



5-1-1939

Creating and Preserving a Copyright

Richard Spencer

Wilfred S. Stone

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Richard Spencer & Wilfred S. Stone, *Creating and Preserving a Copyright*, 14 Notre Dame L. Rev. 362 (1939).

Available at: <http://scholarship.law.nd.edu/ndlr/vol14/iss4/2>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

CREATING AND PRESERVING A COPYRIGHT*

A substantial property interest has been created by the federal copyright laws, and in view of its value, one would expect a considerable body of court decisions interpreting and developing this law. Such, however, is not the case. Despite the fact that our publishing, motion picture and radio broadcasting industries are largely dependent upon copyright for protection against pirating, there are only two or three dozen reported decisions throughout the United States a year.¹ Moreover, the concentration of book, periodical and music publishing in New York City has tended to gather into that locality the more important authors and artists, and the agencies which market their works, with the result that what copyright litigation does take place, occurs largely in and about New York City.² One can state with considerable confidence that the average general lawyer will never institute, defend or try a copyright case, and in a city such as Chicago, even the patent, trade-mark and copyright specialist will probably not have one such case during his career.³ The result is that few lawyers, if any, may be said to have acquired an experience in copyright litigation at all

*Copyright, 1939, by Richard Spencer and Wilfred S. Stone.

¹ Bulletin No. 21 of the Copyright Office covering all reported decisions in the United States on copyright from July, 1935 through December, 1937 contains twenty-six decisions handed down in 1936 and forty-three decisions handed down in 1937—an average of almost thirty-five decisions a year. Several reported decisions by the United States Patent Office and the Court of Customs and Patent Appeals are not included in these figures.

² Of the sixty-nine reported decisions mentioned in Note 3, forty-four were commenced in the State of New York, nine in Massachusetts, five in Pennsylvania, three in California, two in Maine, and one each in the District of Columbia, Rhode Island, New Jersey, New Hampshire, Montana and Oklahoma. Two-thirds of all reported copyright cases in 1936 and 1937 were commenced in or about New York City.

³ It is true that a great number of copyright actions are instituted each year throughout all parts of the country by such organizations as the American Society of Composers, Authors and Publishers. These suits are routine. The bills of complaint are generally identical and judgment against the defendant is a matter of course if certain facts are proved. Only settled problems of copyright law are put into issue and real controversies do not develop. Rarely does a defendant present an argument.

comparable to the experience which a patent lawyer acquires in patents or a real estate lawyer in mortgages.⁴

To this slight contact which the general bar and the patent bar will have with copyright litigation may be contrasted the repeated request by clients for advice pertaining to copyrights. The general practitioner encounters several requests to obtain copyright on some pamphlet, print, etc., to every request for a patent. No doubt this is partly due to the fact that the general public thinks of the patent field as a specialists' field and takes its patent problems directly to a patent lawyer, whereas copyright is not associated with the thought of a specialist and is frequently brought directly to the general practitioner. Moreover, copyright application work is frequently done by the general practitioner because of a hesitancy on his part to ask a patent lawyer to handle non-productive work. By this it is meant that copyright application work is not sought because it is rarely profitable. The copyright application comprises merely a printed form card calling for information which is readily available and can be easily supplied. The simplicity of filing an application is accordingly a strong inducement to the untutored to comply with formalities and to overlook legal problems which exist in a particular situation. Much copyright application work is handled by men, frequently in publishing houses, who have had no legal training whatsoever. Nevertheless and notwithstanding, the accuracy with which the copyright notice is prepared and the publication effected, and the strict observance of certain additional requirements surrounding the application and the deposit of copies, create either a valid or an invalid copyright, as the case may be, and a substantial portion of the few cases in the copyright law involves some question as to the validity of the copyright growing out of its registration.

⁴ Of the cases referred to in Note 3, only half a dozen lawyers participated in more than one case during the two year period, and these were in New York City. Contrast this litigation experience with that of many patent lawyers who try several patent causes in the courts and interference proceedings in the Patent Office annually.

The purpose of this article will be to present information as to what is necessary to obtain a valid copyright and to make a few suggestions relative to preserving the copyright's value after its creation. If a lawyer is able to obtain valid copyrights for his clients, he will be able to solve the only copyright problem which he is likely to encounter during his lifetime.

In order to obtain a valid copyright, one must be certain that three problems are properly handled; first, vesting title to the copyright in the proper party; second, meeting the legal requirements of the Copyright Act as administered by the Register of Copyrights or the Patent Office;⁵ and third, properly advising the client against conduct which might vitiate a valid copyright and informing him of certain matters which will enable him to realize the full value of the copyright. Vesting the copyright title in the proper party is determined partly by the Act of 1909, but primarily by the laws of contracts and personal property; meeting the formal requirements of the Copyright Act is a problem of statutory construction in the light of reported decisions, coupled with an understanding of why these requirements were imposed; and properly advising a client against certain conduct detrimental to the copyright and its value is a problem of understanding the applicable decisions and taking into consideration a few practical situations.

As it happens there is an additional topic that could advantageously be treated here, namely, what constitutes copy-

⁵ Section 3 of the Act of June 18, 1874, which according to an opinion of the Attorney General of December 22, 1909, was not repealed by the Act of 1909, charges the Commissioner of Patents with the duty of administering the copyright laws for prints and labels. This section reads:

"That in the construction of this act the words 'engraving, cut and print' shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the Copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trademark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same."

rightable subject matter. It is recognized that the boundary lines between copyrights on the one hand and trade-marks and patents on the other are not clear and that there are gaps and overlaps in the law. As a practical matter, however, what constitutes copyrightable subject matter is clear in most cases, and while the problem is important at the time of applying and therefore might well be treated in this article, it will not be, for it is a comparatively rare problem and one of sufficient intricacy and variation as to warrant a separate article in itself.⁶

Before considering any of the three problems mentioned, the attention of the reader is invited to the fact that the Library of Congress does not ordinarily pass upon the originality or scope of a copyrighted work, but merely determines whether or not certain formal requirements of the Copyright Act⁷ have been met.⁸ In order that the implications of

⁶ Section 5 of the Act of 1909 reads: "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 cyclopaedic 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;
- (l) Motion picture photoplays;
- (m) Motion pictures other than photoplays:

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.

