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New Copyright Bill

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This proposal for a wholly new copyright law declares in section one that it "Shall be known as the Copyright Act of 1940." Its second section contains a brief but excellently formulated declaration of the Congressional grant of copyright: That "Subject to the provisions of this Act and for the term hereinafter provided, authors shall have copyright in all of their writings, whether published or unpublished, from and after the creation thereof, *without compliance with any conditions or formalities.*" The words which I have italicized if taken literally imply the elimination of many burdensome requirements of our present copyright law. Its grant to authors of certain enumerated exclusive rights is made dependent upon compliance with explicitly expressed conditions and formalities such as: Publication with notice of copyright in a specified form; Registration of the claim of copyright; Deposit "promptly" of the required copies in the Library of Congress and, finally, the obligation, in the case of books and periodicals, that all copies shall be printed from type set within the limits of the United States. The penalties prescribed in the law for non-compliance are severe and sometimes drastic, including possible *forfeiture of the copyright.*

The copyright grants proposed in the bill are largely in character the same as those accorded by the Copyright Act approved March 4, 1909, and to be told at the start that they are to be obtained and enjoyed without conditions or formalities would imply a modern, advanced proposal of law, and the elimination of our present burdensome requirements. It would seem also that due regard has been given to the Copyright Convention's provision (article 4) that authors who are nationals of countries within the International Copyright Union, shall enjoy in all countries, members of that union, such rights as the respective laws of the Union countries "now accord or shall hereafter accord to nation-

als" and that "the enjoyment and the exercise of such rights *are not subject to any formality.*" It is this declaration in the Convention which makes it obligatory to eliminate formalities from the copyright legislation of the United States, so far at least as compliance by foreign authors is concerned, if the United States is to adhere to the Copyright Convention and to enter the Copyright Union.

When, however, the different sections of this lengthy document are carefully examined it is found that for an author to set up an adequate and defendable claim to copyright in his intellectual creation, — his book for example, — he is expected to do many enumerated things, none of which he can omit doing without danger to his copyright protection. It is to be sure stated (Section 16:3) that "*no recordation* of any grant of copyright or of any right or interest therein *shall be required.*" But this positive declaration is followed by the statement, "but any person *may submit* for recordation, and the Register of Copyrights shall record any such grant or other instrument submitted by any such person."

Indeed, in the first subsection of Section 16, the Register of Copyrights is directed upon receipt of the fee prescribed "to record in the Copyright Office any written grant of copyright, or of any right or rights therein, and any other written instrument signed by the grantor or by the duly authorized agent of the grantor, and shall return such grant or instrument to the person submitting the same, with a certificate of recordation attached under the seal of the Copyright Office." The second subsection of Section 16 further declares that "Such grant or other instrument shall contain the names of an author or grantor and grantee, a statement whether it includes any rights in works thereafter to be created by the author or owned by the grantor, the nature of the grant, the date of beginning and duration of such grant, and when the grant itself specifically enumerates individual works, a description of the work or works included in such grant, such as the title or titles and the nature thereof, and when the

grant includes specific rights in any or all works of a particular author or owner, such facts shall be stated in such instrument." The desirability of recordation is further explained in Section 16: (4) as follows: "For the purposes of this Act, a recordation shall be deemed to put all persons upon notice of the grant or other written instrument recorded as above provided to the extent of the statements therein contained, *Provided,* That such grant or other written instrument contains such sufficient statement therein for the purpose of indexing under Section 37 of this Act that if fully indexed by the Register of Copyrights as therein provided the recordation of such grant or other written instrument would be revealed upon reasonable search of the indices and records of the Copyright Office."

Section 16 also contains the important statement: that "A grantee, for a valuable consideration who records a grant or other written instrument in good faith and without notice of a prior conflicting grant, shall prevail from and after the date of the recordation thereof over the grantee in any such prior conflicting grant regardless of priority as to the date of execution of such grants," and it also further declares, that "the certificate of recordation issued by the Register of Copyrights or a certified copy thereof shall be admitted in any court as *prima facie* evidence that such grant or other instrument has been recorded on the date specified therein."

