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# Copyright Reform: Legislation and International Copyright

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## COPYRIGHT REFORM:

### LEGISLATION AND INTERNATIONAL COPYRIGHT.

THE latest general revision of our copyright laws is the Copyright Act approved March 4, 1909, and that Act as amended by six subsequent Acts <sup>1</sup> is the copyright law in force today. During the lapse of this long period of time, some thirty years, many changes in the Act of 1909 have been necessarily proposed and a great many bills have been presented to Congress for the purpose of securing the amendments desired.

It is not worth while to list these numerous bills here; but they may, however, be conveniently classified and distinguished as follows: (a) bills for the general revision or codification of our copyright legislation; (b) bills for change of some one specific Section of the Act of 1909, or some suggestion for extension of the legal provisions. Many, if not most of such bills, have received little or no attention; they have not been debated in Congress and may not even have been considered by the Committees on Patents of the House

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<sup>1</sup> August 24, 1912 (motion pictures); March 2, 1913 (amendment of copyright certificate); March 28, 1914 (deposit of *one* copy of foreign book); December 18, 1919 (amending section 21 — *ad interim* copyright); July 3, 1926 (copyright of book not printed from type set); May 23, 1928 (increased copyright fees).

or Senate, and they have not been reported to Congress; (c) bills proposing amendment of the Copyright law with reference to the specific reform of some provisions of law demanding correction. There have been many such bills and they have been subject to the consideration of committees, and to public hearings, and reports have been submitted and some of them have been actually passed by one House, either Senate or House of Representatives; (d) proposals of law to enable the United States to adhere to the International Copyright Convention.

Not one of all these bills has become law.

The copyright bills under classes "(a)," "(c)," and "(d)," have been before Congress for consideration and public hearings for many years: The printed stenographic reports of testimony submitted — *pro* and *con* — are available to everyone interested in copyright.

Eleven copyright bills have been already presented to Congress this Session.<sup>2</sup> One of these bills introduced by Hon.

<sup>2</sup> List of Copyright bills now before Congress:

1939, January 3, H. R. 153. A Bill to transfer jurisdiction over Commercial prints and labels, for the purpose of copyright registration, to the Register of Copyrights. (Mr. Luther A. Johnson.) Reported February 16, H. R. Rep. 70, and on March 6, 1939, this bill came before the House of Representatives and, after amendments offered by Hon. Fritz Lanham, was passed. On March 7, the House Act was submitted to the Senate.

Jan. 3, H. R. 926. A Bill to amend the Act entitled "An Act to amend and consolidate the Acts respecting copyright," approved March 4, 1909, as amended, and for other purposes (Hon. J. Burrwood Daly). Reintroduced with changes on May 4, H. R. 6160 (by Hon. Jas. McGrammeray).

Jan. 4, H. R. 1644. A Bill to create five regional national libraries and to amend section 12 of the Act entitled "An Act to amend and consolidate the Acts respecting copyright," approved March 4, 1909, and for other purposes (Hon. Ross Collins. Reintroduced on January 26, 1939, as bill H. R. 3699.

Jan. 4, H. R. 1745. A Bill to amend and correct application for copyright filed by Effie Canning Carlton on February 10, 1915, with the Register of Copyrights and bearing renewal registration number 6384, and for other purposes. (Hon. Fritz Lanham).

Jan. 9, H. R. 1964. A Bill to amend section 23 of the Act of March 4, 1909, relating to copyrights. (Hon. Robert Luce.)

Jan. 12, S. 547. A Bill to amend section 23 of the Act of March 4, 1909, relating to copyrights. (Same as H. R. 1964 Hon. Henry Cabot Lodge.)

Feb. 3, H. J. Res. 149. Joint Resolution to create a Bureau of Fine Arts in the Department of the Interior for the Promotion of art and literature through

Fritz Lanham<sup>3</sup> is framed with regard to the recent decision in a Copyright case before the Supreme Court<sup>4</sup> of the United States. Mr. Justice McReynolds delivered the opinion of the Court, and a dissenting opinion by Mr. Justice Black was concurred in by Mr. Justice Roberts and Mr. Justice Reed. The question involved was whether delivery of copies fourteen months after date of publication with notice was a sufficiently "prompt" deposit under the provisions of existing law. The decision was "that while no action can be maintained before copies are actually deposited, mere delay will not destroy the right to sue."