⁷ Wherever "Copyright Act" or "Act of 1909" are used in this article, the Act referred to is the United States Copyright Law of March 4, 1909, as amended in 1912, 1919 and 1928 and which may be found conveniently in Copyright Office Bulletin No. 14.

⁸ Section 9 of the Act of 1909 reads: "That any persons entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act;" and throughout the act, the owner of the copyright is considered merely as a claimant. All that the Register of Copyrights tests is publication, the notice as required by Section 18, and the classification of the copyrightable subject matter as set forth in Section 5.

this statement may be fully appreciated, it is perhaps desirable to compare a copyright with a patent. Before a patent number can be placed on an article, the Patent Office must be convinced that the contribution is new and useful, and achieves the dignity of invention over anything that has gone before and Letters Patent must first be obtained.⁹ That is to say, before Letters Patent are granted, an applicant must convince the Patent Office that an invention has been made. The converse is true in copyrights. The copyright owner first publishes his work with the copyright notice attached and thereafter applies for a copyright. While unlikely, it would be possible for a fraudulent person to publish Henry Fielding's *Tom Jones* under the name of *Timothy Smith* and have the Library of Congress issue a copyright certificate for it, the reason for this being that the Library of Congress is neither equipped nor authorized to pass upon questions of originality. The result is that a copyright certificate represents nothing more than a recording of the author's claim to copyright coupled with an implied statement by the Library of Congress that certain formalities have been met.

1. VESTING LEGAL TITLE IN THE PROPER PARTY.

At the present time there is considerable confusion between the legal and the equitable title to a copyright, and there are many copyright decisions involving problems of misjoinder of parties plaintiff due to doubt as to who holds the legal title or of impressing on the holder of the legal title of a copyright a trust in favor of some equitable claimant.

⁹ Section 4886 of the United States Revised Statutes reads: "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor." Contrast this with Section 9 of the Copyright Act of 1909 quoted in Note 8.

The copyright law, like the patent law, is based upon the conception that the title to an artistic work first vests in its creator, the true author,¹⁰ and that the claimant of the copyright covering the particular work must establish title according to ordinary rules governing the transfer of personal property, — with one exception that an employer who hires an author or authors to create some copyrightable subject matter will be deemed in law to be the author and title will vest automatically in him.¹¹ In the patent law if an inventor is employed by a corporation to make an invention, the inventor must execute the application and the Patent Office will issue the patent to him, unless an assignment to the corporation has been recorded;¹² whereas under similar circumstances, but involving copyrightable subject matter, the corporation may apply for and obtain the copyright as the author. Thus, in the case of employment for hire, the name of the true author need not appear on the application. With this exception, the transfer of title to a copyright is similar to the transfer of title to a patent. To begin with, the assignment must be in writing.¹³ If executed in the United

¹⁰ The word "author" includes artist, composer, etc.

¹¹ Section 62 of the Copyright Act of March 4, 1909 as amended concludes, "and the word 'author' shall include an employer in the case of works made for hire."

¹² See Section 4886 quoted in Note 9 above.

¹³ The Sections of the Copyright Act of 1909 as amended, dealing with assignments are as follows:

"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.

"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. 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."

States, it must be recorded in the Library of Congress within three months to be good against a bona fide purchaser for value without notice.¹⁴ If executed abroad, the period is six months instead of three months and certain formalities of execution must be observed.

The first step in vesting legal title to a copyright in the proper party is to determine the author's name. This is a question of fact. If a client informs the attorney that he wrote the work or drew the picture on his own time, and not in the employ of another, the client is the author and when the time comes for preparing the copyright application, his name should be entered as the author. But if the client states that the work was done in the course of employment for another, as, for example, an advertising agency, publishing house, etc., it is believed that the client is not the author in the eyes of the law and has no legal relationship whatsoever to the copyright of the work.¹⁵ He has no right to apply for copyright, and he has no right in the copyrightable subject matter, nor any claim to the copyright certificate which may issue.

Having once determined the name of the author, the next question which must be determined is the name of the "proprietor" or owner. This too is a question of fact. If the author represents himself to be the proprietor or owner, there need be no written assignments. A copyright application will show the same name after "Proprietor" as appears after "Author."¹⁶ But where the author and the proprietor are not the

¹⁴ A discussion of assignments may be found in *Public Ledger v. Post Printing and Publishing Co.*, 294 Fed. 430 C. C. A. 8th (1923).

¹⁵ Section 62 of the Act of 1909 concludes "... and the word 'author' shall include an employer in the case of works made for hire."

¹⁶ An application for copyright of a book requires these items of information: the name and street address of the owner, the name of the author or translator and his citizenship, if the author is an alien living in the United States his address, the title of the work, its date of first publication, the party to whom the certificate is to be mailed, and the name and address of the person sending the fee. On the back is an affidavit which must be made out by the person claiming copyright, his duly authorized agent or by a printer. See form A1 issued by the Copyright Office. The forms for each type of copyrightable subject matter are much the same, although an affidavit is only required in those cases where compliance with the printing clauses of the Act of 1909 must be met.

same person, then a chain of title from the author to the proprietor by written assignments properly recorded must be established if the rights of the parties are to be protected.

