and those who failed to do this, or who printed another member's book, were to be fined. In 1562 licenses were declared void "if any other has a right," and in 1573 sales of "copy" are entered. The practice had grown up of granting patents or monopolies to persons for a whole class of books; the Stationers' Company itself held that for almanacs up to a very late period, and the Crown has retained that on the Bible and the Book of Common Prayer to the present day. These monopolies were defied, and the Star Chamber decree of 1566, disabling offending printers from exercising their trade and prescribing imprisonment, did not avail. In 1640 the Star Chamber and all the regulations of the press were abolished by the Long Parliament, but the abuse of unlicensed printing led to a new licensing act in 1643, which prohibited printing or importing without consent of the *owner*, on pain of forfeiture of copies to the owner, and which renewed the order that all books should be entered in the register of the Stationers' Company. The early registers still exist in Stationers' Hall, near Paternoster Row, London, in quaint and almost undecipherable chirography, and some of them have been reissued in *facsimile*. It was against

the licensing act of this date that Milton, in 1644, printed his "Areopagitica," but he particularly excepts from his criticism of the act the part providing for "the just retaining of each man his several copy, which God forbid should be gainsaid."

Statutory provisions

In 1649 Parliament provided a penalty of 6*s.* 8*d.* and forfeiture for the reprinting of registered books, and prohibited presses except at London, Finsbury, York, and the universities, and in 1662 it added the requirement of deposit of a copy at the King's library and at each of the universities. To prevent fraudulent changes in a book after licensing, it was further required that a copy be deposited with the licenser at the time of application – apparently the origin of our record-deposit. With the expiration of these acts in 1679, legislative penalties lapsed and piracy became common. Charles II in 1684 renewed the charter of the Stationers' Company, approved its register, and confirmed to proprietors of books "the sole right, power, and privilege and authority of printing, as has been usual heretofore." The licensing act of 1649-62 was revived in 1685, and renewed up to 1694, although the booksellers now petitioned against it, and eleven peers protested against subjecting learning to a mercenary and perhaps ignorant licenser, and destroying the property of authors in their copies. The law lapsed because of the indignation of the Commons against the arbitrary power of the license, but the result was the abolition of statutory penalties, which left the punishment of piracy a matter of damages at

common law, requiring a separate action for each copy sold, usually against irresponsible people. Piracy again flourished. The right at common law seems, however, to have been unquestioned, and the Court of Common Pleas held that a plaintiff who had purchased from the executors of an author was owner of the property at common law. Owners of literary property petitioned Parliament, 1703 to 1709, for security and redress, declaring that the property of English authors had always been held as sacred among the traders, that conveyance gave just and legal title, that the property was the same with houses and other estates, and that existing "copies" had cost at least £50,000, and had been used in marriage settlements and were the subsistence of many widows and orphans. This led to the famous statute of Anne, introduced in 1709, and passed March, 1710, "for the encouragement of learning," said to have been drawn in its original form by Swift, which remains the practical foundation of copyright in England and America to-day.

III
THE DEVELOPMENT OF STATUTORY COPYRIGHT IN ENGLAND

The statute of Anne as foundation

The statute of Anne, the foundation of the present copyright system of England and America, which took effect April 10, 1710, gave the author of works then existing, or his assigns, the sole right of printing for twenty-one years from that date and no longer; of works not then printed, for fourteen years and no longer, except in case he were alive at the expiration of that term, when he could have the privilege prolonged for another fourteen years. Penalties were provided, which could not be exacted unless the books were registered with the Stationers' Company, and which must be sued for within three months after the offence. If too high prices were charged, the Queen's officers might order them lowered. A book could not be imported without written consent of the owner of the printing right. The number of deposit copies was increased to nine. The act was not to prejudice any previous rights of the universities and others.

Its relations to common law
The crucial cases

This act did not touch the question of rights at common law, and soon after its statutory term of protection on previously printed books expired, in 1731, lawsuits began. The first was that of Eyre *v.* Walker, in which Sir Joseph Jekyll granted, in 1735, an injunction as to "The whole duty of man," which had been first published in 1657, or seventy-eight years before. In this and several other cases the Court of Chancery issued injunctions on the theory that the legal right was unquestioned. But in 1769 the famous case of Millar *v.* Taylor, as to the copyright of Thomson's "Seasons," brought directly before the Court of King's Bench the question whether rights at common law still existed, aside from the statute and its period of protection. In this case Lord Mansfield and two other judges held that an author had, at common law, a perpetual copyright, independent of statute, one dissenting justice holding that there was no such property at common law. The copyright was sold by Millar's executors to Becket, who prosecuted Donaldson for piracy and obtained from Lord Chancellor Bathurst a perpetual injunction. In 1774, in the famous case of Donaldson *v.* Becket, this decision was appealed from, and the issue was carried to the highest tribunal, the House of Lords.

The Judges' opinions

The House of Lords propounded five questions to the judges. These, with the replies,[1] were as follows:

[1] The votes on these decisions are given differently in the several copyright authorities. These figures are corrected from 4 Burrow's Reports, 2408, the leading

I. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed, published and sold the same without his consent? Yes, 10 to 1 that he had the sole right, etc., – and 8 to 3 that he might bring the action.

II. If the author had such right originally, did the law take it away, upon his printing and publishing such book or literary composition; and might any person afterward reprint and sell, for his own benefit, such book or literary composition against the will of the author? No, 7 to 4.

III. If such action would have lain at common law, is it taken away by the statute of 8th Anne? And is an author, by the said statute, precluded from every remedy, except on the foundation of the said statute and on the terms and conditions prescribed thereby? Yes, 6 to 5.

IV. Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity, by the common law? Yes, 7 to 4.

V. Whether this right is any way impeached, restrained, or taken away by the statute of 8th Anne? Yes, 6 to 5.

The Lords' decision

These opinions, that there was perpetual copyright at common law, which was not lost by publication, but that the statute of

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English parliamentary reports, and are probably right.

Anne took away that right and confined remedies to the statutory provisions, were directly contrary to the previous decrees of the courts, and on a motion seconded by the Lord Chancellor, the House of Lords, 22 to 11, reversed the decree in the case at issue. This construction by the Lords, in the case of Donaldson *v.* Becket, of the statute of Anne, has practically "laid down the law" for England and America ever since.

Protests

Two protests against this action deserve note. The first, that of the universities, was met by an act of 1775, which granted to the English and Scotch universities (to which Dublin was added in 1801), and to the colleges of Eton, Westminster and Winchester, perpetual copyright in works bequeathed to and printed by them. The other, that of the booksellers, presented to the Commons February 28, 1774, set forth that the petitioners had invested large sums in the belief of perpetuity of copyright, but a bill for their relief was rejected.

Supplementary legislation

In 1801 an act was passed authorizing suits for damages [at common law, as well as penalties under statute] during the period of protection of the statute, the need for such a law having been shown in the case of Beckford *v.* Hood in 1798, wherein the court had to "stretch a point" to protect the plaintiff's rights in an anonymous book, which he had not entered in the Stationers' register.

The Georgian period

Meantime, during the Georgian period, there had been much incidental copyright legislation. The provision in the statute of Anne for the limitation of prices was repealed by the act of 1739, which also continued the prohibition of the importation of foreign reprints, further continued in later acts or customs regulations from time to time, until these were disposed of by the statute law revision act of 1867. Copyright had been extended to engravings and prints by successive acts of 1734-5 (8 George II, c. 13), 1766-7 (7 George III, c. 38) and 1777 (17 George III, c. 57); to designs for linen and cotton printing by acts of 1787, 1789 and 1794; to sculpture by acts of 1798 and 1814 (54 George III, c. 56). A private copyright act of 1734 granted to Samuel Buckley, a citizen and stationer of London, sole liberty of printing an improved edition of the histories of Thuanus, and the engravings act of 1767 contained a similar special provision for the widow of Hogarth. In 1814 also, copyright in books was extended to twenty-eight years and the remainder of life, and the author was relieved from delivering the eleven library copies then required, except on demand. The university copyright act of 1775 (15 George III, c. 53), above-mentioned, and the other acts given with specific citation above, still constitute, in certain unrepealed provisions, a part of the English law, although others of their provisions and other laws were repealed by later copyright acts or by the statute law revision act of 1861 or that of 1867.

Legislation under William IV

In the reign of William IV the dramatic copyright act of 1833 (3 William IV, c. 15) became, and in part remains, the basis of copyright in drama. The lectures copyright act of 1835 (5 & 6 William IV, c. 65) for the first time covered that field. In 1836 the prints and engravings copyright (Ireland) act (6 & 7 William IV, c. 59) extended protection to those classes in that country, and another copyright act (6 & 7 William IV, c. 110) reduced the number of library copies required to five. These laws also remain in force, in unrepealed provisions, as a part of British copyright law.

The Victorian act of 1842

In 1841, under the leadership of Serjeant Talfourd, author of "Ion" and other dramatic works, a new copyright bill was presented to the House of Commons, in the preparation of which George Palmer Putnam, the American publisher, then resident in London, had been consulted. It provided for compulsory registration and extended the term to life and thirty years. The bill attracted little attention and met with no opposition until the second reading, when Lord Macaulay, a bachelor, interested in fame rather than profit to an author or his descendants, attacked the bill and "the great debate" ensued. Macaulay offered a bill limiting copyright to the life of the author, but finally assented to a compromise, by which the term was made forty-two years or the life of the author and seven years, whichever the longer. The

resulting copyright act of 1842 (5 & 6 Victoria, c. 45) presented a new code of copyright, covering the ground of previous laws, but not in terms repealing them. As a result, provisions not specifically repealed or superseded remained in force, and the act of 1842, though serving since as the basic act, has had to be construed with the previous acts in view. The bill practically preserved, however, the restrictions of the statute of Anne. The term of forty-two years or life and seven years is applied to articles in periodicals, but the right in these reverts to the author after twenty-eight years. The Judicial Committee of the Privy Council may authorize the publication of a work which after the author's death the proprietor of the copyright refuses to republish.

Protection of designs

In the same year, 1842, there was passed also a copyright in designs act, covering designs for articles of manufacture, consolidating previous laws on this specific subject from 1787 to 1839 (two bills in this last year having extended protection to printing designs for woolen and other fabrics and to articles of manufacture generally), and providing for a registrar for such designs, – in which act the careless use of the word "ornamenting" seemed so to limit the scope that an amendatory act was passed in 1843.

Subsequent acts

An international copyright act, introduced in the first year of

the Victorian reign, had been passed in 1838, to protect foreign books reprinted in England, but it proved inadequate and was repealed by the subsequent act of 1844 (7 & 8 Victoria, c. 12), providing more comprehensively for international copyright, on the basis of registration and deposit in London. The colonial copyright act of 1847 (10 & 11 Victoria, c. 95) authorized copyright legislation by any colony, subject to the approval of the Crown, and the suspension for such colony of the prohibition of foreign reprints, which act is therefore often cited as the foreign reprints act. An act of 1850 further covered designs and provided for their provisional registration, and one in 1851 protected exhibits at the international exhibition of that year in London. A third international copyright act was passed in 1852 (15 & 16 Victoria, c. 12) covering translations and including an authorization of a special treaty with France. The fine arts copyright act of 1862 (25 & 26 Victoria, c. 68) extended copyright to paintings, drawings, and photographs, hitherto unprotected, for life and seven years. A fourth international copyright act of 1875 (38 & 39 Victoria, c. 12) protected foreign dramatic works from imitation or adaptation on the English stage, which had been specifically permitted by the previous law, and in the same year "The Canada copyright act" (38 & 39 Victoria, c. 53) gave effect to a Canadian parliament act respecting copyright reprints.

The Royal Commission report of 1878

"The law of England, as to copyright," says the report of the

Royal Copyright Commission, in a blue-book of 1878, "consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports." The digest, by Sir James Stephen, appended to this report, is presented by the Commission as "a correct statement of the law as it stands." This digest is one of the most valuable contributions to the literature of copyright, but the frequency with which such phrases occur as "it is probable, but not certain," "it is uncertain," "probably," "it seems," shows the state of the law, "wholly destitute of any sort of arrangement, incomplete, often obscure," as says the report itself. The digest is accompanied, in parallel columns, with alterations suggested by the Commission, and it is much to be regretted that their work failed to reach the expected result of an act of Parliament. The evidence taken by the Commission forms a second blue-book, also of great value.

This report and digest covered legislation through 1875, inclusive of the Canada act. They seem also to have regarded, though the act is not specified in the schedule, the consolidated customs act of 1876 (39 & 40 Victoria, c. 36), which incidentally contained the provisions for the prohibition of the importation of copyright books.

Later legislation

Despite the recommendations of the Commission and several

later endeavors to pass a comprehensive copyright act, – of which the most important was Lord Monkswell's bill introduced into Parliament on behalf of the British Society of Authors, November 16, 1890, and given in full with an analysis by Walter Besant in George Haven Putnam's "Question of copyright" – later legislation in England has been confined practically to two topics, international copyright and the vexed question of musical compositions.

International copyright

The international copyright act of 1886 (49 & 50 Victoria, c. 43), amending and extending, and in part repealing the earlier international copyright acts and provisions, was intended to enable Great Britain, through Orders in Council, to become a party to international agreements, particularly the Berne copyright convention of 1886, ratified in 1887; this was made effective with respect to the eight other countries which were parties to the original Berne convention by the Order in Council of November 28, 1887, taking effect December 6, 1887. The convention was to extend to the British possessions, though with exceptions in some respects. The revenue act of 1889 (52 & 53 Victoria, c. 42) extended the prohibition of importation to foreign works copyrighted under the act of 1886, "printed or reprinted in any country or state" other than that "in which they were first published," if registered as required by the customs authorities.

Musical copyright

The protection of musical compositions was in such confused and unsatisfactory condition that special legislation was necessary. The recent laws on this subject, described in detail in the chapter on dramatic and musical copyright, include the copyright (musical compositions) act of 1882 (45 & 46 Victoria, c. 40); the copyright (musical compositions) act of 1888 (51 & 52 Victoria, c. 17); the musical (summary proceedings) copyright act of 1902 (2 Edward VII, c. 15); and the musical copyright act of 1906 (6 Edward VII, c. 36), – following the report of the Musical Copyright Committee of 1904, – which successively met imperfections developed in applying the previous law.

Committee report of 1909

After the adoption of the revised international copyright convention signed at Berlin November 13, 1908, modifying the Berne-Paris conventions, a Committee on the law of copyright consisting of seventeen publicists, authors, artists, publishers and others was appointed by minute of March 9, 1909, by the President of the Board of Trade, to consider and report upon the modification of domestic legislation in conformity with the Berlin agreement of 1908. The Committee made a report in December, 1909, strongly advising that domestic legislation be brought into line with international practice and that the copyright term in Great Britain be for life and fifty years. With

the report was printed a blue-book of minutes of evidence, containing valuable appendixes which included a *projêt de loi type* (model bill) on copyright, drafted by the International Literary and Artistic Association, and an artistic copyright bill drafted by the Artistic Copyright Society.

Imperial copyright conference of 1909

In the early part of 1909 an Imperial copyright conference was also held in London, attended by Crown officials and representatives from all of the self-governing dominions, at which certain resolutions for copyright betterment were adopted. Its minutes and resolutions were also presented to Parliament.

The pending bill

As a result of the deliberations and reports of these two bodies, "a bill to amend and consolidate the law relating to copyright" (1 George V) was introduced into the House of Commons July 26, 1910, in the names of Mr. Buxton, Mr. Solicitor-General, Colonel Seely and Mr. Tennant, the adoption of which would provide a copyright code similar in extent to the American code of 1909, and applicable throughout the British dominions, with the proviso that the self-governing dominions may accept or modify the code or legislate separately, and providing also for international copyright. The bill adopted most of the features of the Berlin convention including the term of life and fifty years, covered literary, dramatic, musical and artistic works, including architectural works of art, and

while distinguishing between first publication and performance, included under copyright acoustic or visual performance or exhibition and control for mechanical reproduction. The bill, somewhat modified, was reintroduced into the subsequent Parliament March 30, 1911, emerged from committee with important alterations July 13, 1911, and was passed with slight additional changes by the House of Commons August 17, and first read in the House of Lords August 18, 1911. On passage of the House of Lords, it becomes effective July 1, 1912, unless earlier date is provided by Order in Council. The bill repeals by specific schedule all existing laws except specified sections in the fine arts copyright act of 1862, the musical copyright acts of 1902 and 1906, and the copyright provisions in the customs consolidation act of 1876 and the revenue act of 1889. The provisions of the new measure are specifically treated and summarized comprehensively in later chapters and the full text is given in the appendix.

Design patents

The bill does not, however, repeal the previous law as to copyright in designs, which had continued to receive consideration during the Victorian reign in laws, later than those cited, of 1858-1861, and thus finally became merged in the protection of patents. Thus "designs capable of being registered under the patents and designs act, 1907," are specifically excepted under clause 22 of the proposed copyright code.

It seems possible that, under the precedent of the acts of 1775 and 1801, the common law rights practically taken away by the statute of Anne and specifically abrogated by the proposed bill, could have been restored by legislation. These restrictions have not only ruled the practice of England ever since, but they were embodied in the Constitution of the United States, and have influenced alike our legislators and our courts.

IV
THE HISTORY OF COPYRIGHT IN THE UNITED STATES

Constitutional provision

The Constitution of the United States authorized Congress "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." Previous to its adoption, in 1787, the nation had no power to act, but on Madison's motion, Congress, in May, 1783, recommended the States to pass acts securing copyright for fourteen years.

Early state legislation

Connecticut in January, 1783, Massachusetts in March, 1783, and Maryland in April, 1783, had already provided for copyright, twenty-one years being the usual period. New Jersey on May 27, 1783, and New Hampshire and Rhode Island in December of the same year, followed Madison's suggestion. Pennsylvania and South Carolina in March, 1784, Virginia and North Carolina in 1785, Georgia and New York in 1786, also passed copyright acts, so that all the thirteen States except Vermont had separately provided for copyright, – thanks to the vigorous copyright crusade of Noah Webster, who traveled from capital to capital, –

when the United States statute of 1790 made them unnecessary.

The act of 1790

This act followed the precedent of the English act of 1710, and gave to authors who were citizens or residents, their heirs and assigns, copyright in books, maps and charts for fourteen years, with renewal for fourteen years more, if the author were living at expiration of the first term. A printed title must be deposited before publication in the clerk's office of the local United States District Court; notice must be printed four times in a newspaper within two months after publication; a copy must be deposited with the United States Secretary of State within six months after publication; the penalties were forfeiture and a fine of fifty cents for each sheet found, half to go to the United States; a remedy was provided against unauthorized publication of manuscripts.

1802-1867
The revised act of 1870
1874-1882

This original and fundamental act was followed by others – in 1802, requiring copyright record to be printed on or next the title-page, and including designs, engravings and etchings; in 1819, giving United States Circuit Courts original jurisdiction in copyright cases; in 1831 (a consolidation of previous acts), including musical compositions, extending the term to twenty-eight years, with renewal for fourteen years to author, widow, or children, doing away with the newspaper notice except for

renewals, and providing for the deposit of a copy with the district clerk (for transmission to the Secretary of State) within three months after publication; in 1834, requiring record of assignment in the court of original entry; in 1846 (the act establishing the Smithsonian Institution), requiring one copy to be delivered to that, and one to the Library of Congress; in 1855, a postal provision for free mailing of deposits; in 1856, securing to dramatists the right of performance; in 1859, repealing the provision of 1846 for the deposit of copies, and making the Interior Department instead of the State Department the copyright custodian; in 1861, providing for appeal in all copyright cases to the Supreme Court; in 1865, including photographs and negatives, and again requiring deposit with the Library of Congress, within one month from publication; in 1867, providing $25 penalty for failure to deposit. This makes twelve acts bearing on copyright up to 1870, when a general act took the place of all, including "paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine arts." This did away with the local District Court system of registry, and made the Librarian of Congress the copyright officer, with whom printed title must be filed before, and two copies deposited within ten days after, publication. In 1873-4 the copyright act was included in the Revised Statutes as sections 4948 to 4971 (also see secs. 629 and 699), and in 1874 an amendatory act made legal a short form of record, "Copyright, 18__, by A. B.," and relegated labels to the Patent

Office. In 1879 the Post Office appropriation bill contained a proviso against the transmission of any publication which violates copyright; in 1882 an amendment dealt with the position of the copyright notice on moulded, decorative articles, etc.