#### DEPOSIT OF COPIES UNDER PRESENT LAW AND PROPOSED ALTERATIONS.

The present copyright law requires (section 12) "that after copyright has been secured by publication of the work with the notice of copyright . . . there shall be *promptly deposited* in the Copyright Office, or in the mail addressed to the Register of Copyrights . . . two complete copies of the best edition thereof then published, or if the work is by an author who is a citizen or subject of a foreign state or

the use of copyrighted and copyrightable material and to define the powers and duties of said Bureau, and for other purposes. (Hon. Wm. I. Sirovich.)

Feb. 9, H. J. Res. 162. Joint Resolution to establish a Distinguished Service Medal in Arts and Sciences and in Public Service and prescribing the conditions of the awards thereof, and providing for new duties for the Commissioner of Patents and the Register of Copyrights. (Hon. Wm. I. Sirovich.)

Feb. 23, H. R. 4433. A Bill to amend sections 12, 13, and 29 of the Copyright Act of March 4, 1909, and further to secure the prompt deposit of copyrightable material into the Library of Congress and prompt registration of claims of copyright in the Copyright Office, and for other purposes. (Hon. Fritz Lanham.) Text revised and new bill introduced on March 24th, H. R. 5319 (Hon. Fritz Lanham).

Mar. 8 H. R. 4871. A Bill to amend the Act entitled "An Act to amend and consolidate the Acts respecting copyright," approved March 4, 1909, as amended. (Hon. J. Burrwood Daly.)

Mar. 9, H. R. 4918. A Bill to entitle Effie Canning Carlton to now file with the Register of Copyrights a corrected application for renewal of copyright to her musical composition entitled "Rock-A-Bye-Baby." (Hon. Pehr G. Holmes.)

<sup>3</sup> See note 2: list of bills: Feb. 23, 1939. H. R. 4433.

<sup>4</sup> Supreme Court of the United States. No. 222. — October term 1938. The Washingtonian Publishing Company, Inc. Petitioner v. Drew Pearson, Robert S. Allen, and Van Rees Press, Inc., et al. Certiorari to the United States Court of Appeals for the District of Columbia. (January 30, 1939.) 8, 11 pp. 8°.

nation and has been published in a foreign country, one complete copy of the best edition then published in such foreign country . . .”

Present law (section 13) further authorizes the Register of Copyrights upon actual notice to require the copyright proprietor to deposit copies of books which have not been deposited as required and upon failure to comply with this special demand within three months or within six months in case of a foreign country or a United States possession, the proprietor is made subject to a fine of \$100 and required to pay to the Library of Congress twice the price of the book and furthermore it is declared that in such case “the copyright shall become void.”

Mr. Lanham’s bill proposes amendment of these two sections. In section 12 it eliminates the words “there shall be *promptly* deposited” and substitutes a fixed term of days within which the required deposit must be made, namely, sixty calendar days after publication within the United States and one hundred and twenty days if the author is a citizen of a foreign state or nation and his work has been published in a foreign country. The following provision of existing law is retained in the bill: “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.”

In section 13 the bill reduces the prescribed time within which copies may be deposited after such special demand to two months from any part of the United States, or four months from any territorial possession of the United States or from any foreign country. It further inserts an additional new paragraph after section 29 of the Act of 1909, reading as follows:

“Any person who, after having secured a copyright in a work by publication with notice in accordance with the

terms of section 9 of this Act, or any person in whom the title in such copyright shall subsequently vest by assignment or otherwise who, prior to the expiration of six calendar months following the publication of such work, shall fail to deposit the copies or copy as provided in section 12, accompanied by an application for registration of claim of copyright in such work in the Copyright Office or in the mail addressed to the Register of Copyrights, Washington, District of Columbia, shall on the expiration of the said period of six calendar months *forfeit his copyright and the copyright shall then and there become void*; and such person shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work then published. Provided, however, that this paragraph shall not apply if, subsequent to the expiration of the said six months' period, such person shall make deposit and application for registration, and it shall appear to the Register of Copyrights that failure to make such deposit and application within the prescribed time was due to causes beyond the control of the applicant."