Up to this point, we have identified the author and the proprietor; explained in whom title originally vests; and indicated how it may be transmitted to others. These problems must not be confused with those concerning who may apply for copyright or to whom the Register of Copyrights may issue a certificate. These last two questions are quite separate from the matter of true title to the copyrightable subject matter, although they may result in putting title in a party who is not the true owner. Section 8 of the Act of 1909 reads: "That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the terms specified in this Act:", and according to these terms, any proprietor may apply for a copyright and the Register of Copyrights will issue the certificate directly to him provided the copyright notice on the published work shows as the proprietor the party applying.¹⁷ Expressed differently, the copyright law permits the Register of Copyrights to issue the certificate to one whose name appears as the proprietor in the copyright notice on the published work without requiring that party to establish a chain of title by written recorded assignments from the author; whereas in the patent law such assignments must be of record in order for the patent to issue to anyone other than the inventor.¹⁸ Thus, where A writes a novel and orally assigns it to B, who orally as-

¹⁷ As will appear in the second part of this article, Section 18 of the Act of 1909 requires that all notices of copyright enable a reader to learn the date of copyright and the name of the proprietor. The copyright notice does not show the name of the author unless the proprietor and author are the same person.

¹⁸ The copyright law apparently proceeds on the theory that no one would go to the expense of publishing a book if he did not have the right to do so. As the law wishes to encourage commercial exploiters of copyrightable subject matter, such as publishers, to show copyright notices, it assumes that the publisher acts under the authority of the author and grants the certificate to him as proprietor where claimed without checking the assignment record and compels the author to adjust his rights as against the proprietor as named in the copyright notice without recourse to the Copyright Office.

signs it to C, a publishing house, and C after publication with notice showing C as the proprietor obtains a certificate of registration showing itself to be the proprietor, the legal title is in C and the Register of Copyrights is justified in issuing the certificate to C, but C's title is defective because the assignments are not in writing and they have not been recorded. Moreover, if A should now again assign, this time in writing, to D who records and three months elapse, legal title is in D, if he is a bona fide purchaser for value without notice and he can compel C to surrender the certificate.¹⁹

While this latitude in permitting any proprietor whose name appears in the copyright notice to file a copyright application and in allowing the Register of Copyrights to issue the copyright to such a party, may seem confusing, the situation is justified because of the desire of the law to prevent forfeiture of the copyright by publication with improper notice. First publication of a copyrightable work must bear a copyright notice,²⁰ and if this notice is omitted and the party responsible can be considered to be an agent of the copyright owner, the publication constitutes a dedication of the work to the public. Inasmuch as authors for the most part do not exploit their own works, they must rely on others to publish them and the responsibility of affixing a proper copyright notice of necessity rests on the commercial exploiter, such as the publisher, whose interest is frequently indifferent to or adverse to that of the author. A periodical publisher, for example, generally wants first rights to publish, and thereafter

¹⁹ There are many difficult possibilities in these cases. One is the situation cited in the text wherein C having the legal title sells it to a bona fide purchaser for value as E. As between E and D, who would prevail?

²⁰ In Note 8 above is set forth Section 9 of the Act of 1909. It will be noted that this Section says nothing about *first* publishing with the notice of copyright. The requirement of first publication is founded upon the common law rule that where one publishes copyrightable subject matter, he dedicates it to the public. This rule has not been supplanted by the United States copyright laws, and it, therefore, follows that in order to comply with Section 9 of the Act of 1909, the copyrightable subject matter must still be the exclusive property of the applicant, and hence the publication with notice must be first. It must not previously have been dedicated to the public.

is not interested in the work. This attitude on his part, prior to the present Act, developed a common situation wherein a work was published without notice of copyright, thereby giving to the periodical publisher all that he wanted and costing the author fifty-six years of protection.²¹ If a book publisher under contract with the author publishes a work without the copyright notice, the publisher is first in the field and probably can dispose of the first edition, but the author has lost everything. The law, therefore, favors a free and easy compliance with the Act of 1909 in order that publishers and other commercial exploiters of copyrightable subject matter will take the trouble to show a copyright notice though they show the wrong person as the proprietor, which does not invalidate the copyright. Once a valid copyright has been created, the law will leave it to the parties to determine ownership.

A few practical situations may serve to place the above in better perspective. A writes a novel and submits it to B publishing house which without replying publishes the work without the copyright notice. The right to copyright is not lost for B's publication was unauthorized,²² A having merely submitted the work in expectation of receiving an offer of purchase or royalty in reply. A's rights cannot be lost by the unauthorized act of another.

But now assume that B replies in a letter which merely states that B will pay a royalty of twenty-five cents a volume and will take care of the copyright, which offer A accepts. If B publishes and omits the copyright notice, all rights to copyright are lost for B has become A's agent. A may have a right of action against B. On the other hand,

²¹ The last clause of Section 19 in the Act of 1909 explicitly provides "That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice," so that in the illustration presented in the text, the author today would not lose his copyright, but the legal title would be vested in the magazine owner.

²² This is a clear inference from the first part of Section 9 of the Act of 1909 quoted above in Note 8.

suppose that B publishes with a copyright notice showing B as a proprietor, and files an application for copyright reciting A to be the author and itself, B, to be the proprietor, which is a very common practice. The correspondence between A and B cannot be construed as an assignment of the copyright to B. As between A and B, the real title therefore remains in A, as it should. But the legal title to the copyright is in B and the copyright certificate is in B's possession. And rightfully so, for the Register of Copyrights can only issue the certificate to the one named as proprietor in the copyright notice. Moreover, the Register of Copyrights will not undertake to decide an argument between two-claimants for a copyright. In practice, the copyright certificate goes to the first claimant of copyright. A second certificate will not be issued knowingly on the same subject matter and the Copyright Office will not investigate a charge of theft for the purpose of correcting a certificate already issued, although it might for the purpose of avoiding the issuance of any more certificates to a fraudulent or mistaken applicant. In short, the first claimant has the legal title to the copyright, which in the instant case is the B publishing house. All that A can do is to obtain an assignment from B, and that is a very poor solution, for B can usually find some ground for refusing to convey voluntarily, and A's only remaining remedy is to sue in equity and seek to have B held a constructive trustee for A. In the meantime, B may go into bankruptcy.