International copyright legislation, 1891

In 1891 there was passed, after a long campaign, the so-called international copyright act, extending copyright to the citizens of other nations in case of reciprocal grants by such nations, and providing that the copyright on books and certain other articles should be conditioned on manufacture in the United States. In 1893 an amendatory act gave the same effect to copies deposited "on or before publication." In 1895 the public documents bill provided that no government publication should be copyrighted, and another bill imposed penalties in the case of infringement of photographs and of original works of art. In 1897 an act provided that unauthorized representation, wilful and for profit, of any dramatic or musical composition is a misdemeanor punishable by imprisonment; another act provided for the appointment of a Register of Copyrights under the direction and supervision of the Librarian of Congress; and a third act provided penalty for printing false claim of copyright and prohibited the importation of articles bearing a false claim of copyright. In 1904 provision was made for protection to exhibitors of foreign literary, artistic or musical works at the Louisiana Purchase Exposition. A bill of 1905 permitted *ad interim* copyright for one year of books published abroad if registered here within thirty days publication

and bearing notice of reservation.

Private copyright acts

A curious incident in American copyright legislation has been the passage of private copyright acts, nine in all, of which the earliest in 1828, as amended in 1830 and 1843, continued the copyright of John Rowlett "in a useful book, called Rowlett's Tables of discount and interest" from its original publication in 1802 till 1858, – curiously the present period of fifty-six years. In 1849 the copyright of Levi H. Corson in a perpetual calendar or almanac was renewed by special act. In 1854 an appropriation of $10,000 was made to Thomas H. Sumner for his new method of ascertaining a ship's position and the copyright was extinguished. In 1859 a special act gave to "Mistress Henry R. Schoolcraft" and her heirs for fourteen years the right to republish her husband's work on the Indian tribes originally published by order of Congress and to make any abridgement thereof, and a similar special copyright was voted in 1866 for Herndon's "Exploration of the Amazon" for his widow. An act of 1874 authorized the validation of William Tod Helmuth's work on surgery which had been imperfectly entered for copyright two years before, and a ninth private act in 1898 validated for like reason the copyright of Judson Jones in a work on orthoepy.

American possessions

In 1900 the act for the government of the territory of Hawaii repealed the Hawaiian copyright act of 1888 and extended

United States copyright to Hawaii. In the same year the act providing temporary government for Porto Rico extended the copyright laws to that island. In 1904 the Attorney General rendered an opinion that Philippine authors were entitled to United States copyright but that the book must be manufactured within the United States. Hawaii, Porto Rico and the Philippine Islands, as well as Alaska, were later included by name in the jurisdiction of the code of 1909. American copyright was extended to the Canal Zone by War Department order in 1907.

The American code of 1909

Finally, in 1909, there was passed the new copyright code repealing all previous legislation and providing comprehensively for the whole subject of copyright, literary, artistic, dramatic, musical, or other. Under this code copyright is effected by publication with the statutory notice of copyright and completed by registration of two deposit copies sent to the Copyright Office promptly after publication. The manufacturing clause is continued and extended to require printing and binding as well as type-setting within the United States. The musical author is given control over mechanical reproductions though under provision for compulsory license in case he permits any such reproduction. The copyright term is for twenty-eight years with a like renewal term, making fifty-six years. Rights of performance are included under copyright, and unpublished works are specifically protected by special registration. These are the salient features of the code which is stated and discussed in

detail in succeeding chapters.

State protection of playright

In line with the dramatic act of 1897, the dramatic authors between 1895 and 1905 procured state legislation in the States of New Hampshire, New York, Louisiana, Oregon, Pennsylvania, Ohio, New Jersey, Massachusetts, Minnesota, California, Wisconsin, Connecticut and Michigan, differing somewhat in form, to give effect to the federal copyright laws in respect to dramatic performance or to apply the principles of common law through the punishment of dramatic companies disregarding performing rights.

Citations
Trade-Mark act

Citations of all these laws will be found in Appendix A of the report of copyright legislation from the Register of Copyrights, included in the report of the Librarian of Congress for 1904; and the full text of the United States acts, except the later ones, are given in "Copyright Enactments 1783-1904" issued from the Copyright Office in 1905 as Bulletin No. 3, and in a second revised and enlarged edition, extending to 1906, reissued in 1906. The Trade-Mark act of February 20, 1905, supplemented by an act of May 4, 1906, covers the protection of labels, etc., excluded from copyright by the copyright act, and is given, with a list of trade-mark laws of foreign nations, and trade-mark treaties with them, rules, indexes, etc., in a Government publication,

entitled "United States Statutes concerning the registry of trade-marks with the rules of the Patent Office relating thereto."

Common law relations

The act of 1790 received an interpretation, in 1834, in the case of Wheaton *v.* Peters (rival law reports), at the bar of the U. S. Supreme Court, which placed copyright in the United States exactly in the *status* it held in England after the decision of the House of Lords in 1774. The court referred directly to that decision as the ruling precedent, and declared that by the statute of 179 °Congress did not affirm an existing right, but created a right. It stated also that there was no common law of the United States and that (English) common law as to copyright had not been adopted in Pennsylvania, where the case arose. So late as 1880, in Putnam *v.* Pollard, claim was made that this ruling decision did not apply in New York, which, in its statute of 1786, expressly "provided, that nothing in this act shall extend to, affect, prejudice, or confirm the rights which any person may have to the printing or publishing of any books or pamphlets at common law, in cases not mentioned in this act." But the N. Y. Supreme Court decided that the precedent of Wheaton *v.* Peters nevertheless held. During the discussion of the present copyright code, Edward Everett Hale consulted with other veteran authors whose early works were passing out of copyright, with the intention of bringing a test case for the extension of copyright under common law after the expiration of the statutory period. But on proposing such a case to legal counsel

he became assured that such a suit could not be maintained.

Divided opinions

As in the English case of Donaldson *v.* Becket, the decision in the American ruling case of Wheaton v. Peters came from a divided court. The opinion was handed down by Justice McLean, three other judges agreeing, Justices Thompson and Baldwin dissenting, a seventh judge being absent. The opinions of the dissenting judges, given in Eaton S. Drone's "A treatise on the law of property in intellectual productions," constitute one of the strongest statements ever made of natural rights in literary property, in opposition to the ruling that the right is solely the creature of the statute. "An author's right," says Justice Thompson, "ought to be esteemed an inviolable right established in sound reason and abstract morality." There seems, indeed, to be a sense of natural copyright among the American Indians; an Ojibwa brave will not sing the song belonging to another tribe or singer, and a Chippewa youth may learn his father's songs, on a customary gift of tobacco, but does not inherit the right to sing them.

V
SCOPE OF COPYRIGHT: RIGHTS AND EXTENT

General scope

The scope of copyright, or the nature and extent of the right or privilege, may be said to cover at common law identical rights with those in any other property, to use the phrase which, in Siam, transfers these rights to statutory law, but in statutory law must be taken to depend upon the terms of the statute.

American provisions

The new American copyright code, passed March 4, 1909, and in force July 1, 1909, in its fundamental provision broadly sets forth and specifically defines the scope of copyright, by providing (sec. 1): "That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

"(a) To print, reprint, publish, copy, and vend the copyrighted work;

"(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama; to

arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

Oral addresses

"(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

Dramas

"(d) To perform or represent the copyrighted work publicly if it be a drama, or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

Music

"(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (a) hereof, 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" – which last clause is, however, limited by an elaborate proviso requiring

the licensing of mechanical musical reproductions in case the copyright proprietor permits any reproduction by that means, which proviso is given in full in the chapter on mechanical music.

Previous American law

The American law previously defined the scope of copyright (Rev. Stat. sec. 4952), as "the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works." The new code is both broader and more definite.

Unpublished works

The new American code is specific in preserving to an author previous to the publication of his work all common law rights in the comprehensive language (sec. 2): "That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor."

Common law scope

In the Washburn form of the copyright bill it was proposed to include a clause to the effect "that subject to the limitations and conditions of this Act copyright secured hereunder shall be entitled to all the rights and remedies which would be accorded to

any other species of property at common law." But this provision was not accepted by the Congressional Committees and does not form part of the copyright code as enacted.

Common law in U. S. practice

The common law of England became the common law of its colonies and finally of the sovereign States of the United States, and common law is therefore administered by the state rather than by the federal courts. In the case of Wheaton *v.* Peters, the U. S. Supreme Court went so far as to say "there is no common law of the United States," but federal courts accept and apply in each State the common law as accepted in that State, and in later years the U. S. Supreme Court has held, as in 1901, in Western Union Tel. Co. *v.* Call Pub. Co., that where there is a conflict between the common law as accepted by different States or where the rule adopted is not in accord with federal courts, the United States courts will recognize and enforce the common law of England. This use by the federal courts, as here pointed out by Justice Brewer, is peculiarly applicable to interstate transactions. The effect of section 2 of the copyright code is to give the federal courts the special authority of Congress to accept and enforce the principles of common law and of equity in the case of unpublished works.

Statutory limitations

But in the case of a published work, the courts have denied to copyright works some of the rights and remedies applicable

previous to publication, because not specifically granted by statute, in accordance with the established rule that no rights or remedies will be allowed by the courts unless specifically granted. But the common law right of the author is recognized by the courts notwithstanding the publication of his work, if that is done without the author's consent. In 1896, in the case of Press Pub. Co. *v.* Monroe, the doctrine was specifically held by the U. S. Circuit Court of Appeals through Judge Lacombe, that the unauthorized publisher may be restrained and damages obtained by civil action, and recovery in such an action will not divest the author of any of his rights or invest any of his rights in the infringer or the public.

General rights

Thus the owner of a copyrightable work may (before publication), as with other personal property, preserve his work exclusively for his own use, or he may (1) print, (2) reprint, (3) publish, (4) copy, or (5) vend it; or

If it be a literary work he may (6) translate it, or (7) make any other version thereof, or (8) dramatize it; or

If a work for oral delivery he may (9) deliver or authorize delivery in public for profit; or

If it be a dramatic work he may (10) convert it into a novel or other non-dramatic form or (11) perform or represent it, or (as in 5) vend any manuscript or record thereof, or (12) make or cause to be made any transcription or record thereof; or (13) exhibit, perform, produce, or reproduce it in any manner or by

any method; or

If it be a musical work he may (14) arrange or (15) adapt it, or (as in 11) perform it publicly for profit, or (16) make any arrangement or (17) setting of the melody in any notation or by any form of record (the last subject to the license provision of the statute); or

If a design for a work of art, he may (18) complete, execute, and finish it,

– all these being specifically reserved and granted to the author, although in somewhat complex and overlapping phraseology, by the new American code.

Inferential rights

Or, in utilizing his rights at common law or as above granted by statute, he may (19) give, (20) lend, (21) grant, (22) sell, (23) manufacture, (24) lease or license, (25) mortgage, or (26) devise his work or the use of it, or (27) it may pass by inheritance, – as pointed out by Arthur Steuart, chairman of the Copyright Committee of the American Bar Association, in his argument before the Congressional Committees.

Differentiated rights

Or, as also pointed out by Mr. Steuart, he may "impose upon any of these estates any condition or limit," as by limiting the use (28) for special purposes, (29) at a special price, or (30) for a special time, or (31) in a special locality, or (32) to a special person.

Court protection

The rights scheduled, adds Mr. Steuart, the courts will protect (a) "in equity by injunction and the recovery of profits"; or (b) "at law by a civil action for trespass or conversion, with a recovery of special damages for actual injury or punitive damages for injury to reputation, or by replevin for the recovery of possession of the work, as well as by any other form of action known to the common law or statute law and proper to the protection of this class of property."

Division of rights

The owner of the copyright of a book may thus publish a limited edition of his book and sell it to whom he may please, or for a specified market. Such specified or divided rights are recognized in Germany as "*getheiltes Verlagsrecht*," in France as "*édition partagée*," and there is specific reference to them in the German copyright law. Some of the specified rights are cognate to the rights of a proprietor of land to sell a piece of land subject to certain restrictions, agreed upon with the purchaser or imposed upon the title in the deed of transfer. As in the frequent practice of restricting use for the purposes of a stable or a shop, or requiring that only one house shall be built on a specified number of lots.

Analysis of property rights

In an elaborate discussion of fundamental principles in his opinion in Harper *v.* Donohue, in 1905, affirmed by the

Circuit Court of Appeals in 1906, Judge Sanborn analyzed the property rights of an author before publication, after unrestricted publication and after publication under the copyright acts. Among the rights before publication he mentions "the right to sell and assign the author's interest, either absolutely or conditionally, with or without qualification, limitation or restriction, territorial or otherwise, by oral or written transfer. Such literary property is not subject either to execution or taxation, because this might include a forced sale, the very thing the owner has the right to prevent." "Unrestricted publication," he says, "without copyright, is a transfer to the public to do most of the things the author might do, in common with the author, except all right of transfer and sale, which remains to the author; but without advantage, since the work has become, by the publication, common property." "The copyright acts," he concludes, "substantially give the following additional rights: To copyright, and thus secure the sole privilege of unlimited multiplication and sale of copies; to sell or transfer the unlimited right of reproduction, sale and publication, the limited right of serial publication, the right of publication in book form, the right of translation, the right of dramatization or one or more of these rights in specific territory, and the right to secure a copyright either generally, or in one or more countries whose laws permit it, either in the name of the author or assignee. Also the right to the author to license the sale or other restricted enjoyment of some lesser right, without the power to copyright."

The courts have indeed held to very broad principles as to such

rights. In the case of Press Pub. Co. *v.* Monroe, the court said:

Broad interpretation

"The right of property includes the right to transfer the subject of it or any interest in it by gift, grant, or device. And if the fruits of mental effort are regarded as property, like all other possessions, they descend to the legatees, the executors, and administrators of their creditors; they pass by sale or gift to their transferees; the use of them, limited or unlimited, goes to their licensees, and, logically, the power of the State is bound to protect forever the successive owners in the exclusive use and enjoyment thereof."

Limits of protection

Where these latter rights are not specifically granted by statute, the rule has been established by the courts that they will be upheld so far as necessarily inferable from the rights granted and not further. It is under this rule that the greater number of the mooted questions in the application of copyright law have arisen in respect to the scope of copyright. Most of these specific rights are in fact necessary inferences from the statute, in the protection of the property rights therein conferred, but the courts will not go beyond fair construction of the letter of the statute.

Differentiated contracts

In respect to the rights to give, lend, grant, manufacture, lease or license, mortgage or devise copyright property, it may be said that these are subsidiary rights conditioned on and essential to

the general right of property in copyrightable or copyrighted material. An author may exercise any of these rights in respect to his unpublished work so far as they are applicable to it, or to his copyrighted work after publication; and either the copyrightable manuscript or the copyrighted work may pass by inheritance. Thus an author may manufacture, or cause to be manufactured, his unpublished work, and he may retain exclusive control over the manufactured copies so long as he pleases before publishing the work; and after publication (which involves placing on public sale, or publicly distributing) he may exercise these rights negatively by withdrawing his work from further sale. The English law, however, contains a provision that in certain cases the Crown may require continuance of publication.

Enforcement in limited grants

In respect to the right to limit the use of his work under his sale, gift, loan, grant, lease, etc., for a special purpose or at a special price, or for a special time, or in a special locality or to a special person, these powers of limitation, though implied in the grant of copyright, are dependent for their enforcement rather upon the law of contracts than upon copyright law.

There can be no such thing as a copyright for a special purpose or for a special locality, or under other special conditions, for there can be only one copyright, and that a general copyright, in any one work. But specific contracts can be made, enforceable under the law of contracts, as for the sale of a copyrighted book within a certain territory, provided such contracts or limitations

are not contrary to other laws. Although record of assignment in the Copyright Office is provided for by the law only for the copyright in general, the separate estates as a right to publish in a periodical and the right to publish as a book may be sold and assigned separately, and the special assignment recorded in the Copyright Office, though this does not convey a right to substitute in the copyright notice a name other than that of the recorded proprietor of the general copyright, which can only be changed as specifically provided in the law under recorded assignment of the entire copyright.

Copyright as monopoly

Copyright is a monopoly to which the government assures protection in granting the copyright. It is a monopoly not in the offensive sense, but in the sense of private and personal ownership; the public is not the loser but is the gainer by the protection and encouragement given to the author. The whole aim of copyright protection is to permit the author to sell as he pleases and to transfer his rights collectively or severally to such assigns as he may choose. Copyright is a monopoly only in the sense that any ownership is a monopoly. Says Herbert Spencer: "If I am a monopolist, so also are you; so also is every man. If I have no right to those products of my brain, neither have you to those of your hands. No one can become the sole owner of any article whatever; and all property is 'robbery.'" In the copyright debates of 1891, Senator O. H. Platt rightly said: "The very essence of copyright is the privilege of controlling

the market. That is the only way in which a man's property in the work of his brain can be assured." And as Senator Evarts pointed out in the same debate: "The sole question is what we shall do concerning something which is the essential nature of copyright and patent protection, namely, monopoly." In discussing patent monopoly and the law of contracts in Victor Talking Machine Co. *v.* The Fair, the U. S. Circuit Court of Appeals, through Judge Baker, said, in 1903, that "within his domain the patentee is czar. The people must take the invention on the terms he dictates or let it alone for seventeen years." Thus as the government grants and guarantees the monopoly, it is not to be taken as in restraint of trade or otherwise contrary to law. Said Judge Cullen in the case of Murphy *v.* Christian Press Association, in the Appellate Division of the N. Y. Supreme Court, in 1899, decisions as to agreements in restraint of trade "have no application to agreements concerning copyrights and patents, the very object of which is to give monopolies."

Limit only in term

Copyright being in essence a monopoly giving to the copyright proprietor "exclusive rights," as the Constitution provides, the only limitation upon it should be that indicated in the Constitution which confines protection to "limited times." The opponents of copyright have frequently taken the course of falling back upon the plea that in the interests of the public the author should not have exclusive right to his writings and to manage his own affairs, but that Congress should prescribe how

he should market his property. This commonly takes shape in the licensing scheme known in England as the Farrer plan and in America as the Pearsall-Smith plan, with respect to books; and in the passage of the "international copyright amendment" of 1891 this plan was made the basis of attack upon the measure. An analysis of the scheme as presented by R. Pearsall-Smith of Philadelphia is given by G. H. Putnam, from the book publisher's point of view, in the "Question of copyright." In the work on "The law and history of copyright," by Augustine Birrell, a member of the present British cabinet, this plan is characterized as a "preposterous scheme." In the case of a book, for instance, a publisher often suggests to the author the general idea of the book, so that it would be doubly unjust to permit any other publisher to issue that book on the compulsory license scheme; and this might hold true, although to less extent, in other fields of copyright. In any event, the original publisher makes large investment not only in type-setting, printing, and binding a book, or in the publishing of any other work, but in advertising and making a market, and that a rival publisher should have the benefit of this market without paying the cost is a violation of the very essence of property. This scheme, however, is applied, in a limited way and as a compromise, respecting mechanical music, in the American code of 1909, and constitutes its most serious defect. There is question, indeed, whether the compulsory license and fixed price may not be an unconstitutional provision. This matter is more fully discussed in later chapters.

Altered theory of copyright

It should be noted that whereas the previous American law required certain statutory formalities before publication, the new American code somewhat alters the theory of copyright, and more nearly conforms statutory with common law, by making publication with notice the initial copyright act and registration and deposit secondary acts necessary for the completion of the copyright and its protection under the statute.

Publishing

The definition of the date of publication (sec. 62) as "the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority" remedies the vagueness of the previous law and adopts into the statute court decisions to the effect that acts not by the authority of the author or proprietor do not constitute publication in the sense of dedication to the public. In other words, it is made clear that the right to publish inheres in the author and that he cannot be divested of it without his consent. This is the fundamental principle of the new law in the vital matter of protecting the author at the critical point at which an unpublished work, absolutely his own, becomes a published work, subject to statute. In this respect the American code of 1909 comes very close to the acceptance of the right in intellectual property as a natural and inherent right.

