TRELOAR COPYRIGHT BILL.

HEARING BEFORE

HOUSE COMMITTEE ON PATENTS,

AT

WASHINGTON, D. C.,

MARCH 19TH AND 20TH, 1896.

INCLUDING ADDRESS OF

ALEXANDER P. BROWNE, ESQ., OF BOSTON, MASS.

IN BEHALF OF CERTAIN MUSIC AND ART PUBLISHERS.

BOSTON:

ALFRED MUDGE & SON, PRINTERS,

NO. 24 FRANKLIN STREET.

1896.
A BILL
TO PROVIDE FOR THE COMMISSIONER OF COPYRIGHTS AND TO REVISE THE COPYRIGHT LAW.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that all records and other things relating to copyrights and required by law to be preserved in the Library of Congress, which have heretofore been under control of the Librarian of Congress, shall, from the date of this Act, be under the control of an officer, to be known and designated as Commissioner of Copyrights, to be appointed by the President and confirmed by the Senate, who shall, within the Library of Congress, under the supervision of the joint committee on the Library, perform all the duties relating to copyrights which have heretofore by law been imposed upon the Librarian of Congress.

SECT. 2. That the Commissioner of Copyrights shall receive an annual compensation of four thousand dollars, and shall give a bond, with sureties, to the Treasurer of the United States, in the sum of ten thousand dollars, for the faithful discharge of his duties, and with the condition that he will render annually to the proper officers of the Treasury a true account of all monies received by virtue of his office.

SECT. 3. That in addition to the Commissioner of Copyrights there shall be in the copyright office one assistant commissioner of copyrights, one book-keeper, one chief clerk in the administration division, one chief clerk in the division of correspondence, one chief clerk in the division of records, one chief clerk in the division of files, one chief clerk in the index division, one chief clerk in the division of
publication, who shall be appointed by the President and confirmed by the Senate; and there shall also be employed in the copyright department twenty-five clerks and two messengers, who shall be appointed by the Commissioner of Copyrights.

Sect. 4. The annual salaries of the officers, clerks, and messengers named in Section 3 shall be as follows: The assistant commissioner of copyrights, two thousand five hundred dollars; the bookkeeper and six chief clerks of division, each, one thousand eight hundred dollars; three clerks, one thousand four hundred dollars each; ten clerks, each, one thousand two hundred dollars; six clerks, each, one thousand dollars; six clerks, each, nine hundred dollars; one messenger, seven hundred and twenty dollars; one messenger, six hundred dollars; and for the expenditure herein proposed the sum of forty-eight thousand and twenty dollars is hereby appropriated out of any money in the treasury not otherwise appropriated.

Sect. 5. That the Commissioner of Copyrights shall deposit in the Treasury of the United States all monies received for copyrights, or from other sources, as often as the Secretary of the Treasury shall direct.

Sect. 6. That the Commissioner of Copyrights shall make an annual report to Congress of the number and description of copyright publications for which entries have been made and certificates of copyright granted since his last report.

Sect. 7. That the official seal of the Copyright Department shall be of such pattern and design as the Commissioner shall designate, and shall contain the following words, namely: "Commissioner of Copyrights, United States of America"; and by this seal all records and papers issued from the office of the Commissioner of Copyrights shall be authenticated.

Sect. 8. The Commissioner of Copyrights shall make such rules and regulations not inconsistent with the present laws as may be necessary to perform the duties with which he is charged by this Act.

Sect. 9. The author or owner of any unpublished literary composition, including a musical composition, map, chart, or plan, and the executors or administrators of any such author or owner shall, upon complying with the provisions of this Act, have the sole liberty of printing, reprinting, publishing, completing, copying, finishing, using, leasing, or vending copies of the same, and of abridging, adapting, dramatizing, translating, and publicly performing or representing it, or causing it to be publicly performed or represented by others.

Sect. 10. The author or owner of any unpublished pictorial or sculptural composition, and the executors and administrators of any such author or owner shall, upon complying with the provisions of this Act, have the sole liberty of printing, reprinting, reproducing, publishing, completing, copying, executing, finishing, using, exhibiting or vending the same, and copies or reproductions thereof.

Sect. 11. No person shall have a copyright upon any literary, pictorial, or sculptural composition, unless he shall, upon the day of first publication thereof in this or any foreign country, deliver at the office of the Commissioner of Copyrights, at Washington, District of Columbia, or deposit in the mails within the United States, addressed to the Commissioner of Copyrights at Washington, District of Columbia, a printed or typewritten copy of the title of said composition and two printed copies of said composition, or, in the case of a pictorial or sculptural composition, two photographic copies thereof, provided, that in the case of a play the two copies deposited as above may be typewritten, and public performance thereof shall be deemed equivalent to the publication thereof, and publication in print shall not be required.
and provided further, that every published copy of every copyright composition, and also the two printed or photographic copies above mentioned, and the type, plate, negative, transfer, drawing on stone or other device, from which such copy shall be made, shall be set or made within the United States.

Sect. 12. Any person who, during the existence of the copyright thereon, shall knowingly import into the United States, lease, sell or expose for sale, buy, bargain for or barter, any copyright article or copy thereof, not made within the United States as heretofore provided, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty or more than one hundred dollars for each offence, to be paid to the Treasury of the United States of America, and shall further be fined not less than one nor more than one hundred dollars for each and every such copy of such composition found in his possession, to be paid to the Treasury of the United States of America, except in the cases specified in Pars. 512 to 516 inclusive, in Sect. 2 of the act entitled, "An act to reduce the revenue and equalize the duties on imports," and for other purposes, approved Oct. 1st, 1800; and excepting in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time; and except in the case of newspapers and magazines, not containing, in whole or in part, matter copy-righted under the provisions of this act, unauthorised by the author, which are hereby exempted from prohibition of importation; provided, nevertheless, that in the case of books and foreign languages, of which only translations in English are copyrighted, prohibition of importation shall apply only to the translations of the same, and the importation of the books in the original language shall be permitted.

Sect. 13. The certificates of copyright issued on or after date of this Act shall be granted for a term of fifty years from the time of registering the title thereof, in the manner hereinafter directed.

Sect. 14. A copyright shall be assignable in law by an instrument of writing, signed by the assignor and acknowledged in the presence of two witnesses before a notary public or some officer authorized to take acknowledgements of deeds, and such assignment shall be recorded in a book to be kept for that purpose in the office of the Commissioner of Copyrights, within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice.

Sect. 15. That any copy of any copyrighted article that shall, during the existence of the copyright thereon, be found by the postal or Custom House officials while being imported into the United States in violation of this Act, shall be seized by them and immediately forwarded to the Copyright Department at Washington, District of Columbia, and there forthwith be totally destroyed.

Sect. 16. Every title sent for registration shall be accompanied by the registration fee herein provided and by an affidavit (one affidavit to be sufficient for as many titles as shall be deposited by the same party on the same day and in the same package), which affidavit shall be subscribed and sworn to before a notary public or other public officer authorized to take acknowledgments of deeds, and shall be in the following words, to wit: On the day of eighteen , being the day of first publication thereof in this or any foreign country (here insert name) a citizen of , residing at hath deposited in (here insert place of deposit) the title of a (literary, musical, pictorial or sculptural) composition, the title or description of which is in the following words, to
wit: (here insert the title including the name of the author, and if possible the name of the publisher or manufacturer, and the place of manufacture or publication) the right of which he claims as (author, owner, executor, etc., as the case may be), and also two copies of the same made within the United States according to the provisions of this Act. The Commissioner, upon receipt thereof, shall make a record of the same in the following words: —

**Record of Registration.**

Be it remembered that on the day of eighteen , being the day of first publication thereof in this or any foreign country (here insert name) a citizen of residing at has complied with the law relating to the registration of a (literary, musical, pictorial or sculptural composition as the case may be), and has filed in this office the title thereof in the following words, to wit: (here insert the title or description as given in the affidavit above mentioned) the right whereof he claims as (author, owner, executor, etc.), and also two (printed or typewritten) copies thereof. The Commissioner, whenever requested, shall furnish to any applicant therefor a copy of the said certificate of registration upon receipt of the fee hereinafter provided.

Sec. 17. The Commissioner of Copyrights shall receive from the person to whom the services designated are rendered the following fees: For making a record of registration of any article, one dollar; for every copy of such record under seal, fifty cents; for recording and certifying any instrument of writing for the assignment of a copyright, one dollar for each five hundred words or fraction thereof, and twenty cents for each hundred words or fraction thereof above five hundred, and a similar fee for every copy of such assignment.

Sec. 18. It shall be the duty of the Commissioner of Copyrights to furnish to the Secretary of the Treasury copies of the registered titles and dates of publication of all copyrighted articles, and the Secretary of the Treasury shall prepare, print and publish, on Wednesday of each week, alphabetical catalogues of such information as received up to the close of the Saturday preceding, for the use of the Collectors of Customs of the United States, and the postmasters of all post-offices receiving foreign mails, and shall in like manner prepare and issue semi-annual indexes thereof; and such weekly lists and semi-annual indexes shall be furnished to any person desiring them at a sum not exceeding their net cost.

Sec. 19. There shall be delivered at the office of the Commissioner of Copyrights, or deposited in the mails addressed to the Commissioner of Copyrights, at Washington, District of Columbia, a copy of every subsequent edition of any copyright article wherein any substantial changes shall be made.

Sec. 20. The postmaster to whom any title, affidavit or other article for copyright is delivered in accordance with this Act, shall give a receipt therefor in such form as the Postmaster-General shall provide, and shall mail the same forthwith to its destination.

Sec. 21. No copyright shall be valid unless notice thereof shall be given by imprinting upon the several copies of every edition published, if it be a literary composition, including a musical composition, map, chart or plan, on the title page or the page next following, or if it be a pictorial or sculptural composition, by inscribing upon some visible portion of the original and of every copy, or on the substance on which the same shall be mounted, the following, namely: "Copyright (here insert year) by (here insert name of copyrighter)."
SECT. 22. Every person who shall knowingly insert or impress a copyright notice or words of the same purport in, or upon any article, whether such article be subject to copyright or otherwise, which has not been duly copyrighted, shall be liable to a penalty of one hundred dollars, recoverable for the use of the treasury of the United States.