With the passing of years there has been, in Europe, a steady trend towards the enlargement of the author's protection for his intellectual productions, and at the same time proposals to free it from restrictions and from the imposition of any burdens. As members of the International Copyright Union practically all authors of more than forty countries now within the Copyright Union secure protection in all such countries "without any formalities," and in no country is this secured protection curtailed or impaired by reason of non-compliance with any purely extraneous conditions or demands.

#### LEGISLATION WITH REGARD TO DEPOSIT OF COPIES.

Provision in our copyright legislation for deposit of copies was based generally upon the needs of libraries, beginning with the Massachusetts Copyright Act of March 17, 1783

requiring two copies for Library of the University of Cambridge. The United States Copyright Act of August 10, 1846, provided that the author or proprietor of any copyrighted work should deliver one copy to the Smithsonian Institution and one copy to the Library of Congress. By Act of March 3, 1865, this demand for deposit in the Library of Congress was re-enacted and was fortified by authorizing the Librarian of Congress within a year to demand any article not deposited and if then not delivered within a month, — “the right of exclusive publication secured to such proprietor under the Acts of Congress respecting copyright shall be forfeited.” By the Act of February 18, 1867, this last drastic and unjustifiable provision was eliminated, and there was substituted the more reasonable penalty of “twenty-five dollars, to be collected by the Librarian of Congress.”

Our laws prior to the Act of 1909, declared that “no person shall be entitled to a copyright” unless he had complied with certain specified requirements, including the deposit of books “not later than the day of publication thereof in this or any foreign country.” These requirements proved burdensome and often impossible of compliance and caused serious difficulties and unfortunate losses. The Act of 1909 attempted to cure some of these serious faults, and, as Mr. Justice McReynolds<sup>5</sup> states, was intended definitely to grant valuable, enforceable rights to authors, publishers, etc. without burdensome requirements; “to afford greater encouragement to the production of literary works of lasting benefit to the world.”

The original bills (S. 6330 and H. R. 19853, 59th Congress, 1st Session 1906) on which the Act of March 4, 1909, was based, contained no penalty for failure to comply with the requirement of deposit of copies. During the following three years of discussion, a number of bills with varying provisions were introduced. Two of these contained the pro-

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<sup>5</sup> Justice McReynolds' Statement. Supreme Court of the United States opinion No. 222, Oct. term 1938, p. 4.

vision that "failure to deposit shall forfeit such copyright." This was strongly objected to by authors and publishers "as an over-drastring penalty involving incertitude of copyright property."

In my "Memorandum draft" of a copyright bill (October 23, 1905) I proposed that in default of delivery of the required copies "the proprietor of the copyright shall be liable to a penalty of one hundred dollars," but added that the copyright shall not be forfeited by such failure to deposit and register, but in any action for infringement before the formalities were complied with "no damages shall be recovered, except on proof that the defendant was duly notified of the infringement, and continued the same after such notice." This last provision was rejected but the fine of \$100 was retained. On March 21, 1908, four members of a Special Copyright Committee of the Association of the Bar of the City of New York (Paul Fuller, Chairman; Wm. G. Choate; Wm. A. Jenner; and Franklin Pierce) recommended that failure to deposit should forfeit the Copyright, and in the final bill submitted by the House Committee, Mr. Currier, Chairman, this severe penalty was unfortunately included in section 13 of the Copyright Act.

There has recently been published an authoritative work<sup>6</sup> giving in detail all legislation concerning the delivery of published books to certain Great British Libraries. It is an interesting narrative covering the time from 1610 to 1938. It records a lively struggle between authors and publishers, but never was there even a hint that an author actually should be robbed of the legal title to his work for mere failure to deposit the required copies of his book.

The penalty fixed by the British Act of 1911 (Sec. 15:6) is liability "on summary conviction to a fine not exceeding five pounds and the value of the book."