Assume now that A believes that he can best exploit his work by having a magazine first publish it serially and thereafter have it published in book form. The evil results of improperly handling the title now become very serious. A submits the work to C magazine which agrees to publish serially with notice of copyright. The parties are mutually agreed that the title remains in A. The work is published. No notice of copyright appears under the title of the work, but a notice does appear in the spot required by law for pe-

riodicals, and in this notice C is named the proprietor. The work appears in six issues of the magazine. C copyrights its magazine. While the work is appearing in magazine form, A submits it to B book publisher who consults an attorney relative to what must be done to obtain the right to publish the book. The attorney properly finds that the legal title to the copyright is vested in the C magazine and is evidenced by six certificates for the whole of the six issues in which the work serially appeared, and requests six assignments of the copyright identified by the six certificates and limited to the specific work, each assignment to be signed by C magazine and assented to by A as the equitable owner. Such a requirement is sufficient to block almost any sale to a publishing house. Moreover, A cannot correct the situation by now applying for copyright and submitting the copies of the magazine as a first publication, for the work has been validly copyrighted upon the applications of the C magazine and two copyrights cannot validly issue upon the same work. All A can do is obtain the six assignments from C magazine, and sue if C refuses to convey.²³

Attention is additionally invited to the fact that when a title is vested in the wrong party or a copyright is evidenced by several rather than one certificate, the marketability of the work is seriously impaired and the impairment continues throughout the life of the copyright and creates further difficulties at the time of renewal. Copyright may be regarded as a bundle of rights which may be successively exploited. Consider the many ways in which a book may be exploited: magazine serial rights, limited edition book publication rights, general book publication rights for a limited period of years at a preferred price, cheap publication rights, translation rights, rights to publish in foreign countries in the same

²³ A's right to obtain an assignment is not clear under the circumstances. See these two conflicting decisions, *F. Kay Kaplan v. Fox Film Corporation*, 33 U. S. P. Q. 469 D. C. S. D. N. Y. (1937) and *William Douglas v. Elizabeth William Cunningham and Post Publishing Company*, 33 U. S. P. Q. 4709 D. C. Mass., (1933).

language as the original, rights to convert into a play, stage rights, motion picture rights, right to adapt for mechanical reproductions, radio rights. There are others. One who has turned out a single very successful book and kept title clearly in himself may have a living for himself and his children for fifty-six years. There are many authors who have first realized on their magazine serial rights, then on their book rights in the United States, sold to separate publishers their rights in divisions of the British Empire, sold their translation rights to a publishing house in each foreign country, and realized on drama, motion picture, mechanical reproduction and radio rights in every country in the world' granting protection in this field. But the title must be vested in the same one person, preferably evidenced by one certificate, and where there are assignments, they should be in writing and recorded.

With the above situations in mind and with the law in the condition mentioned, this portion of the article will be concluded with a few apt suggestions. In the case where the author will exploit his own work, that is print and publish it himself, he should be advised exactly as to the copyright notice requirements,²⁴ and then after publication he should apply for copyright himself, showing himself to be the proprietor. The same rules apply where one hires another to do the printing and return the printed material to the author without publication having occurred.

Where, however, the author relies upon some other person to do the printing and publishing, the author should proceed by a contract in writing. As a matter of practice, most publishing houses reply to a submitted work in one of two ways: if the work is not acceptable, it is returned; if acceptable, a contract is submitted. The terms of this contract should clearly dispose of certain things. If the publishing house is going to buy the work outright, the contract should

²⁴ These requirements are set forth in the second part of this article.

be a sale and the time for the publishing house paying the consideration should be stated and the amount should be fixed. Payment of a lump sum rather than royalties should be provided for. If the publishing house is not buying the book, the publishing house should be identified as a "licensee" and the specific right granted, as, for example, the right to publish in book form, should be recited. In all such contracts, the publishing house should covenant to show the copyright notice with the author as the proprietor, thus, "Copyright 1939 by A." This undertaking must be a promise for which damages will follow in the event of breach by the publishing house. Finally, the contract should state that the application for copyright will be made by the author and that the publishing house will promptly furnish the necessary copies for deposit with the Register of Copyrights.²⁵ Very frequently the form contracts submitted by magazines and publishers call for the publishing house applying for the copyright, and while this procedure is more likely to result in a prompt application drawn by a party accustomed to file such applications, it very frequently results in the copyright notice bearing the publisher's name as the proprietor in which event the application in order to conform to the notice shows the publisher as the proprietor and the certificate so issues. This places the legal title in the wrong party and should be avoided.

In the case of works first published in magazines, the best procedure is for practical reasons a difficult one. Attention should be called to the copyright notice at the head of this article and to the copyright notice on the first page of this magazine. The latter notice protects all material in the magazine not otherwise copyrighted,²⁶ and normally the publisher of a magazine will apply for copyright immediately

²⁵ Enumeration of certain essentials in the contract between the author and the publisher in the text is not to be construed as a complete enumeration for there are many requirements in those contracts which are important, and if the author considers his work valuable, he should consult a lawyer before he signs.

²⁶ See Note 21 above.

on publication. But the copyright will not prevent the authors from thereafter obtaining copyright on this article which has a specific notice showing title to be in them. The practical advantage of this procedure is great. The law journal has received all of the protection that it desires and it will not be called upon to execute assignments to the authors of a portion of its certificate as it would have to do if the specific copyright notice on this article were omitted. The authors have the legal title to what is theirs and need not worry about their rights being retained. Practical difficulties in this preferred procedure are recognized. Most fiction magazines are not accustomed to show such notices, but they can be compelled to adopt good practices just as the authors of recent years have compelled book publishers to take title to the copyright in the author's name instead of the publisher's and to show a copyright notice showing title in the author.

