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## Some Legal Aspects Of The Pan-American Copyright Convention Of 1946

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SOME LEGAL ASPECTS  
OF THE PAN-AMERICAN COPYRIGHT  
CONVENTION OF 1946

BRYCE REA, JR.<sup>o</sup>

On June 22, 1946, delegates of all of the members of the Pan-American Union signed at Washington, D. C., a new Inter-American Convention on the Rights of the Author in Literary, Scientific, and Artistic Works. The Convention is based on a Draft prepared by the Juridical Division of the Pan-American Union, and emerged from a conference of twenty-two days held under the auspices of that Union pursuant to a resolution adopted by the Eighth International Conference of American States at Lima, Peru, in 1938. The Convention is not yet in force in the United States or in any other signatory country since, as of this writing, it has been ratified only by Mexico, and by its terms, is ineffective until ratified by at least two states. The purpose of this article is to report the more significant provisions of the Convention, to discuss their possible legal effects, and to compare them with some of the established principles of the American Copyright Law.

The Anglo-American common law has long recognized that literary and artistic creations are the property of their creators.<sup>1</sup> The right in them is defined as an absolute and exclusive incorporeal right to the composition, and the protection which the common law gives it differs in no respect from the protection given similar rights in other forms of personal property.<sup>2</sup> However, since the maintenance of a property right at common law requires the exercise of dominion and control over the property, it follows that from a dedication of it to the public there will be implied the abandonment of the incorporeal hereditament. Consequently, the essence of common law copyright under the American rule is merely the right of first publication, for the general distribution of a literary or artistic work is a dedication to the public and results in the loss of the common law right therein.<sup>3</sup>

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<sup>1</sup>2 Blackstone Com. 405.

<sup>2</sup>*Caliga v. Inter-Ocean Newspaper Co.*, 157 Fed. 186 (C. C. A. 7th, 1907), aff'd, 215 U. S. 182, 54 L. ed. 150 (1909); *Waring v. WDAS*, 327 Pa. 433, 194 Atl. 631 (1937).

<sup>3</sup>*Wheaton v. Peters*, 8 Pet. 591, 8 L. ed. 1055 (1834). The rule in Great Britain is contra. *Donaldson v. Beckett*, 4 Burr. 2408 (H. of L. 1774), held that the English common law gave authors perpetual property rights, regardless of publication.

It is obvious from the foregoing that the common law copyright is ineffective as a means of fully protecting the practical value of most literary and artistic works, for it is only by making such works known to the public that their creators can secure any substantial return for their intellectual labor. And while the performance of plays and music,<sup>4</sup> the exhibition of works of art,<sup>5</sup> and the delivery of lectures<sup>6</sup> are not normally publication in legal effect, the reproduction and general sale of copies is.<sup>7</sup> The first legislative recognition of and attempt to remedy this inadequacy of the common law was made by the British Parliament, which, in 1710, passed the famous Statute of Anne.<sup>8</sup> This statute gave British authors or their assigns the exclusive right to publish their works in Great Britain for a maximum period of 28 years.

Although at the time of the adoption of the American Constitution this example had been followed and there was copyright legislation in five states,<sup>9</sup> the history of statutory copyright in the United States really begins with the Constitution, which gave to the Congress 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."<sup>10</sup> For the purpose of the discussion here there is no need to review the various exercises of this power by the Congress. It is enough to say that the first act was passed in 1790, and that legislation continued in an irregular, sporadic, and piecemeal way until the Act of 1909, entitled "An Act to Amend and Consolidate the Acts Respecting Copyright."<sup>11</sup>

Contrary to the law in England,<sup>12</sup> the American copyright statutes and the decisions of American courts have established the principle that the existence and exercise of the constitutional power of the Congress to grant statutory copyright has not supplanted common law copyright.<sup>13</sup> Consequently, although the two are mutually exclusive

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<sup>4</sup>Ferris v. Frohman, 223 U. S. 424, 56 L. ed. 492 (1912).

<sup>5</sup>American Tobacco Co. v. Werckmeister, 207 U. S. 284, 52 L. ed. 208 (1907).

<sup>6</sup>Nutt v. National Institute, 31 F. (2d) 236 (C. C. A. 1st, 1929).

<sup>7</sup>Jewelers' Mercantile Agency v. Jeweler's Weekly Publishing Co., 155 N. Y. 241, 49 N. E. 872 (1898).

<sup>8</sup>Anne, ch. 19 (1710). In the light of Donaldson v. Beckett, supra, note 3, this statute in fact restricted the common law right.

<sup>9</sup>Connecticut, Massachusetts, New Jersey, New York, Virginia.

<sup>10</sup>U. S. Const. Art. I, § 8, Cl. 8.

<sup>11</sup>17 U.S.C.A. 1, et. seq.

<sup>12</sup>Donaldson v. Beckett, 4 Burr. 2408 (1774), holding that an author had at common law a perpetual right to print and publish his work and that that right had been abolished by the Statute of Anne.

<sup>13</sup>Caliga v. Inter-Ocean Newspaper Co., 215 U. S. 182, 54 L. ed. 150 (1909); American Tobacco Co. v. Werckmeister, 207 U. S. 284, 52 L. ed. 208 (1907); Dieckhaus

and the procuring of the former constitutes the irrevocable abandonment of the latter,<sup>14</sup> an American author may in the first instance elect to rely on either.

As to foreign authors American courts will, in accord with usual principles of comity, afford them the same protection at common law as Americans have.<sup>15</sup> However, until 1891, statutory copyright was expressly limited to citizens or residents of the United States. In that year the protection of the copyright act was extended to foreigners<sup>16</sup> on three conditions, namely, (1) that there be compliance with the formalities of notice on the work,<sup>17</sup> registration and deposit of copies,<sup>18</sup> as required of Americans, (2) that all printing, lithographing, photo-engraving and binding be performed in the United States,<sup>19</sup> and (3) that the state of which a foreign applicant was a citizen or subject grant substantially similar privileges to Americans, the existence of which privileges to be determined and proclaimed by the President.<sup>20</sup> The Act of 1909 modified the condition requiring domestic manufacture to the extent of excepting books in languages other than English and books in raised characters for the use of the blind.<sup>21</sup> As so modified, the Act of 1891 is in this respect the law today.