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<sup>6</sup> R. C. Barrington Partridge, "The History of the legal deposit of books throughout the British Empire." London: Library Association, 1938, xvii, 364 pp.



Only the United States is so far behind the rest of the world that an author's literary property and its protection is not only made to depend on compliance with requirements that have nothing to do with the principle of copyright (for example obligatory American manufacture) or with formalities that in some cases are difficult and sometimes next to impossible of compliance and what is worse, may finally impair or actually destroy the author's literary property.

It is surely amazing that after 150 years of legislation (since 1790) when our first Copyright Act declared an author's exclusive right to his intellectual production, we should be willing to deliberately enact that mere failure to deposit a copy of his book in the Library of Congress should rob him of this grant of legal title to his work and should declare it forfeited.

During my long service as Register of Copyrights (1897-1930) upon only a single occasion was it thought proper to appeal (under section 13) to the Department of Justice and give actual notice requiring the publisher in default to deposit copies. This was the case of a New York publisher of four books with notice of copyright, registered, but of which no copies were deposited. Upon summons with notice (1913) he paid the full amount claimed, namely, fine, \$400: twice the price of the books, \$11.20; costs, \$9.47, total \$420.67, and the copyrights were declared to be void. There was no decision handed down in this case and therefore there is no official report. It is significant that during the thirty years since this drastic penal provision went into effect in only one instance has it been actually applied. On two subsequent dates, June 22, 1934 and March 3, 1936, the preliminary demands were made under section 13 with respect to three alleged non-deliveries of books, but forfeiture of copyright was not declared.

The requirements of section 13, are made even more stringent in Mr. Lanham's bill, demanding deposit of copies within one month or two months in the case of a foreign author's book, and delinquent authors are made subject to the following list of penalties: (1) to pay to the Library of Congress "twice the amount of the retail price of the best edition of their works then published;" (2) made liable to a fine of \$100; (3) debarred from bringing suit for any infringement of their books; and finally (4) the absolute forfeiture of their literary property.

Our copyright law has another section (seventeen) which contains a provision providing for the forfeiture of copyright. This is in the case of any person who for the purpose of obtaining registration of a claim to copyright shall knowingly make a false affidavit as to his having complied with required conditions. He "shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all his rights and privileges under said copyright shall thereafter be forfeited." Why should every author of a book be put on a par with this sort of criminal? The author has made no false oaths or affidavits with regard to the deposit of copies of his book. In ninety-nine cases out of every hundred, he has left that task, as is usual, to his publisher and is personally without responsibility for such failure; which may frequently be explained as the result of very innocent happenings.

In our present copyright law (section 59 and 60) the Librarian of Congress is given authority to dispose of works deposited not held desirable or useful to be preserved in the Library of Congress. The Supreme Court Justice in his opinion refers to these two sections, and declares that "they show clearly enough that deposit of copies is not required primarily in order to insure a complete, permanent collection

of all copyrighted works open to the public. Deposited copies may be distributed or destroyed under the direction of the Librarian and this is incompatible with the notion that copies are now required in order that the subject matter of protected works may always be available for information and to prevent unconscious infringement." In the Report of the Register of Copyrights for 1938, it is declared that 186,037 volumes have been thus distributed during the last 28 years to other libraries, and that "in the ordinary routine of business or in response to special requests 3,612 motion-picture films and 43,302 deposits in other classes have been so returned during the fiscal year" (1938). No figures are available to show how many more books may have been disposed of by "exchange or sale."

#### WHAT PERCENTAGE OF BOOKS REGISTERED HAVE BEEN DEPOSITED?

It is not possible to determine exactly how completely the works which claim copyright are deposited, but as title cards are printed and supplied upon request to other libraries for all books received bearing United States notice of copyright the demand for such cards for works not received furnishes some indication of possible percentage of failure to deposit.

In response to inquiries received during each year from the card division, the accessions division, law division, and the reading room in regard to books supposed to have been copyrighted but not discovered in the Library, it has been found that many of these works had been received and were actually in the Library or Copyright Office; other works were either not published, did not claim copyright, or for other valid reasons could not be delivered. Inquiries led to the receipt each year of a certain number of these missing books. The exact figures (taken from the reports of the Register of

Copyrights) are shown in the table <sup>7</sup> together with the total number of books actually received annually.