SECT. 23. Every person who, after the copyrighting of any article as provided by this Act, contrary to the provisions of this Act, within the term limited and without the consent of the owner of the copyright thereof, first obtained in writing, signed in the presence of two witnesses and acknowledged before a notary public or other public officer authorized to take acknowledgments of deeds, shall violate any of the exclusive rights secured by such copyright, shall forfeit every copy thereof in his possession or control, and also the plates or other devices by which the same was made, to such owner, and shall also forfeit and pay such damages as may be recovered in a civil action by such owner in any court of competent jurisdiction, or at the election of said owner, shall forfeit ten dollars for every copy of the same in his possession or by him sold or exposed for sale, one half thereof to the said owner and the other half to the use of the United States; provided, however, that the total sum to be received as such forfeiture in any action hereafter brought under the provisions of this section shall not in any case be less than one hundred dollars nor more than five thousand dollars, excepting that in cases of pictorial or sculptural compositions it shall not be less than two hundred and fifty dollars or more than ten thousand dollars.

SECT. 24. Any person publicly performing or representing any literary composition, including any musical composition, for which a copyright has been obtained without the consent of the owner of the copyright thereof, shall be liable for damages therefor, such damages in all cases to be assessed at such sum as to the court shall appear to be just; and if it be determined that such unlawful performance was willful or for profit, in addition thereto such person or persons shall be guilty of a misdemeanor and liable to imprisonment for a period not exceeding one year. Any injunction that may be granted by any circuit court of the United States, or by any judge thereof, restraining and enjoining the performance or representation of any such dramatic or operatic composition, may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative and may be enforced by proceedings to punish for contempt or otherwise by any other circuit court or judge in the United States; but the defendants in such action, or any or either of them, may make a motion in any other circuit in which he or they may be engaged in performing or representing said dramatic or operatic composition to dissolve or set aside the said injunction upon such reasonable notice to the plaintiff as the circuit court or the judge before whom said motion shall be made shall deem proper, service of said motion to be made on the plaintiff in person or on his attorneys in the action. The circuit courts or judges thereof shall have jurisdiction to enforce said injunction and to hear and determine a motion to dissolve the same, as herein provided, as fully as if the action were pending or brought in the court in which said motion is made. The clerk of the court or judge granting the injunction shall, when required to do so by the court hearing the application to dissolve or enforce said injunction, transmit without delay to said court a certified copy of all the papers on which said injunction was granted that are on file in his office.

SECT. 25. Every person who shall print or publish any unpublished manuscript without the consent of the owner first obtained, shall be liable to him for all damages occasioned thereby.
Sect. 26. That in all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

Sect. 27. That the circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any rights secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable, and also to ascertain and decree the payment of the profits unlawfully derived therefrom.

Sect. 28. That in the construction of this Act the words "pictorial compositions" shall include only pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints and labels, in conformity with the regulation provided by law as to copyrights or prints, except there shall be paid for recording the title of any print or label, not a trademark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same.

Sect. 29. That for the purpose of this Act each volume of a literary composition in two or more volumes, when such volumes are published separately, and the first one shall not have been issued before this Act shall take effect, and each number of a periodical, shall be considered an independent publication, subject to the form of copyrighting as above.

Sect. 30. That Section 4968 of the Revised Statutes be, and the same is hereby, repealed.

Sect. 31. It shall be unlawful for any person, without the consent of the owner of any copyrighted literary composition, including any musical composition, to make any reproduction of the same, or the notation thereof in the form of any device or instrument whereby the said composition may be mechanically reproduced, expressed or performed, or to lease, sell, or offer for sale any such reproduction, device or instrument, and such making, leasing, selling, or offering for sale, shall be deemed to be a violation of the copyright, and shall subject the person so offending to the actions and penalties hereinbefore provided for other violations of the copyright.

Sect. 32. That this Act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides reciprocity in the granting of copyright, by the terms of which agreement the United States of America may at its pleasure become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation, made or to be made from time to time, as the purpose of this Act may require.

Sect. 33. That this Act shall go into effect on the first day of July, Anno Domini eighteen hundred and ninety-six.

Sect. 34. That all acts and parts of acts inconsistent with the provisions of this Act be, and the same are hereby, repealed.
The Committee met for the purpose of hearing oral arguments in favor of bill (H. R. 5976) to provide for the Commissioner of Copyrights and to revise the copyright law, there being present of the members of the Committee, the Chairman (Mr. Drapee), Mr. Treloar, Mr. Sauerhoff, Mr. Cook, Mr. Fairchild, Mr. Kerr, and Mr. Sulloway.

There were also present the following gentlemen:


George W. Furness, representing the Oliver Ditson Company, of Boston, New York, and Philadelphia.

Daniel L. White, President, Walter M. Bacon, representing the White-Smith Music Publishing Company, Boston, New York, and Chicago.

William B. Everett, representing the Soule Photographic Company, of Boston.

F. H. Gilson, President of the F. H. Gilson Company, of Boston.

William C. Freeman, President, Taber Art Company, New Bedford, Mass.


Hamilton S. Gordon, of New York.

Charles B. Bailey, Secretary of the Music Publishers' Association of the United States.

John P. Rechten, of E. Schuberth & Co., of New York,

The Chairman. Gentlemen, although there is not a quorum present, I think we had better use the time for discussion of the question, as we have many gentlemen here from abroad. I will ask the committee to come to order. I desire to say to the gentlemen present outside of the committee that there are several members of the House here who may be interested in the subject. Mr. Browne, of Boston, will now address the committee.

ADDRESS OF ALEXANDER P. BROWNE.

Mr. Browne. Mr. Chairman and gentlemen, I have the honor of appearing before you on behalf of the Music Publishers' Association of the United States, and also on behalf of a number of gentlemen, clients of mine, who are interested in the manufacture of pictorial works in the United States.

The Music Publishers' Association is a body of music publishers which was formed largely to protect the trade against the defects of the present law, in the way of importation of piratical copies, particularly from Canada. They found the work sufficiently important to make it worth while to publish a catalogue of pirated editions of their works, as a guide to customs officials and others. The men who are in the picture business are similarly interested in preventing the importation of piratical or other improper and unlawful works; and both are interested in the correction of the defects of the present law in another direction, namely, in extending to the makers of pictures and the makers of music the same regulations with reference to manufacture in this country that have been extended by the Act of 1891 to the makers of books, strictly so called.
When the Act of 1891 was passed, the poor, benighted public, including the music publishers, came to the conclusion that this (holding up a bound book of musical compositions) was a "book," and that the work of making it was to be performed in the United States and by American workmen. I was obliged to advise them that they were in error, and that what they did was not a book; that it looked just like a book, but it was not a book. And later on the Court of Appeals for the First Circuit confirmed my suspicions and decided that that was not a book; and they decided that all musical compositions under the Act of 1891 might be made abroad; that the stereotype or other plates, or all the work, might be done abroad.

The music publishers, some thirty of whom have signed the petition, and whose claims I am endeavoring to represent, want that work done in the United States by their own men; and for this reason they wish to give the American publisher, working jointly with his foreign brethren, the control of the manufacture of the American edition of the foreign work. The American edition is made here. It is made in the American style. It is made at American prices, and it proves a good seller. On the other hand, if, as at present, we leave to the foreigner the making of that edition, he makes it in English fashion, or some other fashion, puts on it the English price, or some other foreign price. The thing comes to this country and does not sell, and then the English publisher blames his American brother and says: "You are not treating me fairly." As a sheer matter of business for the publishers, as a clear matter of justice for the artisans, the whole trade asks that this committee do what it can to extend the law of 1891 so that the manufacturer of music and pictures shall be done in the United States, as well as the
manufacture of books, in the most narrow and technical sense.

The Chairman. Does not the other copyright law cover pictures? I thought music was the only thing omitted.

Mr. Browne. You have to take that law to court, General, to find out how many holes there are in it. I have some clients here who are in the business of making photographic pictures to sell, to hang on the wall—things of beauty, art works. There is a concern in New York called the Berliner Photographische Gesellschaft. This Berlin Photograph Company, to translate it, buys from a foreign artist the copyright on his painting. His painting is exhibited in some gallery abroad. They buy from him the copyright—we are under the Act of 1891, now. They copyright that painting with Mr. Spofford in the regular way. Then they make in their great factory, in Berlin, hundreds of thousands of photographs of that picture. They put upon the photograph the copyright notice of the painting. They import those photographs into the United States and sell them here; and when my clients say, "Hold on; that is not the Act of 1891; those things are not protected. We can copy them," and they do copy them—they say: "Oh, no; it is true that the photograph is not protected; but you forgot all about our copyright on the painting; and your photograph being a copy of our photograph, which is a photograph of our painting, you are infringing the copyright on our painting." And the court came very near deciding that they were. Fortunately I got them off on another ground.

You see, there is a hole in the act whereby, as it stands to-day, practically the whole photographic business of our foreign brethren is done on the other side, and then they come over here and hold our market. That is not fairness. If we are going to have this principle at all, we ought to have it fair and just to all.

Therefore, the main points which the trades at large—I think I am justified in saying—have at interest are these: Protection against improper importations, and such a provision of the law as that the manufacture shall be done in the United States.

Mr. Fairchild. Will you allow me to ask you a question right there?

Mr. Browne. Certainly; I shall be glad to have you do so.

Mr. Fairchild. Will you address your remarks to an answer to the suggestion made by Mr. Putnam, that the work on pictures cannot be done here, because you cannot bring the pictures here?

Mr. Browne. I was just about to do that. It is quite true that a great work like those of Michael Angelo, or Rubens, in any of the great foreign churches or galleries, necessarily and naturally cannot be brought from the place of its production to some other country. They cannot be brought here simply for copyright purposes; but who of us, except those who have been there, have ever seen those great pictures except through the medium of photographing, or other analogous reproduction. Nine thousand nine hundred and ninety-nine out of every ten thousand people in the United States get their knowledge of the great art works of the world entirely through photographic reproduction. The better the photographic reproduction, the better our idea of the original picture. Any picture, no matter how beautiful, no matter how artistic, can be photographed there, and that negative can be sent to the United States as easily as any other piece of glass can be imported; and then, with the rapidly increasing skill of American workmen in producing artistic things, as good work can be done in reproducing that foreign picture in the United States as can be done in Berlin itself.
The Chairman. That picture you are holding up is American, I suppose?

Mr. Browne. Strictly. What this represents to-day is nothing to what these people will be able to do in, say, five years, if, as they are doing now, they import the best kind of educated German and French help to train their American people to do this work; and when the American people get trained, they will do as they always do — they will do more than the German, and do it better. The foreigner then goes home, and the educated American artist workman is here.

If it is good American policy to choke off and kill artistic artisan education in the United States, as Mr. Putnam's argument means, I have nothing to say; but I do not think it is.

Mr. Fairchild. As I understand, then, if, as Mr. Putnam suggested, one man should actually bring that picture over here — if an engraver should make an engraving of that original, and another engraver should make an engraving from the photograph of that original, the second engraver would do just as good work, his production would lie just as correct and accurate, as the first engraver, who was engraving from the original?