In contrast to this development of American copyright law on a national basis throughout the nineteenth century, European copyright law developed on an international basis. As literary and artistic works gained increasing monetary value the need for something more than protection limited to the territory of a single state became ap-

v. 20th Century-Fox Film Corp., 54 F. Supp. 425 (E. D. Mo. 1944). It is to be noted that the common law here referred to is the common law of the various states, since it "is clear that there can be no common law of the United States." *Wheaton v. Peters*, 8 Pet. 591, 658, 8 L. ed. 1055, 1080 (1834). Thus in *Ketcham v. New York World's Fair*, 34 F. Supp. 657 (E. D. N. Y. 1940), it was held that the cause of action for violation of an intellectual property right having arisen in New York, the law of that state applied.

<sup>14</sup>The procuring of a statutory copyright is tantamount to publication, *Bobbs Merrill Co. v. Straus*, 147 Fed. 15 (C. C. A. 2d, 1906), *aff'd*, 210 U. S. 339, 52 L. ed. 1086 (1908), is an election between statutory and common law copyright and constitutes an abandonment of the latter. *Photo-Drama Motion Picture Co. v. Social Uplift Film Corp.*, 220 Fed. 448 (C. C. A. 2d, 1915).

<sup>15</sup>*Ferris v. Frohman*, 223 U. S. 424, 56 L. ed. 492 (1912); *American Tobacco Co. v. Werckmeister*, 207 U. S. 284, 52 L. ed. 208 (1907).

<sup>16</sup>17 U.S.C.A. 8.

<sup>17</sup>17 U.S.C.A. 9.

<sup>18</sup>17 U.S.C.A. 11, 12.

<sup>19</sup>17 U.S.C.A. 15.

<sup>20</sup>17 U.S.C.A. 8.

<sup>21</sup>Act of Mar. 4, 1909, 35 Stat. 1078, 17 U.S.C.A. 15.

parent. To meet this need Belgium, France, Germany, Great Britain, Italy, Spain and Switzerland formed, at Berne, in 1886, an International Copyright Union "for the protection of the rights of authors over their literary and artistic works."<sup>22</sup> The signatory countries agreed to protect the works of authors of all members of the Union in accordance with the Convention.

The essence of the international system established at Berne was threefold. First, the types of works entitled to protection under the treaty were defined.<sup>23</sup> Second, minimum rights in those works were established.<sup>24</sup> Third, copyright having been procured in one country of the Union, all of the other countries agreed to afford the copyrighted work the protection of their respective laws and the protection of the Convention without any formality.

This Convention was revised at Berlin in 1908 and again at Rome in 1928. The most important modification deals with the third point above. As revised, the Convention now requires every member of the Union to grant without any formality the protection of its laws and the protection of the Convention to any work not originating in that state which, if published, was published in a Union country not later than it was published elsewhere, or which, if unpublished, is the work of an author within the jurisdiction of one of the countries of the Union. The country of origin of unpublished works is the country "to which the author belongs." The country of origin of published works is the country of first publication. If publication takes place simultaneously in two or more countries the country of origin is the Union country which offers the shortest term of protection.<sup>25</sup>

Thus it will be seen that there are three basic differences between the principles of copyright as they have developed nationally in the United States and as they have developed internationally in the Copyright Union. First, the United States has only conditionally extended any statutory copyright protection to foreigners. Second, the United States has refused to grant any substantive rights to foreigners which have not been created solely by American law and granted to American citizens or residents. Third, the United States has consistently required compliance with the formalities of the American law as to notice on the work, registration and deposit of copies. It is these basic differences

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<sup>22</sup>Berne Convention of 1886, Art. I.

<sup>23</sup>Berne Convention of 1886, Art. IV.

<sup>24</sup>Berne Convention of 1886, Arts. V, VI, VII, IX, X.

<sup>25</sup>Rome Convention of 1928, Art. 4.

which have prevented American adherence to the Berne Convention despite numerous efforts to that end made from time to time since its adoption in 1886.<sup>26</sup>

Although there are now more than 30 adherents to the Berne Convention, none of the members of the Pan-American Union except Brazil is among them. Within the Pan-American Union itself there is in existence only one copyright agreement of any importance.<sup>27</sup> This is the Buenos Aires Convention of 1910, which has been adhered to by fourteen countries, including the United States. By this agreement nationals or domiciled foreigners of any state party thereto who obtain copyrights in one state are entitled to protection in the other signatory states in accordance with their laws without the necessity of complying with any formality, provided their work bears a statement indicating the reservation of copyright.

The new Convention will replace the Buenos Aires Convention, as well as all others among any of the parties, but will not affect rights acquired under them.<sup>28</sup> Since it approaches the principles of the Berne Convention, it is much more far-reaching and all-embracing than any previous inter-American agreements. Basically, it establishes, without regard to the domestic law of the countries signatory to it, a group of enumerated substantive rights in literary and artistic works, and requires each signatory state to grant these rights without any formality to all persons, other than its citizens or domiciled aliens, who are citizens or domiciled aliens of any contracting state and have procured copyright in accordance with the law of that state.

Article II gives "the author of a literary, scientific, and artistic work the exclusive right to use and authorize the use of his work, in whole or in part; transfer the right in any manner, in whole or in part; and transmit it by will or by operation of intestate laws." The article then grants the author certain specific exclusive uses, "and such other uses as may hereafter be known . . ." Briefly, these are reproduction, adaptation, arrangement and diffusion, and public exhibition, presentation and performance. The only exceptions to this broad grant of rights are found in Article VI (2), which permits the reproduction by the press<sup>29</sup> of articles on current events in newspapers and maga-

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<sup>26</sup>For a history and discussion of these efforts see Ladas, *International Protection of Literary and Artistic Property*, Vol. II § 396 (Macmillan 1938).

<sup>27</sup>For a complete list of Inter-American agreements see Ladas, *supra*, note 26, App. II.

<sup>28</sup>Art. XVII(1).

<sup>29</sup>Query: Is the term "press," as used here, broad enough to embrace other

zines in the absence of a "special or general reservation" therein,<sup>30</sup> and in Article XII, which permits the reproduction of brief extracts of protected works for the purposes of instruction, research or criticism.

This concept of use established by Article II, while well settled in American patent law, is comparatively new in American statutory copyright law. The traditional distinction between a patent and a copyright is that the former gives an exclusive right to use<sup>31</sup> while the latter gives an exclusive right to copy.<sup>32</sup> Thus, except for a limited right in the use of a narrow class of works by performance,<sup>33</sup> the American copyright law is concerned only with unauthorized copying.