Section 17 (1) declares that the Register of Copyrights shall issue a receipt under the seal of the Copyright Office to the person making a deposit as provided in Section 14 of this Act, containing the name of the depositor, the title and classification of the work, the author thereof, and the date of receipt, and said receipt, or a copy thereof certified under the seal of the Copyright Office, shall be admitted in any court as *prima facie* evidence of the facts stated therein; and subsection two of Section 17, contains a further repetition of provisions with respect to recordation, reading: "The author or any grantee of any copyright or of any right therein

secured by this Act may, if so desired by such author or grantee, obtain registration of a work or of any right therein, whether the work be published or unpublished, by filing in the Copyright Office an application for registration in the form hereinafter provided, accompanied by the registration fee provided by this Act, and making a deposit of a copy or copies of the work in the manner provided by Section 14 of this Act, if such deposit has not already been made. Such registration shall thereupon inure to the benefit of the author, the grantees, and any other persons. If a grantee shall apply for registration under this section, there shall, at or prior to the time of making said application, be recorded in the Copyright Office any written instrument or instruments under or through which such grantee claims ownership of such copyright or any right therein."

The bill further provides that copies of the author's work *may be deposited* and registration *may be obtained* for "any grant of copyright or of any right or interest therein," if registration of such grant is requested of the Register of Copyrights. This voluntary request for registration, however, is supplemented by specific directions that "The Register of Copyrights upon receipt of the fee hereinafter specified, shall record in the Copyright Office any written grant of copyright, or of any right or rights therein, and any other written instrument signed by the grantor or by the duly authorized agent of the grantor, and shall return such grant or instrument to the person submitting the same, with a certificate of recordation attached under seal of the Copyright Office." It is further declared that "the certificate of recordation issued by the Register of Copyrights or a certified copy thereof shall be admitted in any court as *prima facie* evidence that such grant or other instrument has been recorded on the date specified therein." (Section 16:5.)

In Section 36:2 it is furthermore declared, that "upon the payment of the fee prescribed by this Act the Register of Copyrights shall furnish to any person requesting the

same a copy certified under said seal of any receipt or certificate of recordation or registration issued by the Register of Copyrights, of any grant, application for registration of a claim of copyright or other instrument filed in the Copyright Office, or of any entry in the records or record books of the Copyright Office, or any extract therefrom. Such copy shall be admitted in any court as evidence with like effect as the original thereof."

Similar confusion and duplication is found with respect to the deposit of copies. There is a general permissive provision reading: "The author of any work protected under this Act, whether published or unpublished, or the owner of any of the exclusive rights therein *may deposit* in the Copyright Office a complete copy or manuscript of his work," and it is further stated in another subsection of the same Section 14, that "At the time of making such deposit, registration of the work may be secured upon filing an application therefor and paying the registration fee as provided in this Act," and (under Section 17 (1)) the Register of Copyrights is required to issue a receipt under the seal of the Copyright Office to the person making a deposit under said section to contain "the name of the depositor, the title and classification of the work, the author thereof, and the date of receipt, and said receipt, or a copy thereof certified under the seal of the Copyright Office, shall be admitted in any court as *prima facie* evidence of the facts stated therein."

I have indicated above the many provisions of the bill which repeatedly instruct the owners of copyright what they *may do* voluntarily with reference to registration of copyright claims and deposit of copyright books; but they are followed by the general declaration that in the absence of the deposit of copies of any published or unpublished work, then "the publisher, author or other owner of rights therein shall be denied all right to recover the statutory damage for infringement provided for in Section 19 of this Act with respect to any infringement commenced prior to the date of such deposit."