Mr. Browne. The question of engraving is, of course, a somewhat different matter from the question of photographing. The engraver is an original artist, and there is no necessary objection to the engraver making his drawing wherever the original is; but if he wants to copyright it in the United States, there is this great commercial objection, as it seems to me, to being allowed to make his copies — the purely mechanical part — abroad, and then sell them here. Again, the great works of art of that character, which cannot be fairly reproduced, from an artistic standpoint, in this country, are very, very few compared with the great bulk of the work which makes up the income and the business of the art manufacturers of this country.

The Chairman. Under the present law, do I understand that if some photographer abroad or at home sees fit to copyright the Sistine Madonna, that he can control all the photographs and all the engravings of the Sistine Madonna that can be sold in this country?

Mr. Browne. No.

The Chairman. We will take this picture, St. Cecilia. Can he do that? Where is the line? What is the line?

Mr. Browne. Let me answer your question fully, if you please, General. The Supreme Court of the United States, in a case the name of which is not material, I presume, to you gentlemen, expressed some doubt as to whether a photograph of an inanimate thing like a picture was a copyrightable work or not. They expressly said that they did not decide that question. They did, however, hold that a photograph of Oscar Wilde, in his palmy days, was a copyrightable thing.

I argued before the Court of Appeals that every photograph of a painting like the Sistine Madonna, for example, differed from every other photograph in respect directly as the photographic artist was an artist. You and I, General, could go over and make photographs of the Sistine Madonna. Mine would be a pretty bad photograph; I do not know how expert you are. A photographic artist, a trained man, would go over, and the result would be something that you would be willing and glad to hang upon the walls of your home. That, in my judgment, constitutes artistic work, although the Supreme Court have not yet got around to it.

That is the answer. A man photographs a painting and has the exclusive right to reproduce his negative, but everybody else may photograph it as they photograph the Capitol or the Washington Monument, or anything else; and Smith's photographs are good and sell, and Browne's photographs are very bad and cannot even be given away. Consequently,
it is the artistic taste in the lighting, in the view that is taken, and then, far more, later on in the retouching and finishing and developing and working up — matters that I know very little about except by name, — which make the difference between a beautiful and artistic work and a thoroughly bad work.

The Chairman. Following that out, if it is open to any one to take his own photograph, where is the difficulty that now exists? I want to get at that. Is it desired that a copy of a foreign photograph, for instance, shall be taken as the basis of an American photograph?

Mr. Browne. No, sir; it is desired that foreigners wishing to have the exclusive right of selling their photographs in the United States shall do the mechanical part of the work here.

The Chairman. That they shall have the work done here; I see the point.

Mr. Browne. That is all. That (illustrating) is made as mechanically as you make a blue print. That is, it is a mechanical process.

The Chairman. It is desired that although they can have a copyright for their own work, for their own special artistic design and manner of accomplishing the object, the printing, etc., shall be done in this country?

Mr. Browne. Yes, sir.

Mr. Saunering. How are we treated in regard to that matter in countries abroad?

Mr. Browne. The President of the United States has proclaimed that we are treated just as well over there as we treat them over here.

The Chairman. They are without the manufacturing clause, I suppose, over there? Or do they have it? In fact, I suppose it is not necessary because they can do things of that kind so much cheaper?
a moment, I have for fifteen years, nearly, been the counsel in this country of Messrs. Gilbert and Sullivan, and for the last fifteen years my practice has been very largely in copyright matters. I have, it is unnecessary to say, carefully examined Mr. Treloar's bill, and I desire to say that mechanically, as a bill, as the foundation for a law, it seems to me a wonderfully good bill. It is of course in certain minor points subject to possible amendments, like the draft of any bill; but as a whole, it seems to me to furnish the basis, with very slight amendment here and there, for effective and adequate legislation, to cover the great difficulties and defects of the existing law of 1891.

I do not believe, Mr. Chairman, that there is any pressing necessity for the appointment, as suggested by Mr. Putnam, of a national commission, at great expense, and a delay of two or three years to correct the difficulties that exist; and I am furthermore entirely convinced that this committee is fully able to take hold of this question of amending the copyright law, and do it thoroughly, successfully and satisfactorily to the people of the United States, and the fair-minded people of the world at large.

THE COPYRIGHT DEPARTMENT.

Mr. Treloar's bill begins with a proposed enactment, represented in the title and the first seven sections, of a separate department, under the charge of a Commissioner of Copyrights. I was very glad to hear Mr. Spofford favor that. We know the difficulties that Mr. Spofford has labored under for many years; and all I need say on that subject is that my clients, all of them, heartily indorse that measure and the form in which it is presented, and furthermore, that they are of the opinion that upon the statistics given by Mr. Spofford the department will be self-sustaining, will be a source on the whole of income to the government, not of expense, and that this bill is not an addition to the burdens of the United States, but on the whole an addition to their resources.

The Chairman. Do you agree with Mr. Spofford's suggestion yesterday in regard to the change of fees?

Mr. Browne. Yes, sir. Speaking for my clients, I feel justified in saying that any fee which Mr. Spofford will deem reasonable — and Mr. Spofford and I have been over that matter — they will be glad to pay for the benefit that will come to them from a copyright office carefully organized, and able to run rapidly, smoothly and efficiently. They would be glad to do it.

I will say here that at the suggestion of my clients I have put into typewriting a draft of Mr. Treloar's bill as my clients would be glad to see it. I handed a copy of it a day or two ago to Mr. Treloar, and we have been over it carefully. Mr. Treloar fully understands the slight changes in the way of suggestion that have been made, and I think in the main approves of them.

The Chairman. Under these circumstances, would it not be well to have another bill introduced embodying these changes? That is if Mr. Treloar agrees to them he could introduce another bill embodying all the changes.

Mr. Browne. I am not familiar with the practice of your committee.

The Chairman. It can be done. It is frequently done. I simply make that suggestion.

Mr. Browne. But the changes are not, it seems to me, any more than might be done by amendment. If it would be of any benefit to go back to the House and have it re-referred, etc., of course we would be glad to have it done; but it seems to me that the matter could all be done by Mr. Treloar or here in the committee room.

The Chairman. It is simply a matter of formality. If
a bill could come before us that met with Mr. Treloar’s view, as the introducer of the bill after consideration, all that it is necessary to do is to put it into the House and have it printed. It could then come here and be considered as the bill before us. There would be no delay about it, and it would make it so much easier to consider.

Mr. Browne. It would be Mr. Treloar’s bill just as much as the other, if there has been no material change made.

The Chairman. I will not interrupt your argument, however.

Mr. Browne. I have said that my clients heartily favor the first seven sections of the present bill. It has occurred to me that it would be well to add one more section, exactly analogous to that which exists in the patent law, to the effect that the proposed Commissioner of Copyrights shall make such rules and regulations, not inconsistent with the present laws, as may be necessary to perform the duties with which he is charged by this Act. It is a mere matter of administrative precaution; but Mr. Spofford at present is suffering from the absence of just such a law behind him, and it is, as you gentlemen can see, a business matter merely.

PROPOSED NEW COPYRIGHT LAW.

Now we come to the copyright part of the Act, strictly so called. I want to try and make it clear to the gentlemen of this committee, wherein I conceive that the law of 1891 and all the copyright laws of this country up to this time, have been mechanically bad, and thereby have given rise to a good deal of litigation. The law started in by being limited practically to books, per se, and then, one by one, and gradually, and from time to time, were added maps, charts, etc. Photographs, did not get into the law until the
multiply copies of that bust, their original is their mold, which nobody is interested in from an aesthetic point of view.

Therefore I have ventured to suggest that Section 8 of the present Act—

Mr. Cooke. That is, the Act before the committee, you mean?

Mr. Browne. Of the present bill, I mean.

The Chairman. The pending bill?

Mr. Browne. Of the pending bill.

Mr. Treloar. Which is precisely the same as the present law to-day?

Mr. Browne. Which is the law of to-day.

Mr. Treloar. There has been no change in that section?

Mr. Browne. That is the reason I said the present Act—which is the law of to-day, and in which everything, all these widely diverse things are lumped together, with the result that that (indicating) is not a book. I suggest that that section, be divided into two, and that things of a literary character, sheer impressions, of all sorts, be included in one section, for the privileges and the enjoyment of them are peculiar to them, and that things of a pictorial or sculptural character be embraced by another section, or in different phraseology, for the enjoyment of them is peculiar to them. And I may say that my suggestion, while a little radical, at least does not meet with the disapproval, as I understand, of Mr. Spofford himself.

I will read now the two sections into which I should propose to subdivide the present section.

LITERARY COMPOSITIONS.

"Section 9. The author or owner of any unpublished literary composition, including a musical composition, map, chart or plan, and the executors or administrators of any such author or owner, shall, upon complying with the provisions of this Act, have the sole liberty of printing, reprinting, publishing, completing, copying, finishing, using, leasing or vending copies of the same.

"And of abridging, adapting, dramatizing, translating and publicly performing or representing it, or causing it to be publicly performed or represented by others."

Mr. Cooke. Would that cut any other person off from abridging a work which is copyrighted? It ought to, should it not?

Mr. Browne. It ought to, certainly; and it would, without the consent of the owner. The owner of a work wants to have his abridgment of that work done under his control, or else he might just as well not own it at all.

Mr. Cooke. In other words, the benefits of it can be abridged away from the owner?

Mr. Browne. Yes; and then fight, fight, fight, as to what is a fair use and what is an abridgment.

I want to point out here that the result of this Section will be to introduce into our law the exclusive right of publicly performing musical compositions. It introduces it for the first time. I want to be frank. That right has existed under the English law ever since musical compositions were copyrighted there at all, and the result is this: that music publishers or authors have the right to say: "I will grant free the singing of this song, or I will hire some one famous artist to sing it exclusively, giving him or her a share of the royalties on the sales, and then I will sell copies of the song for private use, but not for public performance." In that way the song "Twickenham Ferry," for example, sung by— I have forgotten the lady's name, some famous English singer—was made to bring in a very large income for its composer, Mr. Marsalis, and the owners; and similarly many English authors and publishers reap large returns. Over here, the only way now to do that is to keep the song in manuscript, as it is called. That is to say, let Miss May Irwin sing it in public, and let her and the author and the publishers take their chances; with the result that in the case of a song which Miss May Irwin is now singing, and
which is in manuscript, the lawful owners are the fifth in order to copyright it. Four other gentlemen of enterprise in the music trade have copyrighted that song.

Mr. Cooke. Do you hold each copyright to be valid?

Mr. Browne. No, sir; except the last.

The Chairman. Is there any priority of copyright?