In the case of lectures, dramatic, musical or dramatico-musical compositions, a motion-picture photoplay, a motion picture other than photoplay, photographs of a work of art, or of a plastic work or drawing where the author does not intend to publish the work himself, but expects to rely upon others to publish and take care of the problem of notice, it is recommended that advantage be taken of the privilege of obtaining the copyright protection provided in Section 11 of the Act of 1909²⁷ in advance of approaching parties for commercial exploitation of the work. Having once obtained

²⁷ Section 11 reads as follows: "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, musical, or dramatico-musical composition; of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay; of a photographic print if the work be a photograph; of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay; or 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 of copies, under sections twelve and thirteen of this Act, where the work is later reproduced in copies for sale."

a valid copyright, even in unpublished form, a subsequent copyright will not be valid except insofar as new material is added. By this arrangement the author is as completely protected as possible.

2. COMPLYING WITH STATUTORY REQUIREMENTS OF NOTICE AND DEPOSIT OF COPIES.

The statutory conditions precedent to obtaining a valid copyright are two in number.²⁸ The copyrightable subject matter must be published for the first time with a proper notice of copyright, and, promptly thereafter, two copies of the work must be deposited with the Register of Copyrights.²⁹ An application in the form required by the Register of Copyrights should be filed at the time the two copies are deposited. The preceding three statements may be criticized as a statement of the law applicable in situations where there has been ignorance or carelessness in creating a valid copyright, as was the situation in the *Washingtonian* case cited in note 28. This article, however, is devoted to avoiding such

²⁸ Sections 9, 10 and portions of 12 of the Act of 1909 are:

"9—That any persons entitled thereby 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..

"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.

"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."

²⁹ A strict interpretation of Sections 9 and 12 would indicate that copyright is perfected merely by publishing with a proper copyright notice and that depositing two copies in the Copyright Office is merely a prerequisite to obtaining certain benefits conferred by the Act. This view seems to be confirmed by the United States Supreme Court in its recent opinion, *The Washingtonian Publishing Company, Inc. v. Pearson, et al* — 40 U. S. P. Q. 190 (1939). The filing of an application secures registration only and does not appear to be mandatory, but an application acted upon by the Copyright Office has great evidentiary value and should be filed.

situations by advising compliance with any requirement in the Copyright Act which might be construed as a condition precedent to obtaining a valid copyright, for the requirements are not difficult: (1) publish the work for the first time with a proper copyright notice; (2) obtain the proper application form from the Copyright Office;³⁰ (3) fill in the form and file it with the requisite copies and one or two dollar fee as the case may be in the Copyright Office.³¹

These requirements presumably exist for the purpose of warning another person that the subject matter has been copyrighted and enabling that other person to locate in the office of the Register of Copyrights the registration of copyright. As will be recalled, a copyright certificate is evidence only of the claim to copyright and in order for another person to know what may or may not be copied, he should be able to learn exactly what the copyright owner claims. Such being the case, it is evident that the indices of copyrights are of prime importance. A short description of these indices may be found in the notes.³²

³⁰ In the case of prints and labels which are administered by the Patent Office, application forms are not available although they appear in a pamphlet which will be supplied upon request.

³¹ There are some factors which will invalidate a copyright such as printing the work outside of the United States or improperly handling foreign books. These are rare and intricate and will not be here considered.

³² The Register of Copyrights publishes an index in four parts which shows all copyrighted subject matter. While each part is issued from time to time, that is, Part One, Group One on Books appears in pamphlet form every three or four days, and Part Four appears in pamphlet form not oftener than once a month, at the end of the year all work copyrighted during the year are placed in these four parts of which Part One is divided into three groups.

The parts are as follows:

Part 1, Group 1, Books;

Group 2, Pamphlets, Leaflets, Lectures, Sermons, Addresses for Oral Delivery and Maps;

Group 3, Dramatic Compositions and Motion Pictures.

Part 2, Periodicals.

Part 3, Musical Compositions.

Part 4, Works of Art, Models or Designs for Works of Art, Reproductions of Works of Art, Drawings or Plastic Works of a Scientific or Technical Character, Photographs, Prints and Pictorial Illustrations.

By checking the specific subjects after each one of the above with the subsections of Section 5 of the Copyright Act, one will find that the entire subject matter of Section 5 is covered in the above indices. Moreover, each part is bound

With the above in mind, the first step in obtaining a valid copyright is to anticipate and carefully provide for the first publication of a work. The law is clear that where a first publication by the authority of the author has been without the copyright notice being affixed, there is a dedication of the work to the public, and a valid copyright cannot be obtained.³³ A lawyer is fortunate when advised by a client that the work is still in manuscript form and that no publication has occurred. All too frequently, however, the client comes to the office after having published the work or at a point practically too late to forestall publication. More specifically, the client may come in with a trade catalogue bearing no copyright notice which he has already mailed out to customers. In such a case, the work has been dedicated to the public and no valid copyright may be obtained. On the other hand, if the client still has possession of the catalogues, he must be advised to put the copyright notice in the proper place on every copy by printing or even by a rubber stamp.

in a single volume with the exception of Part One wherein each group is bound in a separate volume. Thus, all copyrighted subject matter is indexed in six bound volumes for each year.