What constitutes publishing

As to what constitutes publishing, interpretation by the courts based on previous law will in many respects be applicable to the new code. A book which has been sold or leased to subscribers on a contract of restricted use is none the less published, as was set forth in the opinion by Chief Judge Parker of the N. Y. Court of Appeals in Jewellers' Mercantile Agency *v.* Jewellers' Weekly Pub. Co. in 1898, and in the opinion by Judge Putnam of the U. S. Circuit Court in Massachusetts in Ladd *v.* Oxnard in 1896, both having reference to credit-rating books leased to subscribers for their individual use.

"Privately printed" works

Publication depends upon sale or offer to the public, and it is a question whether the sale or offer of a copyrightable work, as the proceedings or publications of a society, to the members of that society only, constitutes publication, to be passed upon by the courts in view of the specific facts. A work "privately printed" or with the imprint "printed but not published," given or even sold by the author to his friends, and not sold generally by his authority, would probably not be held to be published; but the courts would probably hold that the sale of a work, though "privately printed," to merely nominal members of a nominal society, made up of the purchasers of the work, would constitute publication and, if without copyright notice, dedication.

Copying

As to the right to copy, this word in the broad sense as

interpreted by the courts, covers the duplicating or multiplying of copies within the stated scope of the statute. It was argued in the mechanical music cases that the word copy extends to any form or method of duplication by which the thought of the author can be recorded or conveyed, but, as more fully stated in the chapter on mechanical music, the U. S. Supreme Court in White-Smith *v.* Apollo Co. in 1908 upheld the decision below that a perforated roll is not a *copy* in fact of staff notation, and thus limited the statutory use of the word to duplication by similar or corresponding process. It was for this reason that such specific phrases as "to make any other version," "to convert," "to arrange or adapt," "to make transcription or record" were included in the new code, although these would be included in the broader sense of the right "to copy."

Vending

The right to vend covers by a comprehensive word those general rights of sale through which only can the author obtain remuneration for his work. The most important question which has arisen in respect to the application of this word, which is used both in the previous laws and in the present code, has been as to the use of this exclusive right to limit the conditions of sale after the original sale from the author or proprietor as vendor to the immediate vendee. The courts have in general held that the copyright and patent laws, while creating a legal monopoly for the author or original proprietor, do not authorize any continuing control, and have indeed gone so far as to indicate that a sale is

absolute and complete unless limited by special contract within the principles of common or statutory law of contracts. In the leading case of Keeler v. Standard Folding Bed Co., the U. S. Supreme Court in 1895, through Justice Shiras, said:

Control of sale

"Upon the doctrine of these cases we think it follows that one who buys patented articles of manufacture from one authorized to sell them becomes possessed of an absolute property in such articles, unrestricted in time or place. Whether a patentee may protect himself and his assignees by special contracts brought home to the purchaser is not a question before us and upon which we express no opinion. It is, however, obvious that such a question would arise as a question of contract, and not as one under the inherent meaning and effect of the patent laws."

Specific relation to copyrights: the Macy cases

This question in specific relation to copyrights again came before the U. S. Supreme Court in a series of cases, known as the Macy cases, between Isidor and Nathan Straus doing business as R. H. Macy & Co., on the one side, and the Bobbs-Merrill Co. and Charles Scribner's Sons as the respective defendants.

In both cases, the publishers had sought to maintain the retail price of a book, as a right under the copyright law. The Bobbs-Merrill Co. copyrighted the "Castaway" May 18, 1904, and immediately below the copyright notice printed the following in each copy: "The price of this book at retail is one dollar net. No

dealer is licensed to sell it at a less price, and a sale at a less price will be treated as an infringement of the copyright."

The Scribners sought to accomplish the same purpose as to their copyright books by printing in their catalogues, invoices and bills of goods the following notice: "Copyrighted net books published after May 1, 1901, and copyrighted fiction published after February 1, 1902, are sold on condition that prices be maintained as provided by the regulations of the American Publishers' Association."

New dealers were required by the American Publishers' Association, in consideration of a discount allowed by the publisher in question, to enter into an agreement as indicated, but this agreement Macy & Co. refused to accept and they bought books as best they could and sold them at "cut rates," thus inducing dealers from whom the purchases were made to violate the agreement with the publishers.

The Bobbs-Merrill case

In the leading case of Bobbs-Merrill Co., appellant, *v.* Straus, the opinion of the U. S. Supreme Court was delivered June 1, 1908, by Justice Day, who said: "The precise question in this case is, does the sole right to vend (named in section 4952) secure to the owner of the copyright the right, after a sale of the book to a purchaser, to restrict future sales of the book at retail to the right to sell it at a certain price per copy, because of a notice in the book that a sale at a different price will be treated as an infringement, which notice has been brought

home to one undertaking to sell for less than the named sum? We do not think the statute can be given such a construction, and it is to be remembered that this is purely a question of statutory construction. There is no claim in this case of contract limitation, nor license agreement controlling the subsequent sales of the book. In our view the copyright statutes, while protecting the owner of the copyright in his right to multiply and sell his production, do not create the right to impose by notice, such as is disclosed in this case, a limitation at which the book shall be sold at retail by future purchasers, with whom there is no privity of contract."

The Scribner case

In the Scribner case the decision delivered on the same day by the same justice, upheld the lower courts in their view, "that there was nothing in any of the notices of a claim of right or reservation under the copyright law," and "that independent of statutory law" the question of relief in equity was not open to the federal courts because there was no diversity of citizenship nor claim above $2000 "requisite to confer jurisdiction of questions of rights independent of the copyright statutes." On the allegations of the bill as to alleged contributory infringement by inducing dealers to sell in violation of agreement, on which the lower courts held that complainants had not proved an agreement based upon their printed notice, the Supreme Court declined to review the question of fact.

English underselling case

In the English case of Larby *v.* Love, in 1910, however, Justice Bucknill in the King's Bench held the defendant liable for damages for the sale of certain maps to undersellers in disregard of prohibitions specified in the bill of sale.

Suits under state law

The Macy cases included suits in the New York State courts by Straus *v.* American Publishers' Association *et al.*, claiming that the action of the publishers in endeavoring to maintain rates constituted a conspiracy in restraint of trade contrary to the statutes. The N. Y. Court of Appeals held, through Chief Judge Parker, that the agreements would have been free from legal objections if confined solely to copyright publications, but were contrary to the statute in affecting the right of a dealer to sell books not copyrighted at the price he chooses. The copyright side of the question was again pressed in the lower courts and reached the Court of Appeals a second time in 1908, when it was passed upon by a divided court, four to three, Judge Gray for the court declining to review its previous action. The dissenting judges, through Judge Bartlett, held that the decision of the U. S. Supreme Court in the Bobbs-Merrill case did apply in the current case and that the State Court of Appeals should therefore conform its decision to the finding of the federal Supreme Court. The question has been brought into the federal courts in a new series of suits, and it has yet to be finally settled by the U.

S. Supreme Court, whether the legal monopoly conferred by the copyright statute safeguards the copyright proprietor against certain provisions of the anti-trust laws, state or national.

Translating
"Other version"

The right "to translate into other languages or dialects" is strengthened in the new American code by the addition of the phrase "or to make any other version thereof," and the author is thus given exclusive right and entire control as to translation of his original work by himself or others, without specific reservation of rights except as implied and included in the general copyright notice. The broad phrase "make any other version thereof" may cover not only translation into another language, but into another literary form as from prose into poetry or *vice versa*. No case involving construction of this phrase seems yet to have arisen to be decided by the courts; but the author of a narrative poem, like Owen Meredith's "Lucile" or Tennyson's "Enoch Arden," could probably prevent the transformation of his poetical work into equivalent prose; and a novelist would have probably a like protection in case of an attempt to duplicate or transform his story as a narrative poem. This view is confirmed by the analogous specific protection of the right to dramatize a work or convert a drama into non-dramatic form.

Translating term

The exclusive right "to translate the copyrighted work into

other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work" are granted by the act for the same period as the term of original copyright and the renewal term, instead of for a shorter period, as ten years, as is the case in certain foreign legislation. The right to translate or to dramatize is separate from the right to copyright a translation or dramatization, as is shown by the fact that a translation or dramatization can be separately copyrighted for a term extending from its own date of publication and therefore possibly beyond the copyright term of the original work, though on the expiration of the primary copyright any one else may make a translation or dramatization despite the continuing existence of the copyright in the authorized translation or dramatization. These subjects are more specifically discussed for translations under the subject-matter of copyright and for dramatizations under dramatic and musical copyright.

Oral delivery

The exclusive right to deliver orally addresses and similar productions is now specifically included in the American law, as in the laws of some other countries, and probably involves the right to register, before publication, any literary production intended for oral delivery before it is printed in a book or periodical. Thus if Mr. Cable desires to include in his readings, especially if in public for profit, chapters from an unpublished novel, or a poet desires to protect his copyright in a poem which he publicly recites, it may be desirable that he should register

such unpublished work under the provisions of the act for that purpose; although it is a generally accepted doctrine that oral delivery does not constitute publication, and that the matter orally delivered may thus be protected at common law.

"Publicly and for profit"

It should be noted that in the case of a lecture or other work for oral delivery and of a musical composition, the exclusive right is given for its delivery or performance "publicly and for profit," and in the case of a drama, "publicly," the words for profit being, probably by inadvertence, omitted. There is some question, therefore, whether a copyrighted lecture, drama, or musical composition can be given without consent of the author privately, or, except in the case of a drama, gratuitously before the public. In view of the special exception (sec. 28) exempting oratorios, etc., performed for charitable or educational purposes and not for profit, from authorization or payment, as well as on general principles of construction, it would seem probable that the courts would protect the author of a lecture, drama, or musical composition, except in such instances as a private rendering in a private house, to which there was not public admission and at which no fee was charged or collection taken. The cases bearing on this point are given in the later chapter on dramatic and musical copyright.

Material and immaterial property

The American code adopts into the law an important

distinction as between the property in the material and the immaterial rights, hitherto somewhat uncertain, in the following provision (sec. 41): "That the copyright is distinct from the property in the material object copyrighted, and the sale, or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained."

The negative provision in this section was inserted in the new copyright law apparently to differentiate it from patent law with the intent of preventing the proprietor of a copyrighted work from controlling the conditions of sale after copies had left his possession. It is doubtful what, if any, effect this provision may have, as the phrase "lawfully obtained" would scarcely have the result of limiting and annulling contractual conditions of sale. The innocent purchase of a stolen book would not relieve the purchaser from the necessity of returning the stolen property to its proper owner, although as far as intent, knowledge, and payment are concerned, he would have "lawfully obtained" it.

Schemes not copyrightable

The scope of copyright cannot be extended to cover a business or other scheme described in a copyrighted book, as was held in 1906 in Burk *v.* Johnson by the Circuit Court of Appeals in denying relief under copyright protection to the originator

of a mutual burial association who copyrighted the articles of association.

The new British code

The new British measure defines copyright to mean "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever and in any language," thus assuring rights of translation hitherto imperfect or doubtful; "to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work"; and specifically includes the sole right of dramatization (from an "artistic," as well as other non-dramatic work), novelization, and reproduction by mechanical means (though with compulsory license provision as to reproduced music). A copyright may be assigned or licensed "either wholly or partially, and either generally or subject to limitations to any particular country, and either for the whole term of the copyright or for any part thereof."

"Copyright or any similar right in any literary dramatic musical or artistic work, whether published or unpublished," is expressly denied "otherwise than under and in accordance with the provisions of this Act" or other statutory enactment; and thus common law seems to be totally abrogated. Hitherto common law property in an unpublished work has been absolute and co-existed with statutory remedies up to publication, as was strongly upheld in 1908 in Mansell *v.* Valley Printing Co. in the English Court of Appeal. As to published works, the new code

continues the settled law reiterated as late as 1910 in Monckton *v*. The Gramaphone Co., where Justice Joyce in the Chancery Division denied the common law claim of the author of a song printed with prohibition of mechanical production, on the ground that after publication there was no copyright except as given by statute.

Foreign statutes

The statutes of foreign countries are in general of similar scope, though with variations of extent and phraseology in the several countries. The broadest seems to be that of Siam, above cited, translating common law rights into statutory privilege, though that country also contradictorily limits copyright in books by a manufacturing clause. Spain specifically protects works produced or published by "any kind of impression or reproduction known now or subsequently invented," as elsewhere quoted. France specifically gives an author right to assign his property in whole or in part – a right which is probably included in other countries under the general construction of statutory rights in property.

International provisions

The international copyright convention, as modified at Berlin, does not define the scope of copyright, but insures for authors the enjoyment of such rights as the domestic laws accord to natives; but in its several articles it makes specific provision as to representation, translation, adaptation, mechanical reproduction,

etc., as set forth in the chapter on international copyright conventions.

Common law, or a crude equivalent for it, as enforced by the courts, seems to extend copyright protection, in the absence of specific legislation, in Montenegro, Egypt and Liberia, Honduras, the Dominican Republic, and Uruguay, as formerly in Argentina.

VI
SUBJECT-MATTER OF COPYRIGHT: WHAT MAY BE COPYRIGHTED

Subject-matter in general

The subject-matter of copyright should include, in the nature of things, those products of invention, creations of the human brain, which are realized and utilized immaterially through material records, and not, as in the case of patents, materially through the material itself. Copyrightable works, in brief, are those which appeal from the imagination to the imagination, or in which intellectual labor combines immaterial product into new form. What may be copyrighted specifically and practically depends, under present conditions of law, upon the statutory provisions, national or international, of the several nations of the world.

Classification

The new American code gives the following classification of copyrightable works:

"(Sec. 5.) That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

"(a) Books, including composite and cyclopædic works,

directories, gazetteers, and other compilations;

"(b) Periodicals, including newspapers;

"(c) Lectures, sermons, addresses, prepared for oral delivery;

"(d) Dramatic or dramatico-musical compositions;

"(e) Musical compositions;

"(f) Maps;

"(g) Works of art; models or designs for works of art;

"(h) Reproductions of a work of art;

"(i) Drawings or plastic works of a scientific or technical character;

"(j) Photographs;

"(k) Prints and pictorial illustrations:

"*Provided, nevertheless*, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act."

Prints and labels excluded

Prints or labels "not connected with the fine arts," but "designed to be used for any other articles of manufacture," are subject only to registration in the Patent Office in accordance with the act of June 18, 1874.

All the writings of an author

It is enacted (sec. 4): "That the works for which copyright may be secured under this Act shall include all the writings of

an author," thus linking the phraseology of the law with the provision in the Constitution of the United States in which the word "writings" is used, with the effect of construing that word by the classification above cited.

Component parts

It is also enacted (sec. 3): "That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act."

Compilations, new editions, etc.

It is also enacted (sec. 6): "That compilations or abridgments, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works."

Non-copyrightable works

The provisions of the law regarding the subject-matter of copyright are completed by the negative provision:

"(Sec. 7.) That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however*, That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor."

Government use

It is not to be inferred from the provision as to Government publications, that the United States has itself a right to use copyright material without consent of the copyright proprietor. The sovereignty of the nation is not to transgress the rights of private property, unless in the necessary exercise of war or police powers, as the sovereign state cannot take land over which it is theoretically sovereign from a private owner except for public purposes and then only by condemnation proceedings at law and with fair remuneration to the proprietor. No right of

eminent domain in respect to copyrights is asserted by the United States, and the provision means only that material, otherwise copyrightable, furnished by a public officer or otherwise to the Government, becoming the property of the Government, is put freely at the service of the people.

"Author" and "writing" definitions

The constitutional provision is thus given the broadest interpretation in the act. In the narrow sense the dictionaries define "author" as "one who composes or writes a *book*" (Webster), and "writing" variously as "a record made by *hand*," "a production of the *pen*," "any expression of thought in *visible* words" (Century); "anything expressed in *letters*" (Webster, Stormonth, Standard); "a written paper," "a legal instrument" (Johnson); "a literary production" (Chambers); "forming by the hand letters or characters on paper or other suitable substance" (Bouvier's Law Dictionary); "words made *legible* by any device," "a document, whether manuscript or printed, as opposed to mere spoken words" (Rapalje and Lawrence, Law Dict.); "expression of ideas by visible letters" (Anderson's Dict. of Law). For years Massachusetts voters cast a handwriting ballot, until the courts held that a printed ballot fulfilled the "written ballot" requirement of the Massachusetts constitution. But in the wider sense an author is "a creator, an originator" (Webster, Standard), and a writing is the record or expression of a thought or idea.

Interpretation by Congress and courts

Congress, upheld by the courts, had specifically included (law of 1870) under "writings" in the Constitution a "statue," "statuary," "model," without requiring the artist to make a preliminary sketch (if that be specifically a writing) – otherwise, as sculptors are not "inventors" making "discoveries," they could not be protected at all; and in other countries protection has been extended to oral delivery of an address presumably but not necessarily written. It might be claimed, under a restrictive interpretation of the Constitution, that only works specifically relating to "science and useful arts" might be protected, although literature and the fine arts are admittedly especial subjects of copyright. While it is for the judiciary and not for the legislature to construe or interpret the Constitution, the right of Congress to pass laws based upon its understanding of the Constitution, subject to the final decision of the federal courts, has not been challenged. And the code of 1909 by its classification (sec. 5) and its inclusive clause (sec. 4) is most comprehensive in this respect.

Supreme Court decisions

The U. S. Supreme Court, in 1884, in the decision of Burrow-Giles Lith. Co. *v.* Sarony, extending the principles of the copyright act to cover photographs, said through Justice Miller: "By 'writings' is meant the literary productions of those authors, and Congress very properly has declared these to include all forms of writings, printing, engraving, etching, etc., by which the

ideas in the mind of the author are given visible expression. The only reason why photographs were not included in the extended list of 1802 is probably that they did not exist, as photography as an art was then unknown." It seems evident that the phrase "visible expression" as used in this decision was intended to give a broad definition and not to narrow the definition by the exclusion, for instance, of "audible expression," as otherwise the *performance* of a drama or of a musical composition could not be included under copyright protection. This view is confirmed by the later decision of the same court, in 1899, in Holmes *v.* Hurst: "It is the intellectual production of the author which the copyright protects, and not the particular form which such production ultimately takes; and the word 'book' is not to be understood in its technical sense as a bound volume, but any species of publication which the author selects to embody his literary product."

Originality and merit

The courts are disposed to extend copyright to any work involving intellectual labor or brain skill, without emphasizing originality or literary merit. In the important case of Walter *v.* Lane, in which a *verbatim* report of Lord Rosebery's speeches was protected, by decision of the House of Lords, in 1900, Lord Chancellor Halsbury said: "Although I think in these compositions (*i. e.* the work of the stenographer) there is literary merit and intellectual labor, yet the statute seems to me to require neither – nor originality either in thought or language … the right

in my view is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit, or of no merit whatever."

"Book" definitions

The word "book" covers the great body of copyright property, and has been many times the subject of judicial construction giving the most comprehensive meaning to the term. The English judges early held that protection "could not depend upon the form of the publication"; "that a composition on a single sheet might well be a book within the meaning of the legislature"; and that "any composition, whether large or small, is a book within the meaning of this act." The English law of 1842 afterward specifically construed the word "book" "to mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart or plan, separately published." The law of the United States makes no definition of the term, except by specifically including as books "composite and cyclopædic works, directories, gazetteers, and other compilations"; but our judges have agreed with the English view, Judge Thompson holding, in 1828, in Clayton *v.* Stone, that a "book" may be printed "only on one sheet," and that "the literary property intended to be protected by the Act is not to be determined by the size, form or shape … but by the subject-matter," and Judge Leavitt, in 1862, in Drury v. Ewing, that a diagram for cutting dresses, with directions, printed on a single sheet, being "the product of thought and mental toil," was a

"book" within the benefit of the law.

Inclusions adjudicated

In fact, though all English and American statutes have been avowedly for "the encouragement of learning" and "the progress of science and useful arts," the courts have construed the laws to cover in the widest sense any "useful book." The courts have indeed denied copyright protection only to works having absolutely no literary quality, such as advertisements (unless they contain original literary matter) and advertising cuts, labels, blank books, or blank forms. Even booksellers' and other trade catalogues, having descriptive notes or distinctive arrangement and combination, can be copyrighted. Compilations of existing materials, from common sources, arranged and combined in an original and useful form, receive the same protection as wholly original matter. Drone schedules English or American judicial constructions extending this principle to: (1) general miscellaneous compilations; (2) annotations consisting of common materials; (3) dictionaries; (4) books of chronology; (5) gazetteers; (6) itineraries, road and guide books; (7) directories; (8) maps and charts; (9) calendars; (10) catalogues; (11) mathematical tables; (12) a list of hounds; (13) abstracts of titles to lands; and collections of (14) statistics, (15) statutory forms, (16) recipes, and (17) designs – several of which classes are now specifically included in the new American statute. Later decisions have confirmed several of these categories and have specified also (18) trotting records;

(19) racing charts; (20) newspaper reports of public speeches; (21) telegraphic codes; (22) mining reports; (23) a tradesman's alphabetical list of wares; (24) a list of public documents; (25) mathematical calculations; (26) legal forms; (27) an application form for membership; (28) complications of railroad time-tables; (29) commercial circulars, protected by a Canadian decision; (30) school registers, and (31) stud book list of horses.

