

# Copyright Problems

*These papers were presented as a symposium sponsored by the Governmental Relations Section of ALA's Library Administration Division at Washington, D. C., June 23, 1959. The papers are by Benjamin Kaplan, Professor of Law, Harvard University; Edward G. Freehafer, Director, New York Public Library; Joseph W. Rogers, Chief, Copyright Cataloging Division, Library of Congress; and Rutherford D. Rogers, Chief Assistant Librarian, Library of Congress. Richard E. Chapin, Director, Michigan State University, prepared the Introduction.*

## Introduction: Copyright Law Revision and Libraries

THE COPYRIGHT LAW in effect today is basically the law that was enacted in 1909. It is true that there have been amendments from time to time, but these are minor compared to the major changes in the patterns and techniques of communication that have taken place in the succeeding half-century. Faced with the difficult problem of administering a nineteenth-century law in a twentieth-century world, the United States Copyright Office has been studying the problems that would require attention in a general revision of the copyright law.

As the time approaches for a proposal to be submitted, it behooves us as librarians to formulate our views on some of the basic copyright questions which affect our operations. In the April 1958 issue of the *ALA Bulletin*, Joseph W. Rogers enumerated a number of the questions for which the profession must find answers. If we lack the interest, or if we are not informed, we will be unable to state our position regarding this vital subject. We will then be forced to operate with a law which may be inadequate for our needs. At the present time ALA, the Association of Research Libraries, Special Libraries Association, Music Li-

brary Association, and other interested groups are actively following the progress of revision activities.

Because of the need for information relating to copyright activities, a meeting was held during the Washington Conference to provide ALA members with information regarding some of the library-related problems involved in revision of the copyright law. The following papers<sup>1</sup> were delivered at the meeting of the LAD Governmental Relations Section on June 23, 1959. L. Quincy Mumford, Librarian of Congress, acted as moderator of the meeting, and Arthur Fisher, Register of Copyrights, and Abe A. Goldman, chief of research of the Copyright Office, introduced the general topic of copyright law revision and participated in the discussions which followed the presentation of the papers.

A series of background studies on the principal problems at issue, developed by the Copyright Office under the direction of Mr. Goldman, is now nearing

<sup>1</sup> These papers were followed by informal remarks by Dan M. Lacy, managing director of the American Book Publishers' Council, Inc., on "Factors Influencing the Publishers' Positions on Copyright Revision." Other commitments have prevented Mr. Lacy from preparing a reconstruction of his talk for publication at this time. A very brief report appeared in the *Library of Congress Information Bulletin* for July 6, 1959, pp. 410-411.—Editor.

completion, and will soon be available in printed form from the Superintendent of Documents. The comments of various members of the Panel of Consultants, appointed by the Librarian of Congress in 1956 to advise the Copyright Office in the revision effort, are appended to each study.

It is hoped that the Copyright Law Revision Committee of the LAD Governmental Relations Section will be able to prepare papers stating the position of the Association on copyright revision. Comments from individual members are solicited. These should be sent to one of the following members of the com-

mittee: Ray W. Frantz, Jr., Librarian, University of Richmond Library, Richmond, Virginia; Alberta L. Brown, Librarian, Upjohn Company Library, Kalamazoo, Michigan; John Fall, Chief, Economics Division, Public Library, New York, New York; Joseph W. Rogers, Chief, Copyright Cataloging Division, Library of Congress, Washington 25, D. C.; Earl Borgeson, Librarian, Law School Library, Harvard University, Cambridge, Massachusetts; Richard E. Chapin, Director of Libraries, Michigan State University, East Lansing, Michigan, Chairman, Copyright Law Revision Committee.—*Richard E. Chapin*.

## Copyright, Libraries, the Public Interest

MY ROLE AT THIS MEETING is the congenial one of providing some background for a discussion of copyright law revision. I shall say a word by way of general introduction to the subject and then speak very briefly about a few questions of particular interest to librarians.