Deposit of Copies

The explicit obligation that any copyright work distributed in the United States in book, pamphlet, map or sheet form shall be printed within the limits of the United States from type set therein comes after the declaration that the publisher of any such work, copies of which are offered for sale in the United States, shall at the expense of the publisher and within ninety days after publication, deposit in the Copyright Office two copies of such work "and of every subsequent printing of such work containing a revision thereof, or a substantial addition thereto, or a material change in the text or in the format of such work; and in the case of copies of works required to be printed in the United States, unless the name and location of the printer thereof is imprinted upon every copy of such work the publisher shall file in the Copyright Office an affidavit of compliance with the provisions of Section 29 (1) of this Act declaring that all copies of the deposited work have been printed as provided for in Section 29 (1) and stating the name and location of the plant of the printer in which the work has been printed." (Section 14 (1).) "In the event the publisher of such publication shall knowingly make a false affidavit with respect to compliance with the above conditions relating to printing any works specified in Section 29 (1), such person shall be denied all right to recover statutory damages." (Section 14, (1a).)

In the event of the failure to make such deposit of copies with the said affidavit or in lieu thereof to deposit such copies with said imprint thereon within the time limit, then if written demand to make such deposit is made by the Register of Copyrights within two years after the date of such first offering for sale (which demand shall be appropriately indexed in the records of the Copyright Office) the publisher shall within ninety days after the receipt of such demand "either comply therewith or file with the Register of Copyrights in lieu thereof a written relinquishment and dedica-

tion of the publication right signed by the author of the work or the grantee or grantees of the publication rights." (Section 14.) To give emphasis to these demands it is further declared that "in the event of the failure to make such deposit and file such affidavit or to imprint, upon such copies the name and location of the printer or to file such written relinquishment and dedication within the time and after the demand herein specified, the publisher shall be subject to a penalty of $100.00 to be paid to the Register of Copyrights and recoverable at the suit of the United States."

These provisions of the bill take the place of sections 12 and 13 of the Copyright Act approved March 4, 1909 and still in force. Section 13 provides that if the copies of the work demanded in Section 12 are not deposited, then the Register of Copyrights may "at any time after the publication of the work" require "the proprietor" of the copyright to deposit such copies within three months or within six months in case of a foreign country or a possession of the United States and upon failure to comply such proprietor is made subject to a fine of $100 and twice the price of the book *"and the copyright shall become void."*

As shown above the bill proposes in lieu of this drastic and wholly unjustifiable attempt to take away from the author his literary property, that in the case of failure to file such described document *"the publisher* shall be subject to a penalty of $100.00." This is at least a provision to the credit of the proponents of the bill because it eliminates one drastic and unjustifiable penalty, of our present copyright law namely, that of the author's loss of his literary property because of failure to send to the Library of Congress a copy of his work.

Obligatory Manufacture Within the United States in Order to Obtain Copyright

The present copyright law (Act approved March 4, 1909) requires "that of the printed *book or periodical,* . . . the text

of all copies accorded protection . . . shall be printed from type set within the limits of the United States." This requirement was first included in the Act of March 3, 1891, and was then only applied to books, and in the case of a "photograph, chromo and lithograph." The Act of March 4, 1909, eliminated photographs, chromos and lithographs, and exempted from the obligation "the original text of a book of foreign origin in a language or languages other than English," thus leaving the requirement of American manufacture in addition to all works by nationals of the United States, to be applicable only in the case of foreign authors *to books in the English language.* There has been no change since that date.

This release of foreign books in languages other than English was due to the personal efforts of the Hon. Robert Underwood Johnson who secured after repeated interviews with the President of the International Typographical Union, his signature to a statement that as a result of such interviews the International Typographical Union would agree not to oppose legislative amendment to exempt foreign books in a language other than English from obligatory American type setting.[1]

OBLIGATORY AMERICAN MANUFACTURE

This obligatory American manufacture as a condition for securing copyright in the United States is one of the darkest

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[1] Mr. R. U. Johnson, December 18, 1908

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

Sincerely, James M. Lynch, President,
International Typographical Union.