Exclusions adjudicated

On the other hand, the courts have declined to include as proper subjects of copyright (a) methods or plans, as for compiling credit-ratings or systems, as in the case of (b) shorthand, (c) trading stamps or coupons as described in a copyrighted advertising pamphlet, or (d) of letter-file indexes; (e) a sleeve pattern chart; (f) the face of a barometer; (g) a railway ticket designed for punching; (h) a day's sporting tips; (i) blank books; or (j) blank forms, as a cricket score-card; and (k) monograms.

Inclusions defined

In the new Rules and Regulations of the Copyright Office promulgated as approved by the Librarian of Congress in 1910 as Bulletin No. 15, it is said as to books:

"(4, *a*) *Books.*– This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term 'book' as used in the law includes

tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations such as logarithmic tables; interest, cost, and wage tables, etc., single poems, and the words of a song when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopædias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers."

Exclusions defined

On the other hand, definitions are made negatively that:

"(5) The term 'book' can not be applied to —

"Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and check books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions.

"Directions on scales, or dials, or mathematical or other instruments; puzzles; games; rebuses; labels; wrappers; formulæ on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles.

"Advertisements or catalogues which merely set forth the

names, prices, and places where articles are for sale.

"Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books.

"Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as 'books' or as 'prints' according to the nature of the copyrightable matter."

The Rules also make the following negative definitions:

"(12) No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles."

The definition of other classes of subject-matter given in the new Rules and Regulations of the Copyright Office, including that of maps, will be found in the chapters on dramatic and musical copyright and on artistic copyright.

Blank books

In the case of Everson *v.* Young, then Librarian of Congress, Judge Cole, of the Supreme Court of the District of Columbia, in 1889, refused a mandamus against the copyright officer while admitting that "the librarian had no discretion" on the ground that mandamus "will not be used to order a vain thing to be done" and that a blank book "containing not a single English sentence" is not a subject of copyright.

"The copyright statutes," as is said in Circular Letter no. 32 of the Copyright Office, "in designating the classes of articles which

may be registered in this office do not mention blank forms or blank books. The United States courts which have jurisdiction in cases arising under the copyright laws have held that blank forms or blank books or similar articles *for use in themselves* are not subject to copyright, and hence are not registrable in this office. A bill was introduced in Congress in 1904 proposing to extend the protection of the copyright law to vouchers, certificates, or other business forms, wholly or partly printed. But the measure was not favorably acted upon and did not become law." This exclusion does not refer to such publications as an insurance policy or a legal document, on which blank spaces are to be filled in, which are accepted as proper subject-matter for copyright by the Copyright Office.

Combinations and arrangements

The copyright under certain categories above scheduled may be in the combination and arrangement only, or it may be also in any original material included with other material. Quantity is not an essential element in copyright so much as "substantial importance." An English court protected a passage of only sixty words.

Advertisements

In respect to advertisements and advertising matter as such, the new American code is silent, and court decisions, mostly English, have been contradictory. In 1863 Vice-Chancellor Page Wood, in Hotten *v.* Arthur, "found no difficulty" in deciding

that a catalogue of old books was a subject of copyright "notwithstanding that the catalogues were for the purpose of advertising the plaintiffs' stock-in-trade, and were not in themselves offered for sale"; but in 1872 Lord Romilly, in Cobbett *v.* Woodward, made an absolutely contrary decision, saying: "But at the last, it comes round to this, that there is no copyright in an advertisement. If you copy the advertisement of another, you do him no wrong in doing so, unless you lead the public to believe that you sell the articles of the person whose advertisement you copy." This last decision was definitely overruled and in 1882, in Maple *v.* Junior Army & Navy Stores, the English Court of Appeal, in protecting an advertising catalogue consisting mostly of engravings of furniture, said through Justice Jessel: "The case which has done all the mischief is Cobbett *v.* Woodward… I think that is not law. I am not aware that the use to which a proprietor puts his book makes any difference in his rights." In 1906, in Davis *v.* Benjamin, the Chancery Division held a sheet of advertising illustrations with headlines and prices a book.

Undistinctive advertising not protectable

An advertisement *per se* of an ordinary character, the courts may decline to protect, either on behalf of the advertiser or of the publisher of the periodical in which it appears; thus possibly ordinary advertisements might be copied by another paper, to give an inflated impression of its advertising patronage unless enjoined for intent to deceive. On the other hand,

characteristic advertisements, as those for which department stores pay large sums to advertisement writers, could doubtless be copyrighted to prevent their use by rival firms, though the advertiser would scarcely be interested in preventing the wide diffusion of his advertisement with his name by its gratuitous publication elsewhere. Some street-car advertisements, however, bear copyright notices. Whether the proprietor of a copyrighted periodical could prevent the use of a copyrightable advertisement not protected by specific copyright, in a rival newspaper, would be questionable, though a publisher might be granted an injunction for the combination or arrangement of copyrightable advertisements in his periodical. In 1892, in Lamb *v.* Evans, Lord Justice Lindley, in the English Court of Appeal, said: "I do not see myself the difficulty in the publisher's having a copyright in a sheet of advertisements. I do see a difficulty in his having a copyright in one advertisement, because, as Mr. Justice Chitty pointed out, that might prevent the advertiser from republishing his advertisements in another paper, which is absurd." An advertisement appearing in several publications, some of them not copyrighted, could only be protected in these latter by specific copyright notice, even though covered in the copyrighted periodicals as a component part. The Copyright Office can make no clear line of demarcation in advance as to advertisements, but it has declined in a recent instance to accept for registry recipes printed on tin and inserted in packages of flour to advertise the flour, which could scarcely be accepted as

a "book" or other copyrightable matter.

New editions

New editions are protected under the American code as new works (sec. 6), to the extent that they include new material; and this is in accord with the whole trend of court decisions. In 1852 Vice-Chancellor Kindersley stated the doctrine that "if a man prints a second edition, not being a mere reprint of the first edition, but containing considerable and material alterations and additions, *quoad* those, it is a new work." So in 1870, in Black *v.* Murray & Son, Lockhart's edition of Scott's "Border Minstrelsy" was protected, on Lord President Inglis' decision, to the full extent of the notes: "Questions of great nicety and difficulty may arise as to how far a new edition of a work is a proper subject of copyright at all; but that must always depend upon circumstances. A new edition of a book may be a mere reprint of an old edition, and plainly that would not entitle the author to a new term of copyright running from the date of the new edition. On the other hand, the new edition of a book may be so enlarged and improved as to constitute in reality a new work, and that just as clearly will entitle the author to a copyright running from the date of the new edition." A few colorable alterations or unimportant notes may not justify a new copyright; a Scotch justice, however, contended that Walter Scott's change of a single word in "Glenallan's Earl" authorized a copyright for the new edition, though another law lord differed, and the case was decided on other grounds. It is doubtful indeed whether there

can be protection of a single word, a question which arose in the *Belgravia* case, unless having association in the public mind as a trade-mark. In any event, the copyright on a new edition, whether made by rewriting, extending, condensing, annotating, or otherwise altering, runs independently of the term of the original or any other edition, covers only the new parts, and cannot prevent the issue by others of the original or any other edition on which copyright has expired. This is made entirely clear in the new code (sec. 6).

Copyright comprehensive

"A book must include every part of the book; it must include every print, design, or engraving which forms part of the book, as well as the letterpress therein, which is another part of it," according to the ruling decision of Vice-Chancellor Parker, in 1852, in the English case of Bogue *v.* Houlston. To the same effect Drone says: "The copyright protects the whole and all the parts and contents of a book: when the book comprises a number of independent compositions, each of the latter is as fully protected as the whole." The copyright under the new law protects (sec. 3) "all the copyrightable component parts of the work copyrighted." The practice of some publishers in copyrighting a magazine and also specific articles or engravings seems, therefore, a work of doubtful expediency. The new law specifically gives to the proprietor of "composite works or periodicals" (sec. 3) "all the rights in respect thereto which he would have if each part were individually copyrighted."

Non-copyrightable parts excepted

On the other hand, copyright cannot extend to any part of a book not subject in itself to copyright, even under the old law, and the new law (sec. 3) is perfectly plain. The general copyright is not, however, vitiated as to copyrightable portions by its seeming to cover non-copyrightable portions, as was held by Lord Kenyon, in 1801, in Cary *v.* Longman. But when copyright is claimed on a work partly composed of uncopyrightable matter the courts may require the claimant, on interrogatories, to designate which parts are and which are not original. "If the parts cannot be separated," says Drone, "it would seem that copyright will not vest in any of it." The new code is to the same effect.

Book illustrations

The application of these principles to the protection of a "new edition" which is new only with respect to added illustrations, is very simple. It is only the new illustrations which can be copyrighted, and it is matter for question whether the endeavor to protect an edition of unaltered text by a general copyright notice which really covers only a few added illustrations would not be a false use of the copyright notice. A proper copyright notice on an illustrated book will, however, protect the illustrations against indirect as well as direct reproduction; thus in 1908 in Harper *v.* Kalem, Judge Lacombe in the U. S. Circuit Court in New York protected certain illustrations in "Ben Hur" against their reproduction in moving pictures.

Translations

In respect to translations, the new American law is specific, not only in its mention of "translations" (sec. 6), but in giving (sec. 1, b) the exclusive right "to translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work." The early American precedent was the case of "Uncle Tom's cabin," in 1853, in which Mrs. Stowe had copyrighted not only the original work, but a German translation which she had provided; Justice Grier in the U. S. Circuit Court held that she could not recover against one Thomas who was issuing another German translation, since it was not "*copies* of her *book*." This case was previous to the statute permitting authors to reserve the right of translation, and the new code as above cited fully protects translations. The author of a copyrighted work thus has the exclusive right to translate his work, or license its translation, into any other language, and under such a license the translator with the consent of the author would have the right to copyright his translation. Where the author employs a translator for hire, the copyright in the translation may be secured by the author of the original work, but under ordinary circumstances the copyright in the translation would be secured by or on behalf of the translator. In case of contest on this point, the issue would be a question of contract, and in the absence of contract or specific assent the courts would doubtless base their decisions on the circumstances of the case so far as they could be held to imply contract. The inclusion

of the notice of copyright of the original work on a translation, without specific copyright of the translation itself, would be held, it seems probable, to protect the translation under the author's original copyright; but this would limit the copyright term on the translation to the copyright term of the original work, and for this and other reasons a specific copyright on each translation is desirable, in which case the notice of copyright of the original work need not be given on the translation.

Translator's rights

In the case of the translation of a copyright work, the author of the original work has the right to prevent other translations, but the translator has no such right to prevent translation by another translator except as exclusive right to translate is conveyed or implied to him by the author of the original work. A work in the public domain, as a non-copyright work or a work on which copyright has expired, may be translated by any one and the translation copyrighted, but such translator would not have the right to prevent translation by another translator.

English practice

In England, while the right of translation may be reserved under the international copyright act by notice on the title-page, an English author could reserve his right of translation only by providing such translation, but the new code gives the full right.

Translations in international relations

The American provisions as to translations apply with especial

importance to international relations. "The original text of a book of foreign origin in a language or languages other than English" is copyrightable in America without manufacture here; and such a work, duly copyrighted, can only be translated into English or any other language by authority of the foreign author or his assigns, and such translation in English or any other language can be copyrighted only when manufactured in this country as provided in the act. If the original text of a foreign work is not duly copyrighted under the American law, then translation is open to any one and copyright can be secured only for the particular translation copyrighted, as above stated, and this cannot prevent independent translation into the same or any other language. Thus, a German original duly copyrighted may not be translated into English, French, or any other language without authority of the copyright proprietor, nor can an English translation be made, for instance, from a French translation of the copyrighted work; but any number of translations of the copyrighted German work into English or any other language may be separately copyrighted under the American law, subject to the manufacturing clause, if duly authorized by the copyright proprietor, and each translator could only prevent the copying of his particular translation or the translation of his own version into another language.

Foreign translators

A translation can be copyrighted by a translator only in case he is a citizen of a country with which the United States has copyright relations or is a resident of this country; thus a Swedish

translation by a citizen of Sweden not resident in the United States could not be copyrighted unless the translator had been "employed for hire" by the author or proprietor of the original copyrighted work. If the entire copyright of the original work had been sold by the author to a citizen of Sweden, not a resident in the United States, it would seem to follow that the latter could not copyright a translation though he might retain the right to prevent unauthorized translation under the general copyright which he had purchased. In the case of an authorized independent translation made by a Swedish citizen not resident here, the general notice of copyright of the original work might be utilized to protect the translation, but in such case copies not manufactured in the United States could not be imported into this country; while if such authorized translation bore no copyright notice and were imported into the United States by the author or with his consent, it is probable that this translation, but not the original work or another translation from either, would be freed from copyright protection.

Abridgments

In respect to abridgments, these are specifically mentioned (sec. 6) as copyrightable works, and by inference from this clause and the provision (sec. 1) giving an author the exclusive right to "make any other version," the author or proprietor of a literary work may prevent abridgment of his work. The courts had held to precedents which the best writers, such as Curtis, Drone and Copinger, declare to be contradictory to

the true principles of copyright law. In 1740 Lord Hardwicke, deciding against a mere reprint, "colorably shortened only," of Sir Matthew Hale's "Pleas of the Crown," declared that he would not restrain "a real and fair abridgment," and in 1774 Lord Chancellor Apsley, after consultation with Blackstone, held that an abridgment of Hawkesworth's "Voyages," involving understanding and skill, was not plagiarism or a copyright wrong, but "an allowable and meritorious work." In the leading American case of Story's "Commentaries," Story v. Holcombe, in 1847, in the U. S. Supreme Court, Justice McLean, while expressing his own opinion that "an abridgment, if fairly made, contains the principle of the original work, and this constitutes its value," added, "but a contrary doctrine has long been established in England … and in this country the same doctrine has prevailed. I am, therefore, bound by precedent, and I yield to it in this instance, more as a principle of law than a rule of reason or justice." Similarly, in Lawrence v. Dana, in 1869, Judge Clifford, in the U. S. Circuit Court, declared that "an abridgment ought to be regarded as an infringement … but the opposite doctrine has been too long established to be considered open to controversy." The language of the new code frees the courts from these precedents and settles the American law.

Compilations

In respect to compilations, these are protected by specific mention (sec. 6) in the new law, and also by the classification as books (sec. 5, a) of "composite and cyclopædic works,

directories, gazetteers, and other compilations." Compilations can be protected even if consisting solely of non-copyright material, "because of the originality, arrangement, selection, abridgment, or amplification of such simple material," as stated in the Scotch Court of Session, in the case of Lennie v. Pillans in 1843, with which later English and American decisions are in accord.

Collections

Collections are copyrightable as compilations or otherwise, and where the use of copyrighted poems or other copyright material is permitted, these are protected by general copyright notice on the collection. Permission to use a copyrighted poem, for instance, in a specified collection does not grant a license to use it in other form, though it could be used in a combination of such collections. In 1896, in Gabriel *v.* McCabe, Judge Grosscup in the U. S. Circuit Court in Illinois held that the licensor could not prevent the use of a song licensed for a particular collection in a combination of this collection in another collection or in an abridged edition of the collection, though an "abridgment" involving a reprint of the song by itself would have been an unfair use of the license.

Titles

As to titles, which are not mentioned in the new code, both English and American court decisions are broadly and generally, though with some exceptions, to the effect that there is no

copyright protection for the title of a book *per se*, but it may be considered an essential part of the book. Judge Shepley held, in 1872, in his elaborate discussion of the question of titles in Osgood *v.* Allen as to the periodical *Our Young Folks*, that "the right secured is the property in the literary composition – the product of the mind and genius of the author – and not in the name or title given to it. The title does not necessarily involve any literary composition; it may not be, and certainly the statute does not require that it should be, the product of the author's mind… It is a mere appendage, which only identifies, and frequently does not in any way describe, the literary composition itself… If there were no piracy of the copyrighted book there would be no remedy … for the use of a title which could not be copyrighted independently of the book." Judge Lacombe accepted this view in his decision of the "Trilby" case, cited beyond.

Changed titles

Conversely, the publication of a copyrighted work under a changed title, with the original notice of copyright, would probably not invalidate the copyright, though it would make identification more difficult and prevent the copyright certificate being *prima facie* proof; and change of title is a practice altogether reprehensible. A new copyright of the same book changed only in title, with a new copyright notice of later date, could scarcely be construed as a new edition and in the absence of the original copyright notice the copyright might thus be abandoned or forfeited and the work be dedicated to the public.

General titles

General titles cannot in any way be protected. The publishers of the "*Bibliographie Universelle*," in France, the "Post Office Directory," in England, and of "Irving's Works," in America, were all defeated in attempts to prevent the use of those titles.

Titles as trade-marks

Titles are rather to be considered as trade-marks, which may be registered in the United States under the Trade-Mark acts of 1905-6, and protected by the statutory penalties, or may be protected on general principles of equity. This doctrine was early upheld by the English courts, especially in regard to periodicals, as in the titles of *Bell's Life* and the *London Journal*, and again came before the courts in the important case of Weldon *v.* Dicks, as to the specific title of the novel "Trial and triumph," in which case, in 1878, Vice-Chancellor Malins enjoined quite another book under the same title, though the title was chosen in ignorance of the first book and in entire good faith. So, also, as to the title "Splendid misery," used by Miss Braddon in 1879, Sir James Bacon, in the Chancery suit of Dicks *v.* Yates, in 1881, was inclined to support the claim of C. H. Hazelwood, who had used the title in 1874, until it was shown that a forgotten novelist named Purr had used it in 1801, so that it had become, in a measure, common property.

"Chatterbox" cases

In the several American "Chatterbox" cases, Judge Wheeler's

early decision restraining the use of this "name or word, or any name or word substantially identical therewith," in or upon any juveniles of the general character of the English book of that name, was followed by Judge Shipman, in 1887, in Estes *v.* Worthington, in the U. S. Circuit Court in New York, who also held that the word "Chatterbox" had become "a well-known trade-mark designating a well-known series," published in a distinctive style and enjoined the rival publication, simulating the external style, but of different contents. These decisions previous to 1891, resting on principles of trade-mark and not of copyright, indirectly assured a measure of international copyright.

Other title decisions

In 1888 the publishers of *Life* and of "The good things of *Life*" obtained an injunction from the N. Y. Supreme Court, in Mitchell & Miller *v.* White & Allen, to restrain the publication of "The spice of life," as seemingly a continuation or counterpart of the authorized collection of extracts from that periodical. In 1904, in Gannet *v.* Rupert, Judge Coxe in the U. S. Circuit Court of Appeals in New York, on suit of the publishers of *Comfort*, restrained the use of the title *Home Comfort* on a rival periodical "not as a case of unfair competition" but as "founded on a technical common law trade-mark"; and characterized the name as "a badge of origin and genuineness. It is as much a part of the proprietor's property as his counting room or printing press. A rival publisher has no more right to appropriate the name of its owner," – despite the defence that *Comfort* is "a standard English

word not fanciful or manufactured." This defence had precedent in the doubt expressed by Lord Cairns in 1867 in the *Belgravia* case, cited beyond, as to copyright protection of a single word, and in the decision of Judge Curtis in Isaacs *v.* Daly, in the N. Y. Superior Court in 1874, as to the drama "Charity," that "the use of the word 'Charity' as a designation for any work of art or literature cannot ordinarily be monopolized by any one person"; but under trade-mark law a single word associated by registry or in the public mind with a well-known product, may undoubtedly be protected as against misleading use of the word otherwise. The courts will go even farther in preventing the use of a title by another person with intent to deceive or to utilize the reputation of another work or author, as a fraud upon the public, or as unfair competition, without reference specifically to trade-mark principles. Thus Judge Newburger of the N. Y. Supreme Court, in 1910, in Eliot and Collier *v.* Jones and the Circle Publishing Company, restrained the issue under the title "Dr. Eliot's five-foot shelf" of books by the defendants of a set of books selected by and issued under the authority of President Eliot of Harvard, under arrangement with the co-plaintiff. The English rulings are to the like effect, that while a title has no copyright protection except as part of a book, the use of a title to attract purchasers on the supposition that they are getting another book previously known by that title is a fraud punishable at common law. Further citations of cases on these points are given in the chapter on infringement.