You have heard it said many times, and on all sides, that our copyright statute needs comprehensive overhaul; and although this statement is a commonplace, it is true. It has been true for a long time. I well remember one of my older associates bemoaning the sorry state of copyright law back in 1933, when I began law practice; and now, a quarter-century later, I find myself making similar moan to my own students. The facts of life have simply overrun and overwhelmed considerable parts of the statute, which dates from 1909. The economic and industrial complex in which the statute operates is altogether different from what it was in the gentle days of President Taft. Inventions have

revolutionized some of the principal means of communication.

Why in the face of these titanic changes has the statute—I speak here of its domestic as distinguished from its international aspects—persisted without fundamental revision? The reasons are many, but surely one of them is the natural and laudable self-seeking of the several interests concerned with copyright law. Proposals satisfactory to some groups have met implacable opposition from others; so it has gone in one attempted revision after another; and the wit of man has so far failed to produce a sound omnibus bill that could command general support.

This is not to say that the law faces imminent collapse. Private interests have found ways of accommodating to the existing statute, sometimes by disregarding it. The courts have been reasonably inventive in putting glosses on the law to meet exigent problems. In recent years we have enjoyed an energetic ad-

ministration of the Copyright Office in Washington which has known how to palliate various defects in the law. We may confidently predict that the foundations of the Republic will not crumble if the copyright statute stands unchanged for another decade. Yet it is or ought to be an American habit not to be content with the merely tolerable but rather to strive for something better.

In fact present prospects for intelligent revision are reasonably encouraging. We have recently witnessed a notable development on the international front. As you know, one of the saddest features of our law from 1790 to the mid-1950's was its xenophobic trend: the law accorded only drastically limited rights to published works of foreign authorship. Recall the wholesale American piracies of British works through most of the nineteenth century. All that is now changed. The most dramatic steps came a few years ago when we ratified the Universal Copyright Convention (UCC) and welded it into our statute law, with the result—to speak in general and imprecise terms—that works of nationals of other subscribing countries can with minimum difficulty secure protection here corresponding to that given like works of our own nationals. Our law has thus been humanized in a way befitting our world position. It should be added that the UCC helps our nationals to secure more effective protection of their works abroad.

Formulation of the UCC was a UNESCO project in which our Copyright Office, under the leadership of the Librarian of Congress, took a vital part. Although in legislative matters it is hard to trace cause into effect, the success of the enterprise seems attributable in some considerable measure to the care and patience with which the preliminary and preparatory work was done. The UCC experience illustrates the old observation that opposed factions can often be led to reasonable adjustment in

the public interest by a process of exposing all the facts fairly and fully to the common view.

This brings me to the current effort to revise our domestic law. Our Copyright Office has evidently learned a lesson from the UCC episode. For, as a first step toward revision, the Register of Copyrights undertook to sponsor a series of scholarly studies covering the major problems of copyright law. These studies have been issued from time to time with comments by members of a panel of experts appointed by the Librarian of Congress. The project is now nearing completion.

So far as possible the Copyright Office studies grind no axes. They attempt to take a long view of their subjects—and I need not tell you that an understanding of historical origins can itself be a force for rational improvement. Some of the studies move beyond our territorial boundaries and consider relevant experience in other countries. A few explore practice and opinion by means of questionnaires addressed to those intimately affected by the copyright law. There is reason to think that all this preliminary work and the discussion which it has engendered are creating an atmosphere favorable to dispassionate reconsideration of the law.

Let me now turn briefly to a few problems of immediate concern to librarians which may find solution in the course of a general revision of the statute.