James J. Sullivan,
Copyright Law Representative, International Typographical Union.

blots on our copyright legislation. It should never have been included in our copyright law. It has nothing to do with the principle of copyright. It has prevented the United States from granting any adequate reciprocity with respect to copyright protection for foreign authors of books. Great Britain on February 3, 1915, decreed that its latest copyright Act of 1911 should apply "to literary, dramatic, musical and artistic works the authors whereof were at the time of the making of the works citizens of the United States of America, *in like manner as if the authors had been British subjects.*"

This generous British grant of copyright to American authors is met by our extension to British authors of the rights and privileges accorded by the copyright laws of the United States. This has the appearance of a reciprocal grant of copyright; but this is not true reciprocity, for it carries with it and applies to every book by a British author the obligation that it be printed from type set in the United States in order to obtain the "rights and privileges accorded by the copyright laws of the United States." The British author at the same time that such rights are extended to him is denied access to the American market for the sale of copies of his book until he has reprinted it in the United States.

The bill proposes a drastic change in existing law which is almost unbelievable; namely the extension of the printing clause not only to all books by American authors and to foreign books in the English language as is now the case, but, in addition to all printed matter, by declaring that "*all copies of any copyrighted* work which shall be distributed in the United States *in book, pamphlet, map or sheet form, including illustrations,* shall be printed from type set within the limits of the United States or its dependencies, . . ." or if the book "be produced by lithographic, mimeographic, photogravure, or photoengraving or any kindred process of reproduction now known or hereafter devised, then by type set, or by such process wholly performed within the limits

of the United States" . . . and "the printing or other reproduction of said copies, and the binding of any book, pamphlet, collection of maps, or sheets, shall be performed within the limits of the United States." (Section 29:1.)

The bill, however, does declare, that this obligatory American manufacture shall not apply (a) "to copies imported in personal baggage and not for sale or hire; *Provided,* That no more than one copy of any work is imported in the baggage of any one person;" (b) "to importation . . . of not more than one copy of any work on any one invoice for personal use of the consignee and not for sale or hire; *Provided, however,* That no person in the United States other than a retail bookdealer shall act as the agent of the consignee in the acquisition of such copy;" (c) "to two copies imported for the author's own use;" (d) "to copies (without number) imported for libraries;" (e) "to works which form parts of private collections purchased en bloc in a foreign country and which are not intended for sale or hire;" (f) "to foreign newspapers, periodicals, or magazines;" (g) "to an authorized translation in a foreign language of a work previously published in the United States;" (h) "to works in a foreign language by authors not resident or domiciled in the United States at the time of the creation of the work;" (i) "to works in raised characters for the use of the blind;" (j) "to illustrations of a scientific work or reproductions of a work of art where the subjects represented are located in a foreign country;" (k) "to not more than twelve copies of an unprinted work in manuscript, typescript, mimeographic or photostatic form."

And it is further proposed in Section 30 (2) that "when an edition of a copyrighted work is manufactured in the United States, pursuant to the provisions of Section 29, and is published either by the author, or by the grantee of exclusive publication rights in the United States pursuant to a written grant recorded in the Copyright Office, then during the period of said exclusive publication rights or the term

of copyright therein, whichever terminates sooner, importation of copies in violation of Section 29, is prohibited." And the "importation into the United States without the written consent of the author, or any authorized agent to act on behalf of the author, of copies of works produced in violation of Section 29 of this Act is hereby prohibited and such copies shall be seized by the Customs or Post Office Officials." (Section 30: (1).)

Our present copyright law declares in Section 31 "That during the existence of the American copyright in any book the importation into the United States of any *piratical* copies thereof . . . shall be, and is hereby, prohibited." The bill eliminates this provision and substitutes in lieu thereof in Section 30, the following: "The importation into the United States, except as otherwise herein permitted, of a copy of the whole or any part of any copyrighted work, which if published in the United States would infringe such copyright, shall be deemed an infringement, and is hereby prohibited."

The present copyright law tries to ameliorate the hardship of immediate compliance with the requirement of the printing of the English author's book in the United States, by providing for the deposit of a copy of the original British edition of his book and the registration of United States protection for it for an *ad interim* copyright of four months duration. This short-term protection can be extended to the full first term of 28 years by the production within the four months copyright term, of an edition of the book manufactured in the United States. If no American reprint is so produced, the copyright protection terminates at the end of the four months.