Projected titles

There can be no claim to protection for the title of an unpublished book, as a trade-mark or otherwise, just as there can be no copyright in a projected book. This question was elaborately discussed in the leading English case of Maxwell *v.* Hogg, in 1867, in relation to the magazine *Belgravia*, when the rule was laid down that no matter what expenditure had been made or advertising done, a title was not protectable previous to its association with a work actually before the public. Judge Shepley, in 1872, pointed out that "there is no such thing as property in a trade-mark as an abstract name," for a trade-mark simply shows that certain goods "were manufactured by a certain person." Nor can an abandoned title, in the case of a periodical, be held against a person starting a new periodical of that name, providing it does not purport to be a continuation of the old, according to a French case quoted by English authorities.

Projected works not copyrightable

There can be no statutory copyright in a book or other work projected and not yet prepared, despite a very general notion that under the old law a projected book could be protected by registering a title and depositing a title-page of an unwritten or unpublished book. There is nothing in copyright law corresponding to the *caveat* in patent law. This is not in conflict with the protection of an unpublished work at common law or in equity referred to in the new American code (sec.

2) or the provision in the new law (sec. 11) permitting the registration of "a lecture or similar production or a dramatic or musical composition" or a work of art, before publication, with the deposit of a complete copy or identifying print.

Immoral works

There can be no copyright in an immoral book, and Lord Eldon, in Southey *v.* Sherwood, carried this doctrine so far as to deny the common law right of an author in a non-innocent manuscript, because there could be no right to hold what there was no right to sell. His opinion, resulting in the wide sale of a book which the author desired to suppress, has been severely criticised by later authorities. In the American case of Broder *v.* Zeno Mauvais Music Co., Judge Morrow, in the U. S. Circuit Court in California, in 1898, held that as a song which the plaintiff sought to protect contained indecent words, it was not entitled to protection under the copyright law. There can be no copyright in blasphemous, seditious, or libelous books; but though this rule was very strictly enforced by English judges a century ago, the later courts hesitate to rule strictly on this point, lest the rule be perverted to sectarianism or despotism. There can be no copyright in books involving fraud, as those which spuriously obtain salable value by being represented to be the work of writers who did not write them, or to contain matter which they do not contain; but this rule does not extend to books under assumed names or innocently pretending to be what they are not, as when Horace Walpole's "Castle of Otranto" was put

forward as a translation from the Italian.

Periodicals

In addition to the inclusion of "composite works," the new American law specifically covers (sec. 5, b) "periodicals, including newspapers," and by other provisions of the law above cited, this covers "all copyrightable component parts." It is further provided (sec. 3) that "the copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act." While the American code does not specifically provide as to the separate rights of authors in articles in periodicals or composite works, which must therefore be a matter of contract, or of practice or precedent implying contract, provision for separate copyright is implied in a clause (sec. 12) requiring the deposit of only one copy instead of two in the case of "a contribution to a periodical, for which contribution special registration is requested" – although the specific article is fully protected, as indicated above, by the general copyright.

Definition of periodicals

The new Rules and Regulations of the Copyright Office define periodicals as follows:

"(6) This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies, etc., which appear regularly

at intervals of less than a year; and, generally, periodical publications which would be registered as second class matter at the post office."

Periodicals under manufacturing clause

Periodicals, as well as books, are subject to the manufacturing clause (sec. 15), but affidavit is not required, and the importation of "a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor," is not prohibited (sec. 31, b), "unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization" – but these and other conditions are treated in later chapters.

Periodicals copyrightable by numbers

The law provides (sec. 19) in the case of a periodical, that the notice of copyright may be "either upon the title-page or upon the first page of text of each separate number or under the title heading," "provided that one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice." This implies that each issue of a periodical must be separately copyrighted as though a separate work, although the title may be registered as a trade-mark and possibly protected in this way. A daily newspaper may thus be copyrighted day by day at a cost of $365 per year, so as to protect all its original material of substantial literary value. This was done in fact under the American law previous to 1909, though periodicals were

not specifically mentioned; a daily price-list of the New York Cotton Exchange was so entered day by day, but the question of maintaining such a copyright under the old law seems never to have been tested in the courts, and New York dailies copyrighted their Sunday cable letters separately.

News

In respect to news, there is no provision in the new code. A bill to protect news for twenty-four hours was at one time before Congress, but was never passed. There is, therefore, no copyright protection for news as such, but the general copyright of the newspaper or a special copyright may protect the form of a dispatch, letter, or article containing news. Thus the New York *Herald* copyrighted without question Dr. Cook's Arctic dispatches, and the question as to the copyright by the New York *Times* of Commander Peary's dispatches describing his dash for the pole hinged solely on the question of ownership or authority to copyright, as set forth in a later chapter. But any such copyright could not prevent publication by other newspapers of the news that Cook and Peary claimed to have reached the North Pole, at stated dates and under stated circumstances, though their own form of statement of the facts could not lawfully be copied except within "fair use."

In 1892 Justice North in the English Court of Chancery, in Walter *v.* Steinkopff, said that "although it is sometimes said that there is no copyright in news, there could be copyright in the particular form of language or mode of expression by which

information is conveyed." The English courts went further in two actions brought by the Exchange Telegraph Co., 1895-97, in the first of which Gregory & Co. were restrained from using information furnished to subscribers first as unpublished matter before publication, second after publication because of copyright on the publication, and third as "unfair competition." In 1902, in Nat. Tel. News Co. *v.* West. Union Tel. Co., the U. S. Circuit Court of Appeals protected news on ticker tapes, and in 1910, in Press Assoc. *v.* Reporting Agency, the English Chancery Division protected election reports on the last-named ground alone.

British Periodicals

The statutes of Great Britain have hitherto provided that a work published in parts or a periodical may be fully protected by copyright entry of the first part; the new code covers newspapers and periodicals generally as collective works. When the London *Times'* memoir of Beaconsfield was reprinted as a penny pamphlet, the *Times* brought suit as a matter of common law right, but the judge held that a newspaper was copyrightable under the statute, and therefore that a common law suit could not hold.

Oral works

The American law now specifically protects oral works by including in the classification (sec. 5, c) "lectures, sermons, addresses, prepared for oral delivery," and by assuring (sec.

1, c) exclusive right "to deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production." The phrase "similar production" and the spirit of the statute suggest that, though the manuscript of a book cannot be copyrighted prior to publication, a "reading" from an unpublished book, as a chapter, scene, or poem, might be registered and protected for oral delivery before publication; and the Copyright Office will make such registry on such application. The former law made no specific provision, but the courts seemed disposed to protect a lecturer on the common law ground that the lecture read is not published by reading, and can be controlled as a manuscript. In the application of common law doctrine to extemporaneous or other oral deliveries, the question of implied contract between the speaker and his auditors enters, and the trend of court decisions is that a hearer who has purchased or obtained a ticket, may make notes for his own use but may not publish them for profit. In the leading English case of Abernethy *v.* Hutchinson, in 1825, Lord Chancellor Eldon protected Dr. Abernethy against the publication of notes of unwritten medical lectures, evidently obtained through a student hearer.

Newspaper reports

Newspapers have, however, in practice freely republished lectures, and probably even under the present law the courts would permit, unless report was specifically and entirely forbidden by the speaker, a reasonable report but not a *verbatim*

reproduction of the address, as within the bounds of "fair use." The publication of an unauthorized report by one newspaper would not justify another newspaper in copying the report without consent of the copyright proprietor on the ground of publication, for such unauthorized publication cannot deprive the copyright proprietor of his rights. If a speaker delivers an address, extemporaneously or even from written manuscript without registering the address as an unpublished work or taking other precautions, it is probable that the courts would protect his rights at common law; but it would be hazardous not to take advantage of the statute.

Lectures in England

Lectures have hitherto been protected in England in case the lecturer gave notice of reservation in writing two days in advance to two justices at the place of reading, but this complicated proviso caused speakers to rely rather on the common law doctrine that oral delivery is not publication. The new British code specifically provides that delivery is not publication, but permits newspaper report unless the speaker prohibits such report by notice posted near the main entrance and except during public worship near the speaker's position; "newspaper summary" within "fair dealing" is expressly permitted.

Letters

Letters are not specified either in English or American statutes under copyright law. A private letter has been held

an unpublished manuscript, the right to publish or copyright remaining with the author while living, though the material letter, its paper and ink, has passed to the receiver. Thus in 1741 Pope prevented Curl, an English bookseller, from republishing his letters to Swift, and in 1774, in Thompson *v.* Stanhope, Lord Chesterfield prevented his son's widow from publishing letters which he had made a gift to her. Letters, however, are copyrightable by themselves or as part of a book; and the writer may protect a letter against unauthorized publication by himself publishing and copyrighting it. The U. S. Supreme Court in 1841, in Folsom *v.* Marsh, enjoined the republication of letters of Washington, published by authority in Sparks's "Life of Washington," through Justice Story, who said: "The author of any letter or letters, and his representatives, whether they are literary letters or letters of business, possess the sole and exclusive copyright therein; and no person, neither those to whom they are addressed, nor other persons, have any right or authority to publish the same." But as manuscripts posthumously published, the copyright in letters may belong to the receiver or his assigns; and in Macmillan *v.* Dent, in 1906, the English Court of Appeal held, where the owners of letters of Charles Lamb had sold the copyright to certain publishers, these could not be republished by another who had later bought the material letters even under the authorization of the representative of Lamb's heirs. In Philip *v.* Pennell, Whistler's executrix was denied an injunction to prevent the use of biographical information

obtained from the receivers of letters. But *obiter dicta* indicated that the courts may grant to the writer's representatives an injunction against publication or misuse. The laws of some countries specifically permit the publication of letters in the interest of justice. Unless the letter is of the nature of privileged correspondence, the courts can probably require the production of a letter in court, and in fact do subpœna telegraph companies to produce the originals or transmittal records of telegrams in court, and thus make them *quasi* public property. The sale of a manuscript letter cannot authorize a vendee to publish it without consent of the writer, and the receiver of a letter is perhaps bound to keep a letter private or destroy it, if so required by the writer, but this is a right difficult of enforcement if not doubtful *in esse*. The receiver of a letter has probably a right to destroy it at his will, unless the writer has required its return to him.

The subject-matter of copyright in respect to musical and dramatic compositions and works of art, is treated specifically in later chapters on dramatic and musical copyright and on artistic copyright.

Designs patentable

Designs for use in manufacture are, in the United States, subjects of patent and not copyright. It is provided by the act of May 9, 1902, that "any new, original, and ornamental design for an article of manufacture" may be patented, and this classification inferentially excludes such designs from copyright. This generalized description of design patents replaced, at

the suggestion of the Commissioner of Patents, the specific descriptions in the design patents act of December 1, 1873, and adopted instead the more comprehensive phraseology of the act of February 4, 1887, for the punishment of infringement of design patents. In like manner the new British code excludes designs registrable under the patents and designs act, 1907, "except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process."

Foreign practice

"The foreign copyright legislation," as is stated in Copyright Office Bulletin, No. 9 of 1905, "instead of specifically naming the productions which are subject-matter of copyright, generally uses some inclusive expression, such as 'all writings,' 'every kind of literary work,' 'works of literature,' 'literary and scientific works,' 'every production of literature and science,' and even such inclusive terms as 'every work of the intellect.'" Spain adds the inclusive phrase "produced or published by … any kind of impression or reproduction known now or subsequently invented." Great Britain, most of her colonies, and some other countries have set forth specific categories. But the new British measure uses the general phrase "every original literary dramatic musical and artistic work" – this replacing the several categories in the several previous laws. In a few countries manuscripts, personal letters and telegraphic messages, mostly in newspaper use, and in Ecuador, titles of periodicals, are specifically

scheduled as subjects of copyright.

International definition

The Berlin convention uses the general expression "literary and artistic works," which it defines as including "all productions in the literary, scientific or artistic domain, whatever the mode or form of reproduction," then specifying in detail categories of literary, dramatic, musical and other artistic works, as set forth in the chapter on international conventions and arrangements.

VII
OWNERSHIP OF COPYRIGHT: WHO MAY SECURE COPYRIGHT

Persons named

The American code of 1909 names (sec. 8) "the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns" as the persons in whom the copyright may lodge. It also provides specifically (sec. 62) that "the word 'author' shall include an employer in the case of works made for hire."

The American law formerly named "the author, inventor, designer, or proprietor of any work, and the executors, administrators, or assigns of any such person" as the persons in whom copyright may lodge. The Librarian of Congress accordingly issued copyright certificates for books as to an "author" or "proprietor" only, assuming usually that an editor was the "author" and a publisher the "proprietor," and never going behind the claim set forth in the application. Under the new law the applicant is designated only as the "claimant," and no such distinction is made, except that the Copyright Office has an index card for proprietor, as well as author, when another than the author makes the application.

The author primarily

The author is the person primarily entitled to copyright. He may sell or otherwise transfer his production before it is copyrighted, in which case the new proprietor obtains all the common law rights of property, both in the manuscript and its publication, including the right to copyright. This common law right, including the right to copyright, may extend, Drone argues, to the finder of an unpublished manuscript, provided no one successfully disputes his ownership of his find, if the manuscript be copyrightable; but there are no decisions on this point. If a copyright is taken out by another person (as the publisher of the book), it is done impliedly in trust for the author, as is a usual custom among American publishers. The proprietor is defined to mean "the representative of an artist or author who might himself obtain copyright."

Claimant's right to register

The Register of Copyrights is not a *quasi* judicial officer, as is the Commissioner of Patents, and he does not undertake to make decision as to the right of the claimant, this question being one for determination by the courts in specific instances. In cases of doubt, however, he may in practice, for the sake of convenience and of clearness of record, call the attention of the claimant to such doubt and invite explanation, but he probably would not be justified in refusing to register the application for a claimant who asserted his right to such entry. A former

Librarian of Congress, then directly the copyright officer, used to say that he would enter copyright for any one on the Bible in King James' version if formal application were made to him, thus emphasizing the statement that he had no judicial authority. In the case of Everson *v.* John Russell Young, then Librarian of Congress, Judge Cole in 1889, while refusing the mandamus asked for, asserted incidentally that "the Librarian had no discretion." Where a second application is made for the entry of the same copyrightable work by a second party, the copyright officer would not decline to register the second application, if the claimant insisted on his right, after the fact of the first registration had been brought to the second claimant's notice, and the question of ownership would have to be brought before the courts. It is only in the case of works evidently not copyrightable, or in the case of claimants not entitled to apply for registration, as a citizen of a foreign country with which the United States has no copyright relations, or in other cases evidently beyond the scope of the law, that the copyright officer would exercise discretion and decline to make the record.

Employer as author

The provision of the new code specifically including as author (sec. 62) "an employer in the case of works made for hire" is new in American law, but it adopts previous decisions of the courts. It does not, however, adjudicate the application or specific definition of this phrase, which remains in large measure a question of contract. Earlier copyright decisions were to the

effect that the authorship may inhere in the employer, if the design of the work is so far his as to make him the virtual creator and the actual writer a deputy merely; but that he is not an author who "merely suggests the subject, and has no share in the design or execution of the work." But under the new law, the case turns upon the meaning of "employment," which would be clear in the case of writers paid wages or salary for doing the work on an encyclopædia, but might not be clear in the case of an author paid in advance or on account by a publisher, though working on a general plan suggested or invented by the publisher. In such cases the proprietary right, including the right to secure copyright, depends upon the contract, implied or express, and the courts will decide this according to the law of contracts. In Boucicault *v.* Fox, in 1862, Judge Shipman, in the U. S. Circuit Court, held, as to the play "The octoroon," that "a man's intellectual productions are peculiarly his own, and he will not be deemed to have parted with his right and transferred it to his employer until a valid agreement to that effect is adduced." It is safer in all cases, for the protection of the employer and for the sake of clear relations with the actual person who does the work, that there should be a definite contract.

When a salaried law reporter had been employed by the State of New York under a law that the copyright of the Reports should vest in the State, Judge Nelson for the Circuit Court of Appeals, in 1852, in Little *v.* Gould, held as valid an entry by the Secretary of State, "in trust for the State of New York," though no formal

assignment had been made.

Implied ownership

In the absence of specific contract, or even in some cases of specific contract, many cross-questions may arise which the law does not and cannot determine in advance. In the case of a book "with illustrations by John Leech," where Leech retained the copyright of the designs, though the publishers owned the wood on which he had drawn them, an English court held to a distinction between the copyright and the right to the material, and directed the publishers to waive their lesser right and surrender the blocks, in view of the circumstances of the contract.

Protection outside of copyright

Most of the cases arising as to ownership are, in fact, issues outside of copyright law, as when in 1883 in Clemens *v.* Belford, in the U. S. Circuit Court in Illinois, Samuel L. Clemens vainly sought to restrain the use of his pen-name, "Mark Twain," in a collection of his uncopyrighted papers, Judge Blodgett holding that whoever has a right to publish has a right to state authorship, though an author can restrain the publication over his name of things he did not write. The same doctrine was upheld in 1910 in Ellis *v.* Hurst, where a publisher had printed with the real name of the author some non-copyright books which Edward S. Ellis had put forth under a pseudonym. Judge Greenbaum, in the N. Y. Supreme Court, held that the law insuring right of privacy does

not prevent the use of a writer's name on a book undoubtedly of his writing.

In 1908 Mr. Clemens sought in vain to prevent the use by others of his pseudonym, "Mark Twain," by incorporating a company with this name, planning thus to secure the exclusive use of the name for this corporation and practically obtaining a continuing trade-mark protection for it under this device. But that an author may protect a *nom de plume* of settled use independent of copyright or trade-mark was held in Landa v. Greenberg in 1908, in Chancery Division.

Work in cyclopædias

When, as in the case of a cyclopædia, many persons are employed at the offices of an employer, using his materials and facilities, and especially if on salary, the courts would undoubtedly uphold his full proprietorship in their work. Where outside persons contribute special articles, the presumption would probably be that the ownership of the copyright, for that special publication, vested in the employer, but that neither he, without the author's consent, nor the author, without his consent, could publish the article in other competing shape. In Bullen *v.* Aflalo, the House of Lords, in 1903, reversing the lower courts, protected the proprietors of an encyclopædia who had purchased articles from authors, against reprints of the material elsewhere, by the authors themselves, on the ground "that the right to obtain copyright was intended to pass to the publisher, otherwise he would get nothing from his bargain; and unless the publisher and

proprietor of the encyclopædia stood in the shoes of the actual writer and was the proprietor of the copyright, he would have nothing for his money, because the articles might be published by others and he would have no remedy, not having the copyright."

Association of author's name

The right of a contributor to have his name associated with his work in the case of an encyclopædia, at issue in Basil Jones *v.* American Law Book Co., where the individual writer's name was replaced by that of a distinguished jurist, though upheld in 1905 by Judge McCall in the N. Y. Supreme Court, was denied in the reversal of this decision in 1908 by the Appellate Division through Judge Houghton.

Added material and alteration

Where a publisher had affixed additional material to a copyrighted book, the author was denied relief in Holloway *v.* Bradley, in 1886, by Judge Butler in the U. S. Circuit Court; but this decision would not hold where the added material was so placed as to give the false impression that it was written by the author of the copyrighted work. Thus in 1910, in Gilbert *v.* Workman, Sir W. S. Gilbert obtained an order in the Chancery Division through Justice Neville against the interpolation of a song into his copyrighted opera without his consent.

Separate registration of contributions

This would hold true to like extent in respect to alterations, which might be permissible when in the nature of proof-reading

correction or editorial revision, but contrary to equity when they pervert, obscure, or otherwise misrepresent the author.