*Photocopying.* The invention of efficient and economical methods of reproducing printed and other material gives rise to a problem which impinges on the day-to-day business of librarians. Our present statute quite naturally secures to the copyright proprietor the right to "copy" the copyrighted work: this is in fact the essence of the copyright monopoly. Nevertheless it has been generally assumed that a reader need not obtain the consent of the copyright proprietor

to make a hand-copy of passages from a copyrighted work for ordinary scholarly purposes. (This privilege sometimes goes by the name of "fair use.") In lieu of copying by hand, may not the reader take the more expeditious course of snapping a picture of the page? May not the library do this job for him on request? But what are we to say about a request by an industrial company for 300 photocopies of copyrighted material to be distributed to company employees? A privilege on the part of libraries or others to make photocopies *ad lib.*, derogating from the monopoly rights conferred on authors (and on publishers by succession to authors), might conceivably diminish publishers' financial returns to the point where they would lose incentive to publish and authors would correspondingly lack incentive to create, thus defeating the overriding purpose of any copyright law—encouragement of the production and dissemination of works of the mind. I have been referring here to the photocopying of published works under copyright. A rather different although related problem arises on the photocopying of unpublished manuscripts in which literary rights subsist.

To approach a solution of these difficulties, which have long worried librarians, we need to know the extent and character of the photocopying now being done by and requested of librarians. This information may show up some false issues even if it will uncover new and unsuspected real ones. The Copyright Office study on the subject of photocopying<sup>1</sup> does not assemble these necessary data but makes a contribution along a different line by showing how the problem has been attacked through "gentlemen's agreements" in this country, and through such agreements and explicit legislation, some of it very recent, in other countries. I will add the

<sup>1</sup> U. S. Copyright Office, *Photoduplication of Copyrighted Material by Libraries*, by Borge Varner (General Revision of the Copyright Law, Study No. 19; Washington: Copyright Office, May 1959).

single comment that where publishers cannot themselves meet the needs of readers by delivering copies rapidly and at reasonable cost, libraries are inevitably going to supply copies, and their privilege to do so should be regularized and acknowledged. But this proposition, with which publishers might possibly agree, is only a start. The precise terms of a fair adjustment of the interests involved will need careful deliberation.

**Copyright Notice.** Our law commands that a formal notice of copyright appear on published copyrighted works. If the notice is omitted or is deficient, the copyright may be forfeited. In the larger part of the world there is no such formal requirement.

Here are some of the questions thrown up by the notice: What, exactly, are the values of the notice to libraries and other users of copyrighted works? On this question a highly suggestive Copyright Office study has been published.<sup>2</sup> Taking due account of the values of the notice, can we justify the stiff penalty of loss of copyright for failure—which may be inadvertent—to carry out a formal prescription? And if a copyright notice is to be continued, whether as a compulsory or permissive feature of the law, can it be improved in content?

**Copyright Deposits.** With exceptions for certain foreign productions, the present law requires that applicants for statutory copyright forward copies of their works to the Copyright Office in Washington. Many of these deposits find their way, under the law, to the shelves of the Library of Congress. The deposit system is intertwined with registration requirements.

Through these procedures a very important part of the cultural contribution of the nation is preserved and recorded. The deposit-registration routines serve

<sup>2</sup> U. S. Copyright Office, *Uses of the Copyright Notice: A. Commercial Use of the Copyright Notice*, by William M. Blaisdell; *B. Use of the Copyright Notice by Libraries*, by Joseph W. Rogers (General Revision of the Copyright Law, Study No. 17; Washington: Copyright Office, April 1959).

several purposes, but the bibliographical objective is a dominating one. So strong indeed is the librarians' professional interest in this field that lawyers ought to take a back seat and begin by asking instructions from librarians. So I will say only that revision of the Copyright Law will provide an opportunity for re-examining and reappraising all aspects of a great bibliographical resource.

Librarians are and ought to be exercised over these three issues of copyright law, but I suggest that their concern should not stop there. Underlying the librarians' craft is the entire law regulating the ownership and use of literary,

artistic, and musical works, and this law is largely the law of copyright. It is not an accident that the United States Copyright Office is set up as part of the Library of Congress: this is the sign of a kind of symbiotic relationship between "copyright" and "library." I hope that this meeting under ALA auspices will foster an ever increasing interest of librarians in copyright, not only because of the inherent fitness of the thing, but because librarians, from their knowledge and experience and with a vision uncolored by excessive partisanship, can contribute much to the creation of a better copyright law.—*Benjamin Kaplan.*

## Photocopying and Fair Use

SECTION 1 of the United States copyright law accords the proprietor, or owner, of a copyright exclusive rights to print, publish, copy, and vend the work. In other words, the proprietor has the exclusive right to produce the work for public consumption, to copy it, and to sell it. The proprietor is given these rights in order to encourage the recording and dissemination of man's intellectual endeavor, without fear of piracy.

