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Newspaper Copyright

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NEWSPAPER COPYRIGHT

This is a report upon the state of the American law prepared for submission to the International Congress of Comparative Law to be held at The Hague, August 2nd to 6th, 1932. The report was prepared at the request of the American committee of the International Academy of Comparative Law, and is published with the approval of the Academy. The national reports are to form the basis of a general report, not exceeding 10,000 words in length, covering the general state of the law in regard to the particular topic. Because of the limitations thus involved, it has been necessary to confine the report to a statement of principles, and to omit any consideration of the cases.

NATIONAL PROTECTION

Newspapers are copyrightable in the United States of America. Under the United States Constitution the national Congress is given power "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive rights to their respective writings and discoveries,"¹ and newspapers are specifically mentioned in the national Copyright Act passed pursuant to such power.²

The subject having been dealt with by the national Congress under its constitutional power, the States can not legislate upon it. A scholar of another country, investigating the American law of copyright, will therefore not find it necessary to refer to the laws of the various states, unless from a historical standpoint, relating to the period prior to the enactment of Federal legislation, or in connection with matters which may well be deemed incidental, such as certain aspects of practice in infringement litigation, the administration of the estate of one owning a copyright, etc. While private copyright bills have been enacted, it may be assumed that in the future copyrights will be granted only under general laws.

¹ Art. 1, § 8, cl. 8.

² Act of March 4, 1909, c. 320, § 5(b); 35 Stat. 1075, 1076; U. S. C. A. tit. 17, § 5(b)

After publication the only copyright protection is statutory. Before publication writings are protected as literary property, under general principles of law, or what may be termed common law copyright. This report is concerned only with the statutory form.

SECURED BY PROPRIETOR OF NEWSPAPER

The corporation³ which is the proprietor of a newspaper may file a single copyright application which will cover all the material of copyrightable nature in the particular issue which the proprietor has the right to copyright. This will include material written by its employees, and the contributions of other authors who have assigned the right to copyright to the proprietor, either as beneficial owner or in trust.⁴ The assignment, of either type, is governed by general principles of law, and may be implied from the nature of the relations between the parties. It is not necessary to refer to either assignments or trusts in the application.

The inclusion in the newspaper of non-copyrightable material does not affect the validity of the copyright as to the remaining portion, and it is not necessary to specify the parts which are claimed to be copyrightable. A single notice of copyright upon each copy of the paper is sufficient, but a separate application must be filed for each issue and for each edition which contains substantial changes.

If preferred, an author may copyright his contribution separately in his own name. If this is done, it is necessary to publish a separate notice of copyright at the beginning of the article. Such a copyright by the author would seem to be preferable to the creation of a trust in the newspaper proprietor only in the event subsequent publication in book form is contemplated.

If the copyright of a contribution is taken out by the newspaper proprietor as trustee, it seems that it will not be possible subsequently to alter the status thus created, as it is generally considered that a partial assignment of a copyright cannot be made.⁵ The holder of a copyright may grant a license con-

³ Individual proprietorship is permissible, but has no practical importance.

⁴ Copyright Act, §§ 3 and 62, *supra* note 2.

⁵ But see *Witwer v. Harold Lloyd Corporation*, 46 Fed. (2d) 792 (S. D. Calif. 1930).

veying partial rights in its use, but the licensee can not sue for infringement in his own name. While an assignment of the right to secure a copyright may be created orally or by implication, the assignment of a copyright which has been granted must be in writing. Such an assignment may be recorded in the Copyright Office at the national capital, and constructive notice of its existence thus given.⁶ Licenses can not be recorded. Copyrights may in general be handled, by written instruments, in the same manner as other choses in action.⁷ In connection with the publication of copyrighted material it is not necessary to expressly reserve any rights. The duration of a copyright is for twenty-eight years, with a privilege of renewal for a like period.

MATTER PROTECTED

Neither facts nor ideas can be copyrighted, but only the mode of their expression. This may be expressed differently by saying that neither thoughts nor events can be copyrighted, but only the literary qualities involved in their verbal presentation.⁸ This eliminates news, as such, from the benefits of copyright privileges. News is, however, protected under principles of unfair competition.⁹ This subject is beyond the scope of the present report.

As the constitutional authority to grant copyrights is "to promote the progress of science and the useful arts," anti-social material, such as matter which is immoral, false, blasphemous, seditious, or libellous, can not be copyrighted.

For the same reason, matter which is in the "public domain," that is, which has been made public without having been copyrighted, cannot later be afforded that protection. Whatever contribution this material is capable of has been made, and no constitutional end would be subserved by a subsequent copyright.

Likewise, originality is required. This does not mean that the production must possess literary or artistic merit, or that it must be instructive or uplifting, but it must consist of something more

⁶ Copyright Act, §§ 43 and 44, *supra* note 2.

⁷ Copyright Act, § 42, *supra* note 2.

⁸ As an example, *Chicago Record-Herald Co. v. Tribune Assn.*, 275 Fed. 797 (C. C. A. 7th, 1921).

⁹ See the leading case of *International News Service v. Associated Press*, 248 U. S. 215 (1918).

than the naked presentation of facts. It must have involved some sort of original intellectual labor. It may be written for purposes of amusement. It may be utterly worthless. The *sine qua non* is that it must consist of something more than mere copying.

The requisite intellectual labor may consist of the industrious assembly and arrangement of a series of facts.¹⁰ Thus lists and directories have been held copyrightable. It is upon this principle that statistics are entitled to protection.

The ideas presented may have been suggested by the ideas of others. The thoughts involved may be a repetition of the thoughts of others. It is enough that there is presentation in an original form. Little originality is required, but there must be some new element. Prior publication in a foreign country is sufficient to destroy a claim of originality.¹¹

Titles, if possessed of the requisite originality, are protected by copyright. So are advertisements, cartoons, diagrams, photographs, and translations. Current price quotations ordinarily are not copyrightable, because considered bare presentations of facts not involving special intellectual effort to arrange.

FOREIGN AUTHORS AND NEWSPAPERS

This country has been comparatively backward in international copyright matters.¹² Aliens domiciled within the United States at the time of publication are entitled to copyright privileges.¹³ Other aliens are granted such privileges upon a reciprocal basis, evidenced by Presidential proclamation.¹⁴

A copyright may be assigned to an alien. The American employer of an alien author may secure a copyright. An alien not domiciled in the United States can not, by assignment to a citizen, create a right to copyright.

Publication of a foreign newspaper in the United States is necessary before it can be copyrighted. It must also have a por-

¹⁰ *Yale University Press v. Row, Peterson & Co.*, 40 Fed. (2d) 290 (S. D. N. Y. 1930).

¹¹ *American Code Co. v. Bensinger*, 282 Fed. 829 (C. C. A. 2d, 1922).

¹² John H. Wigmore, *Copyright Legislation in the Federal Senate*, (1931) 25 ILL. L. REV. 799.

¹³ Copyright Act, § 8(a), *supra* note 2.

¹⁴ Copyright Act, § 8 (b), *supra* note 2.

tion of the mechanical work done in this country.¹⁵ The foreign and domestic publications may be simultaneous. A foreign newspaper which has not had the requisite portion of its work done in this country can not be imported if it contains any matter copyrighted here which has been reproduced without authority.¹⁶

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¹⁵ Copyright Act, § 15, as amended, 1926, *supra* note 2.

¹⁶ Copyright Act, § 31(b), *supra* note 2.