In respect to composite works, the new American code indicates (sec. 23) that there may be separate registration of contributions, inferentially in the person of "an individual author," as distinguished from the general entry for copyright of the composite work. This doubtless refers to the practice, for instance, of the entry in his own name of his specific work, by a novelist or other contributor to a periodical, in addition to the general entry of the number of the periodical of which it is a copyrightable component part. The only direct effect is to give to the specific author *prima facie* evidence of ownership in his specific contribution, as distinguished from the right of the proprietor of the general copyright, and in some respects the clause is ambiguous and perhaps misleading, making it the more desirable that the relation of the individual author should be defined by contract. It is not really in conflict, however, with the principle that there cannot be two copyrights in the same work, as the evident distinction implied is that the proprietor of the general copyright holds the right for publication in the periodical and that the specific author reserves the right of publication in other form, which distinction is sufficiently provided for as a matter of contract and does not depend upon specific entry of the contribution. The wisest course may be for the proprietor of the periodical or other composite work to reassign his interest in the specific contribution, as was done by the proprietors of the

Smart Set as adjudicated in the case of Dam *v.* Kirke La Shelle Co., cited in the chapter on dramatic and musical copyright, and thus remove possible doubt as to ownership.

Anonymous works

There is no specific reference in the new American code as to anonymous or pseudonymous works, except as to duration of copyright. In practice, the Copyright Office assumes that the applicant for the entry of an anonymous or pseudonymous work is the qualified and legal author or proprietor, and any disputed question of fact would ultimately be decided by the courts.

Joint authorship

There may be joint authorship in a work of common design, in which case the joint authors will become owners in common of the undivided property; but mere alterations or work on specific parts could not justify claim to more than such alterations or parts. The copyright would naturally be entered in both names, but as one copyright; it was held in 1902, in Mifflin *v.* Dutton, by the U. S. Supreme Court, that "there cannot be duplicate copyrights of the same book in different names." If one of the joint authors and not the other should apply for entry, the Copyright Office would in practice probably record the copyright claim on the presumption that the author was acting in the common interest; but if two joint authors applied simultaneously and severally, the question of ownership would have to be settled by the courts.

Corporate bodies

A corporate body, even though not incorporated under statute, is considered an author in the case of its own proceedings or similar publications, and in 1903 Justice Holmes rendered the decision of the U. S. Supreme Court in the case of Bleistein *v.* Donaldson Lith. Co., though the court was divided on the subject, that a copyright taken in the name of the Courier Lithographing Company, which was only the trade name of the complainant, was valid.

Posthumous works

In the case of posthumous works, the person entitled to copyright would be the executor, administrator, or the heirs of the author, and the owner of an unpublished manuscript could probably enter and maintain copyright in the absence of other legal claimant.

The Peary cases
Opposing decisions

The first important case under the new American code, in September, 1909, dealt with the question who may obtain copyright. On the report of the discovery of the North Pole, the New York *Herald* procured from Dr. Cook his account of his journey and copyrighted it on its publication in the *Herald*, – which copyright does not seem to have been questioned. Immediately thereafter came Commander Peary's account of his polar journey, for which the New York *Times* had contracted

with him before his departure in the previous year. The Peary report was published simultaneously by the New York *Times* and the London *Times*, but the difference of five hours enabled the correspondents of the New York *Sun* and *World* to cable the report to their respective papers in time for publication at the same hour in America as in the New York *Times*. Anticipating this course, the New York *Times* had taken the precaution to publish the report in pamphlet or "book" form some hours before newspaper publication, and to copyright this as a book. When an injunction was asked in the U. S. Circuit Court from Judge Hand, that judge granted the injunction, but on the required production of the contract in court, dissolved his injunction on the ground that the contract between Peary and the New York *Times* gave to the *Times* only the right to news publication and specifically reserved to Peary magazine and book rights. He inferred thus that the *Times* had no right to copyright the news report as a book, and was not the agent of the author for that purpose. To the contrary, Judge Grosscup in Chicago, in an exactly similar case against the Chicago *Inter-Ocean* and other Chicago papers, and with the contract before him, maintained the copyright by the *Times*. The two contradictory decisions have not so far been adjudicated in the higher courts. It will be observed that the question is not strictly one of copyright, but of contract, and that it is not denied that the news report, in the literary form given it by the author, was a proper subject of copyright, though the news of the discovery of the North Pole might not be copyrightable. Judge

Hand perhaps erred in assuming that there could be separate copyright for news, magazine, or book publication, overlooking the fact that Peary had conferred on the *Times* authority to protect the report sent to it by cable, while reserving to himself rights in magazine or book publication of his material, whether in the same or different form.

Renewal rights

In the renewal of copyright, the new American code follows the previous law in differentiating the persons entitled to renew the copyright. It provides (sec. 23) that in the case of a posthumous composite or corporate work originally copyrighted by the proprietor thereof or a work made for hire, the proprietor of such copyright shall be entitled to a renewal; but in other cases, including a separately registered contribution by an individual to a composite work, the author or the widow, widower or children, or, if such be not living, the author's executors or next of kin shall be entitled to a renewal. This means that there can be no renewal by an assignee proprietor, and that in the absence of natural heirs of a personal author, no person is entitled to a renewal of his copyright. The new law has been specifically construed to this effect by the Attorney-General in his opinion of February 3, 1910. It should be noted that the word "administrators," included in the provision as to original application (sec. 8), is omitted from the provision as to renewal (sec. 23) including renewal of existing copyrights (sec. 24), indicating that while an author may make bequest of copyright for the renewal term, which right may

then be claimed by his executor, the right to renew lapses when he makes no will and has no next of kin to inherit the right of renewal.

Assignments

Specific provision as to the method and record of the transfer of copyrights by assignments are contained in the following provisions of the code of 1909:

"(Sec. 42.) That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

"(Sec. 43.) That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be *prima facie* evidence of the execution of the instrument.

Assignment record

"(Sec. 44.) That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without

notice, whose assignment has been duly recorded.

"(Sec. 45.) That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

Substitution of name

"(Sec. 46). That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act."

It should be noted that this last provision, authorizing the substitution of a name, is applicable only to the general copyright in a work, and not to a divided right; otherwise there would seem to be more than one copyright in the same work. The Copyright Office will, however, record assignments of specific or divided rights without reference to this power of substitution. Further assignment from one assignee to another is permissible to any extent, and in cases of repeated assignment of a general copyright there may be further substitution of names.

Witnesses

There is no specific requirement as to the witnessing of assignments, which would therefore follow the usual principles of law. This was, however, an important question in England, and

under the early English statute the courts held that assignments must be in writing, attested by two witnesses; the later statute of Victoria modified the language, and the new English code requires assignment in writing signed by the owner or his authorized agent, without specifying witnesses. But assignment of common law rights (as in an unpublished manuscript) may doubtless be by word of mouth.

"Outrights" and renewal

Where an author sells his entire rights "outright," he cannot transfer the right to take out renewal, but he may directly or by inference bind himself to apply for such renewal in the interest of the new proprietor. Under such a contract, this proprietor could probably require him by equity proceedings to take this step. Such a contract, however, would not bar the author from his right to renewal under the copyright law and through the Copyright Office, although it is possible that the courts might enjoin an author from renewal or assignment of a renewed copyright in the interest of another than the original assignee. It should be noted that in the case of composite, corporate or like impersonal works, copyrighted under the new code, renewal is not restricted to the *original* proprietor, though by analogy this should be the practice; but that in the case of renewal of copyrights existing before July 1, 1909, and in extension of the present renewal terms, the use of the phrase "such proprietor," referring back to "the original proprietor," does make such limitation.

Proof of proprietorship

Where the copyright proprietor of record is not the author, the courts may require him to prove his rights, in default of which the copyright certificate will be adjudged null and void, as was done in 1909 by the Circuit Court of Appeals both in Bosselman *v.* Richardson, where a son copyrighted paintings by his father and failed to prove that they had not before been published, and in Saake *v.* Lederer, where the court canceled the copyright of the play "Old Heidelberg" because Lederer had obtained from the German author only a license to perform and not a right to copyright.

Foreign citizens

As to copyright by others than citizens of the country, the law of 1909 provides (sec. 8) "that the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

"(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

"(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act,

or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

"The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require."

Earlier provisions

The Revised Statutes formerly extended copyright to "a citizen of the United States or *resident therein* or his widow or children," and the act of 1891 provided for a *quasi* international copyright on a basis similar to that in subsection (b), cited above, of the law of 1909, *i. e.* on a basis of reciprocity. The new American code practically adopts the features both of the Revised Statutes and the act of 1891, though with verbal and substantial differences. The word "domiciled" is new in the law and has yet to be construed in a copyright case, but it is presumably the equivalent of "resident." The new Rules and Regulations of the Copyright Office use the phrase "(2) a resident alien domiciled in the United States at the time of the first publication of his work."

Residence

A resident, under the American decisions, is a person who intends to reside permanently in this country. It is decided by the

intention of the resident. A person who is residing here without intention of permanence probably cannot maintain copyright under this clause. For English copyright, on the contrary, a person temporarily residing in His Majesty's dominions has been considered a resident. "The United States" would doubtless be construed to include territories and dependencies, as specific jurisdiction is given (sec. 34) to stated courts in Alaska, Hawaii, the Philippine Islands and Porto Rico, in addition to the general decisions of the U. S. Supreme Court.

Under the statute of Anne the English courts differed persistently on the question whether a non-resident foreigner could obtain British copyright by first publication within the British dominions, until in 1854, in the ultimate case of Jefferys *v.* Boosey, the House of Lords, after consulting the judges, of whom six denied and four sustained the contention, decided unanimously that a non-resident foreigner could not acquire copyright by first publication. Under the law of 1842, the question was again raised, in view of the variation of the language from that in the statute of Anne; in 1868, in the case of Routledge *v.* Low, in which an American author claimed copyright for his work first published in London while he resided for a few days in Canada, the House of Lords held that a foreigner might thus obtain copyright by temporary residence within the British dominions and indicated, but did not decide, that a foreigner could obtain copyright by first publication, even if not temporarily resident within the British dominions.

After the passage of the "international copyright amendment" in 1891, the American law authorities consulted with the law officers of the Crown, who rendered a decision that foreign authors were entitled to British copyright on the sole condition of first publication, and on this decision the President based his proclamation of reciprocal relations with Great Britain. The new British measure retains first publication within the included parts of the Empire as the essential condition, except in unpublished works, unless otherwise provided under international copyright, though the Crown may withdraw this privilege from foreigners whose countries do not assure reciprocity.

Intending citizens

The provision of subsection (a) is chiefly useful, it would seem, to protect intending citizens who have applied for naturalization papers and incidentally renounced their previous allegiance to another power and thus put themselves beyond the pale of the international conventions.

Time of first publication

"First publication" is not limited in terms to the United States, and the "alien author or proprietor," provided he makes application under this clause and is not a citizen of a country with which the United States has a copyright convention, must therefore be domiciled here, it would seem, at the time of first publication, in whatever country that may be.

Non-qualified authors cannot transfer

It has twice been decided, both prior to and since the "international copyright amendment" of 1891, that a foreign author not qualified to secure a copyright cannot indirectly obtain one by assignment to an American or other proprietor. In 1890 J. M. Barrie assigned to J. W. Lovell, and he to the U. S. Book Company, his American rights in "The little minister," and after the act of 1891 the latter endeavored to restrain a dramatization of the story. Judge Jenkins held with the lower court that the foreign author could transfer only, prior to the act, the right to publish from advance sheets and not the right to copyright. In the case of Bong *v.* Campbell Art Co., in which it was sought to protect under the act of 1891 a work by a Peruvian painter, Hernandez, whose country had no international relations with the United States, through transfer to a German proprietor, whose country had reciprocal relations, it was held in 1909 by the U. S. Supreme Court, through Justice McKenna, that an author who is a citizen of a country with which the United States has no copyright relations cannot indirectly obtain American copyright by making a citizen of a country with which the United States has copyright relations the proprietor of his work. A proprietor has been construed by the courts to mean merely an assignee of a qualified author. It is evident, therefore, despite the ambiguous phrasing of the statute, that an assignee proprietor, though domiciled in the United States at the time of first publication of a work, could not obtain copyright unless the author were so domiciled, for the contrary ruling would

nullify the general purport of the law by permitting an assignee to acquire rights which the non-qualified author could not secure. The evident construction of the word "proprietor" in this clause is as proprietor of an impersonal work and not an assignee proprietor. The Rules and Regulations of the Copyright Office, construing the code of 1909, say specifically (2): "If the author of the work should be a person who could not himself claim the benefit of the copyright act, the proprietor cannot claim it."

Foreign ownership

But it seems that a foreigner may enter copyright in the work of a citizen or resident author – it being foreign authorship, not ownership, which the law refuses to protect, though this point has not been judicially determined. Under the provision (sec. 62) of the new American code giving copyright to an employer as author "in the case of works made for hire," it would seem that a person entitled to make copyright entry might, as an employer, obtain copyright on the work of an alien employee not domiciled here and not otherwise entitled to enter copyright; but it is probable that this construction would not extend to a separate or separable work, as this would be contrary to the principles adjudicated as above cited.

The complicated question of the ownership and the right to secure copyright in translations from foreign works or into foreign languages, under this international copyright provision, is covered under translation in the preceding chapter on subject-matter of copyright.

Proclaimed countries

Under the provisions of the international copyright clause of 1891 Presidential proclamations have designated as countries with which the United States has copyright relations (July 1, 1891) Belgium, France, Great Britain and her possessions, Switzerland; (April 15, 1892) Germany; (October 31, 1892) Italy; (May 8, 1893) Denmark; (July 20, 1893) Portugal; (July 10, 1895) Spain; (February 27, 1896) Mexico; (May 25, 1896) Chile; (October 19, 1899) Costa Rica; (November 20, 1899) Holland and possessions; (November 17, 1903) Cuba; (January 13, 1904) China – this treaty of October 8, 1903, protecting for ten years books, maps, prints or engravings "especially prepared for the use and education of the Chinese people," or "translation into Chinese of any book," but leaving to Chinese subjects liberty to make "original translations into Chinese"; (July 1, 1905) Norway; (May 17, 1906) Japan – this treaty of November 10, 1905, also excepting translations, and (August 11, 1908) additionally protecting Japanese relations in China and Korea; (September 20, 1907) Austria, not including Hungary; and (April 9, 1908) under the Pan American convention signed in Mexico City, January 27, 1902, effective from July 1, 1908, Guatemala, Salvador, Costa Rica, Honduras and Nicaragua.

Under act of 1909

Under the provisions of the act of 1909, the President of the United States issued a general proclamation, dated April 9, 1910,

certifying anew to the existence of reciprocal relations with the above-mentioned countries, under the arrangements of the new act, as from its effective date July 1, 1909. This accepted such relations as continuous and uninterrupted, without the necessity of new treaties, with the effect that international copyrights before July 1, 1909, were under the arrangements of the act of 1891 and from and after that date under the arrangements of the code of 1909. Luxemburg was added by proclamation of June 29, 1910, and Sweden by that of May 26, 1911. Proclamations of December 8, 1910, as to Germany, and June 14, 1911, as to Belgium, Luxemburg and Norway, proclaimed reciprocal relations as to mechanical reproductions.

Buenos Aires convention

The ratification of the Buenos Aires convention by the U. S. Senate, February 16, 1911, has the effect of authorizing the President to proclaim reciprocal relations with other countries which are parties to that treaty, as each ratifies the convention.

The new British code

The new British measure specifies that "the author of a work shall be the first owner of the copyright," except where an engraving, photograph, or portrait is ordered for valuable consideration or where work is done in the course of employment. The owner may assign the copyright in writing, "either wholly or partially, and either generally or subject to limitations to any particular country, and either for the whole

term of the copyright or for any part thereof, and may grant any interest in the right by license"; in case of partial assignment, the original owner and the assignee become respectively the owners of the residual and assigned portions of the copyright. But any assignment, except by will, becomes null and void twenty-five years after the death of the author when the entire rights revert to his heirs.

Foreign practice

In general the statutes of most of the copyright countries designate "authors" and their "assigns and heirs" as the persons who may obtain copyright. The Australian law of 1905 defines "author" to include "the personal representatives of an author." In certain countries the laws specifically mention as persons who may secure copyright "joint authors," "proprietors" in some countries and "publishers" in other countries of anonymous and pseudonymous, posthumous or unpublished works, periodicals and composite works, "corporate bodies," "translators," "editors, compilers or adapters" and "persons who give a commission for a portrait or photograph."

VIII
DURATION OF COPYRIGHT: TERM AND RENEWAL

Historic precedent

The duration of copyright was in the early printers' privileges for a short term, as for seven years, except in France, where copyrights were in perpetuity until the act of the National Assembly; in modern times the copyright term has been lengthened until a term extending through and beyond the life of the author has been adopted by thirty-seven countries, or more than half of those which have copyright laws, of which four assure perpetual copyright. The Constitution imposes only one limitation on the comprehensive rights of authors, in the provision that protection shall be "for limited times" only. This provision has made the discussion of perpetual copyright purely academic in this country. The new American code adopts the double term of twenty-eight and twenty-eight years, making fifty-six years in all, without reference to the life of the author.

Previous American practice

The American law previous to 1909 provided for a uniform term of twenty-eight years, dating from the time of recording the title, with a renewal of fourteen years, securable only by

the author, or, if he be dead at the expiration of the term, by his widow or children. No other heirs or persons could renew. The new code differs in making the renewal period a second twenty-eight years and extending the right of renewal to the executors or next of kin and to the proprietors of composite or other impersonal works; but it still denies renewal to assignee proprietors of personal works.

Term in code of 1909

The American code of 1909 provides (sec. 23) "that the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name," and makes provision also in the cases specified for renewal for a second period of twenty-eight years, provided that renewal application is registered in the Copyright Office "within one year prior to the expiration of the original term of copyright."

Renewal

The provisions as to renewal are in full as follows (sec. 23): "*Provided*, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor

of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopædic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication."

Extension of subsisting copyrights

The extension of copyrights subsisting July 1, 1909, is provided for as follows (sec. 24): "That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be

renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: *Provided, however*, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term."

Assignee of unpublished manuscripts

In holding with the Attorney-General that an assignee cannot obtain renewal, Judge Brown in the U. S. Circuit Court in Rhode Island, in White Smith *v.* Goff, in 1910, raised but did not decide the "difficult" question whether, if an author sells his unpublished manuscript with right to publish and copyright, the new owner as the original copyright proprietor may claim renewal, or whether the author might reclaim the right.

Extension of subsisting renewals

Under the provisions of the renewal clauses (sec. 24), not only may the original copyright term of a subsisting copyright be renewed for the longer term of twenty-eight years instead

of fourteen years, but a subsisting copyright renewal may be extended from the added fourteen years to the full renewal term of twenty-eight years, and a separate application form for this latter class of cases is provided by the Copyright Office.

Publishers' equities

In the copyright conferences, it was pointed out by publishers that the right of the author to renewal, and the implied denial of that right to an assignee proprietor, placed at serious disadvantage a publisher who had made investment in plates of an author's works, and would be deprived of the use of his investment at the end of the original term in case the author preferred to make arrangements with another publisher for the renewal term. The Congressional Committee failed, however, to provide a remedy for this through the proposed Monroe-Smith amendment, requiring that in such case author and publisher should unite in the application for renewal. No contract on the part of an author can give a publisher the right to claim copyright renewal under the new code, although a contract to make claim for the renewal period and transfer the copyright for the renewal period to the publisher, might be enforced by the courts through a writ requiring the author to enter such claim and assign the renewed copyright in accordance with the contract. When a copyrighted work is sold "outright," it therefore does not include renewal of the copyright, and unless the author registers his renewal claim, the right to renewal lapses.

Estoppel of renewal

Where an author has sold "outright" all his right, title and interest in his work, it is possible that this may estop him from application for renewal or invalidate a renewal, but this question must be decided by the courts when a case arises. It is important that any contract between author and publisher should be clear and specific on this vexed question of rights for the renewal term. No provision is made for notification of renewal in the copyright notice, and therefore, after the expiration of the original term, information must be sought from the Copyright Office as to whether there has been renewal extension of the term. As it would be hazardous to omit the original copyright notice or to replace it by one giving the date of renewal, which might be construed to involve claim of a longer term and thus defeat itself, it may prove the wiser course to add to the official original notice, the unofficial notice "Copyright renewed, 19__."