Importation Permitted of First 500 Copies of a Foreign Author's Book

The bill eliminates this *ad interim* copyright term of protection, and substitutes authority for the unhindered im-

portation (subject to customs duty) of the first 500 copies of the original authorized edition of the British author's book; but such number of copies it is declared shall not include any books imported under the authorized list of exceptions to the prohibition of importation enumerated above. But this privilege of importation "of such five hundred copies shall not extend to works of authors, citizens of, or aliens resident or domiciled in, the United States of America at the time of creation, printing or first publication." Furthermore, it is declared that every such importation must be accompanied "by a written authorization specifying the title of the work and the number of copies imported thereunder, signed by the author or the owner of the publication rights for the United States with respect to said work, together with an affidavit of the importer certifying that a duplicate copy of said authorization has been mailed to or deposited with the Register of Copyrights." If copies in excess of the 500 copies provided for with the consent of the author, or any one authorized to act on behalf of the author, are imported; "then no remedies shall be available under this Act *for the printing, reprinting, publication, distribution, or vending* of copies of such work made by any process set forth in subsection 1" (of Section 29), that is to say, loss of right to sue in case of American infringement of the British author's book.

The proponents of the bill in a note explain, that "the sanction of the obligation not to import more than 500 copies of a foreign author's work is not the loss of the copyright in general" the author "merely has no remedy against the printing, publication or sale of a domestically manufactured work but he maintains all other rights, for instance, for other versions of his work, for radio communications, for performance."

But in plain language, after the importation of the first five hundred copies of the English author's book his American market is shut off, and his right to sue for an American

piracy of his book is taken away from him. How can this proposed procedure be held to honestly extend the copyright reciprocity proclaimed by President William H. Taft in his first copyright proclamation which contains his declaration that the citizens or subjects of Great Britain and her possessions are and have been since July 1, 1909 entitled to all of the benefits of the Copyright Act of that date (except the benefits of Section 1 (e).) and how does it meet the provisions of Article 4 of the International Copyright Convention which declares that authors of one Union country shall enjoy for their works such rights in other member countries "as the respective laws now accord or shall hereafter accord," and that "the enjoyment and the exercise of such rights are not subject to any formality?"

This proposal to extend compulsory American printing beyond American works and to include every article that can be produced by the printing press, and the proposed enactment of severe penalties for failure to print in the United States, is the most retrogressive copyright proposal possible to present to Congress.

That this requirement of American manufacture of books has ever been of any advantage to labor, or that it has stimulated employment, is yet to be proved. Originally applicable to books in all languages, it was, in 1909, with the approval of the representatives of the typographers limited as to foreign works to such as were printed in the English language. Unprejudiced observers believe that, regardless of the statute, most types of English works now manufactured in the United States would continue to be so manufactured for reasons of convenience and economy. The book publishers' organization has long advocated American adherence to the Copyright Convention.

Some labor leaders have acquiesced in the repeal of so much of the manufacturing clause as is in conflict with the convention. They say that, if any loss of work should result it would be balanced by the increased export trade in books

which would result from the convention and by other compensating features. In this they would seem to be correct. Appropriate attention has been given to this problem in the Department of Labor and other departments of the Government, which have adduced evidence that the convention will result in gain for both employers and employees in all of the allied printing trades. Even if this were not true, the manufacturing clause is, on its face, so unfair and so out of harmony with sound economies as to invite the opposition of statesmanlike labor leadership. It certainly invites retaliation from other countries which, insofar as actually exercised, must be injurious to American labor.

Probable Effects of the Abrogation of the Obligatory American Manufacture of Books by British Authors

While the printing industry in the United States has steadily opposed the abrogation of the obligatory American printing of books, or of any modification intended to reduce the area of its application, there has never been presented to Congress any concrete argument in support of this opposition. There has merely been a constant contention that as Congress has granted them this concession there was no obligation upon the printers to accept any proposal for its abrogation or even its reduced application.