Mr. Browne. No, sir. Mr. Spofford pointed out a crying need of the present law; that is, that the man who copyrights that song has got *prima facie* a right to it; and once, you get the trade started on to copyrighting a song all the enterprising publishers copyright it.

The Chairman. And then fight it out in the courts?

Mr. Browne. And then fight it out in the courts. I get quite a handsome income out of that practice, but I am against it in the interest of good business and good sense.

The Chairman. You said this was new. In the same section, line 10, page 4, it says here: "In the case of a dramatic, musical, or literary composition, publicly performing or representing it —"

Mr. Browne. I should say in that respect the Treloar bill is new. We heartily indorse it, and the public will, too. I do not think I will spend any more time upon that particular expression, but I want the committee to understand it is there, because we do not want it said that we are getting anything in underhand.

**PICTORIAL AND SCULPTURAL COMPOSITIONS.**

The other branch of the section, covering pictorial and sculptural compositions, we suggest should read:

"Section 10. The author or owner of any unpublished pictorial or sculptural composition, and the executors and administrators of any such author or owner, shall, upon complying with the provisions of this Act, have the sole liberty of printing, re-printing, reproducing, publishing, completing, copying, executing, finishing, using, leasing, exhibiting and vending the same and copies or reproductions thereof."

That word "exhibiting" I have inserted, for the reason that it was within a month only that the question of the effect of the exhibition of a painting upon copyright was, for the first time, authoritatively decided. That was decided in the case of my clients behind me in the Court of Appeals for the First Circuit, where it was held for the first time that the exhibition of a picture was publication within the meaning of the copyright law. One or two other points of interest with reference to marking the painting, putting copyright marks upon the painting, were decided in that same case. This Berlin Photograph Company was the plaintiff in that case.

**TERM OF COPYRIGHT.**

The next section of the Treloar bill — the next two sections really — relate to the term.

For some reason which I confess I do not quite clearly understand, it was originally enacted in England, and subsequently by sheer imitation in the United States, that a copyright as to its term should be expressed in two parts; part one, so long, and part two, so many years' renewal. The practical results of that under our Act, the 1891 Act, and before — for there is no substantial change, I believe, as to renewal — have been very, very onerous. The author and his heirs, widows or children, whichever they are, go off and hide in the remote parts of the United States, when they don't die. The publisher, who is trying his best to do his duty by his clients, hunts and hunts and hunts for them. He spends more money than the royalty on the blessed thing is worth, and then in despair takes out an invalid renewal in his own name, and waits for the author's heirs to turn up.

On the other hand, as Mr. Putnam told you, truly, ninety-nine authors out of one hundred make a contract in the first instance for their publishing rights with
their publisher, which reads that the publisher shall pay to them and their legal representatives, their heirs, so much royalty, and shall pay it for the whole term.

Why not make one term instead of two, and save all the trouble?

The Chairman. Is not this analogous to the method of issuing patents, which has been done away with? In the old time they used to issue a patent for fourteen years, with an opportunity of seven years' extension. Now they have changed it, and issue the patent for one term of seventeen years. What you propose is to have one term instead of two, in the same way as is now done with patents?

Mr. Browne. Yes, sir; strictly in analogy with that; and Mr. Spofford, I will say, does not disfavor that proposition.

The Chairman. I suppose there must have been some argument for this in the first place, or it would not have been done.

Mr. Spofford. It is copied from the British law, precisely.

Mr. Browne. The reasons for it are lost, I think, in the mists of the past. Mr. Drone does not know them, and Mr. Drone has given as much time, from the point of view of the student of copyright, to use Mr. Putnam's expression, as anybody I know of, and has written a very valuable treatise on the subject.

There is no consideration of justice, that I know of, to anybody which called for the retention of this antiquated and cumbrous provision; and the analogy of the patent law is a very strong argument in favor of taking one term.

Then the question comes: What shall that term be? The present term is twenty-eight, plus fourteen, total forty-two. That is the shortest term of copyright granted by any country in the world, with the single exception of one country.

Liberia, or something. It is the shortest term of copyright granted anywhere. It has accrued to us, and it meets Mr. Treloar's approval, that instead of forty-two years the term be made fifty years, and stop. It will then be the shortest term of any copyright country in the world. It will be fifty years, and you will know where you are.

The Chairman. The Treloar bill provides for first forty and then twenty years; the present law is twenty-eight and fourteen; and what you propose is fifty years?

Mr. Browne. Yes, sir; that was done after conference with Mr. Spofford, and I understand with Mr. Treloar's approval, upon the ground that sixty years might be thought by those hostile to copyrights in general to be too much to give the poor author and the poor publisher.

Assignments.

The next section as to assignments, Mr. Treloar's new section corrects many difficulties of the old law, imposes no undue burden upon the public, and will, in my judgment, lead to uniformity in the copyright office, and security in copyright property and title that does not exist to-day.

The Chairman. There should be payment for recording the assignments?

Mr. Browne. Certainly.

The Chairman. That is implied?

Mr. Browne. That comes later, in terms, and should be based upon the number of words in the assignment, like a patent assignment.

Requisites for obtaining Copyright.

The next section is the section which provides as to the requisites for obtaining copyright. Under the present law, copyright attaches if you do this: If on or before the day
of publication—which means exposing to the public—you either send to Mr. Spofford, or deposit in the mail within the United States, a printed copy of the title and two printed copies of the article, or a photograph of the article as the case may be, and your fee, you thereby get a copyright. It does not make any difference whether the things ever reach the Librarian of Congress or not. Your copyright attaches by virtue of your doing those things, under the present law. It is a good law. It has worked well in practice. The only practical difficulty that has shown itself is that the present law says "on or before"; and a curious custom has grown up, through many years, of sending the title on ahead of the copies, in the belief that by sending the title you have got some sort of protection. The courts have decided over and over again that you cannot copyright a title; that the deposit of the title with Mr. Spofford is nothing but proof of the fact that you had it, that it was deposited, which may be proved in forty other ways, and that it is not necessary to send your title on ahead of your copies. But the practice, as I say, has grown up among some people—not among the music publishers, who, as I may say, do the most of the copyrighting, but among the public at large—of sending the title on ahead. It gives no protection, and amounts to nothing, but it has so grown up. Mr. Spofford, on receipt of that title, sends back a paper, sealed with his seal, which says that he has received the title—

Mr. Spofford. And recorded it.

Mr. Browne. And recorded the same, and that he had his fee. Ninety-nine people out of a hundred lock that up in their strong box or their safe deposit, as the case may be, and say: "These are my copyright papers." Not a bit. It is simply evidence that you have done one of the two acts which the law requires. You must, as I say, deposit your title and your two copies in order to get a copyright.

In the direction of simplicity, I suggest that the law provide that the deposit of both the title and the two books be one single act, be done at the same time, and that that day be the day of first publication. The great practical difficulty which we have now is to know what is the day of first publication. There is no evidence of it, as things are today. We do not know; we cannot find out, in the case of copyrights, what is the day of publication.

Inasmuch as the present law provides that deposit in the mails within the United States is all that is necessary, that on the day of publication the author or owner shall put into the mail the title of the book and two copies, and the money, that will do what in Washington? That will cut down the clerical labor just one half, because whereas now it is customary to make two separate entries, one of the title and then, when the books come, of that fact, if requested, one single entry will do the whole business; and we provide that with them there shall be an affidavit of ownership or authorship, and of where the book or other article was made, from a mechanical point of view.

THE MANUFACTURING CLAUSE.

Then, as a substitute for Section 12, we have this:

"Section 11. No person shall have a copyright upon any literary, pictorial or sculptural composition unless he shall, on the day of first publication thereof, deliver at the office of the Commissioner of Copyrights at Washington, District of Columbia, or deposit in the mails within the United States, addressed to the Commissioner of Copyrights at Washington, District of Columbia, a printed or typewritten, copy of the title of said composition and two printed copies of said composition. Provided, that in the case of a play, the two copies deposited as above may be typewritten, and public performance thereof shall be deemed equivalent to the pub-
lication thereof, and publication in print shall not be required."

That is desirable with plays. Most plays are not intended to be printed, not desired to be printed, and public performance should be deemed equivalent to publication. That is the English law, and it works well. It is the practice here; although if you deposit your title here, under the present law, and then do not print and publish within that very elastic period, "a reasonable time," you lose your copyright.

Mr. Cooke. Is the printing of such works injurious to the interests of the owner of them?

Mr. Browne. Yes, sir; in this way: that it makes piracy, unlicensed performance of them, very much more easy. You cannot get more than a dollar at the outside for a printed copy of your play, and you are lucky to get fifteen cents; and for fifteen cents a gentleman in a distant part of the country has got the manuscript and the whole business right there before him, and can go right to work and infringe upon your really valuable property in the acting rights.

"And provided further, that every published copy of every copyright composition, and also the two copies above mentioned, and the type, plate, negative, transfer drawing on stone or other device from which such copy shall be made, shall be set or made within the United States."

The Chairman. There is a point there that has been called to my attention, Mr. Browne, in regard to the negative of a photograph. That is Mr. Treloar's suggestion. What I understand you to say is that in the case of a photograph, the two copies required to be delivered shall be printed from negatives made within the limits of the United States. That would make it absolutely impossible to copyright anything made outside of the limits of the United States?

Mr. Browne. Yes, sir.

The Chairman. You cannot photograph St. Peter's at Rome and have your negative made in America. Is that the intent, to shut out absolutely from copyright anything outside of the limits of the United States?

Mr. Browne. That is what that limits, as it is; but I should like to see the committee whittle down from that—start with a cast-iron provision, and whittle off as little as is necessary to do justice. I agree with you, Mr. Chairman, that the negative should be permitted to be made abroad.

The Chairman. It cannot be made anywhere else. That is the point I was coming at.

Mr. Browne. It cannot be made anywhere else.

Mr. Everett. You can make a transfer from one negative to another just exactly as well; so you can get around that, and make it comply with that provision. A negative can be made in this country from a negative made abroad. It is a transfer of the negative, which is just as good as the original negative.

The Chairman. A little change in the wording there might be of advantage.

Mr. Everett. So that if it says, "made in the United States," it can be made in the United States from the other negative, first making a transparency from the original negative, and then making a negative from that transparency. It is almost impossible for an expert to tell the difference.

Mr. Browne. I have put that clause in, as I say, in order to cover the whole thing, and it does it.

The Chairman. Something could be said there to make that clearer, but at the same time we will pass it by for the time being. I do not wish to interrupt you.

Mr. Browne. It is open to the objection that you suggest, and I think that is the only construction, that it excludes printing from a foreign-made negative, unless an intermediate negative be made in the United States.