The Copyright Office records clearly go to show the general good intention to fully comply with the requirement of deposit of copyright books, and the annual statistics of the Office plainly indicate how small is the actual number of delinquents in proportion to the large number of books delivered annually.

#### INTERNATIONAL COPYRIGHT CONVENTION AND THE COPYRIGHT UNION.

The greatest advance that the world has witnessed with respect to the protection of literary property, was the formation in 1886 of the International Copyright Convention of Berne and the creation, based on that convention, of the International Copyright Union. The fundamental basis of this union is to secure to authors throughout all the countries which are members of the union, legal protection for all of their works in which copyright is subsisting from the time of the creation of the work, automatically, without compliance with any formalities. This protection of the work is to continue so long as the work has not fallen into the public domain of its country of origin "because of the expiration of the term of protection."

<sup>7</sup> Reports on supposed delinquent deposits:

Date	Books Missing	Found in Library	Found in Copyright Office	Received After Request	Books Not Published	Annual Book Deposit
1928	316	31	16	222	11	32,911
1929	623	71	17	437	23	32,157
1930	784	89	28	497	78	36,334
1931	802	74	19	560	86	34,087
1932	797	77	21	513	92	33,041
1933	693	49	18	476	63	27,124
1934	689	38	21	403	98	24,071
1935	782	41	16	482	87	26,567
1936	894	63	26	528	93	28,581
1937	728	59	14	385	87	27,463
1938	884	75	16	201	96	27,663
	7,992	667	212	4,704	814	329,999

Consideration with respect to an author's world rights, protection for his works in foreign countries and the assurance of reciprocal protection for the works of foreign authors in our country, is the highest attainment to be achieved at this time for the betterment of the creators of literary, dramatic, musical and artistic creations. But it is precisely here that the United States has been most dilatory, backward, and inadequate. The intermittent, but prolonged struggle for honorable and adequate international copyright relations has now extended over an entire century, from 1837 to 1937, but it is even now not an actual accomplishment.

To understand this puzzling circumstance we must briefly go back to the beginning of copyright in the United States. Noah Webster began his personal activities to secure the exclusive right to publish and vend his popular "Spelling Book" by helping to obtain the enactment by his own State, Connecticut, of our earliest copyright act in January, 1783. The first section of the Act grandiloquently declared that "it is perfectly agreeable to the principles of natural equity and justice that *every author* should be secured in receiving the profits that may arise from the sale of his works;" but in its last section, it is made clear that "every author" meant only authors who were citizens of Connecticut, and not an author "residing in or inhabitant of any other of the United States."

At Washington, however, where, on May 31, 1790, Congress enacted our first Federal Copyright Act, there was no question that an author's right should be limited by state boundaries, but, on the other hand, it was declared that the copyright granted by that Act extended only to authors who were "citizens of the United States or resident therein" and, further, did not prohibit "the importation or vending, reprinting or publishing in the United States of any book or books printed or published abroad by foreign authors." This narrow-minded, provincial exclusion of all foreign authors from legal protection for their works, and this direct permission by law to appropriate such works without consent of, or

payment to, their authors was continued in our copyright legislation for a full hundred years from 1790 to 1891, and because of it there developed our disgraceful nation-wide literary piracy of English books.

But the American public consciousness was so far aroused (especially in the period from 1837 to 1891) and such pressure was brought to bear on Congress that it led finally to the enactment of the law of March 3, 1891, sometimes called the "International Copyright Act." That Act did not expressly extend copyright to foreign authors, but by the elimination from our law of the words which directly excluded foreign authors from copyright protection, it did extend, by implication, in principle, to *all* authors, foreign as well as domestic, the exclusive right to control the use of their own literary creations.

But the extension of this grant of copyright to foreign authors was conditioned upon the existence of so-called reciprocal protection of American authors abroad. That is to say: copyright protection in the United States is only extended to foreign authors who are nationals of a country which grants to American authors "the benefits of copyright on substantially the same basis as to its own citizens," the existence of which condition must be determined by the President, and made known by a Copyright Proclamation.