Life term and beyond

The international copyright convention, as modified at the Berlin conference of 1908, adopted the term of life and fifty years, – previously in force in France and fourteen other countries, – subject to adoption by domestic legislation. A term of life and a specified number of years after the death of the author, preferably fifty years for personal works, and a term of fifty years for impersonal works, was advocated by the American Copyright leagues and other friends of copyright and was in the

early drafts of the new copyright code.

It was pointed out that Emerson, Longfellow, Lowell, Whittier, Holmes and others outlived their earlier copyrights; that Edward Everett Hale, whose "Man without a country" did for this nation a patriotic service scarcely second to that of the great generals of the civil war, had no longer copyright in this work, although private soldiers, their relicts and descendants, were still paid pensions; and that many others of our foremost authors had been, or under the present system would be, deprived of their created property within their lifetime. The term advocated provides for the author and his children's children during the probable minority of the grandchildren, a period to which the entail of realty is limited by our laws. But the final decision of the Congressional Committees was for the simpler, though in other respects less satisfactory, period of twenty-eight years, as heretofore, with a renewal period of a second twenty-eight years, under the limitations above cited. No other countries, except Canada and Newfoundland, following our example, have this double or renewal term.

Unpublished works

As a lecture or other work intended for oral delivery or a dramatic or musical work or a work of art, an unpublished dramatic or musical work or a work of art not reproduced in copies for sale is copyrightable without reference to date of publication, it is not altogether certain whether the term extends from the date of registration or the date of first

delivery, performance or exhibition, or whether the statutory law now protects such a work under common law as unpublished, pending publication and therefore for an indefinite period if not practically in perpetuity. The Copyright Office issues a certificate for twenty-eight years, but without reference to initial date, which would be presumably the date of the certificate. The Copyright Office will doubtless, under this precedent, issue renewal certificate for the second term of twenty-eight years.

Publication as date of copyright

As the new copyright code makes publication with notice the basis of copyright instead of entry and deposit, as formerly, the term of copyright now dates from publication, and "the date of publication" is specifically defined (sec. 62) as "the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority." Such date is included in the application for registry at the Copyright Office, and on the same day twenty-eight years or fifty-six years thereafter the copyright ends. A provision for terminating copyrights at the end of the calendar year of expiration was included in the early drafts of the code, but was not included in the law as enacted.

Serial publication

In the case of works published and copyrighted as serials, as a novel published in parts in a monthly magazine, the copyright runs technically from the first publication of each part; and at

the end of the twenty-eight or fifty-six years, each part could be successively published at monthly intervals free from copyright. Practically, however, such a copyrighted serial could not be published complete until twenty-eight or fifty-six years from the publication of the last part. In usual practice a novel is printed in book form a month or two before its completion as a serial in a magazine, and the date of the copyright on the completed work would then terminate at the end of the twenty-eight or fifty-six years from publication in book form.

Joint authorship

The use of the date of publication as the beginning of the copyright term and the specification of twenty-eight years and twenty-eight years for its duration, obviates questions as to anonymous and pseudonymous works, composite works or works of joint authorship. The earlier drafts of the bill, providing for a term through and beyond life, made the lifetime of the last surviving author the basis for the term of copyright on works of joint authorship. This method was interestingly applied in the German courts, when it was held as to the opera "Carmen" that Bizet's music was out of copyright, but that the libretto was protected because one of its three joint authors was still living.

Termination by forfeiture or laches

A copyright is terminated *ipse facto* by forfeiture as provided in the act, either because of failure to deposit copies after notice from the Copyright Office (sec. 13), or because of false affidavit

of American manufacture (sec. 17). It may also be terminated by *laches*, that is, carelessness in protecting one's rights, as by omission of the notice, unless by accident or mistake, from particular copies (sec. 20).

Abandonment

A copyright may be terminated by voluntary abandonment or purposed dedication as well as by expiration, forfeiture or *laches*. Thus in 1854 Congress purchased for $10,000 the copyright of Sumner's new method of ascertaining a ship's position, dedicated the method to general public use, and extinguished the copyright. The Copyright Office has no authority to recognize annulments, but it has noted request for annulment when received on the registry. In 1910 the Oxford University Press, American Branch, formally notified the Treasury Department that they abandoned the copyright on Oxford Cyclopædic Concordance copyrighted by them in 1903, and collectors of customs were accordingly authorized by circular letter of January 25, 1910, to permit importation "of any copies of the said work with the notice of the copyright obliterated, or a notice of the abandonment of the copyright plainly printed upon the same page with the notice of copyright and adjacent thereto." This last was a curious "boomerang" effect of the manufacturing clause as extended to binding in the act of 1909.

In England

In England the term of book copyright has been the life of the

author and seven years after his death, or forty-two years from first publication, whichever the longer. The copyright in other articles has varied according to specific laws. The Copyright Commission of 1876 proposed, for all copyright articles as well as books, a term of life and thirty years after the author's death, according to the German precedent, or in case of anonymous and posthumous books and encyclopædias, thirty years from the date of deposit in the British Museum, an anonymous author to have the right during the thirty years to obtain the full term by publishing an edition with his name. The English law contained a specific provision that in the case of articles in periodicals (but not in an encyclopædia) the right to publish in separate form should revert to an author after twenty-eight years; the Commission proposed a term of three years, during which time also the author as well as the general owner may bring suit against piracy. The English committee appointed to make recommendations in respect to the adoption of the Berlin provisions of 1908 through domestic legislation, however, reported strongly in favor of a general term of life and fifty years; and this term has been adopted in the new code.

The new British code

This general term of "the life of the author and a period of fifty years after his death" holds "unless previously determined by first publication elsewhere." In joint authorship, copyright shall subsist during the life of the author who first dies and fifty years after or during the life of the author who dies last,

whichever the longer. In posthumous works, copyright subsists for fifty years from first publication or performance, whichever the earlier. Anonymous and pseudonymous, and corporate works are not named in the act, and the term is presumably fifty years, unless in the former cases identity is disclosed. For photographs and mechanical music reproductions as such, the term is fifty years from the making of the original negative or the original plate. Existing copyrights are extended through the new period; but for the extended term the rights revert to the author, though an assignee may require continuance of the assignment or continue to publish on royalties, as determined by agreement or arbitration. Assignments, except for parts of collective works, terminate in twenty-five years, when rights revert to the heirs.

Perpetual copyright

The Crown has held an exclusive and perpetual right to license the printing of the Bible, Book of Common Prayer, ordnance surveys, and possibly the Acts of Parliament; and specified universities and colleges were assured perpetual copyright in works given or bequeathed to them unless given for a limited term, but the right lapsed into the usual copyright term unless the work were printed on their own presses and for their own benefit. Under the new code, "without prejudice to any rights or privileges of the Crown," any work prepared or published for His Majesty or any Government department has copyright for fifty years from first publication – the effect of which provision on Crown perpetual copyrights is not clearly evident.

A saving clause protects the universities "in any right they already possess," inferentially limiting their future copyrights to the statutory term. After the death of the author of a literary, dramatic or musical work, on complaint of the withholding of the work from publication or performance, the Judicial Committee of the Privy Council may require the owner to grant a license to reproduce or perform the work in public under conditions determined by the Committee. After twenty-five years, or in the case of existing copyrights thirty years from the author's death, the work may be reproduced by any person on prescribed notice in writing of his intention and payment of ten per cent on the published price in accordance with regulations by the Board of Trade.

Other countries
International standard term

Perpetual copyright is granted by the laws of other countries, Mexico, Guatemala, Nicaragua and Venezuela, while in Montenegro, Egypt, Liberia, Honduras, the Dominican Republic, Paraguay and Uruguay, which give copyright protection without specific legislation under a crude civil or common law enforced by the courts, the term is indefinite. A copyright term extending eighty years beyond the death of the author is granted by Spain, Cuba, Colombia and Panama. The French precedent of fifty years after the author's death was followed by Belgium, Russia and the Scandinavian countries, Hungary, Portugal and some others, and was adopted by the

Berlin convention as the international standard term; the German precedent of thirty years beyond death was followed by Austria, Switzerland and Japan, while the British precedent of seven years beyond death or forty-two years from publication, whichever the longer, was followed in many of the English colonies and in Siam. Italy has a curious term of life or at least forty years after publication, with a second period of forty years during which, though the exclusive rights lapse, the author enjoys a royalty of five per cent on publication price. Haiti has the curious term of the life of the author and twenty additional years for widow or children, or ten years for other heirs. In Holland fifty years or life, in Brazil fifty years from the preceding January 1st, and in Greece fifteen years are specified.

Special categories

In many countries there are special terms for special categories of works, as for anonymous, pseudonymous, and corporate works, translations, photographs and telegraphic dispatches – the latter for a stated number of hours.

IX
FORMALITIES OF COPYRIGHT: PUBLICATION, NOTICE, REGISTRATION AND DEPOSIT

General principles

Copyright may inhere as a natural right, as under English common law before the statute of Anne, without record or formalities, but also without statutory protection; or formalities may be required only as a prerequisite to protection by actions at law; or formalities may be required to validate and secure the copyright. English formalities belong to the second class. American formalities are of the third class, and without them copyright does not exist.

Previous American requirements

The American copyright law of 1909 prescribes exactly the method of securing copyright, and makes clear the cases in which non-compliance invalidates copyright. Previous to 1909 copyright was secured by complying exactly with the statutory requirements of (1) the delivery to the Librarian of Congress on or before the day of publication, in this or any foreign country, of a printed (including typewritten) copy of title or description of the work, (2) the insertion in every copy published of the

prescribed copyright notice, and (3) the deposit not later (under the law of 1891) than such day of publication (earlier law allowing ten days after publication) of two copies of the best edition of a book or other article, or a photograph of a work of art (as to date of deposit of which last the law was not explicit); and any failure to comply literally and exactly with these conditions forfeited the copyright.

Present American basis

The American code of 1909 substitutes an entirely different basis for securing copyright. Copyright now depends upon (1) publication with the notice of copyright, and (2) deposit of copies, these copies in the case of books and certain other works to be manufactured within the United States. The accidental omission of the copyright notice from "a particular copy or copies" does not invalidate the copyright though it may relieve an innocent trespasser from penalty as an infringer; but failure to deposit within a specified time, or false report as to manufacture, makes the copyright not valid.

Provisions of 1909

The general provisions as to formalities are as follows (sec. 9): "That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case

of books seeking *ad interim* protection under section twenty-one of this Act"; and (sec. 10): "That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the Register of Copyrights shall issue to him the certificate provided for in section fifty-five of this Act."

Publication

The definition in the act (sec. 62) of "the date of publication" as "the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority" defines publication, and the clause (sec. 9) requiring the copyright notice to be affixed to each copy "published or offered for sale in the United States by authority of the copyright proprietor" confirms the principle that the copyright proprietor cannot be held responsible, nor can copyright be voided because of copies "published," offered, sold or distributed without his authority. The Copyright Office Rules and Regulations (23) add to the definition of publication the parenthetical explanation: "(*i. e.*, so that all persons who desire copies may obtain them without restriction or condition other than that imposed by the copyright law)." It is questionable, however, whether this explanation does not go beyond the letter of the law. In Stern *v.* Remick, in 1910, the U. S. Circuit Court protected the copyright of a song, though only one copy had been offered for sale and sold. Advance distribution to the trade or of review copies would not constitute publication. While the

law does not prescribe first publication in this country, it is at least doubtful whether a book published in another country prior to publication here, unless protected by international copyright relations, has not fallen into the public domain and thus forfeited copyright protection here.

Copyright notice

The first step in securing copyright, being publication "with the notice of copyright" "affixed to each copy published or offered for sale in the United States by authority of the copyright proprietor," the method and form of this notice is of first importance. The act of 1909 provides (sec. 18): "That the notice of copyright required by section nine of this Act shall consist either of the word 'Copyright' or the abbreviation 'Copr.,' accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms

prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four."

Previous statutory form

Under the law of 1874, the prescribed notice was in the old form (Rev. Stat. 4962), "Entered according to Act of Congress, in the year ____, by A. B., in the office of the Librarian of Congress, at Washington," with the optional alternative of the form "Copyright, 18__, by A. B." Under the new code the latter form is preserved, with the alternative of the provision "Copr.," with date and name, but the longer form may be used on books copyrighted under the earlier acts, even if reprinted after the passage of the later act. Except for books previously copyrighted, the longer form is not now the legal notice, and its use would be dangerous, as it does not contain the specific word copyright, or its abbreviation, now made an obligatory part of the notice. While in Osgood v. Aloe in 1897, the omission of the name from the notice, though on the title-page, and in Record & Guide Co. *v.* Bromley in 1910, the omission of the date, though indicated by the date of the periodical in the line below, were held to void the copyright, such addition as the words "published by" has been held, as in Hills v. Hoover in 1905, a mere superfluity not voiding copyright.

Exact phraseology required

The exact phraseology and order of words must be followed, and it has been held that any inaccuracy in the name of the

copyright proprietor, as in the English case of Low *v.* Routledge, by Vice-Chancellor Kindersley, in 1864, or in the date of the entry, as in the American case of Baker *v.* Taylor in 1848, when 1847 was put for 1846, makes the copyright invalid.

Name

The name in the copyright notice (C. O. Rule 24) must be the real name of a living person or of a firm or corporate body or the trade name in actual use, and may not be a pseudonym or pen-name or other make-believe. A copyright notice should not be in the name of one person for the benefit of another; the beneficiary's name should be the one printed. A publisher may take out a copyright for an author, however, in which case the publisher's name and not the author's name will be given, unless the publisher makes application as the agent of the author-claimant. The name in the copyright notice must correspond fully with the real name as given in the application, but an objection that N. Sarony instead of Napoleon Sarony was not the real name, was quashed in 1884, in Burrow-Giles Lith. Co. *v.* Sarony, by the U. S. Supreme Court.

Date

The date of copyright notice, being that of publication, should correspond with the imprint date on the original edition; but on later printings or editions, where the date of imprint is changed, the copyright notice would of course show the earlier date of the original edition. Thus a book first published in 1911 could

not bear copyright notice of 1910 date, which would mean that copyright was registered before instead of after publication, which is not possible under the new law; nor should an edition of 1910 bear copyright notice of 1911, as the application and notice should state the actual year of publication; and the date of 1911 in imprint where the copyright notice is of 1910, would be correct only on a later edition, as above stated. A book may be printed, however, in a certain year and not published till a later year, in which case the copyright notice would be of later date than the imprint date; thus the Copyright Office registered in 1910, under the new law, a copyright on a work with the imprint of 1904, on assurance that though printed in 1904, the work was not actually published until 1910. Under the old law, where, as stated above, a copyright notice later than the actual copyright was disallowed as claiming protection beyond the copyright term, a later decision, in 1888, in Callaghan *v.* Myers, held, that where a copyright notice gave the year 1866, while the true date was 1867, there was no harm done to the public, because a year of the copyright, which really ended in 1895 instead of 1894, was given to the public, whereas in the previous case an additional year was claimed. Doubt was thrown upon this decision by Judge Wallace in Schumacher *v.* Wogram, also in 1888. In Snow *v.* Mast in 1895, the substitution for 1894 of the abbreviated '94, and in Stern *v.* Remick in 1910, the use of words or Roman numerals for Arabic, were upheld.

Accidental omission

An important safeguard, new in copyright law, is enacted in the provision (sec. 20): "That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct."

Place of notice

It is further provided (sec. 19): "That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided*, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice."

Although the code of 1909 relieves the copyright proprietor from permanent forfeiture in the case of an accidental omission of the copyright notice from certain copies (sec. 20), the statute

is otherwise specific, and there seems to be no means of relief where the copyright notice is, however innocently, in the wrong place or in the wrong form. Thus in 1909, in Freeman *v.* Trade Register, the U. S. Circuit Court held that where the copyright notice of a periodical appeared on the editorial page, which was not the first page of text, the copyright was voided. The copyright notice can probably, however, be placed safely and preferably on the first page, being the title-page, of a specially copyrighted part of a book, as an introduction preceding a non-copyright work or an index or appended notes, or upon specific illustrations; and this is perhaps preferable in copyrighting editions with such features of works otherwise in the public domain. In the case of articles in a periodical or parts of a composite work separately copyrighted or registered, the copyright notice should appear on the same page as the title heading.

One notice sufficient

The proviso (sec. 19) that one notice of copyright in each volume or in each number of a periodical shall suffice is complementary to the provision (sec. 3) by which a copyright protects all the copyrightable component parts of the work copyrighted, and gives to the proprietor of a composite work or periodical all the rights he would have if each part were individually copyrighted. It means that there need be no repetition of the general copyright notice on different portions of a book or periodical. In West Pub. Co. *v.* Thompson Co., under the old law, Judge Ward, in the U. S. Circuit Court

of Appeals in 1910, overruled the defense that the copyright was not valid because the copyright notice did not repeat the several copyright notices originally protecting the several parts of the compilation; and this view, that the general copyright notice protects all copyrighted and copyrightable parts, is now specifically embodied in the statute.

Separate volumes
Different dates

The proviso (sec. 61) "that only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time" indicates that one copyright entry suffices for several volumes simultaneously published, but each separate volume should contain the notice. Volumes published separately, not only in successive years but at successive dates within the year, should be separately registered, and if published separately in successive years, must each bear its copyright notice for the year of publication – this being the direct sequence from the provision that copyright runs from the specific date of publication and not from the year or date of registration. The Copyright Office will, however, under the law, register for one fee volumes or parts deposited at the same time, though published at various times. In the case of a book issued in successive parts, of which only the first part includes a title-page or title headings, the law is not specific; but it seems probable that, in default of copyright notice and registration for each part, the parts not bearing copyright notice might be legally reprinted,

and that the safer course is to place the copyright notice on the first page of each part and register each part separately, in which case the completed work should have the date or dates of the year or years within which the several parts were published. There seem to be no objections, within the law or from court decisions, to coupling two dates in the same notice, in such cases as "Copyright, 1910, 1911, by A. B.," though there is no specific decision on this point. Under the previous law a book published in more than one volume or part, the portions not complete in themselves, was probably protected by copyright entry of the first part, all parts being of course ultimately deposited; but the change in the new code basing copyright on publication with notice, seems to change this rule of practice. In the case of Dwight *v.* Appleton, in 1840, it was held that as the statute did not expressly prescribe that the copyright notice should appear in successive volumes after the first, this was not necessary; but the application of this doubtful decision under the new code would be more than questionable.

Notice part of initial step

It may be emphasized that publication with notice is the first step in copyright under the new code, and that registration on deposit is the secondary and completing act, and therefore that no registry in the Copyright Office is necessary to authorize the printing of the copyright notice, as was formerly the case.

Extraterritorial notice

The requirement (sec. 9) that the notice of copyright "shall be affixed to each copy published or offered for sale in the United States by authority of the copyright proprietor" makes clear what was a subject of dispute under the old law. The courts, however, generally held that extraterritorial notice of copyright, *i. e.* on foreign editions, was impracticable and unnecessary; and this view is specifically adopted in the new code. In 1905, in Harper *v.* Donohue, it was held by Judge Sanborn, in the U. S. Circuit Court, that the omission of the American copyright notice from an English edition could not vitiate copyright here, especially in view of the prohibition in the law of the importation of foreign-made copies of copyright works. In 1908, in Merriam *v.* United Dictionary Co., it was held by the U. S. Supreme Court, through Justice Holmes, that even where the omission of the notice on a foreign-made edition was with the assent of the American copyright proprietor, there was no waiver of copyright in this country.

Successive editions

In the case of successive printings or editions of a copyrighted book, the original copyright entry must appear in every reprint of the first edition; and it would seem that this entry should also appear in every new edition newly copyrighted, as well as the new notice, so long as it is desired to protect the matter contained in the old edition. Judge Clifford, in the U. S. Circuit Court, in Lawrence *v.* Dana, in 1869, ruled this to be superfluous; but his decision is contrary to the rule that a proprietor may not claim

through the copyright notice a longer term than the law permits, since a later date, referring only to new matter, but apparently comprehensive of the whole contents, might be voided under this rule. It is doubtful whether on a new edition with old and new matter one copyright notice with two dates is safe, and the wiser course is to give both the earlier copyright notice and the later notice in proper sequence. In the case of new printings of works published and copyrighted prior to July 1, 1909, no new notice or application is required unless there is added material to be additionally protected and constituting to that extent a new work, in which case a new application and the deposit of two copies is necessary.