Once the work is produced for public consumption the public may read it, and be stimulated by it, and may get ideas from it, but may appropriate parts of it only in certain circumstances. There are occasions when, for example, in the production of a new work by a different person, it is necessary or desirable to use the copyrighted work. When this happens, however, the proprietor may consider the use of his work improper or excessive, thus impinging on his rights, and as a result he may decide to sue for infringement.

The courts have attempted to resolve such conflict of interest by a rule of reason. They have not imposed liability for infringement if the use of copyrighted material is judged to be reasonable, or fair. They have tried, case by case, to weigh the exclusive rights of the proprietor against those of the user of the material.

One definition of fair use tells us that it . . . "may be defined as a privilege in others than the owner of the copyright, to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner of the copyright."<sup>1</sup> Or again, fair use has been defined as such use as is "reasonable and customary."<sup>2</sup> We notice, however, no definition of "reasonable." Another writer states that "There is one proposition about fair use about which there is widespread agree-

<sup>1</sup> Horace G. Ball, *The Law of Copyright and Literary Property*, (Albany: Banks & Co., 1944) p. 260.

<sup>2</sup> Shapiro, Bernstein & Co., Inc. v. P. F. Collier & Son Co. and Joseph P. McEvoy, 26 *USPQ*, 40-43.

ment: it is not easy to decide what is and what is not a fair use."<sup>3</sup>

It is clear that fair use or reasonable use lies somewhere between the exclusive rights of the proprietor and those of the user who, for one reason or another, denies that his use of the copyrighted material infringes upon such rights.

Certain uses of copyrighted material appear to be in the public interest, and in general are held to represent fair use. These have been identified as *incidental use, use for purposes of review and criticism, for a parody and burlesque, for scholarly works and compilations, for non-profit or governmental purposes, use in litigation, and personal or private use.*

It is this last area in which libraries have long been active, meeting what they consider to be their traditional obligation to make their collections of maximum service to their readers. Although the law grants the copyright owner the exclusive right to copy his work, probably no one denies the right, for example, of a reader to copy in long hand a published work, even though copyrighted, for his personal or private use. The same might be said of copying by typewriter or by some other mechanical or photographic method in lieu of manual transcription. And it would seem reasonable to copy for personal or private use in lieu of loan, either for convenience, or when lending is precluded by policy or by loan regulations. It has been stated furthermore that "anyone may copy copyrighted materials for the purposes of private study and review."<sup>4</sup> It has also been stated that "private use is completely outside the scope and intent of restriction by copyright."<sup>5</sup>

In any event, copying by photoduplication has been a traditional practice of libraries in making their materials of

maximum usefulness for personal or private use. In doing so, however, they have tried to observe the inherent criteria for fair use such as the type of use, the intent of use, the quantity and value of the materials used and the degree in which the use may prejudice the sale or diminish the profits of the original work.

With this in mind, and recognizing as far back as 1935 the growing use of photographic methods of reproduction, the so-called Gentlemen's Agreement of that year laid down certain guide lines for copying by libraries. Generally speaking this provided for the making of one copy of part of a copyrighted book or periodical volume for a scholar representing in writing that he desired such reproduction in lieu or in place of manual transcription and solely for purposes of research, provided that he is notified he is not exempt from liability for misuse of the reproduction, and that the reproduction is made without profit to the maker. The agreement is no longer operative as such, but is still influential as a guide in the copying of material for use in personal research.