However, as a practical matter Article II grants three rights not granted in the American law. First, the author of a protected work is given the exclusive right to perform it publicly, whether or not for profit. Under the present American law only the holder of a copyright in a dramatic or musical work or in a lecture, sermon, address, or similar production has any right with respect to performance. This right is limited to public performance for profit,<sup>34</sup> except in the case of a drama, where it is extended to any public performance.<sup>35</sup>

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media of mass communication such as radio, motion picture news reels, news magazines?

<sup>30</sup>The differentiation between a special and general reservation would seem to be meaningless in view of the last clause of Article VI(2): "identification of the author by name shall constitute such a reservation in those countries in which the law or custom so considers it." By American law the reservation of copyright in a newspaper is the reservation of copyright on all material therein eligible therefor. See *International News Service v. Associated Press*, 248 U. S. 215, 63 L. ed. 211 (1918). Most Latin-American countries either follow this rule—e.g., Chile, Law of March 17, 1925—or hold that publication over a name is a reservation of right—e.g., Argentina, Law of September 28, 1933.

<sup>31</sup>*Aldrich v. Remington Rand*, 52 F. Supp. 732 (N. D. Tex. 1942).

<sup>32</sup>"The true definition of 'copyright' is the sole right of multiplying copies." *Jeweller's Circ. Pub. Co. v. Keystone Pub. Co.*, 281 Fed. 83, 94 (C. C. A. 2d, 1922), cert. den. 259 U. S. 581, 66 L. ed. 1074 (1922). The zeal with which the courts adhere to this distinction is illustrated by *Patterson v. Century Productions*, 93 F. (2d) 489 493 (C. C. A. 2d, 1937), cert. den. 303 U. S. 655, 82 L. ed. 1114 (1938), which held that the showing of a motion picture is the exclusive right of the copyright owner because projection on the screen is copying. "...when the film was shown the defendants who did that made an enlarged copy of the picture. It was to be sure temporary but still a copy while it lasted...."

<sup>33</sup>This right is of comparatively recent origin. Thus it was not until 1856 that authors of copyrighted plays were given exclusive performance rights. *Palmer v. DeWitt*, 47 N. Y. 532, 7 Am. Rep. 480 (1872).

<sup>34</sup>Performance for profit does not require the charging of an admission fee. To paraphrase Mr. Justice Holmes' famous remark in *Herbert v. Shanley*, 242 U. S. 591, 595, 61 L. ed. 511, 514 (1917), holding that the playing of music in a restaurant was performance for profit whether it pays or not, if the purpose of employing it is profit, that is enough.

<sup>35</sup>A performance may be public notwithstanding that it is not in a place where

Second, the author of a protected work is given the exclusive right to "adapt and authorize general or individual adaptations of it to instruments that serve to reproduce it mechanically or electrically." This right was specifically set forth, and the clause embodying it was carefully drawn for the purpose of changing American law. That law grants only the owner of a musical copyright the right to prevent only the first mechanical reproduction of it. Having made, permitted, or acquiesced in one such use he must permit all other such uses upon payment of a royalty of two cents for each reproduction.<sup>36</sup>

Third, although the Convention does not so provide in terms, American courts will probably hold that the author of a protected work is given the exclusive right to perform or authorize the performance of his work in coin-operated machines. The American copyright act expressly provides that the rendition of a musical composition in coin-operated machines is not a "public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs."<sup>37</sup> Earlier drafts of the Convention gave the author the exclusive right to authorize the use of his work in coin-operated machines. This clause was stricken on the ground that it was unnecessary in view of the other language of Article II, and presumably the minutes of the Convention will so show. Specifically, the clause giving the author the exclusive right to perform his work publicly by means of mechanical instruments, and the clause giving him the right to "diffuse it . . . by any method now known or hereafter devised and which may serve for the reproduction of signs, sounds or images . . ."<sup>38</sup> would seem to make an express provision superfluous. Furthermore, it is to be noted that unauthorized performance by coin-operated machines constitutes infringement under the American statute where an admission fee is charged. Consequently, it would appear that the theory of the statute is that unless a fee is charged the performance, though it may be public, is not for profit.<sup>39</sup> If this is so, Article II would clear-

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the public is assembled. Thus a radio performance is public. *Remick v. Amer. Auto Access.*, 5 F. (2d) 411 (C. C. A. 6th, 1925). In *Buck v. Jewell-LaSalle Realty Co.*, 283 U. S. 191, 75 L. ed. 971 (1931), a hotel furnished private rooms with loudspeakers and headsets wired to a master radio set for the convenience of guests. It was held that the reception of music on such speakers and headsets was a public performance for profit separate and distinct from the original performance by the broadcasting station.

<sup>36</sup>17 U.S.C.A. 1(e).

<sup>37</sup>17 U.S.C.A. 1(e).

<sup>38</sup>Art. II(e).

<sup>39</sup>It may be argued that the theory of the statute is that the mere making of



ly outlaw such unauthorized use, since under it profit is not a criterion for protection.

In addition to the protection afforded by Article II, Article XI reserves to the author, in disposing of his copyright "by sale, assignment or otherwise," the right to claim paternity in the work and to oppose any modification or use of it which prejudices his reputation. In contrast to the law of Latin America and the Berne Convention, this doctrine of moral right has never been recognized in the American copyright statutes. Under the American statute, as interpreted by the courts, a copyright is indivisible and nothing less than all of the rights secured to the proprietor can be assigned. In other words there can be no partial assignment of particular rights or privileges.<sup>40</sup> However, it cannot be doubted that one holding an American copyright may license its use on such terms and conditions and with such restrictions as he sees fit.<sup>41</sup> The significant difference between an assignment and a license is that an assignee may sue for infringement in his own name, while a licensee must join the copyright proprietor as party plaintiff.<sup>42</sup> Furthermore, there is dictum to the effect that the holder of an unrestricted license to elaborate an original work is under an implied obligation "to retain and give appropriate expression to the theme, thought, and main action of that which was originally written."<sup>43</sup>

In any event, Article XI provides that the moral right can be disposed of or waived at any time "in accordance with the provisions of the law of the State where the contract is made." Consequently, the principal difference between the Convention and the American law is one of procedure. By the former the right is reserved in the absence of action to pass it. By the latter the right is passed in the absence of action to reserve it. Unfortunately, however, it is not clear whether the reference to the "law of the place where the contract is made" is to

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music available to such individual persons as care to play the machine is not a public performance. But compare *Buck v. Jewell-LaSalle Realty Co.*, 283 U. S. 191, 75 L. ed. 971 (1932), *supra*, note 35. Whatever the theory, if any, the purpose of the proviso seems to have been to prevent monopoly. *Standard Music Roll Co. v. Mills*, 241 Fed. 360 (C. C. A. 3d, 1917).