The indices are very readily understood and carefully prepared. In each instance, the principal index is arranged alphabetically according to the author's name and shows the proprietor's name, the title of the work, the date of publication and the date of filing. After each entry in the principal index is a key number. After the principal index there is generally a cross index in which may be found proprietor's names alphabetically arranged, and some times very helpful means for locating a work such as by its title. After each entry of the secondary index, there is entered the key number of the principal index. The indices do not show the same things, but they are well adapted to locate a copyrighted work of the particular nature sought, as for example, the secondary index of Part One, Group 2, shows the titles to maps which greatly facilitates a search for the owner or the author of the copyrighted map. Whenever trouble arises over a copyrighted subject, the existence of these indices should not be forgotten for they provide a key which will enable one to check into the original claim of copyright and lead on into earlier editions of the work which may disclose something of great value.

³³ Section 9 reads ". . . and such notice shall be affixed to each copy . . ." *Homes v. Hurst*, 174 U. S. 82 (1899) and *Mifflin v. White Co.* 190 U. S. 260 (1903) hold omission of the copyright notice under Copyright Act of 1831 fatal; and *Korzybski v. Underwood & Underwood*, 36 Fed. 2nd 727, C. C. A. 2nd (1929) so holds under Copyright Act of 1909. The last case holds that a patent application bearing no copyright notice is published when forwarded to the Patent Office and the Act constitutes a dedication to the public so far as copyright protection is concerned. See also note 20 above.

The distinction between the two cases is simply that in the first instance, publication had occurred before the client entered the lawyer's office, whereas, in the second, publication had not occurred. Section 62 of the Act of 1909 defines 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, . . ."

There are situations in which first publication without proper notice of copyright being attached will not invalidate a copyright or where the first publication is not one in the eyes of the law. When a client discloses a publication without proper notice of copyright which is covered by one of these situations, the right to copyright is not lost. One such instance is derived from Section 62 of the Act of 1909 which contains the words ". . . by the proprietor . . . or under his authority. . . ." Where a first publication without notice of copyright is made by one who does not have the owner's authorization to publish, it is, of course, not binding upon the owner.³⁴ For example, where one submits an article to a periodical publisher, the contributor is entitled to expect the publisher to submit a contract relative to publication and determination of the rights of the two parties before the work is published. If, however, the work appears in the periodical before such a contract has been consummated and for some reason proper notice is omitted, the copyright is not lost.

A second instance where apparent publication does not vitiate the right to copyright arises from the word "copies" in Section 62. The word "copies" implies a physical embodiment such as a book or statuette and does not include an oral reading. It has long been the law that a public performance of a dramatic or musical work, does not constitute

³⁴ This statement must be true although cases squarely making the statement are not found. *Wilkes Barre Record Co. v. Standard Advertising Co.* 63 Fed. 2nd 99 C. C. A. 3rd (1933).

a publication.³⁵ Moreover, it has been held that where an author of a dramatic work distributes several copies among the members of the cast of actors for presentation of the work on the stage, these copies need not bear a notice of copyright.³⁶

Also, it has been held that one may send samples of a work not carrying a copyright notice to a limited number of persons for some special purpose without losing the right of copyright.³⁷ Posters without copyright notice attached announcing a copyrighted work in advance of publication do not constitute a publication.³⁸

Where the act of the client does not constitute a public sale or offer to sell or a public distribution, there has been no publication and the attorney should proceed by effecting a proper publication with notice of copyright.

What constitutes a proper notice of copyright is determined by Section 18 of the Act of 1909, which divides copyrightable subject matter into two classes.³⁹ First, printed

³⁵ *McCarthy & Fischer, Inc. v. White*, et al D. C. S. D. N. Y. (1919) 259 Fed. 364; *Brown v. Ferris* 204 N. Y. Sup. 190 (1924).

³⁶ *McCarthy & Fischer, Inc. v. White* et al, supra.

³⁷ *Schelberg, et al v. Empringham*, 36 Fed. 2nd 991.

³⁸ In *O'Neill v. General Film Co.* 152 N. Y. Sup. 599, N. Y. Supreme—the court said on pages 360 and 361: “5. Defendant next seeks to escape by claiming that the plaintiff surrendered his rights to the public by putting out pictorial posters of many of the striking scenes in the play for advertising purposes. This is not to be regarded very seriously. A dramatic composition is a work in which the narrative is told by dialogue and action, and the characters go through a series of events which tell a connected story. It may be a pantomime, and the story is told in action, but to make it a dramatic composition, it must tell a connected story or a series of events. (*Daly v. Palmer*, 6 *Blatchf.* 256 Fed. Cas. No. 3552; *Daly v. Webster*, 56 Fed. 483, 4 C. C. A. 10). If that dramatic representation is published without statutory protection the play becomes common property. A mere advertisement — a mere pictorial inducement or invitation to witness a performance — does not tell the story of the play as the actors do. It is not the story told in action, and it is not the story told in print, therefore it is not a publication of the play or story. The construction of “a publication” under the copyright law is the same as of a publication in dealing with the common law rights in a manuscript play, and “the publication referred to in the statute” is an edition offered to the public for sale or circulation. (*Falk v. Engraving Co.*, 54 Fed. 890, 4 C. C. A. 648. See also *Werckmeister v. Springer Lithographing Co.*, C. C., 63 Fed. 808).”

³⁹ Section 18 reads: “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

literary, musical or dramatic⁴⁰ works must show the word "Copyright" or abbreviation "Copr.", together with the name of the copyright proprietor and the year of first publication. Second, works of art, models or designs for a work of art, reproductions of a work of art, drawings or plastic works of a technical or scientific character, photographs or prints or pictorial illustrations which may show a C in a circle followed by the initials, monogram, mark or symbol of the proprietor provided the proprietor's name is written out in full elsewhere on some accessible portion of the work.

The work or subject matter submitted by the client is first classified in one of the above groups and the notice is then prepared. A copyright notice is composed of four elements or less, namely, the word "Copyright" or permissible substitute, the name of the proprietor, the date of first publication and the characteristic of being a notice. Each of these qualities will be considered briefly in the order named.

The word "Copyright" or "Copr." may be used in any notice, but the C in the circle may only be used for the subject matter of the second group above. The phrase "Copyrighted by" is always permissible.