#### COPYRIGHT RELATIONS WITH GREAT BRITAIN.

Our copyright relations with Great Britain are commonly referred to as "reciprocal," but practically they are not so. Under international arrangements now in force there is no equal exchange of benefits. To our authors, there is generously accorded protection for their unpublished books in Great Britain: "in like manner as if the authors had been British Subjects." In the case of an American author's already published work he is assured protection in Great Britain by making sure that an edition of it has been "first

or simultaneously published in Great Britain." And this does not imply an edition printed there, but only that copies of the work have been "sold or placed on sale." Under a court decision it has been held to be sufficient if the sale of copies in England has been held within fourteen days after sale in the United States. Our copyright grant to Great Britain is burdened with obligatory manufacture in the United States. It is no real burden on the American author to print his work in his own country; he would in ordinary course expect to do so. But it is a different matter for the British author who has already printed his book in Great Britain to be obliged to seek a new publisher on the other side of the Atlantic. It is not only the inconvenience but the additional cost of a second edition. There is no principle of copyright involved. It is a burdensome, unjust and inequitable obligation. It has deprived more than fifty per cent of all British authors from obtaining legal protection for their books in the United States, since July 1, 1891.

#### ADHERENCE TO THE INTERNATIONAL COPYRIGHT CONVENTION AND THE COPYRIGHT UNION.

Adherence to the Copyright Convention of Rome of 1928 would permit the entry of the United States into the International Copyright Union. This Union was founded in 1887, but even now, more than 50 years later, the United States has not achieved membership, although it has been publicly urged from year to year for a long time. Again and again outstanding Americans have publicly protested against our long delay in adhering to the Copyright Convention. With the approval of Mr. Vestal, Chairman of the House Committee on Patents, the following group was invited to meet in New York on April 4, 1928, to discuss adherence. President Angell of Yale University; President Stratton of the Institute of Technology; the musician Walter J. Damrosch; the Librarian of Chicago University; the novelist Hamlin Garland; the publishers Mr. Richard Rogers Bowker

and George Haven Putnam, and the Register of Copyrights. In their report it was declared that adherence to the International Copyright Convention is the "one Copyright question that takes precedence over all others because it involves the Nation's honor before the world. . . Our humiliating position in this respect always shocks. It is this wrong which most loudly calls for rectification."

Later, on December 15, 1933, a petition was addressed to the Secretary of State pointing out "The discreditable position occupied by the United States with reference to international copyright;" that "under our law, an author has no redress for piracy, if the language of his work is English and the manufacture foreign"; that "this constitutes a standing affront to friendly powers and cannot be defended on moral grounds." The petition declared that "adherence to the Convention would at once meet the demands of honor, improve international relations and be a boon to American authorship. It would take high rank in copyright annals and such a course is earnestly recommended." This document was signed by the presidents of twelve of our leading universities — Harvard, Columbia, Princeton, Johns Hopkins, Yale; the State Universities of California, Iowa, Minnesota, North Carolina, Texas, and Wisconsin, and the University of Chicago. The President was requested to transmit the convention to the Senate. He did so on February 19, 1934, and it was referred to the Committee on Foreign Relations. It was favorably reported from that Committee and is now on the Executive Calendar of the Senate.

I have referred to the petitions from the heads of our great universities, but it should be stated that practically every university and every college and nearly every institution of higher learning in the United States is on record in behalf of their professors and teachers to urge adherence to the Copyright Treaty. The whole educational and cultural contingent of our people included in the membership of our learned societies is recorded in favor of adherence.



Adherence to the Copyright Convention has been steadily supported by the public press. Many leading journals, among them the New York Nation, the New Republic, the Saturday Review of Literature, World Affairs, have stressed this action and repeated strong editorials have appeared in the New York Times, the Herald Tribune, the Boston Transcript, the Christian Science Monitor, the New York World-Telegram, and the Washington Post, urging that this be done. Many of our Presidents have given expression of sympathetic consideration for such betterment of our international copyright relations, including Arthur, Cleveland, Harrison, Wilson, Theodore Roosevelt, Hoover, and Franklin Delano Roosevelt.