In 1941 ALA adopted a Reproduction of Materials Code, which in effect restated the principles of the Gentlemen's Agreement, with some amplification. Meanwhile some copyright proprietors view with concern the emergence of quicker and simpler devices for photoduplication. Quite understandably they fear the possibility of easy duplication by almost anyone and easy duplication of multiple copies, with detrimental effect on the sale of the work in original form. The extent, if any, to which libraries may find themselves involved in the economics of this problem is a matter which should be studied. Whatever justification in the public interest can be advanced in support of a user making multiple copies would certainly require clear demonstration.

In addition to copying for personal use, there are other purposes for which

<sup>3</sup> Saul Cohen, "Fair Use in the Law of Copyright," in *Copyright Law Symposium No. 6* (New York: Columbia University Press, 1955) p. 52.

<sup>4</sup> Cohen, *op. cit.*, p. 58.

<sup>5</sup> Ralph R. Shaw, "Publication and Distribution of Scientific Literature," *CRL*, XVII (1956), 301.

libraries need to copy. Books wear out, get lost, are even stolen, mutilated, or otherwise damaged. In many instances prompt replacement is highly desirable, if not essential. Common practice, I am sure, is to order new copies. However, in the case of older books, many of them still subject to copyright, new copies often may be secured only at considerable expenditure of time and effort, if at all. A copyrighted book may be out of print, and not available through the second-hand market short of prolonged search. The copyright owner may not be readily available.

These circumstances may obtain particularly in the cases of defunct periodicals, pamphlets, privately printed works, and foreign publications. Thus there arises a question as to what the librarian's course of action should be in fulfilling his obligation to make the materials for study and investigation readily available as economically as he can. Should he copy an o.p. title for his library's collections to serve the best interests of his library's users, in accordance with his best judgment, or must he exhaust the possibilities of the second hand market, and, failing that, exhaust all possibilities of obtaining permission to copy? And how is the public interest best served in the case of research materials if permission to copy is refused?

A similar question arises when libraries need to copy to preserve the text of materials disintegrating on their shelves because of the poor quality of the paper on which they are printed. This is a problem of great magnitude for research libraries. Here again there is a question as to what should be the librarian's reasonable course of action in meeting his obligation to assure preservation of research materials. Should he go ahead and copy, or must he first make every effort to seek permission?

Immediately related to this is the question as to how much freedom of ac-

tion the librarian should properly have in copying for preservation upon receipt newly published material printed on paper sure to break down in a relatively short time. If upon receipt of material of research value such break-down is easy to predict, it is certainly more economical to copy immediately, and to catalogue and house the copy. Is it unreasonable to conclude that such copying is in the public interest, and not damaging to the copyright owner?

Certain kinds of materials—pictures, maps, charts, music—present special problems in fair use, the implications of which need to be studied further in relation to copying by libraries. Moreover, careful consideration must be given the special problems of copying unpublished material subject to common law copyright.

In this brief presentation I have tried only to point out some of the factors and issues in respect to libraries and fair use and photocopying. These require careful study with attendant fact finding and analysis. The answers come neither quickly nor easily.

There are several avenues of approach to solutions in respect to the problems mentioned. One is through statutory revision. Another lies in the direction of establishing some system of royalty fees. Another, stopping short of either of the first two, looks to the development of a working code of reasonable practice by libraries in fulfillment of their responsibility toward facilitating investigation and research. The Joint Library Committee on Fair Use in Photocopying has been concentrating on the third approach in its deliberations to date. The Committee now has the help of legal counsel recently retained under a grant from the Council on Library Resources in studying the background and in gathering pertinent information and data needed for the formulation of recommendations.—*Edward G. Freehafer*.

## Copyright Notice

THE PRESENT LAW requires that each published work, in order to be copyrighted, shall contain a copyright notice in or upon all published copies of that work. The law is specific as to the content and form of the notice and as to its location in or on the work. The notice contains three elements: the word "copyright" (spelled out or abbreviated, or indicated by the copyright symbol), the name of the copyright owner, and the year date of publication. All three elements must be present in notices in books, periodicals, contributions to periodicals, dramas, and music (this form is also generally considered to be that required for motion pictures); an optional form is permitted for maps and in the several art classes, allowing the use of an abbreviated notice without the year date.