The Chairman. My point is this: Supposing an American artist goes over and photographs St. Peter's, or some
great picture or something else, and comes back. This language, as it first struck me, would seem to forbid that that thing could be copyrighted.

Mr. Browne. It will not do it, sir. It will not forbid that it shall be copyrighted. It will simply put him to the bother of making a transfer of negatives in the United States.

The Chairman. This question of a transfer—I do not know how that would stand the courts. It seems to me that some language could be drawn, if it is desired, that would meet the case, rather than to leave a doubtful case for the consideration of the courts. I am simply making the suggestion.

Mr. Everett. I would like to say a word to the committee on that point.

Mr. Browne. Mr. Everett is a publisher, and knows all about such matters.

Mr. Everett. I am a photographic publisher, and could give you, perhaps, some information on that. This law does not, and is not intended to, cover works of art dated previous to the bill. For instance, the international copyright law of 1891 did not refer to paintings made and dated before 1891; so that the question in regard to reproducing the Sistine Madonna and works of the famous old masters need not be considered in connection with this bill at all; nor need the photographing of views, public buildings, or anything of that sort, be considered, for those it is impossible to copyright under the law anyway. It simply refers to works of art after the law of 1891 went into effect.

The Chairman. That is the view of the courts, so far as cases have been decided?

Mr. Browne. So far as they have been decided; yes.

THE IMPORTATION CLAUSE.

Mr. Browne. We find in Sections 14 and 15 of the Treloar bill—
mails, forwarded to the dead-letter office at Washington, and then returned to the publisher in Canada, who is told he must not do it any more. We want it destroyed.

The CHAIRMAN. We pay the postage?

Mr. Bacon. We pay the postage, and the party who sends that music has it returned to him and sells it again. He gets his money. He does not send it until he gets the money. Then the Canadian sells it again, and gets paid twice or more for the same music. He likes it; it is profitable.

Mr. Browne. It is a very beautiful system.

Mr. Treloar. No wonder, then, he can sell it for five cents or ten cents.

Mr. Browne. It is one of the features of the perfect Act of 1891 that we thought needed a little correction.

The CHAIRMAN. Under the present law, it is a misdemeanor, subject to fine?

Mr. Browne. No, sir: it has not been.

The CHAIRMAN. This makes it a misdemeanor.

Mr. Browne. A misdemeanor.

The CHAIRMAN. Subject to a fine of not less than fifty dollars nor more than one hundred dollars?

Mr. Browne. Yes, sir.

The CHAIRMAN. One half to be paid to the informer and one half to the Treasury?

Mr. Browne. Yes, sir.

The CHAIRMAN. Do you approve of that last, one half to be paid to the informer and one half to the Treasury?

Mr. Browne. I prefer to have it all paid to the Treasury, and have so drawn this clause. I think that the firms in the United States, with the assistance of the district attorneys, could be relied upon to root out that practice.

The CHAIRMAN. I know in tariff matters the informer business has been taken out. It is supposed to be for the public good.

Mr. Browne. I am very glad to hear it, sir. I proposed the taking of it out, and so drafted my suggestions to Mr. Treloar. Mr. Treloar, I understand, is not opposed to the taking of it out?

Mr. Treloar. No, sir.

Mr. Browne. For convenience, I have combined into one section these two sections, 14 and 15, so that the section might read:

"Section 12. Any person who, during the existence of the copyright thereon, shall knowingly import into the United States, lease, sell or expose for sale, buy, bargain for or barter, any copyright article or copy thereof, not made within the United States, as hereinbefore provided, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than one hundred dollars for each offence, to be paid to the Treasury of the United States of America, and shall further be fined not less than one nor more than one hundred dollars for each and every such copy of such composition found in his possession, to be paid to the Treasury of the United States of America. Provided, nevertheless, that in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same; and the importation of the books in the original language shall be permitted."

That is the old law, and that is sensible enough.

The CHAIRMAN. Does this affect newspapers? We had in the last Congress a complaint from the newspaper fraternity in which it was stated that they were liable to pay a certain sum for an issue in which they used imported photographs.

Mr. Browne. This is the other clause. That is what is called the penalty clause. This is what is called the importation clause.

Mr. Cooke. In the present laws, is there not something in relation to the articles being in the possession of the supposed offender?
Mr. Browne. No; I believe not.

The Chairman. If you will permit me to interrupt you a moment—this is the time for the adjournment of the committee, and if you are likely to finish within a comparatively short time, we would wait for that; otherwise, I should think it would be desirable for us to adjourn until to-morrow.

Mr. Browne. I do not know just how fully you want me to go through this law, section by section.

The Chairman. It is something that somebody must do.

Mr. Fairchild. Go on; I would like to be instructed on it very thoroughly.

Mr. Browne. You would perhaps like to have me proceed in the manner in which I have been proceeding, as far as my methods go, at any rate.

The Chairman. I should think possibly it might be wise for us to adjourn until to-morrow morning. Some of the members of the committee feel as though they must go.

Mr. Browne. There are a number of Boston men who have been here for some time, and their business, of course, calls them imperatively back at the earliest possible day. Would it be possible for me to report in print as to the balance, or is it better for me to be here and answer questions?

The Chairman. Of course it would be better if you could be here and answer questions. You know how much time you can give. My own view is that we shall hardly get through with the matter entirely this week, as it develops into considerable of a matter. I should be very glad to hear you entirely through on the bill, and I am more certain than I was when you began that with all these changes there ought to be a bill introduced that covers all the changes. Some of us would want not only to consider them in committee, but to consult with gentlemen outside of the committee about them, which we cannot do by saying: Here is an original bill, and there are various amendments proposed.

Mr. Cooke. That is very true. I see the force of that.

Mr. Everett. May I speak of one point as to which there was a question asked here in the committee?

The Chairman. Yes, sir.

Mr. Everett. There was one question which Mr. Fairchild asked, which I thought might be of some service. That is in regard to the engraving in this country of a painting taken abroad. Engraving from a high art standpoint is almost shut out in America, simply from the new processes, photogravure, and other similar processes, which have come in and become popular. To-day we have comparatively few high art engravers and etchers. That is an industry which could be built up, as I understand it, by this very law. For instance, a firm of publishers here who desire to put out a first-class engraving, would naturally secure an artist of high merit, who would go to Europe and make his drawing from the original there, return with his drawing, and make the plate on this side of the water, which can now be done by the Germans or the Italians at a very much less price than on this side. Under this law these publishers could buy the rights of the original artist and hold that right, which would be good internationally, and it would be an American publication, although originally by a foreign artist.

In regard to engraving from the original painting. It is necessary to get all of the understanding of the original picture, to work indirectly from that original; but the plate is not drawn from the original. As I understand engraving, a reverse drawing is made from the original, as every plate must be drawn in the reverse. The artist makes, in the first place, a pencil drawing from the original, just the reverse of what the painting is. He brings that home and copies that off on to his steel plate, and that is what he works from. As far as the etcher or the engraver is concerned, he never takes his plate to a gallery and copies directly on a plate.
That would not be practicable or feasible. So that if a German publisher to-day wants published a print of that sort, he gets the engraver to go to the gallery and make his reverse drawing, and then he can make his plate where he pleases. To-day that cannot be done in America, but under this law it could be.

The Committee was thereupon adjourned until half-past 10 o'clock, Friday, March 20, 1896.

WASHINGTON, D. C., March 20, 1896.

10.30 o'clock A. M.
The Committee met pursuant to adjournment.

STATEMENT OF ALEXANDER P. BROWNE (Resumed).

The Chairman. There is a matter which has been called to my attention since yesterday, which I want to ask you about, Mr. Browne. In Section 13 you say: "No certificate of registration or certificate of copyright shall be issued to a citizen of the United States," etc. Does that mean that citizens of the United States are to be under different restrictions as to copyright from any one else, or that no one but a citizen of the United States shall be entitled to get copyright?

Mr. Browne. In the draft that we have presented that precise language is not used. It says that no person shall have a copyright unless he shall —

The Chairman. That meets the point that I am inquiring about.

Mr. Browne. And then later it is proposed to re-enact or preserve the provision which is in the present law of 1891. That is, that whenever the President of the United States shall proclaim that another country grants reciprocal privileges, then citizens of that country shall have the privilege of this act.

The Chairman. So that international copyright is not affected?

Mr. Browne. No sir; it is the desire of all the gentlemen that I represent that it should not be affected.

The Chairman. I thought I would ask the question. I do not know that you mentioned it yesterday.

Mr. Browne. I did not, because I referred to my own draft — the proposed section, rather than the precise wording of the Treloar section.

The Chairman. We were yesterday on page 8, at Section 16.

Mr. Browne. Yes, sir; but I think I should speak now of a matter that I omitted by inadvertence, with reference to those sections we have already considered, which provided what articles were copyrightable. Mr. Spofford has suggested that all articles not in their nature works of art should be expressly excluded — matters in the nature of advertising, trade labels and trademarks. The present law excludes them, and the same provision should be expressly retained.

The Chairman. Will you embody that in the draft that you are preparing?

Mr. Browne. Yes, sir.

DESTRUCTION OF COPIES.

Coming now, gentlemen, to the sixteenth section of the pending bill on page 8, that is a section for the impounding and destruction of unlawfully imported copies of copyright articles. The section as drawn is possibly a little sweeping, and it is suggested that it be worded as follows: —

"That any copy of any copyrighted article that shall, during the existence of the copyright thereon, be found by the postal or Custom House officials while being imported into
the United States in violation of this act, shall be seized by them and immediately forwarded to the Copyright Department at Washington, District of Columbia, and forthwith be totally destroyed."

thereby limiting the destruction to the infringing article, and not including the entire package, which may be largely innocent.

The Chairman. For instance, if you found a sheet of music in a bale of goods, you would not destroy the bale?

Mr. Browne. No, sir.

Mr. Furniss. Mr. Chairman, if I may be allowed to say a word, we think that the framing of that portion of Mr. Treloar's bill is rather modest in comparison with the present copyright law of England. There they not only seize the music, but they have a right as well, if they choose, to destroy it and to impose a fine of ten pounds for each offence. In our bill we make no penalty.

The Chairman. You agree with Mr. Browne's suggestion?

Mr. Furniss. Yes, sir.

REGISTRATION.