False copyright notice

Provision is specifically made against false notice of copyright by the enactment (sec. 29): "That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a

fine of one hundred dollars," and the importation of any article bearing a notice of copyright when no American copyright exists is absolutely prohibited (sec. 30).

Ad interim protection

It should be noted that the copyright notice is not required on books published abroad in the English language before publication in this country, entered for *ad interim* copyright, and therefore that within sixty days after the publication abroad of a book in the English language, such book may be protected by American registration, though containing no notice of copyright; and within this period inquiry at the Copyright Office is necessary to determine the status of the book.

Substitution of name

It is provided (sec. 46): "That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act." This applies only where the entire copyright has been assigned and the assignment duly recorded in the Copyright Office as provided by law, and does not permit a change of name in the copyright notice under any other circumstances, as partial assignment. Substitution without authority of law voids copyright, as was held in Record & Guide Co. *v.* Bromley in 1910, where another trade name of the copyright claimant was substituted for the original trade name.

Registration

The method of registration, or rather of application therefor, is not specified in the law, for the reason that under the code of 1909 deposit succeeding publication is made the act completing the securing of copyright, and registration is incidental thereto instead of the first requisite. Under the old law it was decided in the U. S. Circuit Court through Judge Colt, in Gottsberger *v.* Estes, that publication before deposit of copies voided the copyright.

Rules and regulations

The act provides (sec. 53): "That, subject to the approval of the Librarian of Congress, the Register of Copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act," and (sec. 54) "whenever deposit has been made in the Copyright Office of a copy of any work under the provisions of this Act, he shall make entry thereof."

Application

It is provided (sec. 5): "That the application for registration shall specify to which of the [stated] classes the work in which copyright is claimed belongs," but it is also provided "nor shall any error in classification invalidate or impair the copyright protection." In Green *v.* Luby, in 1909, the U. S. Circuit Court protected a vaudeville sketch, though classified as a dramatic instead of a dramatico-musical copyright, against infringement

by a mimic performance.

Certificate

It is further provided (sec. 55): "That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the Copyright Office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen of this Act, the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The Register of Copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the Copyright Office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any court as *prima facie* evidence of the facts stated therein. In addition to such certificate the Register of Copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration."

Application requirements

The application is in general in simple form, and care should be taken in filling out the card that the space at the top intended

for use by the Copyright Office should be left blank. The application must be signed with the name and address of the copyright claimant, who may be the author or his representative, as where his publisher is taking out the copyright. In the case of works made for hire, the employer may make application as author. The name of the author should be given on the line provided for that purpose, even though the name of the author as claimant is also given above; but in the case of anonymous or pseudonymous works, the name of the author is not required. The title should be given exactly as on the title-page of the book or on the work, and the other particulars called for in the application should be exactly as indicated by the work itself. The day of publication must be exactly stated, and the application cannot be made, therefore, until *after* publication. Provision is also made on the card for the name and address of the person to whom the certificate of registration is to be sent and of the remitter of the fee, and in the case of books, the application must be accompanied by the affidavit made either on the reverse of the application card or on the separate card also provided. In applications, as for foreign or *ad interim* copyright, where the nationality of the author should be stated, information as to citizenship, not race, is required. A person naturalized in the United States is defined as an American. A foreign author claiming copyright because of residence, must state that he is a "permanent resident" of the United States (C. O. Rule 29).

Illustrations

The illustrations of a book may be separately registered, and if by lithographic or photo-engraving process must also have affidavit of manufacture in this country.

Maps and charts are classed with works of art, and the formalities in respect to these, as well as in respect to dramatic and musical compositions, are treated specifically in the chapters on those specific subjects.

Periodicals

In respect to periodicals, application should be made as for books, but no affidavit is required; separate registration is necessary for each number published, with notice of copyright, and can be made only after publication. It is not possible to register the title of the periodical in advance of publication. (C. O. Rule 36.) Two deposit copies of periodicals are required; but a contribution to a periodical separately registered requires the deposit of only one copy of the periodical. The entire copy should be sent, as a mere clipping does not comply with the statute. (C. O. Rule 37.) The date of publication of a periodical is not necessarily the printed date of issue, and the actual day of publication should be stated in the application, whether for the registration of the periodical itself or a contribution to it.

Application cards

The Copyright Office has prepared blank forms in library card shape, which are furnished applicants free of charge, for the several classes of applications mentioned in the law, the cards

being in *pink*, except as hereafter stated, lettered and numbered as follows: (A1) book by citizen or resident of the United States; (A1. New ed.) new edition of book by citizen or resident of the United States; (A1 for.) book by citizen or resident of a foreign country, but manufactured in the United States; (A2) edition printed in the United States of book originally published abroad in the English language, all these being double cards including affidavit of American manufacture – supplemented by *blue* cards providing with specific instructions, (A1) for separate affidavit of American manufacture from type set or plates made in the United States, and (A2) for lithographic or photo-engraving process within the United States; (A3) book by foreign author in foreign language; (A4) *ad interim* copyright – book published abroad in the English language; (A5) contribution to a newspaper or periodical; (B1) periodical, – for registration of single issue; (B2) periodical, – general application and deposit, supplemented by a *white* blank for depositing single subsequent issues; (C) lecture, sermon, or address prepared for oral delivery; (D1) published dramatic composition; (D2) dramatic composition not reproduced for sale; (D3) dramatico-musical composition; (E1) published musical composition; (E2) musical composition not reproduced for sale – these supplemented by a *blue* card (*U*), notice of use on mechanical instruments; (F) published map; (G) work of art (painting, drawing, or sculpture), or model or design for a work of art; (H) reproduction of a work of art; (I) drawing or plastic work of a scientific or technical

character; (J1) photograph published for sale; (J2) photograph not reproduced for sale; (K) print or pictorial illustration; (R1) renewal of copyright subsisting in any work; (R2) extension of a renewal copyright subsisting in any work. Thus an applicant for copyright on an American book should send for card (A1), on which he may enter his application and also include affidavit as to American type setting, printing, and binding; if he wishes the affidavit to be separately made he should obtain also the special *blue* card (*A*1), or if lithographic or photo-engraving is used he should obtain also the special *blue* card (*A*2). A dramatic applicant should send for card (D1) or card (D3), respectively, for the entry of a dramatic or dramatico-musical composition; or for (D2) if he desires to copyright without reproducing for sale. The applicant for a musical composition, as distinguished from a dramatico-musical work, should send for card (E1) or (E2) respectively. The art applicant should send for card (G) for an original work of art, or card (H) for a reproduction, or for a photograph card (J1) or card (J2) respectively.

Certificate cards

Similar certificate cards, also of library size, uniformly *white*, are provided for the several classes of registration, correspondingly lettered and numbered, except in a few cases where one certificate form serves for more than one class or subdivision, with the addition of a general form (Z) to cover anything unprovided for in the other certificate forms. The certificate bears on one side the uniform statement of the deposit

of two copies or one copy of the article named herein, and of registration for the first or renewal term, with the name of the claimant (printed in the case of a few of the publishers making most applications), and on the other side the specification (following the wording of the application and the deposit copy) of the title or description, date of publication, receipt of affidavit (where required), receipt of copies and entry number by class, together with the seal of the Copyright Office.

Fees

This certificate is sent without charge other than the fees directly provided for in the law (sec. 61), viz., "for the registration of any work subject to copyright, deposited under provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents… For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents." The law no longer contemplates record before publication, and it is unnecessary and undesirable to send application or money previous to sending of deposit copies. In fact, as the certificate must show date of publication, publication *cannot* be anticipated, and money sent in advance, for individual registrations, is only an embarrassment to the Copyright Office. The Office will, however, receive advance deposits from publishers of periodicals or other publishers

making frequent registrations, against which each registration will be charged. Fees should be sent by money order, or at the remitter's risk, in currency (but not in stamps). Bank drafts and certified checks are accepted in practice, though the Register of Copyrights cannot legally receive checks except at his personal risk and therefore from persons known to him as in frequent relation with the Copyright Office. Postage must be prepaid on the signed application, as there is no provision for free transmission through the mails, such as applies to deposit copies. In practice the application with remittance and the deposit copies should be simultaneously sent immediately after publication.

Deposit

The law provides that deposit copies shall be sent *promptly* after publication, and that *two complete* copies of the *best* edition then published (or one copy in case of a contribution to a periodical or for identification of a work not reproduced for sale) shall be deposited; and if a work is published with notice of copyright, and copies are not promptly deposited, the copyright is voided and the proprietor becomes subject to penalty three months (or in case of outlying possessions or foreign countries six months) after formal demand by the Register of Copyrights for deposit copies. The word "promptly" is indefinite and has been vaguely construed to mean "without unnecessary delay," but this does not mean the very day of publication (C. O. Rule 22). The status of undeposited works published with copyright notice and not formally demanded by the Register of Copyrights, is also

not defined by the law. In such case the copyright has not been perfected by the completing act, and it would be impracticable to proceed against an infringer, and the proprietor might be liable to penalty for false notice of copyright. In the event of such a case arising, through carelessness or otherwise, the courts would have to decide the question by definition of the word "promptly" and an interpretation of the implication that copyright is voided, meaning that the right to obtain copyright lapses, if the process is not completed without undue delay.

Fragment not depositable

The deposit copy must be the complete work; a fragment is not a work, and a part of a work cannot be copyrighted, especially as this would nullify the manufacturing clause, as set forth in the opinion of the Attorney-General, February 9, 1910.

Typewriting publication and deposit

A work may be published and deposited in typewriting copies, as set forth in the opinion of the Attorney-General of May 2, 1910, but this will not operate to avoid the manufacturing clause when the work is published in print.

Legal provisions

The completion of the copyright by deposit of copies is covered by the provision (sec. 12): "That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the Copyright Office or in the mail

addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with."

Voiding by failure to deposit

In case of failure to deposit, the law of 1909 provides for penalties and finally voiding of the copyright, as follows (sec. 13): "That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the Register of Copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit copies of the work within three months from any part of the United States, except an outlying territorial

possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void."

Forfeiture by false affidavit

In the case of a printed book or periodical or of a lithograph or photo-engraving, the copies deposited must be manufactured in America, as set forth in the manufacturing provision (sec. 15) as verified in the case of a book by affidavit (sec. 16) separately treated hereafter, and the book copyright is forfeited (sec. 17) in the event of false affidavit. Thus failure to deposit, and, in the case of books, false affidavit as to American manufacture, are the two lapses of formalities which work forfeiture of copyright.

Works not reproduced

In the case of works not reproduced for sale, copyright may be secured under the provision (sec. 11): "That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing. But the privilege of registration

of copyright secured hereunder shall not exempt the copyright proprietor from the deposit copies under sections twelve and thirteen of this Act where the work is later reproduced in copies for sale." The entire work should in each case be deposited (C. O. Rule 18) and not a mere outline, epitome or scenario; and the copy should be in convenient form, clean and legible, with the leaves securely fastened together, and should bear the title of the work exactly as given in the application.

Second registration

It should be noted that in this class of copyright, which is a common law copyright fortified by statutory protection, an ideal example of copyright law, double registration is required in case the unpublished copyrighted work is published, requiring one application fee and deposit of one identifying copy for the unpublished work and a second application fee and deposit of two copies promptly after publication.

Free transportation in mail

It should be noted that the deposit copies may be deposited either in the Copyright Office or "in the mail addressed to the register of copyrights," and it is provided (sec. 14): "That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant." Franking labels are not required and are no longer issued by the

Copyright Office. Deposit copies, and all mail matter, should be addressed to the "Register of Copyrights, Library of Congress, Washington, D. C.," and not to any person by name.

Loss in mail

Thus even if the deposit copies should not reach Washington, as in case they were burned in the mail, the copyright proprietor can validate his claim by production of the postmaster's receipt in lieu of deposit copies.

Foreign works

In respect to foreign works, it should be noted that "the original text of a work of foreign origin in a language or languages other than English," may be formally copyrighted and fully protected by registration under the same formalities as domestic works except that the deposit copies need not be manufactured within the United States, thus giving the author the exclusive right of translation. Copies published for use in America must of course bear the copyright notice. A translation into English from such text cannot be copyrighted unless the deposit copies of the English translation are manufactured within the United States; and this holds true also in respect to translations into a language other than English, as it is only "the original text" which can be copyrighted without American manufacture.

Ad interim deposit

In respect to books published abroad in the English language,

ad interim protection is assured by the provision (sec. 21): "That in the case of a book published abroad in the English language before publication in this country, the deposit in the Copyright Office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an *ad interim* copyright, which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of thirty days after such deposit in the Copyright Office."

Completion of ad interim copyright

On such works the provisional copyright is made permanent under the provision (sec. 22): "That whenever within the period of such *ad interim* protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section fifteen of this Act, and whenever the provisions of this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this Act."

The *ad interim* provision requires the same formalities and fee as in the case of domestic works, except that only one copy of the foreign work in English need be deposited, and that this

deposit copy need not contain the statutory notice of American copyright. The claimant is given thirty days after publication abroad in which to request reservation and a second thirty days after deposit of the foreign copy within which to publish or cause to be published an edition manufactured in America and thus to complete his copyright. This gives a period of *ad interim* protection, ranging from thirty days to sixty days, within which to obtain permanent copyright, the exact period depending upon the number of days elapsing after publication before deposit of the foreign copy in the Copyright Office. Thus a copy deposited on the day of publication will have thirty days in all within which to secure permanent copyright by the publication of the American-made edition, while a copy deposited on the thirtieth day after publication will have sixty days in all; but the failure to deposit the foreign copy within thirty days after publication, or the failure to publish an American-made edition within thirty days after such deposit, will forfeit the right to obtain copyright protection and throw the foreign work into the public domain, despite the *ad interim* registration. When an American-made edition with notice of copyright can be published in America simultaneously with its publication abroad, *ad interim* protection is of course rendered unnecessary; and such simultaneous publication is the simplest and best practice for publishers to adopt.

Omission of copyright notice

It may also be emphasized here that the notice of copyright can be omitted only from foreign-made copies and must be

included in the American-made edition. The American publisher desiring to reprint a book published abroad in the English language within sixty days after publication, without consent of the copyright proprietor, must therefore assure himself, by inquiry from the Copyright Office, whether the work has been registered *ad interim*. The printing of an American copyright notice on the foreign edition in anticipation of the publication of an American-made edition and the deposit of copies thereof within the statutory requirements is a questionable practice, as a failure to publish American-made copies in the United States, because of defective publishing arrangements or a printers' or binders' strike, would make such notice a false notice of copyright. The copyright term in the case of such foreign work in the English language dates, it would seem, from the date of publication abroad rather than from the date of publication of the American-made edition; but this would be of importance only toward the expiration of the original term and in connection with the renewal term.

Books only ad interim

Ad interim protection seems to be confined exclusively to a book as such, and therefore does not apply to articles in periodicals.

American authors not thus protected

It should be noted that an American author publishing his work abroad is not benefited by either of these provisions

respecting foreign works. The provision regarding works in other languages is specifically confined to a work of foreign origin, that is, not by an American author; and he gains nothing, if his work is in English, from *ad interim* protection. Thus an American author publishing his work first in German in Berlin, must copyright and deposit an American-made edition of his German text in this country to obtain American protection, without which his work in German could be imported into this country without his consent, and an independent translation of his text into English and its publication in America could not be prevented.

Exact conformity required in formalities

In view of the exact prescription of the method of securing copyright, unless the statute is precisely complied with the copyright is not valid. Said Judge Sawyer, in 1875, in Parkinson *v.* Laselle: "There is no possible room for construction here. The statute says no right shall attach until these acts have been performed; and the court cannot say, in the face of this express negative provision, that a right shall attach unless they are performed. Until the performance as prescribed, there is no right acquired under the statute that can be violated." And in the case of the play "Shaughraun," Boucicault *v.* Hart, in 1875, Justice Hunt held, as regards copyrights in general: "Two acts are by the statute made necessary to be performed, and we can no more take it upon ourselves to say that the latter is not an indispensable requisite to a copyright than we can say it of the former." The Supreme Court laid down this general doctrine in Wheaton *v.*

Peters, in reference to the statutes of 1790 and 1802, and the later statutes are most explicit on this point. In the same case of Wheaton *v*. Peters, Justice McLean, in delivering the judgment of the Supreme Court, held that while the right "accrues," so that it may be protected in chancery, on compliance with the first requirement of the prescribed process, it must be perfected by complying with the other requisites before a suit at law for violation of copyright can be maintained.

Expunging from registry

A false or unjustifiable entry of copyright may be expunged from the registry by court order, as was done in the English case *Re* Share Certificate Book in 1908.

British formalities

The statutory formalities of copyright in other countries vary greatly. In Great Britain copyright has been secured by first (or simultaneous) publication within the British dominions or under the "international copyright act." The law provided that a copy of the best edition of a book must be deposited in the British Museum, this giving basis for proof of publication, which deposit must be made within one month after publication if published within London, three months elsewhere in the United Kingdom, and one year in other parts of the British dominions; the failure to deposit did not forfeit copyright, but involved a fine; but under the international copyright provisions, deposit in the British Museum of a colonial or foreign work was not

required, though useful as *prima facie* evidence of publication. Four other copies of domestic books must be supplied to the universities of Oxford, Cambridge, Edinburgh and Dublin if demanded within twelve months from publication. Registration at Stationers' Hall was necessary for books only as a prerequisite to an action at law against infringement, but was obligatory in the case of paintings, drawings and photographs. Copyright notice on a book was not required except to reserve the right of representation of a dramatic work, etc., though it has been customary for English publishers to print the phrase "All rights reserved" as the equivalent to the copyright notice. But copyright notice was required to protect sculpture, engravings and musical compositions and in respect to oral lectures.

The new British code

The new British code bases copyright for all published works on first publication within "the parts of His Majesty's dominions to which this Act extends" or as provided for in colonial or international arrangements – copyright of unpublished works depending upon British citizenship or residence at the time of making. Delivery of copies to the British Museum and on demand to the other libraries is required from the publisher of every book published in the United Kingdom, but on penalty of five pounds and the value of the book and not of forfeiture of copyright. The National Library of Wales is entitled to a sixth copy, in prescribed classes of books. Registration is no longer made a condition or circumstance of copyright.

Most of the British colonies have followed the precedent of the mother country, with slight variation, in their domestic legislation. Canada and Newfoundland, following the precedent of the United States, require copyright notice in statutory form.

Other countries

France requires deposit of two copies upon publication, and registration is required prior to a suit for infringement. Germany requires the registration of the name of the author of anonymous or pseudonymous works as the condition for copyright, but otherwise grants copyright practically as natural right without requiring formalities. The greater number of copyright countries do not impose any formalities except for specific privileges as the right of translation, of representation or of reproduction in the case of periodical contributions; or for special subjects as works of art, musical compositions, telegraphic messages, where these are protected, and oral lectures. Deposit of copies is, however, generally required, either before putting the book on the market or before circulation, or upon publication, or else within a specified time after publication, ranging from ten days in the case of Greece to two years in the case of Brazil, while in several countries no specific time is mentioned. In Italy, if no deposit of a registered work is made within ten years, the copyright is considered to be abandoned. The number of copies required varies in the several countries from one to six. In some countries specific formalities are required to establish the beginning of the term of protection for collective or posthumous

works, etc., or in connection with the disclosure of the author's name on anonymous or pseudonymous works. Spain, Colombia and Panama, and Costa Rica have a curious provision that if a work is not registered within one year from publication the copyright is forfeited for ten years, at the end of which period it may be recovered by registration. Canada and Newfoundland, following the United States precedent, Australia, Holland and the Dutch colonies, and Siam require manufacture within the country. In several countries penalty for failure to deposit is provided, the limit being usually the value of a book and a sum not exceeding £5, or in France 300 francs. The deposit of a photograph or sketch of a work of art is in many countries required for purposes of identification.

International provisions

International copyright throughout the countries of the International Copyright Union and the Pan American Union, if the Berlin and Buenos Aires conventions are ratified throughout, will depend, as now it depends for most countries, entirely on the formalities in the country of origin.

X
THE AMERICAN MANUFACTURING PROVISIONS

Manufacturing provision of 1891

In the American law of 1891, embodying the "international copyright amendment" which for the first time permitted the copyright in the United States of works by foreign authors not resident in this country, the copyright of books was conditioned on the manufacture within the United States, and this condition was made applicable also to American authors.

Конец ознакомительного фрагмента.