<sup>40</sup>*Eliot v. Geare-Marston, Inc.*, 30 F. Supp. 301 (E. D. Pa. 1939), and cases there cited.

<sup>41</sup>*Manners v. Morosco*, 252 U. S. 317, 64 L. ed. 590 (1920); *Manners v. Famous Players Laski*, 262 Fed. 811 (S. D. N. Y. 1919).

<sup>42</sup>*Widenski v. Shapiro etc.*, 147 F. (2d) 909 (C. C. A. 1st, 1945); *Buck v. Elm Lodge*, 83 F. (2d) 201 (C. C. A. 2d, 1936). This rule stems from *Waterman v. Mackenzie*, 138 U. S. 252, 34 L. ed. 923 (1890), applying the principle to suits for infringement of patents. *Goldwyn v. Howells*, 282 Fed. 9 (C. C. A. 2d, 1922).

<sup>43</sup>*Curwood v. Affiliated Distributors*, 283 Fed. 219 (S. D. N. Y. 1922).

the law of the place where the waiver is made or to the law of the place where the disposal of the copyright is made. It would seem to be to the latter, for there is nothing to indicate that the waiver of the moral right must be in the form of a contract, while the disposal is spoken of in terms of sale or assignment, both of which imply a contractual relationship. This question is important because in some of the Latin American states it is at least doubtful whether there can be a lawful waiver of the moral right.<sup>44</sup> Consequently, a user, to be sure he has a complete right, must take pains to make all contracts of sale, assignment, and license in a state which permits a waiver of the moral right and to secure waivers in accordance with the law of that state.

Finally, Article XIV extends protection to titles which, as a result of the international fame of the works to which they are attached, have acquired a distinctive character. Their use on other works is prohibited without the consent of the author, unless such other works "are so different in kind or character as to preclude any possibility of confusion."

It is well settled that a copyright under the American statute confers no exclusive right to the title of the work.<sup>45</sup> Indeed, on the authority of the Trade Mark Cases,<sup>46</sup> it seems clear that the Congress cannot constitutionally protect titles to literary or artistic works by virtue of its power with respect to patents and copyrights. Those cases held that trademarks, since they were generally the adoption of something already in existence, lacked the originality necessary for constitutional protection as inventions, discoveries or writings.

However, as those cases show, the right to the exclusive use of a symbol or a form of words to distinguish one's goods or property has long been recognized at common law in England and in the various states, and will be protected in an action at law or in equity. In fact, the law of trademarks is but a part of the broader law of unfair competition,<sup>47</sup> and courts can and do exercise their inherent power to prevent unfair competition to give some protection to titles. This power

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<sup>44</sup>Rome Convention of 1928, Article 6 bis: "(1) Independently of the patrimonial right of the author, and even after the assignment of the said rights, the author retains the right to claim the paternity of the work, as well as the right to object to every deformation, mutilation or other modification of the said work, which may be prejudicial to his honor or to his reputation."

<sup>45</sup>*Becker v. Loew's Inc.*, 133 F. (2d) 889 (C. C. A. 7th, 1943), cert. den. 319 U. S. 772, 87 L. ed. 1720 (1943), and cases cited therein.

<sup>46</sup>100 U. S. 82, 25, L. ed. 550 (1879).

<sup>47</sup>*American Steel Foundries v. Robertson*, 269 U. S. 372, 70 L. ed. 317 (1926); *Kroll Bros. v. Rolls-Royce*, 126 F. (2d) 495 (Ct. of Cus. & Pat. App., 1942).

is exercised if a title is not merely generally descriptive, but has acquired a secondary meaning and a distinctive character that identifies it in the mind of the public with the copyrighted work to which it is affixed. Having met these conditions, its unauthorized use or imitation in such a way as to injure the original user's right to exploit his work, and to confuse and mislead the public will ground an action for injunction or damages or both.<sup>48</sup>

Furthermore, while the Convention deals with copyright, it deals with it in its aspect as and from the standpoint of foreign commerce. It will apparently have no effect upon the copyright law governing American citizens or residents. Therefore, just as the Congress can constitutionally protect some trademarks by virtue of its power over interstate commerce,<sup>49</sup> so here, it would seem that it can protect some titles by virtue of its power over foreign commerce.

The nature of the protection afforded by the Convention having been set out, Article III lists a variety of protected works and concludes by extending protection to any "literary, scientific, or artistic work that can be published or reproduced."<sup>50</sup> In addition, Article V protects, "without prejudice to the copyright in the original works" "translations, adaptations, compilations, arrangements, abridgements, dramatizations, or other versions of literary, scientific, and artistic works . . ."

The broad language of Article III raises a question as to whether the Convention purports to extend protection to works which have not been reduced to physical form. Reading the entire section it would seem not, for all of the classes of works enumerated, with two exceptions, are normally written, within the legal meaning of that term. As for the exceptions, "lectures, addresses, lessons, sermons, and other works of a similar nature" are protected only in their "written or recorded versions," and "choreographic works and pantomimes" are protected only where "the stage directions . . . are fixed in writing or other form."

However, it seems clear that works reduced to physical form only as mechanical records are entitled to protection. This is a radical departure from American law. The term writings, as used in the Consti-

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<sup>48</sup>Warner Bros. v. Majestic Pictures, 70 F. (2d) 310 (C. C. A. 2d, 1934); Patten v. Superior Talking Pictures, 8 F. Supp. 196 (S. D. N. Y. 1934); Paramore v. Mack Sennett, 9 F. (2d) 66 (S. D. Cal. 1925).

<sup>49</sup>United Drug Co. v. Rectamus Co., 248 U. S. 90, 63 L. ed. 141 (1918).