As for the date, the date is the year in which the work is first publicly sold or publicly distributed. For instance, where A orders paint catalogues from a printer who prints and delivers them to A in 1938, but A holds them in his warehouse until the spring season, the true publication date is in the spring. But the likelihood is that the printer will

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 work 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: (C), 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."

⁴⁰ Includes motion pictures.

have put the fall date in the notice. This does not void a copyright. Ante-dating a copyright notice reduces the proprietor's exclusive terms but has no effect on the copyright other than to so reduce the term.⁴¹ A copyright notice bearing a date subsequent to the true publication date voids a copyright, so that whenever there is any question as to the true date of publication, it is better to adopt a date sufficiently early so that it will be absolutely clear that there was no post dating. The date required in the copyright notice is the year only. The month and day need not and should not be mentioned.

As for the name of the proprietor, the controlling principle is that it must be sufficiently clear to enable an ordinary person to locate it in the copyright indices. The first word in the name of the proprietor is frequently the most important word. Where the company proprietor named in the copyright notice is called the Ideal Stamp and Coin Company, it is probable that a court would sustain as valid a notice carrying just the words Ideal Stamp Company for a person of average intelligence searching in the proper year and in the proper classification, would be able to find the registration. It follows, of course, that the name must be legible. However, illegibility seems to go to damages rather than to vitiate the copyright.⁴² Omission of the word "Inc." does not void the copyright.⁴³ The intentional use of the wrong name will void a copyright.⁴⁴

A requirement not specifically mentioned in the statute, but which may be inferred from the words "shall consist" in Section 18 is that the notice must be a notice. Suppose that

⁴¹ *American Code Co. Inc. v. Bensinger et al*, 287 Fed. 829, C. C. A. 2nd (1922). For applicable reasoning under the Act of 1831 see *Callaghan v. Myers*, 128 U. S. 617.

⁴² *Alfred Decker Cohn Co. v. Etcheson Hat Co. et al*, 225 Fed. 135, D. C. E. D. Va. (1915).

⁴³ *Fleischer Studios, Inc. et al v. Ralph A. Freundlich, Inc. et al*, 30 U. S. P. Q. 125 D. C. S. D. N. Y. (1936).

⁴⁴ Section 17 of the Act of 1909 specifically voids the copyright under such circumstances. See *Haas v. Leo Feist, Inc. et al* 234 Fed. 126 D. C. S. D. N. Y. (1916).

the following statement appears on the right hand corner of a map: "The X Company has spent five years and \$25,000 in making the surveys from which the above map was made. We have employed expert surveyors and we have received the assistance of skilled members of the United States Geodetic Survey. We are offering this map copyrighted by us in 1939 to the public as something that is unique and available from no one but ourselves." This is not a valid notice. Its primary purpose is not to give notice of a copyright, but to attract purchasers, and mention of the copyright is so imbedded in the paragraph that it might not be caught by one actually looking for a copyright notice. A copyright notice, therefore, must be directed solely toward the purpose of informing the public of the existence of a copyright and nothing does this like the word "Copyright" standing alone. Hence, the requirement.

If protection abroad is to be obtained, an additional item should be added to the copyright notice in order to safeguard foreign rights. The United States is not a member of the International Copyright Union which provides a quick way of obtaining copyright throughout most of the countries of the world, because our country is at the moment unwilling to comply with the free trade provisions of that Union relative to the printing of books. While the United States has copyright treaties in effect with most countries of the world, a separate application in each country must be made and this is costly and time consuming. Most countries of the world are members of the Copyright Union. One of the conditions precedent to obtaining protection under the Union is that publication in one of the member countries of the Union must take place simultaneously with or prior to the first publication any place else in the world. It is, therefore, desirable when an author intends to obtain foreign copyright to add to the American notice the words "Copyright under International Copyright Union — Printed in U. S. A." and copies of the work must be publicly sold, placed on sale or

distributed in a member country at a date prior to or on the same date as the United States publication. A printing abroad is unnecessary if the United States publication shows the above notice, for United States copies may be sent abroad, — Canada which is convenient is usually selected, — for the first publication in a Copyright Union country.

Concerning the question of the location of the copyright notice, Section 19 of the Act provides that in the case of a book or printed publication, the notice must be placed on the title page or upon the page immediately following, or in the case of a periodical, on the title page or on the first page of the text of each number, or upon a musical work upon its title page or its first page of music.⁴⁵ The notice must not be placed elsewhere. It should not be placed on the bound cover or upon the back page.⁴⁶ Nor should it be placed several places and omitted from the right place, for the place of notice has been construed as a requirement which may only be satisfied by exact compliance. One is entitled to look in the exact place, and if no notice appears, there is no obligation to search elsewhere for it. In the case of maps and other subject matter of subsections (f) through (k) of Section 5,⁴⁷ the C in the circle plus the initials, monogram, mark or symbol of the proprietor should be placed on the face of the work, but the writing out of the name of the proprietor or author may appear elsewhere, as for instance, on the margin or back or permanent base or pedestal.

The notice of copyright must be applied to all copies⁴⁸ and the only way that a copyright proprietor can escape void-

⁴⁵ Section 19 reads: "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."

⁴⁶ *United Thrift Plan, Inc. v. National Thrift Plan, Inc.*, 34 Fed. 2nd 300, D. C. E. D. N. Y. (1929).

⁴⁷ See Note 7 above.