The informational circular used by the Copyright Office to answer the many inquiries it receives about notice contains the following warning:

NOTE: Once a work has been published *without* the required copyright notice, copyright protection is lost permanently and cannot be regained. Adding the correct notice later to the original or subsequently produced copies will not restore protection or permit the Copyright Office to register a claim.

Here is the rub. Despite the clarity of the notice provisions in the law and the care taken by the Office to explain these provisions fully, works for which their authors or owners wished to have copyright protection have, through ignorance or inadvertence, sometimes been published lacking the intended notice, containing a notice but in the wrong place, or containing a notice that is defective in some essential aspect. Such works may go immediately into the public domain.

Because the law states specifically that the copyright notice must be affixed to each copy thereof published, reprints and reproductions of copyrighted works issued without also reproducing the copyright notice may have the effect of throwing such works into the public domain, even when the permission of the copyright owner has been secured.

Not unnaturally, a great many copyright owners feel that a permanent loss of copyright is too severe a penalty for a technical defect and that this should be corrected in a new law. Some would eliminate the copyright notice completely, so that all works potentially copyrightable would be automatically copyrighted simply by publication.

The Copyright Office has not only studied the legal aspects of the notice provision, but has also explored the usefulness of the notice with groups that use copyright materials. Two explorations were made, one a rather small but representative sampling of American libraries of all types, and the other a larger survey of the principal copyright industries: notably the book, periodical, newspaper, and music publishing industries, and the printing, greeting card, and broadcasting industries. These groups were asked a variety of questions designed to discover how and to what extent they used the copyright notice and the value of the notice to them. The results demonstrated clearly that industry uses were primarily for commercial purposes and that library uses were primarily for non-commercial purposes.

Commercial users of copyrighted materials refer to the copyright notice principally to satisfy themselves as to whether or not a work is under copyright, and, if so, to secure the name of the owner. They are somewhat less interested in the date of copyright. Even if the property has changed hands since

first publication, being able to obtain the name of the original owner from the notice provides a starting point from which to search for subsequent owners.

Commercial users make use of existing copyrighted properties through printed reproduction, public performance as by broadcasting, or sound recording. The broadcasting and newspaper publishing industries tend to be concerned less than others with the notice since they are protected by contracts with the suppliers of the materials they use commercially. These suppliers, on the other hand, normally *are* concerned with the notice. Except for these two industries, from two-thirds to three-quarters of the firms canvassed believe the elimination of the copyright notice would make their work more difficult.

The canvass of libraries demonstrated that almost all libraries use the copyright notice frequently. Most libraries acquire more copyrighted works than works that are not copyrighted, and the element of the notice of greatest value is the copyright date. This is widely interpreted as the date of the content of the work. Usually this interpretation is correct, since the date required by the law is the year date of first publication. To the extent that copyright date actually does represent the date of content, it is a conveniently placed aid to book selection and reference work; it is also useful in discarding, ascertaining the existence of earlier editions, cataloging, shelflisting, shelf arrangement, identifying rare books, and other functions.

The name in the notice, on the other hand, is of relatively little interest to libraries, although it is used in conjunction with name in imprint when it is necessary to write for permission to duplicate. Libraries handling large numbers of requests for photocopies, principally large university and public libraries, depend upon it as their principal guide in determining whether a work may be copied without permission.

Most libraries would be inconvenienced, many quite seriously, if the notice were no longer required or if the copyright date were no longer required. Some libraries mentioned the difficulties that arise from the fact that date is not required in the notice for maps, and urged strongly that the law be changed to require it in the future.

Thus there are many who believe that the public good argues strongly for retention of the notice; some believe it should not only be retained but should be elaborated to include the dates of all earlier editions, and to specify the limitations of the claim when it pertains only to a portion of a complete work, as in editions subsequent to the first. Others believe that the present specific requirements of the law are too strict.