<sup>50</sup>Article LV(2) provides that: "Works of art made principally for industrial purposes shall be protected reciprocally among the Contracting States which now grant or shall in the future grant protection to such works." Article IV(3) excepts from the protection of the Convention "the industrial utilization of scientific ideas."

tution, has long had a broader meaning than simply books. The original copyright act of 1790 included also maps and charts. Prints were added in 1802, musical compositions in 1831, photographs and negatives thereof in 1865, paintings, drawings, statues, models and designs in 1870. However, the Congress has never extended the statute to permit the copyrighting of records. Rather, as was stated above, it has merely given musical copyright holders a limited right to prevent the unauthorized reproduction of their works on such records. This limited right was given by the Act of 1909. Prior to that Act it had been held that the making of mechanical reproductions of copyrighted music was not such a copying as would give rise to a cause of action for infringement. "In no sense can musical sounds which reach us through the sense of hearing be said to be copies . . ." <sup>51</sup>

Furthermore, two opinions of the Supreme Court of the United States raise doubt as to whether such records can be considered writings, as that term is used in the Constitution. In *Burrow-Giles Lithographing Co. v. Sarony*, the Court defined the term to "include all forms of writing, printing, engraving, etching, etc., by which the ideas in the mind of the author are given *visible* expression."<sup>52</sup> In *White-Smith Music Co. v. Appollo Co.*, the Court said: "A musical composition is an intellectual creation which first exists in the mind of the composer; he may play it for the first time upon an instrument. It is not susceptible of being copied until it has been put in a form which others can see and read . . ." <sup>53</sup>

Nevertheless, in accordance with established principles of constitutional construction, it can logically be held that, as the copyright act may be applied to situations not anticipated by the Congress,<sup>54</sup> so the language of the Constitution may be applied to situations not anticipated by its framers. In fact, it was on this principle that the Supreme Court held the granting of protection to photographs constitutional in the *Sarony* case, the very case whose definition of writings as the visible expression of an author's ideas would exclude mechanical records. Consequently, if, as suggested, Article III is limited to works

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<sup>51</sup>*White-Smith Music Publishing Co. v. Appollo Co.*, 209 U. S. 1, 52 L. ed. 655 (1908) (concerning music roles); *Stern v. Rosey*, 17 App. D. C. 562 (1901) (concerning phonograph records).

<sup>52</sup>111 U. S. 53, 58, 28, L. ed. 349, 351 (1884). (Italics supplied)

<sup>53</sup>209 U. S. 1, 17, 52 L. ed. 655, 662 (1908). (Italics supplied)

<sup>54</sup>*Remick v. American Auto Accessories*, 5 F. (2d) 411 (C. C. A. 6th, 1925), holding that the fact that radio was not developed at the time the Copyright Act was enacted does not exclude it from the statute.

reduced to physical form, it is not at variance with the Constitution so long as that form is one "in which the thought of an author may be recorded and from which it may be read or reproduced."<sup>55</sup>

If then, Article III gives protection to works reduced to physical form only as mechanical records, Article V by extending protection, *inter alia*, to adaptations, arrangements and other versions of works, seems to make possible a copyright in the audible rendition of a work distinct from any copyright in the work itself. This also will be a radical departure from American law. As has been said, the Congress has never authorized the copyrighting of intellectual creations in the form of records. *A priori*, there can be no copyright in the audible performance of works, since only by means of such records can sound be preserved and reproduced. However, it has been held that there is a common law property right in such renditions which the courts will protect.<sup>56</sup> In any event, there would seem to be no difference in principle between the protection of audible and the protection of visible renditions. Both may be original and of great intellectual, artistic and monetary value. The fact that the American statute now protects the latter by permitting the copyrighting of motion picture film is a substantial argument for extending protection to the former.

Articles IV and IX state the conditions on which works entitled to protection under Articles III and V will receive the protection afforded by Article II. Article IV (1) provides first that: "Each of the Contracting States agrees to recognize and protect within its territory the rights of authors in unpublished works," and second that the "present Convention shall not be construed to annul or limit the rights of an author in his unpublished works . . ."

It would appear that the effect of this language is to make publication a condition precedent to protection under the Convention and at the same time to obligate each of the Contracting States to protect unpublished works by its domestic law without respect to the Convention. This is the only tenable interpretation when Article IV(1) is read as a whole, for if the Convention were intended to extend to unpublished works, the provision that it should not annul or limit rights

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<sup>55</sup>This is the language used by the Congress in 17 U.S.C.A. 1(e) in extending to musical copyright holders rights with respect to the mechanical reproduction of their works.

<sup>56</sup>*Waring v. WDAS*, 327 Pa. 433, 194 Atl. 631 (1937); *Waring v. Dunlea*, 26 F. Supp. 338 (E. D. N. C. 1939). See also *Nat. Assoc. of Performing Artists v. Wm. Penn Co.*, 38 F. Supp. 531 (E. D. Pa. 1941). Cf. *R. C. A. Mfg. Co. v. Whiteman*, 114 F. (2d) 86 (C. C. A. 2d, 1940).

in such works would be meaningless. Moreover, since in no place does the Convention limit protection in terms to published works, mention of unpublished works would be superfluous were it intended to treat both classes in the same way. Furthermore, Article III(2) of the Pan-American Draft Convention, from which this Article evolved, left unpublished works to be governed by the law of the place where the protection was claimed. It was understood at the Conference that the present provision was substituted to emphasize the principle that the use of unpublished works requires the consent of the author.

Although it speaks of published works the Convention does not define publication. Earlier drafts tried to, but because of differences of opinion among the various delegations as to the proper definition, based on differences in the laws of the various states, all attempts were finally abandoned. Neither does it state what law courts shall follow in determining whether there has been a publication, the law of the place where protection is claimed, the law of the place where the acts took place, or the law of the place of the author's nationality or domicile. It is not clear from the decisions which law American courts will refer to. In *American Tobacco Co. v. Werckmeister*,<sup>57</sup> the Supreme Court of the United States held that the exhibition of a British painting in a gallery in London did not constitute a general publication. The opinion, by Mr. Justice Day, discussed only the circumstances of the exhibition and the application of general common law principles to those circumstances. There was no reference to the British copyright law. On the other hand, in *Ferris v. Frohman*,<sup>58</sup> the question was whether the performance of an uncopyrighted British play in London had destroyed the common law copyright in the United States. In holding that it had not, Mr. Justice Hughes relied on both British and American law. Since, by the British statutes, performance of a play is deemed equivalent to publication of a book,<sup>59</sup> it was argued that the English authors had, by the law of their domicile, lost their common law right. In answer to this the Court said that the British statutes did not purport to curtail any rights outside of British dominions. The statutes "disclose no intention to destroy rights for which they provided no substitute. There is no indication of a purpose to incapacitate British citizens from holding their intellectual productions secure . . . in other jurisdictions . . . Their right was not gone *simpliciter*, but

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<sup>57</sup>207 U. S. 375, 52 L. ed. 254 (1907).