Mr. Browne. The two following sections of the pending bill refer to the routine matters of registration, including what is to be done in the office of the librarian or Commissioner. If the suggestion already made be adopted, that the title and copies shall be sent at the same time, then obviously but one registration or record will have to be made, and consequently the form which we suggest substitutes for the duplicate recording of the pending bill a single recording, as follows:

"Every title sent for registration shall be accompanied by a registration fee of fifty cents and an affidavit (one affidavit to be sufficient for as many titles as shall be deposited by the same party on the same day and in the same package), which affidavit shall be subscribed and sworn to before a notary public or other public officer authorized to take acknowledgments of deeds, and shall be in the following words, to wit:

"On the day of Eighteen being the day of first publication thereof (here insert name), a citizen of , residing at , having deposited in (here insert place of deposit) the title of a (literary, musical, pictorial or sculptural) composition, the title or description of which is in the following words, to wit: (here insert the title, including the name of the author and if possible the name of the publisher or manufacturer, and the place of manufacture or publication) the right of which he claims as (author, owner, executor, etc., as the case may be), and also two copies of the same made within the United States according to the provisions of this Act."

This is the affidavit to be sworn to. You will notice that it contains a solemn statement under oath of ownership, and also of the place of manufacture of the copies. We believe that this very valuable suggestion of Mr. Treloar, to wit, this affidavit, will go far to stop the present practice of inconsiderate copyrighting by persons who do not in fact pretend to have any claim of ownership whatever to the composition. This is illustrated by the matter to which I referred yesterday, the song sung by Miss Irwin, and then copyrighted in a scramble by a number of would-be publishers, no one really having a shadow of right.

The section continues:

"The Commissioner upon receipt thereof shall make a record of the same in the following words:

\begin{verbatim}
               record of registration.
\end{verbatim}

Be it remembered that on the day of Eighteen being the day of first publication thereof (here insert name), a citizen of , residing at , has complied with the law relating to the registration of a (literary, musical, pictorial or sculptural) composition as the case may be), and has filed in this office the title thereof in the following words, to wit: (here insert the title of description as given in the affidavit above mentioned) the right whereof he claims as (author, owner, executor, etc.) and also two (printed or typewritten) copies thereof."
That certificate of record to be signed by the Commissioner only, not in addition by the chief clerk of the office, as the Trelorn bill provides. That seems, in Mr. Spofford's judgment, and I think now in the judgment of Mr. Trelorn, an unnecessary piece of detail work.

The section concludes:

"The Commissioner whenever requested, shall furnish to any applicant therefor a copy of the said certificate of registration upon receipt of the fee hereinafter provided."

We shall then have one single certificate from the Commissioner of Copyrights that all the requirements of law have been complied with, and that the copyright is at any rate prima facie the property of the person named in the certificate.

The Chairman. One word there. You say a fee of fifty cents. Are you going on with Section 18 as here, and have another fee of fifty cents? If not, the fee should be a dollar.

Mr. Browne. Yes, sir; I am.

Mr. Trelorn. The fee, I believe, we have agreed upon as being a dollar, instead of fifty cents, as you have it there.

Mr. Browne. I may state that the insertion of those words in the section I have just read is somewhat inadvertent. It should have been erased, because we have in the very next section provided for all the fees.

The Chairman. That is a matter I wish you would be careful about in your draft.

Mr. Browne. I will, sir. I can only say in palliation that this draft Mr. Trelorn and Mr. Spofford and I have been over together more or less, and we could not always the first time hit all the verbal matters that required attention.

Mr. Trelorn. Mr. Browne, you omit here in this bill, on page 9, Section 17, in the eighth line, after "a citizen of," the words "the United States of America."

Mr. Browne. Yes, sir.
tion, that I very frequently have occasion to act in that capacity for foreign authors. The recent Gilbert & Sullivan opera, the Grand Duke manuscript—it happened to be proof sheets—was sent to me. I had it reprinted in the United States, to wit, in Boston, and deposited two copies there in the mails and got my receipt. I did it upon the day of first publication, which is of necessity simultaneous in the various countries; the wisdom of that provision being that in common fairness the American public shall receive the knowledge of the thing at least as early as any foreign country, and, on the other hand, that the foreign citizen who is entitled to the benefits of the law shall receive his information as early as the American. Therefore, simultaneous publication has been held for a long time as a requisite of copyright, particularly international.

FEES.

The next section of our draft corresponds to Section 19 of the pending bill. The committee will recollect that Sections 17 and 18 become one, by reason of there being but one registration instead of two.

The Chairman. With the change of the fee to one dollar instead of two fees of fifty cents?

Mr. Browne. Yes; and the suggested section with reference to fees is as follows:

"The Commissioner of Copyrights shall receive from the person to whom the services designated are rendered the following fees: For making a record of registration of any article, fifty cents; for every copy of such record under seal, fifty cents; for recording and certifying any instrument of writing for the assignment of a copyright, one dollar for each five hundred words or fraction thereof, and twenty cents for each hundred words or fraction thereof above five hundred, and a similar fee for every copy of such assignment."

That form or system of charge is made exactly analogous to the rule which prevails with reference to assignments of patents. It is often necessary in the course of business to assign, transfer, a whole catalogue of copyrights, in which case the instrument of transfer becomes voluminous, and it is right, of course, that the copyright office should receive compensation commensurate with the number of words to be copied and recorded.

The Chairman. I would like to ask Mr. Spofford if he thinks that is a suitable sum.

Mr. Spofford. The only objection to it, Mr. Chairman, is that it consumes more valuable time than seems to be necessary. I would very much prefer a method of charging for the record of assignments, some of which are extremely brief and some extremely long, a definite sum per page. That could be counted in one minute, whereas the other might occupy a very long time, to count up words by the hundred. I object to anything that calls for the consumption of time, short methods being best.

Mr. Browne. Of course any suggestion of that sort from Mr. Spofford outweighs any suggestion we make, on account of his greater familiarity with the details of the work.

The Chairman. I would suggest that it would be a good idea, in closing your draft in this particular matter, if you would arrange the matter with Mr. Spofford, talking it over with him, as we should want to consider the completed draft.

Mr. Browne. Certainly. I had proposed to hand this draft to Mr. Treloar, and then to ask Mr. Treloar, in consultation with Mr. Spofford, to make such amendments or this draft in matters, particularly of administration, as seem to him and Mr. Spofford wise.

The Chairman. Then we should have a new bill before us, really?

Mr. Browne. Yes; but not, I hope, widely different from the document we are now considering.
The Chairman. Not widely different. I understand it would be different in some matters of detail.

Mr. Browne. In the matter of the hundred words, it is the method that is always followed in the Patent Office. What the practical difficulties are, of course I do not know. I only gathered, from the fact that it is in universal use there that it had been found a good way to do it.

Mr. Fairchild. It is in universal use in the courts, too. They simply say so many words to the page. They do not count every word.

Mr. Cooke. The clerk constantly making such computations arrives at a very clear estimate, just by his eye.

Weekly Lists.

Mr. Browne. The next section corresponds with the next section of the bill, and runs as follows:—

"It shall be the duty of the Commissioner of Copyrights to furnish to the Secretary of the Treasury copies of the registered titles and dates of publication of all copyrighted articles, and the Secretary of the Treasury shall prepare, print and publish, on Wednesday of each week, alphabetical catalogues of such information as is received up to the close of the Saturday preceding, for the use of the Collectors of Customs of the United States, and the postmasters of all post-offices receiving foreign mails, and shall in like manner prepare and issue semi-annual indexes thereof; and such weekly lists and semi-annual indexes shall be furnished to any person desiring them, at a sum not exceeding their net cost."

Mr. Cooke. You omit the concluding part of Section 20, do you?

Mr. Browne. Yes, sir; it seemed to me to be in the nature of surplusage. I omitted it merely for that reason. It also occurred to me from a practical point of view that it might antagonize a little the different departments by putting that provision into this law.

The Chairman. Is this provision in the present law?

Mr. Browne. In substance; yes, sir. We have amplified it a little, in the hope that we shall make a valuable and accessible publication.

The Chairman. I mean the provision that you omit, "and the Postmaster-General is required to make and enforce such rules and regulations," etc.; is that in the present law?

Mr. Browne. It is; yes, sir.

Mr. Spofford. It is.

The Chairman. Do you think it wise to omit it?

Mr. Browne. Possibly not. I had not thought of it. We have, however, another section, which is different from the present law, wherein the same matter is gone into at considerable detail, and I omitted it for that reason.

The Chairman. It would seem to me that something of this kind would be requisite somewhere.

Mr. Browne. I think the committee will find that it is specially provided for.

The Chairman. Later?

Mr. Browne. Later or earlier. My impression was it was earlier.

Failure to Deposit.

As to the next section, Section 21, we see no reason why Section 21 should not stand. It is verbatim, I believe, in accordance with one of the sections of the present law. We have, however, omitted the following section, Section 22, which provides a penalty for the failure to deposit copies after the title has been deposited, for the reason that we believe that the deposit of the two copies should be simultaneous; and inasmuch as it is made essential to the obtaining of a copyright, that whole question of the penalties now becomes immaterial. I will say in this connection that this penalty section, imposing a penalty upon the copyrighter for failure to deposit, has in the past been made a weapon of extortion against publishers who, by inadvertence or other-
wise, have failed to complete their copyrights; and large sums of money have been taken from the Oliver Ditson Company and the White-Smith Company, and other publishers, where they were really guilty of no more than the forgetfulness which is likely to occur in any large business dealing with a vast multiplicity of such matters.

The Chairman. And no harm done, really?

Mr. Browne. And no harm done really; and, as has been suggested to me by the Ditson Company's representatives, in the purchase of catalogues of other parties, where, in the past, it had been impossible to tell whether the deposit has ever been made or not. This seems to me to throw additional light upon the wisdom of making the deposit of the title and the deposit of the two copies one act, for then we shall be entirely free from all questions of penalty or compliance. We have the certificate; we have the affidavit; and the thing is then in business-like shape.

Mr. Cooke. The failure to deliver these additional copies would operate to invalidate the act by which the original certificate was attacked?

Mr. Browne. Yes, sir. There could be no original certificate obtained, because the librarian would not give them any certificate.

Mr. Cooke. So that operates as a penalty in and of itself—a sufficient penalty probably?

Mr. Browne. Yes, sir.

The Chairman. It simplifies things.

Mr. Saurermo. Yes; very much.

POSTMASTER'S RECEIPT.

Mr. Browne. The next section is the one which imposes upon the postmaster to whom the copyrighted article or matter is delivered the duty of giving a receipt therefor, and that section is very desirable. In fact, it is very vital, and we wish to have it stand substantially as it is, and we have so preserved it. It reads, in our draft:

"The postmaster to whom any title, affidavit or other article for copyright is delivered in accordance with this Act should give a receipt therefor in such form as the Postmaster-General shall provide, and shall mail the same forthwith to its destination."

The present law contains such a provision, and the post-office authorities give the receipt without demur.

Mr. Theoloe. Is it not a fact that they are not compelled to do so unless requested?