Most of the specialists now advising the Copyright Office on revision problems take a middle position which would retain notice as a general requirement but would preserve the copyright if the notice were omitted inadvertently. Thus, unintentional omissions or errors could be cured, but an innocent infringer who had been misled by the absence of the copyright notice would be absolved from liability. Many of these advisers would relax the provisions relating to the form of the notice and its position in the work, but generally not as to content. The notice provision of the Universal Copyright Convention is strongly favored; that is, the notice would consist of the copyright symbol, the name of the copyright owner, and the year date of first publication, placed "in such manner and location" as to give reasonable notice of claim of copyright.

The attitude of the library profession on this problem is important not only because libraries appear to have, judging from the results of the survey, a particular "private" interest in copyright notice, but also because they represent, to an important degree, the public interest as well.—*Joseph W. Rogers*.

# Deposit of Copies of Copyright Works in the Library of Congress

SINCE 1870 roughly ten million works, in one or two copies each, have been deposited in the Library of Congress through the operation of the copyright law. Approximately half of these have gone into the collections of the Library, and another one-and-a-half million, mostly unpublished works and advertising materials, are retained in the Copyright Office. Others have been transferred to the Department of Agriculture Library, the National Library of Medicine, and other federal libraries in the District of Columbia. A great many have been used for foreign exchange, returned to copyright claimants, made available to the Congress, sold, or destroyed as waste paper after selective screenings.

It is almost impossible to give you succinctly any kind of mental image of these deposits. Nevertheless, it is desirable to try. The copyright deposit system has given the Library of Congress a nearly complete collection of the creative and factual published works in the form of books, periodicals, dramas, music, and maps, and a representative collection of motion pictures, produced commercially in the United States since 1870. Deposits of art works, printed ephemera, and advertising matter, while substantial, are not complete nor fully representative of the total domestic production. In addition, large numbers of unpublished works of music and drama have been deposited since 1909. For better or for worse, the deposits represent, in materials usually capable of preservation, the strengths and weaknesses of American culture.

The general revision of the copyright law in 1909 took cognizance of the growing space problem of the Library by giving authority to the Librarian of Congress to choose one or both copies of any deposit for the Library's collections, and by giving authority to the Librarian and

the Register of Copyrights jointly to dispose, by various means, of copyright deposits not required for library use. It also renewed the Librarian's authority to demand the deposit of works in those instances when it was known that works published with the copyright notice had not been deposited within a reasonable time; this authority was now lodged with the Register of Copyrights. Copyright owners who could not, or would not, comply with such demands for deposit were subject both to a fine and to the forfeiture of their copyright.

Many authors and publishers feel that this provision for forfeiture is unfair. They believe that, while a copyright registration system including the deposit of copies is desirable, registration should not be an absolute requirement for copyright, especially since the failure to register within any specified time may be due to inadvertence or oversight rather than intent. Except for this provision, there does not seem to be objection to the continued deposit of copies.

Nearly all national libraries in the world build their collections largely or partly through the operation of a mandatory deposit system. There are three principal types—legal, voluntary, and copyright. France and Great Britain have legal deposit systems, Switzerland a voluntary system.

In the United States the deposit of copies has always been directly tied to the copyright registration system. Initially there was no thought of the deposit as making a contribution to the national library. Between 1846 and 1859, when the Smithsonian Institution and the Library of Congress received deposit copies of copyrighted works, and following 1865 when the Library of Congress again became a depository, the idea of deposit for the enrichment of the Library had at

least equal acceptance with that of deposit for copyright registration. Since 1909 deposit for the enrichment of the Library has clearly been in the forefront.

Besides contributing directly to the development of the collections of the Library, the deposit system made it feasible for the Library to begin its printed-card distribution activities in 1901. The broad coverage of American trade, technical, university press, reference, and other books reaching the Library through the deposit system was a prime factor in the establishment of the card program. Deposit has also been a key factor in the production of comprehensive United States bibliographies.

