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Copyrights.

CHARLES F. MURRAY.

Before entering into the discussion of copyrights, it might be well to acquaint the student with the definition of a copyright. Webster's dictionary says that a copyright is "The exclusive right to multiply and dispose of copies of an intellectual production; the right which the law affords for protecting the produce of a man's intellectual industry from being made use of by others without adequate recompense to him."

By the Constitution, Article 1, Section 8, Congress is given the power to "promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries," and so the Copyright law exists under this authority.

The law today provides that any person entitled thereto, upon complying with the provisions of the Copyright Act, shall have the exclusive right to print, reprint, publish, copy and vend the copyrighted work; to translate it into the languages or dialects, to dramatize it, to convert it into a novel or to music; to deliver or authorize the delivery of the copyrighted work in public for profit, if it be a lecture, sermon, address, etc.; to perform the work if it be dramatic; to perform it if it be a musical composition; to exhibit it if it be a photo-play or "movie."

The following are the kinds of productions that may be copyrighted: books, periodicals, including newspapers as a whole; lectures, sermons, dramatic compositions, musical compositions, maps, works of art, models or designs, reproductions of works of art; drawings of a technical character, photographs; prints, motion picture photoplays and motion pictures other than photoplays.

Only a few days ago, the Court of Appeals for the Sixth Circuit, held that a copyright on a musical composition gave the owner a right to prevent radio broadcasting of the music. Of course the radio was unheard of when the Copyright law was passed, but the tendency of the Courts is to adapt the law to present conditions wherever possible.

Unusual Provisions of the Copyright Act.

The Copyright Act has some peculiar provisions: for example, a copyright claimant may mail the copies required to be filed in Washington, without postage. Sometimes where books of large size are forwarded, two copies of which are necessary, the amount of postage thus saved is considerable.

Another provision is that, should be registrant fail to deposit the required copies after notice to deposit them with the Librarian of Congress within a specified time, he shall be liable to a fine of $100 and also liable to pay to the Librarian of Congress twice the amount of the retail price of the best edition of the work; and the copyright shall be void.

Renewal.

A copyright endures for 28 years and is subject to renewal for a further term of 28 years in certain cases, by the author or his heirs or last of kin.

Infringement.

Infringement of the copyright act is penalized in a different manner for different subjects of copyrights. As to subjects except dramatic works,
motion pictures, lectures and addresses, paintings or sculpture, the penalty is $1 for each copy; furthermore all infringing copies must be delivered up for destruction, together with all the plates from which the infringing copies were made.

The act provides a penalty for fraudulently applying a notice of copyright when no copyright has been obtained, a fine being specified of not less than $100 nor more than $1,000.

What Constitutes Infringement of a Copyright.

This is the most perplexing question that arises. It sometimes happens that a book giving certain data acquired as the result of calculations, is copyrighted. A subsequent publisher may wish to issue a book containing the same information. If the calculations in each instance are accurate and exact, it is possible that two books might be produced that were identical as to figures and arrangement and the latter might not be an infringement of the copyright on the first; this on the assumption that the second work was produced independently of and without borrowing anything from the first. Likewise a map maker might produce an accurate map of a certain section and obtain a copyright; a second map maker might produce an identical map and it would not be an infringement of the first if the second map maker produced his map without copying or borrowing from the first. However, the test applied by the courts in many instances of this character, is based on the known frailty of humans and their likelihood to err. Few, if any, works have ever been produced that do not contain errors and if the second work contained the same errors in the same place, it is assumed that the second operator would not in all human probability have made the same mistake at the same place and that, therefore, the second was a copy of the first.

Instances have been known where dramatic compositions have been produced entirely independently and yet so closely resemble each other that the belief of improper derivation is almost inescapable. For example, the French play, "Cyrano de Bergerac" by Rostand; produced many years ago in the United States by Richard Mansfield, was found to be almost identical with a play written and previously copyrighted by a Chicagoan entitled "The Merchant Prince of Cornville." The similarity was so great that a court issued an injunction against further presentation of Cyrano de Bergerac.

One of the persistent fallacies of the layman is that a trade mark or trade name may be copyrighted. The protection provided for a trade mark is entirely different from that provided for a copyright, and the law is administered by two different departments of the government. A trade mark must be registered in the United States Patent Office, whereas a copyright is obtained through the Librarian of Congress. They are different in scope, duration, character and process of maintenance, and how the confusion arose is difficult to understand. Probably it happened because Congress at one time attempted to protect labels and posters or prints used for advertising purposes under the copyright law, but the Librarian of Congress refused to have anything to do with them because they did not relate to the fine arts. Thereafter, the practice was changed to place such articles under the jurisdiction of the Patent Office. As a result, labels such as used on canned goods, etc., together with posters or advertising work may be copyrighted in the Patent Office, but that has nothing to do with trade marks or trade names.
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