<sup>58</sup>223 U. S. 424, 433, 56 L. ed. 492, 496, (1912).

<sup>59</sup>5 & 6 Vict. c. 45, § 20 (1842).

only in a qualified sense for the purpose of the statutes . . .” The Court then went on to point out that public performance of an unpublished play did not deprive the owner of his common law rights except by statute and that the American statute had no such effect.

In principle, the creation of legal rights by the acts claimed to constitute publication can be determined only by the law of the place where those acts occurred. Creating no rights there, they create none anywhere, and the inquiry of the court is complete. Creating rights there, they create them everywhere, and being in existence, they should be enforced unless public policy forbids.<sup>60</sup> It is difficult to see how public policy can forbid enforcement in this case, since the purpose of the Convention, which, if ratified, will be the purpose of the United States, is to grant its protection without respect to the domestic law of the signatory states.

On the question of formalities, the Convention strikes a compromise between the law of the United States, which makes compliance with the formalities of its Act mandatory as to all works,<sup>61</sup> and the law of the Berne Convention which dispenses with all formalities so long as the work is first published in a contracting state or is by an author within the jurisdiction of such state.<sup>62</sup> Article IX provides that a work properly copyrighted in any one of the signatory states by a national or an alien domiciled therein is entitled to protection in all of the *other* signatory states without compliance with any formality.

At the outset it may be said that this article does not violate any basic principles of American law, for it is nothing more nor less than the common law conflict of laws doctrine of comity. One’s right in personal property, valid by the law of the place of its creation, is valid everywhere, and will be enforced by the law of the forum unless its enforcement contravenes the public policy of that law.<sup>63</sup> American courts have applied this doctrine with respect to the common law of literary property.<sup>64</sup>

Considering Article IX in the light of the American statute, it is

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<sup>60</sup>Slater v. Mexican R. Co., 194 U. S. 120, 48 L. ed. 900 (1904).

<sup>61</sup>17 U.S.C.A. 9, 11, 12, 13.

<sup>62</sup>Rome Convention of 1928, Art. 4.

<sup>63</sup>Loucks v. Standard Oil Co., 224 N. Y. 99, 120 N. E. 198 (1918). See also *supra*, note 60.

<sup>64</sup>Ferris v. Frohman, 223 U. S. 424, 56 L. ed. 492 (1912); American Tobacco Co. v. Werckmeister, 207 U. S. 284, 52 L. ed. 208 (1907); Brown v. Select Theatres Corp., 56 F. Supp. 438 (D. C. Mass. 1944); Palmer v. De Witt, 47 N. Y. 532, 7 Am. Rep. 480 (1872).

at variance with the principle of that statute, which requires the formalities of registration and deposit of copies as to all works, and notice on published works. The purpose sought to be served by these requirements is the protection of the public from innocent infringement of copyright by making known the existence of a claim of exclusive right to the work and the name of the claimant.<sup>65</sup> Therefore, it is well to consider, in examining the change which would be effected by the Convention, the extent to which the requirements as to formalities fulfill this purpose.

The requirements of registration and deposit of copies do not accomplish this purpose. First, as to unpublished works, an exclusive perpetual property right exists at common law and will be protected without regard to the copyright statute. Indeed, it has been held that this right is not lost even though an attempted registration and deposit was refused or failed for want of compliance with the statute and the regulations thereunder.<sup>66</sup> As to published works, failure to register and deposit will not defeat an otherwise valid copyright except after demand by the Register of Copyrights therefor.<sup>67</sup> In other words compliance with these requirements is not a condition precedent to a valid copyright. Rather, it is merely a condition precedent to suit for infringement.<sup>68</sup> Consequently, it is no defence to a suit for infringement, whether innocent or intentional,<sup>69</sup> that there had been no registration and deposit at the time the infringement occurred.<sup>70</sup>

Second, even though all works are immediately registered and deposited, the copyright office, unlike the patent office, does not ex-

<sup>65</sup>*Burrow-Giles Lithographing Co. v. Sarony*, 111 U. S. 53, 28 L. ed. 349 (1884); *Smith v. Wilkinson*, 19 F. Supp. 841 (D. C. N. H. 1937).

<sup>66</sup>*Dieckhaus v. Twentieth Cent. Fox Film*, 54 F. Supp. 425 (D. C. Mo. 1944).

<sup>67</sup>17 U.S.C.A. 13.

<sup>68</sup>17 U.S.C.A. 12.

<sup>69</sup>A showing of intention by the defendant to infringe a copyright is not essential to recovery of damages. *Sheldon v. Metro-Goldwyn Pictures*, 81 F. (2d) 49 (C. C. A. 2d, 1936), cert. den., 298 U. S. 669, 80 L. ed. 1392.

<sup>70</sup>*Washingtonian Publishing Co. v. Pearson*, 306 U. S. 30, 83 L. ed. 470 (1939). The Court reversed the U. S. Court of Appeals for the District of Columbia, which had held that it was contrary to the general purpose of the Act to allow recovery where the infringement occurred before a tardy deposit. The majority reasoned that publication with notice made it known that immediate copyright existed, that the statute did not define the requirement of deposit "promptly," and that the statute barred suit not *unless* but *until* deposit was made.

Under the prior Act deposit was necessary not later than the day of publication. Act of 1891, 26 Stat. 1107. It was the harshness of this requirement that led to the modification found in the present statute. *Mittenthal v. Berlin*, 291 Fed. 714 (S. D. N. Y. 1933).



amine them for originality, for under Section 3 of the Act,<sup>71</sup> works may be copyrighted notwithstanding that they contain matter which is in the public domain or which has been previously copyrighted.<sup>72</sup> Thus a copyright, standing alone, is no more than a claim of right which may be defeated by showing that the work has been plagiarized either from one in the public domain or from one copyrighted by another, this, coupled with the fact that the copyright office merely indexes them by title, author, copyright owner and publisher, if any, means that there is no practical way in which a prospective user can determine whether or not a claim of copyright is valid.