Senator Carl Hayden, Chairman of the Committee on printing, has made public, however, in Senate Document No. 99 (76th Congress, 1st Session) some striking statistics and noticeable statements regarding the probable effects on the printing industry of the adoption of the Copyright Convention and the abrogation or partial abrogation of the printing clause. It is pointed out in the first place that what has been proposed would leave the printing requirement untouched in respect of American works and would only release foreign books by English authors from obligatory reprinting here in order to secure copyright protection. Doing this "would dis-

pel a great deal of ill-will and create a great deal of goodwill for American industry engaged in publishing copyrighted works." It is pointed out that the total imports of books and other printed matter in 1937 amounted to nine and one-half million dollars, less than one-half of one percent of the domestic production, $2,203,418,382. The average number of wage earners and the amount of wages in the printing and publishing business of the United States in 1937 were workers 276,363, and the earned wages $416,469,702. "From these figures it must be surmised that international trade, while potentially important, is not a vital factor in the industry as a whole."

Before 1891, foreigners could not obtain copyright and their books could be and were freely published regardless of the author's consent; "a situation which should in effect discourage importation and increase the making of work for American labor." But of books and other printed matter, in 1890 the imports amounted to $3,970,848, and the exports only to $1,886,094; while in 1938, exports reached a value of approximately $23,000,000.

"There is now no possible excuse for using such an expedient as the manufacturing requirement to make work for American printers. They have work made for them in the great and growing demand of other countries for their products. Imports, though showing a healthy growth over the same period, are now far behind exports, amounting, indeed, to less than half their value. This is believed to be solely the result of the fact that American authorship and the American publishing industry have reached maturity and meet demands at home and abroad in a superior way, with superior creations. The manufacturing requirement is a hindrance, not a help to this development."

On an examination of some of the figures for international trade in books alone, helpful information may be found. Exports of bound educational textbooks (1937) amounted to $2,264,470, (1938) $2,005,507; of other bound books

(1937) $2,978,616, (1938) $3,213,807; of unbound books in sheets (1937) $270,977, (1938) $324,332. These figures reveal a $5,000,000 export trade in bound books. They also reveal the exportation of increasing quantities of printed sheets for binding into books in some other country, generally Great Britain. This is usually due to the failure to complete the making of the book for publication on a fixed, simultaneous date. In every such case American industry and labor were deprived of the legitimate work of finishing the books in question. The probability from available figures seems to be that imports of books that are really competitive are less than exports. "Control, if desirable, is a tariff not a copyright matter."

The question is, "would business and employment, if any, now resulting from the manufacturing requirement in the United States, be diminished if, in case of works of authors in other countries, writing in English, copyright should be accorded (under the treaty) without the requirement of manufacture here?" . . . . "Official estimates that have been made suggest that the reduction, if any, would be negligible." The works in English by writers who are domiciled in other countries that are or may be published or republished in the United States, seem to furnish too small a fraction of the publishing industry to be likely to affect employment or the general volume of business, even if all of it should be withdrawn. "But the probability is that little or none of it will be withdrawn."

When it has been demonstrated that an English work may become a "best seller," the demands of our far greater market can often be met more cheaply and satisfactorily by a special American edition, than by exportation to the United States of copies of the original edition. If, as should be possible, in all cases, the English author has secured copyright for his book in the United States and is already legally protected, good business would dictate the printing of an American edition and the printers would be benefited thereby. But

if his copyright has been denied him because he could not print at once a second edition shortly after the publication of his first British edition, the American printer had lost his job because of the stupid requirement of the immediate printing of an obligatory American edition.