Mr. Browne. At present they are not compelled, unless requested; but it seemed wise to make it a part of the duty of the office, there being no objection that I know of in practice, and no burden imposed upon the post-office department that it is not perfectly willing to assume.

The Chairman. Is it worth while to try to prescribe the form of the receipt in the law?

Mr. Browne. It would be very worth while, from many points of view, it seems to me; but I avoided introducing it because I was not quite sure just how far it might raise a conflict with the Post-office Department.

Mr. Cooke. That is, you mean such regulations as may now be in vogue in the department?

Mr. Browne. Yes, sir.

The Chairman. Suppose you should take the receipt that they now give; would it do that? I am saying this tentatively.

Mr. Browne. Mr. Chairman, I cannot imagine how a postmaster, unless he were animated by positive malice against the depositor, and were seeking to do him injury, would fail to give a fair business receipt for his property. As a matter of fact, they now use a printed blank.

The Chairman. That is what I supposed.

Mr. Browne. Which, while it is not what it might be, is
yet fairly sufficient, I believe. It is the custom of some of my clients, I know, to preserve those receipts, because, after all, they are the most valuable evidence of deposit in the mails, which is one of the requisites of copyright.

Mr. Sauerbing. Are these copies directed now to Mr. Spofford, the librarian, registered?

Mr. Browne. Not always.

Mr. Furniss. They are simply put in the mails.

Mr. Browne. They are invariably carried without charge.

Mr. Spofford. Stamps are furnished by the Copyright Department, in Washington. As to registering, Mr. Chairman, I may say that not one in fifty is registered, because my office mails mailing labels to anybody applying for them. They are sent out, and the packages do not require any postage.

Mr. Browne. I would like to ask Mr. Spofford his opinion as to the wisdom of changing in any way the present receipt given by the government.

Mr. Spofford. The receipt given by the government, through the postmaster, really represents nothing more than a signature and a date, and the form of the receipt I consider to be so wholly immaterial that I think it would not perhaps be worth while to introduce it in the law.

The Chairman. You would let it go just as it is?

Mr. Spofford. I think so. There is certainly no danger in doing so.

Mr. Browne. Later on, I have no doubt that requests to the Postmaster-General will result in the adoption of a form which is fuller and more satisfactory, without the need of any legislation in the premises.

The gentlemen of this committee would think that where the law provided as simple a form of copyright imprint as "Copyright 18 by (so and so)," the chances would be that that form would be followed by the public and the trade. In my judgment, a large part of the copyright imprints, even those put on by the men in the habit of dealing in copyrighted property, fail to comply with that wording, in whole or in part; and the books contain many cases where valuable copyrights have been destroyed by departure from that form. I say this by way of preface to the present section of the pending bill and to the substitute which we propose.

As the committee will notice, the present section retains the alternative duplicate notice, one being the long notice, "Entered according to the Act of Congress," etc., and the other being the short notice. Now, our English friends, in particular, have wonderful facility in getting both of these notices wrong. They like the long notice best, because it seems to them the more binding, and they get it wronger, if I may use the expression, than would be deemed possible by the average intellect.

It seems to me in the direction of simplification that we should have but one form of notice, and that the shortest possible form, with a view to diminishing the possibility of innocent mistake on the part of the copyrighter and the loss of the copyright privilege thereby. The courts have been pretty strict to hold that in the absence of a copyright notice the copyright is valueless; and in the case that I was speaking of yesterday, the picture case, where my clients were sued for copying the uncopyrighted photograph of a copyrighted painting, the Court held that the exhibiting of that painting was a publication, and that the failure to put the copyright notice upon the picture so publicly exhibited destroyed the copyright.

That shows the importance of the copyright notice, and
In the same time the importance of having it as simple as words can make it. We suggest, therefore, that it read:

“No copyrights shall be valid unless notice thereof shall be given by imprinting upon the several copies of every edition published, if it be a literary composition, including a musical composition, map, chart, or plan, on the title page or the page next following, or if it be a pictorial or sculptural composition, by inscribing upon some visible portion of the original and of every copy, or on the substance on which the same shall be mounted, the following, namely: "Copyright eighteen hundred , by (here insert name of the copy righter)."

Mr. Cooke. Without the words “United States of America”?

Mr. Browne. Yes, sir, because the Act is intended to be international in its character. The notice gives information to the interested public that this is a copyright entered by a certain man in a certain year.

Mr. Bayly. Would that copyright notice be put on by the Commissioner of Copyrights, independent of the person who sent the article on?

Mr. Browne. No, sir.

Mr. Bayly. Would that be worded in a way so as to prevent a man from making a mistake.

Mr. Browne. No, sir.

Mr. Bayly. If an article was sent on to be copyrighted, would the Commissioner of Copyrights put the right word on the article?

Mr. Browne. No; I think that would be too paternal, and would put a little too much burden on the Commissioner. I think it is fair to assume that if a man is entitled to a copyright, he is possessed of sufficient intelligence to get that sentence on somewhere near right.

The Chairman. Or he could consult counsel.

Mr. Browne. Or he could consult counsel learned in the law.

Mr. Treloar. You would have, then, simply the word "Copyright," and the figures "189" so and so — not spelled out?

Mr. Browne. I should think under the law we could spell them out in full, or we could express them in Arabic figures, or express them in Roman figures.

The Chairman. Would you say "So and so" of blank residence, or simply leave the name?

Mr. Browne. It has been suggested by some of the manufacturers of art works, particularly, that the shorter the notice, the better, because it does to a certain extent mar the print. I assure you, Mr. Chairman and gentlemen, that every word you add to this, you make another chance of error on the part of the person whose business it is to attend to the matter.

The Chairman. I should think it would give notice to the person who saw it, if he wanted to use the copyright, where he could apply. That has simply crossed my mind.

Mr. Treloar. You mean it would act as an advertisement?

The Chairman. Certainly.

Mr. Browne. That would be a compulsory advertisement, and inasmuch as in practically every case the name of the publisher is there —

The Chairman. They can find out who he is by sending to the Copyright Department.

Mr. Browne. In every case they could. In the vast majority of cases they could tell by the publication.

Mr. Fairchild. Do you not think we are too near the year 1900 to make it read “18”? Do you not think it should read, “Here insert year and date”? That would allow them to write it out in figures, or put it in words.

Mr. Browne. Yes, sir; that could be done.

Mr. Gordon. Would that cover “all rights reserved”? 
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Mr. Browne. Yes, sir; that could be done.

Mr. Gordon. Would that cover “all rights reserved”? 
Mr. Browne. Yes, sir; it is no longer necessary to use the expression "All rights reserved."

Mr. Gordon. Suppose a person did not want to reserve all the rights.

Mr. Browne. Then he can publish such a license as he likes, as the English people do. The question raised by Mr. Gordon is as to the question of using the phrase "All rights reserved." That phrase was formerly used under the old law, because that law provided that the author, etc., might reserve the right if he chose. The law of 1891 and this pending bill provide that the right is reserved to him by law; consequently, that avoids the necessity of putting that in. If he wishes to part with any of his rights to the public at large, or to a class of the public, all he has to do is to say so on his issue, and publishers are very willing to do it. In the case of a dramatic performance, the notice is published inside, or somewhere where the public will see it. It is to the interest, of course, of the party controlling the article to get his wares before the public, and he puts it on in such form as he thinks best. It forms no part, however, of the copyright notice as such.

FALSE COPYRIGHT NOTICE.

We come next, Mr. Chairman, to the section which provides for the false imprint of the copyright notice upon a copyrightable article, or upon any article, by some one who has no right to imprint such a notice. That is a penalty clause, which is very wise. It will be obvious to the committee, I take it, that if there were no such penalty, copyright protection would be very seriously handicapped, for the notice would be falsely put on, the claim falsely made, right and left.

The Chairman. What is the provision of the present law?

Mr. Spofford. It is one hundred dollars.

The Chairman. It is one hundred dollars instead of two hundred dollars.

Mr. Browne. The draft which we submit restores the penalty to one hundred dollars.

The Chairman. Do you believe in a recovery of one half for the person who shall sue, and one half to the United States.

Mr. Browne. I do not, sir.

The Chairman. I am rather opposed to it myself.

Mr. Browne. Our draft does not contain that proposition. It is, however, fair to say, as Mr. Treloar has said to me, that it is sometimes well to leave it to some one's interest to look after these things.

The Chairman. It is to the interest of the person who has the copyright, is it not?

Mr. Browne. It seems so to me, sir, and it seems to me that the district attorney, if the case is presented properly, is in duty bound to proceed, even though the amount of recovery be relatively small.

The Chairman. Is this in the present law — the one half?

Mr. Browne. Yes, sir; the one half is in the present law.

The Chairman. Do you think it should be retained, Mr. Spofford?

Mr. Spofford. No, sir.

The Chairman. I am opposed to that.

Mr. Browne. Our proposed section upon that subject reads as follows:

"Every person who shall knowingly insert or impress a copyright notice or words of the same purport in or upon any article, whether such article be subject to copyright or otherwise, which has not been duly copyrighted, shall be liable to a penalty of one hundred dollars, recoverable for the use of the Treasury of the United States."
It seemed to me that the word “knowingly” is a fair and proper word to insert there. We lawyers know sometimes the difficulty of proving the motive; but it is a bulwark and protection for the innocent and ignorant offender; and this law, as I understand it, is needed for and directed against the wilful violator, the man who knows exactly what he is doing, and does it with intent to deceive.

The Chairman. You leave it one hundred dollars instead of two hundred dollars, as provided in the bill?

Mr. Browne. Yes, sir.

The Chairman. Mr. Treloar assents to that, does he?

Mr. Treloar. I do not see any objection.

Mr. Cooke. Do you not think any man knows whether he has copyrighted a book or not?

Mr. Browne. Yes, sir; but questions can arise, particularly on later editions, and whether or not a thing is a new edition or is covered by an old copyright; and — Mr. Spofford will confirm me in this — when the law is somewhat obscure, and where it is a question with the publisher whether he shall put on two copyright notices, that is, the original copyright notice of a given year, and the subsequent copyright notice of another year, where there has been some change made, some new work done. Suppose that a publisher should innocently, and perhaps by the advice of counsel, put on both notices. Then suppose that the Court should subsequently hold that the first notice, for example, was wrongful, should not have been put there, or that the second notice should not have been put there. Then it would be a question whether he had not, in following the advice of his counsel, rendered himself liable to a penalty.

Mr. Cooke. Is it not a principle of law anyway that no man can be convicted of an offence of which he is not guilty, in the sense of committing the offence knowingly?

Mr. Browne. You cannot recover a penalty without going to a jury, and I think a jury generally takes care of that question. But the insertion of the word “knowingly” seems to me to do no harm, and to give the jury a chance to find fairly and rightly that the offence was not knowingly an offence under the law.