Third, assuming a work has been registered and deposited, there is no assurance that it will remain on deposit, for Section 60 of the Copyright Act<sup>73</sup> authorizes the copyright office to destroy or return to the copyright proprietor from time to time such articles as are not considered "desirable or useful to preserve in the permanent files."

Thus, the only formality which serves a useful purpose<sup>74</sup> *vis a vis* the public is that of notice of copyright on published works. Since such notice is a pre-requisite to a valid copyright,<sup>75</sup> prospective users can determine the existence of a claim of copyright, and, of more importance, are informed of the name of the claimant.<sup>76</sup> In addition, this requirement is supplemented by a more or less abortive attempt to apply the principles of the recording acts. Under Section 44 of the Act bona fide purchasers for value without notice take free of any assignment not recorded in the copyright office within three months of its execution in the United States or within six months of its execution elsewhere.<sup>77</sup> However, since a prospective purchaser or assignee can at no time rely on the absence of a record of assignment as proof that one has not been made within six months, this section is of little value.

The Convention is silent on the subject of assignments in this respect, thereby giving rise to the question of the applicability of Section 44 of the American statute to works protected by it. On the one

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<sup>71</sup>17 U.S.C.A. 3.

<sup>72</sup>See *Eggers v. Sun Sales Corp.*, 263 Fed. 373 (C. C. A. 2d, 1920).

<sup>73</sup>17 U.S.C.A. 60.

<sup>74</sup>Apart from this discussion, the deposit of copies serves the purpose of adding to the collection of the library of Congress and other Government libraries in the District of Columbia. 17 U.S.C.A. 59 requires the Librarian of Congress to "determine what books and other articles shall be transferred to the permanent collections of the Library of Congress," and what others shall be placed in the reserve collection for sale or exchange or transfer to other Government libraries.

<sup>75</sup>17 U.S.C.A. 9. *Washingtonian Pub. Co. v. Pearson*, 306 U. S. 30, 83 L. ed. 470 (1939); *Deward v. Bristol Savings & Loan Corp.*, 120 F. (2d) 537 (C. C. A. 4th, 1941).

<sup>76</sup>*Supra*, note 65.

<sup>77</sup>17 U.S.C.A. 44.

hand, it is arguable that the section is applicable on the theory that treaties will be construed, if reasonably possible, to avoid the impairment of domestic legislation.<sup>78</sup> On the other hand, it is arguable that the requirements of Section 44, being a part of the American Act and designed to apply to works protected under that Act, cannot be extended to works protected otherwise.

The duration of the protection afforded by the Convention is in accord with the principles of the Berne Convention.<sup>79</sup> It is fixed by Article VIII as that period allowed in the state where copyright was originally obtained, with the proviso that it not exceed the period allowed in the state where protection is claimed. Since the American Act provides for two successive periods of twenty-eight years each, the Article includes a clause requiring computation in such cases to be on the basis of the aggregate of both periods.

The minimum remedies to be afforded in the event of infringement of works protected under the Convention are set out in Article XIII. All infringing publications or reproductions are required to be seized by the "competent authorities" either "at the instance of the government or upon petition by the owner of the copyright." Infringing presentations or performances of plays or musical compositions are required to be enjoined upon petition by the injured copyright owner.

This Article changes the American law by extending to the Government the right to institute proceedings for the seizure of infringing copies. Under the present American Act the United States has authority to institute proceedings for the seizure and condemnation only of works imported in violation of the copyright law.<sup>80</sup>

Of more importance, this Article seems to make seizure and/or injunction mandatory upon a showing of infringement. In contrast, Section 36 of the American Act provides for injunction only "according to the course and principles of courts of equity"<sup>81</sup> and on such terms as the court deems reasonable. Thus, the petitioner must come into court with clean hands.<sup>82</sup> Courts will refuse to enjoin the performance

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<sup>78</sup>Guaranty Trust Co. v. U. S., 304 U. S. 126, 82 L. ed. 1224 (1938).

<sup>79</sup>The Rome Convention of 1928, Art. 7, § 1, provides that the protection granted by it is for the life of the author plus fifty years. However, under § 2, if this period is not made uniform in all member countries, duration is regulated by the law of the country where protection is claimed, so long as it does not exceed the term fixed in the country of origin of the work.

<sup>80</sup>17 U.S.C.A. 32.

<sup>81</sup>17 U.S.C.A. 36.

<sup>82</sup>T. B. Harms etc. v. Stern, 231 Fed. 645 (C. C. A. 2d, 1916).

of an infringing play or motion picture if it is possible to eliminate the infringing portions.<sup>83</sup> An innocent infringer who has ceased infringing after notice will not be enjoined.<sup>84</sup>

These remedies are to be granted "without prejudice to pertinent civil remedies or criminal action." Since it is contemplated that there will be only two bodies of law in any signatory state, the law of the Convention and the domestic law of that state, it follows that the pertinent remedies here referred to are those pertinent under the domestic law of the state in which protection is sought.

Under the present law of the United States the remedy in damages is pertinent where a work has been copyrighted in accordance with the requirements of the American Act. Works protected only by virtue of the Convention do not fall within this class. Not having been copyrighted in compliance with that Act, it follows that the remedies therein provided are not necessarily pertinent and that courts would not be bound to award the damages there provided. This is significant, because the American Act requires the award of minimum damages in the amount of \$250.00<sup>85</sup> for each infringement, where actual damages are not proved. Whether the infringement is innocent or intentional is irrelevant.

On the other hand, works entitled to the protection of the Convention having been published, the common law right in them has been abandoned. However, it does not follow from this that the remedy in damages is not pertinent at all. Legal rights having been created and "competent authorities"—i.e., the courts—having been given authority to protect them, they can be protected by any means within the inherent jurisdiction of the courts, including the award of damages for their violation where, in the circumstances, such an award is the exercise of sound judicial discretion.