#### CONCLUSION.

We are forced to admit that as regards copyright, literary and artistic property, the United States has not shown itself sensitive to the moral and intellectual considerations involved. As pointed out our legislation in the beginning was based upon most provincial considerations, — each state to grant copyright only to its own citizens, and the United States to nationals only; barring out foreign authors.

In his excellent little work on *Literary Property*, Nathaniel Shaler of Harvard,<sup>8</sup> states:

“When we come to weigh the rights of the several sorts of property which can be held by man, and in this judgment take into consideration only the absolute question of justice, leaving out the limitations of expediency and of prejudice, it will be clearly seen that intellectual property is, after all, the only absolute possession in the world. . . . The man who brings out of nothingness some child of his thought has rights therein which cannot belong to any other sort of property. . .

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<sup>8</sup> Shaler (Nathaniel Southgate.) *Thoughts on the nature of intellectual property and its importance to the state.* Boston, J. R. Osgood & Co. 1878. iv. 75 pp 8°.

the inventor of a book or other contrivance of thought holds his property, as a God holds it, by right of creation.

So the restrictions which we may cast around the property of intellect must be made with the confession of the rightfulness of that property. They must be made with the acceptance of the proposition that it has the same sanctities as other human interests, and that society is as much interested in maintaining its bounds as it is in protecting ancestral acres, or the other well accepted forms of property.

Intellectual property has been slowly growing into recognition in our laws for some centuries past, and this development of legal protection has been followed by an enormous increase in the proportion of human endeavor that has been given to the work of improving the physical and mental condition of man. . . . Whatever tends to lower the protection given to intellectual property is so much taken from the forces which have been active in securing the advances of society during the last centuries."

For more than a century—to use Professor Shaler's words — we have "cast restrictions around the property of intellect" and for fifty years our copyright legislation has failed to take into consideration "only the absolute question of justice" and has persistently applied the "limitations of expediency and of prejudice;" with the result that our copyright legislation is provincial, primitive and inadequate and as regards international copyright the United States occupies an undignified and criticized position.

#### PRESENT COPYRIGHT SITUATION.

Since 1909 no major amendment of our copyright legislation has been enacted. At this time, therefore, there remains the necessity and the opportunity to propose Congressional action for the accomplishment of at least some of the

more urgent and important copyright reforms now demanded. Briefly stated these are: (1) adherence to the International Copyright Convention of Rome of 1928, and entry into the Copyright Union; (2) the enactment of the changes in our copyright law necessary to bring it into accord with the articles of the Copyright Treaty, and (3) such further amendment of our copyright legislation as will secure the more important improvements demanded, so far as they can be agreed upon.

#### PRESENT PROPOSAL BY THE SENATE.

The Senate Committee on Foreign Relations on April 11th, submitted a report with regard to adherence to the Copyright Convention of Rome of 1928, and recommended "that the Senate do advise and consent to the same." That Convention is therefore again on the Executive calendar and can be called up at any convenient time. The report was made by Senator Thomas of Utah.<sup>9</sup> He states positively that the treaty should be adopted entirely independently of the amendment by statute of the present copyright law. That course was urged by Senators F. Ryan Duffy; Wallace H. White Jr. and Frederick Van Nuys in 1937.

"In order that there may be time for adjustments, considered desirable or necessary in some quarters, before the convention becomes operative in this country, it is further recommended that, in accordance with article 25, paragraph (3) of the convention, the day for its entry into force as to the United States be fixed at one year from the date of its approval by the Senate."

It is of first importance that this procedure shall be followed. Senator Thomas says: "I think the treaty should be ratified in advance of the enactment of legislation as a mat-

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<sup>9</sup> Senate Executive Report No. 2.

ter of sound policy and correct procedure. As between treaty and statute law the later in date prevails. It is appropriate that the final word in this matter should be said by the Congress as a whole. Prior action on the treaty will thus not only prepare the way for appropriate legislation but assure the prevalence of the interpretive and supplementary legislative enactment called for by the treaty, which enactment is, so far as the treaty is concerned, the chief objective of amendments to the statute.”

*Thorvald Solberg.*

Washington, D. C.