If the copyright treaty is adhered to, copyright protection in the United States would be extended to previously published foreign works. For such of these works as are of a character to find readers in the United States, publishers may be depended upon to come forward with proposals for protected American editions. This would of course mean work for American printers which is lost to them now by the unfortunate demand for a simultaneous reprinting of the English author's book. "Moreover, publication here of the English author's book may actually be prevented by the manufacturing requirement. Some practical publishers say that American editions not now considered would be undertaken if the requirement were repealed." The present period of *ad interim* protection is often insufficient to determine the final American demand for an English work, in which case no American edition is brought out, and not only is the opportunity for continued American copyright lost, but the printers have forfeited their profit. It is clear, however, that if the author was granted full copyright under the convention and subsequently discovered a sizeable American demand, an American edition would normally follow. "Thus American labor and business would no longer be unjustly deprived of work by the very provision of law that was intended to bring them work." The desirability that foreign authors have immediate copyright under the convention is increased by the fact that without assurance of copyright, any particular American publisher will hesitate to bring out even a book for which there is assured demand. "The reason is that every other publisher is free to do the same thing and so to render the first venture profitless."

"It would seem, accordingly, that, entirely apart from the advantages of the Convention in promoting exports, its protection to the authors of other countries may bring positive advantages to American labor and industry."

Because of the great demand throughout the world for American copyright books and other important products of the publishing industries, failure to obtain copyright abroad leads to the publication of unauthorized editions. If the Convention were in force and copyright provided, this demand for American books would, at least in most cases, be supplied by American labor and industry.

The International Copyright Convention and the Copyright Union

The one most important and most pressing copyright matter for many years has been adherence to the Copyright Treaty and the entry of the United States into the International Copyright Union.

The United States has been unable to enter this Union because a basic article of the convention upon which the Union is founded is that the enjoyment and the exercise of the rights accorded by the Convention of Berne shall not be subject to any formality; and that protection is to be automatic in the case of any and all works by authors who are citizens or subjects of any country within the Union, or authors who first publish their works in any such country. The various requirements in the copyright legislation of the United States with respect to deposit of copies, registration, notice of copyright and, above all, the obligatory manufacture of the author's book within the United States, has prevented the entry of the United States into the Copyright Union up to the present time, — from 1891 to 1939."

The proposed copyright bill under consideration takes little notice of the International Copyright Convention. It does, however, in Section 7, grant the extension of copyright

"to works of an author who is a national of a foreign country" provided that "The foreign country of which the author is a national affords at the time of the creation of the work either by treaty, convention, agreement, or law, to citizens of the United States, the benefits of copyright on substantially the same basis as to its own citizens." Or "the foreign country of which the author is a national is, at the time of the creation of the work, an adhering party to the Convention for the Protection of Literary and Artistic Works or to an Inter-American Convention for the Protection of Literary and Artistic Works and the United States is, at the same time, an adhering party.

The existence or cessation of reciprocal conditions in any foreign country shall be determined by the President of the United States by proclamation made from time to time, after the effective date of the Act. The President may at any time terminate any such proclamation in whole or in part.

* * * *

During the last regular session of Congress, on March 29, 1939, Senator Elbert D. Thomas of Utah, a member of the Senate Committee on Foreign Relations, submitted to that Committee a report on the International Copyright Convention adopted at Rome on June 2, 1928. The Committee on Foreign Relations filed on April 11, 1939 a report (76th Congress, 1st Session, Senate Executive Report No. 2) recommending that the Senate "do advise and consent" to adherence by the United States to the said convention and "that, in accordance with article 25, paragraph (3) of that 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."

Senator Thomas in his report states that he is "thoroughly convinced that the treaty should stand on its own feet and be adopted entirely independently of the amendment by statute of the present copyright law" and thinks that it

"should be ratified in advance of the enactment of legislation as a matter of sound policy and correct procedure."

The Senator also declares that "All things considered, I am of opinion that the manufacturing clause has become outmoded, that it does not fulfill its objective of making work for American labor and that, being essentially unfair, it constantly invites other countries to make use of unfair practices of one kind or another to the injury of American labor and American authors, publishers, and producers generally. The opportunity to get rid of it which the pending treaty offers is an opportunity which the Senate should welcome."

Thorvald Solberg.

Washington, D. C.