There are, of course, certain groups of materials which the present copyright deposit does not bring in. United States government documents are not copyrightable under the existing law, nor are phonograph records and certain manuscript materials. Only partial coverage is secured in certain other fields, such as state and municipal documents, foreign works, several kinds of art works, and such works as are written on subsidy or with no thought of profit.

The Library is, of course, most concerned with those works which, because of their timeliness, authoritativeness, or representativeness of current taste, are sure to make a current or future contribution to the work of the Library. These works include the majority of the new works and new editions of the United States book, periodicals, music, and map producing industries, and the major products of the motion-picture industry.

For the purpose of discussion let us assume that there will continue to be a copyright registration system, and that copies available to the Library of Congress will be deposited in conjunction with registration. As I have already indicated, however, there is much sentiment that registration should not be compulsory; that is, that copyright should not depend upon registration. It may re-

sult, therefore, that some copyrighted works will not be deposited for copyright registration.

Certain primary issues emerge which must be settled first. Should there be some system to require the deposit for the Library of Congress of works that are not registered? Should the present integrated copyright deposit system, under which deposits for copyright registration include copies for the enrichment of the Library, be continued? It is possible that two systems might be set up to operate independently of each other, one for copyright registration and the other for the enrichment of the Library. Or the present integrated copyright deposit system might be supplemented by a legal requirement of deposit in the Library of copies of copyrighted works not registered. Under either a separate system or a supplemental system, deposit for the Library might conceivably be extended to some kinds of works not at present ordinarily copyrighted (such as certain widely used current bibliographies, scholarly works, and many newspapers), or now excluded from copyright protection (such as sound recordings). One difficulty here is that some Constitutional basis other than copyright, probably interstate commerce, would need to be found if the system were to apply to works not copyrighted.

In addition to these basic questions, and those so far suggested, there are others in which librarians have a particular interest. For example: If provision is made for a separate or supplemental system of legal deposit for the enrichment of the Library of Congress, what kinds of material should be required to be deposited? Should the Librarian of Congress be authorized to specify the kinds of material by regulation? How many copies should be required, and should this number be the same for all kinds of materials (e.g., for books, motion pictures, and art works alike)?

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lection on the subject; "horizontal" meaning a study of the important publications in related fields. In this way the bibliographer can not only meet the immediate demand but also prepare materials to some extent for future needs. Again, in a specialized research library it is vitally important to keep close contact with the patrons and watch where their interest lies and how it develops, for this is the only way the bibliographer can meet the challenge, both present and future. Probably every library has found some time or another that although some books are ignored for some time, when researchers want them they have to have them immediately. The bibliographer should also be familiar with the contemporary trends in Japan and know who were and are outstanding scholars in the subjects of most moment to the faculty and the graduate students.

The focus of book selection by the

bibliographer is primarily on the materials needed for instructional and research purposes in Japanese studies, but he will need to consider the interests of the whole university community. For example, if the library is located on the West Coast, materials on or by the Japanese immigrants should be seriously considered. He will have to watch constantly for materials to keep some of the collections strong by supplementing with new materials, even if the interest in the collection at the present moment may not seem entirely to justify selection. For example, if the library has a strong collection on some aspect of Japanese literature, it will be quite logical to add new materials to it, even if there is little current interest. The bibliographer should never forget that the library serves the general library system and must keep materials ready to satisfy the interests of the whole community.

## Copyright Problems

(Continued from page 222)

Should the number be limited to one in the case of limited editions and very expensive works? Should consideration be given to requiring additional copies for regional libraries, possibly set up as part of a quasi-federal system to provide security to our cultural product as well as to service it? Should a time period be fixed within which deposit must be made; should a penalty be provided for failure to deposit within that time and what should it be? Should deposit in advance of publication be permitted and encouraged?

There are other questions, and tentative answers to questions on the deposit system and on other elements of the copyright registration procedure will undoubtedly create additional questions. I hope I have been able to make clear at least the significant problems which we now have under consideration at the Library of Congress; I hope also that you will take the opportunity afforded by this meeting to express your views regarding the desirable content of the deposit provisions of a revised copyright law.—*Rutherford D. Rogers.*