Under Article VII suit against an infringer may be brought by the person "whose name or known pseudonym is indicated on a protected work" as the author, or, in the case of "anonymous or pseudonymous works whose authors are not known," by the publisher. It would seem

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<sup>83</sup>Dam v. Kirke LaShelle Co., 166 Fed. 589 (C. C. N. Y. 1908), aff'd, 175 Fed. 902 (C. C. A. 2d, 1910); Cravens v. Retail Credit Assoc., 26 F. (2d) 833 (D. C. Tenn. 1924); International Film Service v. Affiliated Distributors, 283 Fed. 229 (S. D. N. Y. 1922).

<sup>84</sup>Smith v. Wilkinson, 97 F. (2d) 506 (C. C. A. 1st, 1938).

<sup>85</sup>17 U.S.C.A. 25. In the case of a newspaper reproduction of a photograph the minimum is \$50. In the case of the innocent use of a non-dramatic work in a motion picture there is no minimum.

<sup>86</sup>Jewell-LaSalle Realty Co. v. Buck, 283 U. S. 202, 75 L. ed. 978 (1931); Tiffany

that no change in Rule 17 (a) of the Federal Rules of Civil Procedure, requiring suits to be brought in the name of the real party in interest, will be necessary to give effect to this Article in the United States. By way of exception that Rule permits one authorized by statute to sue in his own name.

As soon as two or more states deposit instruments of ratification with the Pan-American Union the Convention is to come into force as to those states.<sup>87</sup> Since its protection is not limited to works produced and copyrighted subsequent to that date, all works in which there is a subsisting copyright in any signatory state on that date will become entitled to protection under it. This will result in the extension of protection in the United States, as well as in other countries, to many works now in the public domain. However, to avoid some of the hardship in this grant of retroactive protection, provision is made for the indefinite continuation without liability of any utilization of such works "involving expenditure or contractual obligation."<sup>88</sup> This provision is a paraphrase of that incorporated in Section 8 of the American Act in 1941,<sup>89</sup> allowing continued use for one year of works which become entitled to copyright as a result of a proclamation by the President that reciprocal conditions exist between the United States and a foreign country. Prior to the amendment of 1941, the Copyright Act was silent on this subject. As far as can be ascertained there has been no litigation either as to the extent of the rights of foreigners prior to 1941,<sup>90</sup> or as to the meaning of the phrase "expenditure or contractual obligation" since 1941.

In conclusion, two general considerations may be mentioned. First, it may be argued that in some respects—e.g., in protecting titles and in protecting works reproduced only on mechanical records—the Convention is at variance with the Constitution of the United States. This raises the question as to whether the President and the Senate can do by treaty what the Congress cannot do by legislation. This question has never been definitively answered. The Constitution makes treaties the

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*Productions v. Dewing*, 50 F. (2d) 911 (D. C. Md. 1931); *Advertisers Exchange v. Bayless Drug Store*, 50 F. Supp. 169 (D. C. N. J. 1943). Where the proof discloses that no damages were sustained, the statutory minimum is not allowable. *Washingtonian Pub. Co. v. Pearson*, 78 App. D. C. 287, 140 F. (2d) 465 (1944).

<sup>87</sup>Article XX.

<sup>88</sup>Article XVII (2).

<sup>89</sup>Act of Sept. 25, 1941, c. 421, 55 Stat. 732, 17 U.S.C.A. 8

<sup>90</sup>See 29 Op. Atty. Gen. 64 (1911), stating that a German citizen, who complied with the Copyright Act between the date Section 8 became law and the date of the President's proclamation with respect to Germany, may maintain an action for an infringement which occurred between such dates.

supreme law of the land when they are made under the "Authority of the United States," and Acts of Congress the supreme law of the land when they are made pursuant to the Constitution.<sup>91</sup> The precise meaning of the phrase "authority of the United States" is unsettled. It has been stated by the Supreme Court that the power to make treaties is not unlimited by the Constitution and does not go "so far as to authorize what the Constitution forbids."<sup>92</sup> Nevertheless, the limitations "must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with, but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found."<sup>93</sup>

Second, the question arises as to whether the treaty is self-executing upon ratification or whether it will be necessary for the Congress to implement it by legislation before its provisions may be given effect.

In the United States a treaty, unless its terms import only an executory contract between sovereignties, is the law of the land equivalent to an Act of Congress immediately upon its ratification. As such, it repeals all prior inconsistent laws and, insofar as it grants private rights, is enforceable in the courts.<sup>94</sup> A treaty may contain "provisions which confer certain rights upon the citizens or subjects of one of the nations . . . which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country . . . . A treaty then, is the law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute."<sup>95</sup>

Applying these principles, the Convention under discussion would seem to be self-executing. The Contracting States grant unconditionally certain private rights and certain private remedies to certain private persons. In the preamble it is stated that the Governments of the American Republics have concluded the Convention "to give effect" to its

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<sup>91</sup>U. S. Const. Art. VI, Cl. 2.

<sup>92</sup>Geofroy v. Riggs, 133 U. S. 258, 266, 33 L. ed. 642, 644 (1890).

<sup>93</sup>Missouri v. Holland, 252 U. S. 416, 433, 64 L. ed. 641, 647 (1920).

<sup>94</sup>Foster v. Neilson, 2 Pet. 253, 314, 7 L. ed. 415, 436 (1829); Asakura v. City of Seattle, 265 U. S. 332, 68 L. ed. 1041 (1924).

<sup>95</sup>Z. & F. Assets Realization Corp. v. Hull, 72 App. D. C. 234, 114 F. (2d) 464 (1940).

purposes. By Article I the Contracting States "agree to recognize and protect rights . . . in accordance with the present Convention." Article VII provides that "the courts of the Contracting States shall admit actions . . ." brought by certain private persons. Article XIII provides that in such actions certain reproductions "shall be seized" and certain performances "shall . . . be enjoined" upon petition by certain private persons. Article XX provides that the Convention shall "come into force . . . as soon as" instruments of ratification are deposited in the Pan-American Union. In short, the Convention throughout purports to define categorically and completely the nature and scope of the rights it creates, the classes of persons to whom those rights are given and the conditions for their exercise. At no place is implementing legislation by any Contracting State made such a condition.

No attempt has been made to draw any conclusions as to whether this Convention should or should not be ratified by the Senate of the United States. The practical ramifications of the changes it would effect in the copyright law in the businesses of creating, publishing, adapting, producing and performing literary and artistic works are proper considerations in the drawing of such conclusions, and are beyond the scope of this article.

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