⁴⁸ See Section 9 of the Act of 1909.

ing of the copyright where notice is omitted from one or more copies, is to show either that the omission was not the result of negligence by himself or his agents⁴⁹ or that it was a true accident or mistake on a limited number of copies only.⁵⁰ Where one copyrights a series of advertisements which are to be sold to local drug stores for use in local papers, and supplies these advertisements to the drug store in the form of matrices, each matrix must show the C in the circle and the name of the copyright owner, because the owner of the copyright made the matrices. If the copyright is illegible, no damages can be recovered, and if it is omitted, the copyright is void.⁵¹ On the other hand, where the drug store is supplied with printed advertisements having the copyright notice attached and the drug store takes it to the newspaper which omits the copyright notice, the omission of the notice having not occurred through the fault of the copyright proprietor, the copyright will not be void. Even in this case, however, there is some question about damages if an innocent party copies from the newspaper. The copyright owner has placed in the hands of a third party the means of causing an innocent party to copy.

A separate notice must be attached to each copy of the subject matter. For example, where the copyrighted subject matter is a design of Christmas holly and leaves in rectangular form, but as actually sold, the design is repeated in groups of twelve on the face of Christmas wrapping paper, one copyright notice on each sheet of paper will not suffice.⁵²

⁴⁹ See discussion above on page 28.

⁵⁰ Section 20 reads: "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."

⁵¹ *Wilkes Barre Record Co. v. Standard Advertising Co.*, supra Note 32.

⁵² *DeJonge & Co. v. Brenker & Kessler Co.*, 235 U. S. 33 (1914).

If the work has been published with the proper copyright notice attached, an application together with the requisite copies should be filed with the Register of Copyrights. The Register provides the application forms and insists upon these forms in preference to any application that a lawyer might prepare. The forms cover the various types of work set forth in the subsections of Section 5. These forms may be obtained gratuitously from the Register of Copyrights in the Library of Congress, Washington, D. C., and a request for a particular form will bring with it a bulletin making pertinent suggestions for filling in the application. The statute makes no requirement as to the time for filing the application, but explicitly states that copies shall be filed promptly. It is recommended that the deposit of copies and the filing of the application be done promptly after publication. How long one may wait and still be prompt will not be gone into at this point.⁵³ While the majority of the United States Supreme Court has held that failure to deposit copies with the Register of Copyrights does not void a copyright obtained by publication with proper notice, no legal rights appurtenant to ownership are available until after deposit has been made. Moreover, the copyright owner subjects himself to the penalties set forth in Section 13 of the Act of 1909 by failing to make the required deposit. It is accordingly recommended that the filing of the application and the deposit of copies be completed within a month or two of the first publication. If more time has elapsed before the client brings his problem to the attorney, the best that can be done is to file immediately.

3. PRESERVING THE COPYRIGHT.

When an attorney delivers a copyright certificate to a client, the latter should be impressed with a few important factors.

⁵³ This question has recently been treated by the United States Supreme Court in the *Washingtonian Publishing Company, Inc. v. Pearson et al*, 40 U. S. P. Q. 190 (1939) also mentioned in Note 29 above.

In the first place, the copyright notice must appear on every copy. If the book is revised, a new copyright notice must show the date of the original copyright as well as the date of revision.

A copyright owner should be advised that his copyright will last for twenty-eight years from the date of first publication and that during the last year of this period, the statute names certain persons who may create an entirely new or more accurately renewed copyright for a like period of time.⁵⁴ The year during which a renewal application must be filed should be determined for the client immediately. Thus, if the publication date is June 1, 1938, the renewal period commences on June 2, 1965 and expires June 1, 1966. The date June 2, 1965 should be particularly impressed upon the client for on that date the right to renew vests in whatever party, according to statute, has the right to renew

⁵⁴ Section 23 of the Copyright Act of 1909 reads: "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; PROVIDED That in the case of any posthumous work or of any periodical, cyclopaedic, 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 cyclopaedic 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."

and expires three hundred and sixty-five days thereafter.⁵⁵ If the author is an individual, he should be advised to inform his wife and children of the renewal period for under the Act the right descends to the heirs. If the owner is a corporation, it should be advised to file the date with those other matters which require action at some distant date, as for example, the expiration date of corporate charters.

Thus, the client should be fully advised of the bundle of rights enumerated herein. The author should be advised to retain the legal right to the copyright in himself, and exploit the right through license agreements. He should be advised to consult his lawyer whenever any substantial violation of the right is involved because usually the other party to a license agreement will be a commercial exploiter such as a publishing house or a motion picture company which is ably informed.

The author should undertake to exploit his rights successively if he is new and unknown. Frequently authors do not fully realize on the work that brought them prominence because they disposed of all their rights simultaneously and without being properly informed.

One last suggestion will serve merely to revive the discussion which appeared under the first part of this article, namely, the legal title and the equitable title should be maintained together, and if possible, held by one person. Many well-known plays and novels are ignored by motion picture producers because the legal title is too involved to permit the risk of a substantial investment therein. When a producer is obliged to obtain the consent of a guardian *ad litem* and a court in one state, of a conservator for an insane heir in

⁵⁵ The party in whom the right to renew will vest may change during the last year of the copyright and the time of vesting of the right is therefore important. The text suggests that the title vests upon the opening of the year. No authorities on the subject are known.

another, or of a separated but not divorced couple, the chances of reaching an agreement are few. Accordingly, the copyright should be disposed of by will to a single person or vested in a trustee with full power of exploitation.

CONCLUSION.

The authors' recommendations to their clients are few but important. The notice "Copyright, 1929, by client" should appear in the proper prescribed place on every copy published. Application for copyright should be filed promptly in the Copyright Office disclosing the client to be the proprietor. The requisite copies for deposit should likewise be forwarded promptly to the Copyright Office. If the client requests permission to employ the notation *C* in a circle, we advise that neat printing of the full notice is attractive and preferable, but allow him to use the *C* in the circle on proper subject matter if he insists. Finally, we instruct him to communicate with counsel before entering into any agreement which in any manner affects or seeks to dispose of his right or any part thereof.

Richard Spencer.

Wilfred S. Stone.

Chicago, Ill.