Mr. Cooke. It gives them a loophole of escape?

Mr. Browne. It certainly does. Once in a while somebody gets through, but as a rule I think they stop them.

Mr. Cooke. It comes out in the case of selling liquor to minors. Suppose the offender does not know whether this person is a minor or not. He looks like a person twenty-one years old, but nevertheless he is only eighteen, and liquor has been sold to him. Has a criminal offence been perpetrated in that instance, where the law says: “Any person who shall sell or give liquor to a minor?”

Mr. Cooke. Would he escape punishment?

Mr. Cooke. Out with us he invariably does, under such a statute, where it is not shown that the offender did know, or had reason to believe, that the person was a minor.

Mr. Cooke. Still, it would be unwise to put in that word “knowingly.” The accused has a hole by which to escape anyway, and it would widen the hole to put in that word.

Mr. Browne. The word “knowingly” is tentatively submitted to the judgment of the lawyers on this committee, as well as the other members.

Infringement of Copyright.

The next matter in the pending bill is the question of infringement of copyright. The pending law provides both for damages and for forfeitures and for penalties. Many questions have arisen under this law. It is my impression that a prosecution for penalties has never yet been successfully carried through the courts, although many cases have been
privately settled. The difficulties with the present law are that it imposes a penalty of, say, one dollar, for every copy found in the possession of the party who has infringed, and in the case of a newspaper, printing innocently perhaps a copyrighted song, but without permission, the penalties may be $200,000, we will say, or less, as the circulation of the newspaper may be.

The Chairman. There was an amendment in the last session to the copyright laws, as far as newspapers go.

Mr. Browne. Yes; it was limited there to $5,000.

The Chairman. I have forgotten the precise sum.

Mr. Browne. Under some circumstances any fixed penalty might be a business inducement to the printing without authority. We have here, and will present, a section which gives to the owner of the copyright the option of electing whether he will sue for damages or for penalty, and at the same time preserves, as far as penalties are concerned, the penalty of the present law, so that if the damages are in fact larger than the penalty, the owner of the copyright may recover them, but he cannot recover —

Mr. Cooke. In that case he would have to prove actual damage?

Mr. Browne. Yes, sir. The present law, you will remember, provides for the same proof of actual damage and recovery, but also, in addition, the penalty.

The section which I would suggest upon this is as follows:

"Every person who, after the copyrighting of any article as provided by this Act, contrary to the provisions of this Act, within the term limited and without the consent of the owner of the copyright therefor, first obtained in writing, signed in the presence of two witnesses and acknowledged before a notary public or other public officer authorized to take acknowledgments of deeds, shall violate any of the exclusive rights secured by such copyright, shall forfeit

every copy thereof in his possession or control and also the plates or other devices by which the same was made to such owner, and shall also forfeit and pay such damages as may be recovered in a civil action by such owner in any court of competent jurisdiction, or at the election of said owner shall forfeit ten dollars for every copy of the same in his possession or by him sold or exposed for sale, one half thereof to said owner and the other half to the use of the United States; provided, however, that the total sum to be recovered as such forfeiture in any action hereafter brought under the provisions of this section shall not in any case be less than one hundred dollars nor more than five thousand dollars, excepting that in cases of paintings or statuary it shall not be less than two hundred and fifty dollars nor more than ten thousand dollars."

The Chairman. That agrees with the last amendment?

Mr. Browne. Yes, sir. Upon this matter of the penalty I confess my judgment is not any better, there is no reason why it should be better, than that of any other man looking at it from the standpoint of public policy. It is a question of public policy. As long as we protect the owner of the copyright, and leave him a chance to recover, in any event, for the injury he has sustained, and as long as we have an adequate penalty it seems to me that the interests of the community are preserved.

The Chairman. Do you think it wise to have that alternative in there of ten dollars, and so on. Do you think it wise to have an alternative penalty?

Mr. Browne. Under the present law he gets both, and it seemed to me that the only way to make it fair was to give him his election, but provide that there should be a limit as far as penalties were concerned.

Mr. Furniss. Mr. Chairman, I received a communication from a publishing house in New York yesterday, asking that the committee take under favorable consideration the fact that a person who might infringe on American copyright in this country, who might reproduce in this
country an infringement on an American copyright, and not be able to pay the penalty, as provided in our amendment here, should suffer by some sort of imprisonment.

The Chairman. I think you would find it difficult to carry that through the House. I am not expressing my own view about it now, but I think you would find it very difficult to carry that through.

Mr. Cooke. I would not vote for any such provision.

Mr. Furniss. I mention that simply to fulfil the duty that was imposed upon me.

Mr. Browne. I do not think we should advocate any such provision.

UNLICENSED PERFORMANCE.

The next section, which refers to the matter of the wrongful public performance of dramatic compositions, etc., I understand that to have been reported from this committee.

The Chairman. In the Cummings bill; yes, sir.

Mr. Browne. We have kept it substantially literally, I think, in this bill, and I understand the Cummings bill to be almost the same.

The Chairman. The Cummings bill, in my judgment, is quite likely to become law and it would be desirable to follow that phraseology under those circumstances, if it can be done. I will not say that it is certain to be, but I think there is a very general feeling in the House, as far as I have learned, that what these gentlemen ask for should be granted.

Mr. Browne. But if the Cummings bill should become a law, I should assume, subject to correction, that it would be unnecessary to re-enact it or any part of it in the Treloar bill.

The Chairman. It would not be necessary; but you would not want to enact anything contrary to it.
We think, on the other hand, that where the infringement of a work of great value, for which there is a great demand and upon which no royalty is granted at all, occurs, that the damages should be considerably larger. In other words, it seems to me that the damages should be assessed by the Court according to the circumstances of each particular case, as far as damages are concerned.

The Chairman. I should feel, Mr. Browne, if we were to change this — and of course the question of delay in a matter of this kind is a matter of small importance, perhaps — that we ought to have Judge Dittenhoefer and the counsel of these gentlemen who have prepared this bill and advocated it before us, and gone over it for a year or two, to get the present wording. I should not feel like changing it without having them present at the hearing to express their views, which would, of course, cause delay. I am simply suggesting that as to this particular feature.

Mr. Browne. Yes, sir; I am aware of the difficulty that we are now in because of the Cummings bill having been reported, and whether the question is really open.

The Chairman. You suggest a penalty of one hundred dollars for the first and fifty dollars for every subsequent performance. That is just as the present law stands.

Mr. Cooke. And the imprisonment clause also?

The Chairman. No; the imprisonment clause is in the Cummings bill. The first eight lines of this are in the present law.

Mr. Treloar. With the exception that we have inserted here "operatic."

The Chairman. Yes.

Mr. Cooke. But you do insert here the clause rendering the offender liable to imprisonment?

The Chairman. That is in the Cummings bill which is reported.

Mr. Browne. I had inserted in my draft, after the word "just," the following:

"And if it be determined that such unlawful performance was wilful or for profit, in addition thereto such person or persons shall be guilty of a misdemeanor and liable to imprisonment for a period not exceeding one year."

The Chairman. I do not know whether you were present or not when that matter was discussed, but there were some very interesting letters read. There was one amusing letter from a gentleman who was playing what are called pirated plays, in which he said that he proposed to play these plays just as long as he saw fit, until they could put him in jail for it. He said when they could do that he would stop; otherwise he would not.

Mr. Cooke. Such a thing as that is two-edged. Some persons might do it who had no such intention.

The Chairman. At any rate, that is a matter that is in this bill which is before the House.

Mr. Treloar. I think it would be wise to let it stay the way it is reported from the committee.

Mr. Browne. It seems to me that the introduction, "if it be determined that such unlawful performance was wilful or for profit," is a safeguard for the liberties of the people.

The Chairman. It is here and it is in the Cummings bill.

Mr. Browne. Then that removes all the difficulties.

The Chairman. My own feelings would be that it would be wise, for the time being at least, to leave the phraseology as it is. If the Cummings bill should not pass, it would be a matter left open. I can say privately that there is a good deal of pressure being brought to bear by the musical, operatic and dramatic profession, and dramatic authors, upon various gentlemen to get that bill up, but whether it will pass when it is before the House I do not know.
Mr. Cooke. I should think there would be opposition to the clause providing a penalty?

The Chairman. There is always opportunity to discuss that, of course. These people say that they are opposed to that and everything else. They say that in an ordinary infringement of copyrights the man has a domicile, a habitat, he has property; but that the strolling player goes about without any property and there is no way of enforcing a mandate; and that it ought to be made a misdemeanor. I do not desire to go into any discussion of that. I am simply giving the argument that we heard when the gentleman was not present.

Mr. Cooke. I have heard of many cases where persons ought to be imprisoned for the infringement of a patent, but there is no provision to that effect.

Mr. Browne. Efforts have been made to obtain it, but they have never been successful before Congress, on account of the danger of ignorant persons.

The Chairman. There ought not to be any such provision except in the matter of contempt. I suppose there would be imprisonment then.

**Actions for Infringement.**

Mr. Browne. The next two sections of the pending bill are found in the present Act, and it would seem to be desirable to keep them as they stand. At the end of Section 31, after the provision about granting injunction, I have ventured to add this:

"And also to ascertain and decree the payment of the profits unlawfully derived therefrom."

I will say, as a matter of fact, that such is the decree always made in a copyright suit, where an injunction is obtained. I think the judges have some little doubt as to their authority to make it, under the law as it stands to-day, and it seems to me it would be well to give them express authority for that recovery, remembering that the previous clause has put a regulation or limitation upon the amount to be recovered in the way of penalty.

**Pictorial Compositions Defined.**

For the next section, Section 32 of the pending bill, in view of the fact that it is proposed to use the words "pictorial composition" generally, and include all these classes in it, we have endeavored to draft a proviso clause here which shall meet Mr. Spofford's suggestion that copyrightable works shall be only those which are in their nature artistic, or something of that sort, and not mere advertising matter. Whether, in Mr. Spofford's judgment, this clause sufficiently does that or not, I do not know.

"That in the construction of this act the words 'pictorial composition' shall include only pictorial illustrations, or works connected with the fine arts, and no prints or labels designated to be used for any articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office."

The rest of the section being as it stands here. It enlarges it, using the expression "pictorial composition."

The following section, Section 33, and also Section 34, are preserved.

**International Copyright.**

Then, in order that it may be perfectly clear that this law is to preserve the feature of international copyright, we suggest the re-enactment of the section of the present law:

"That this Act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States the benefit of copyright on substantially the same basis as its own citizens, or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the
granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States, by proclamation made or to be made from time to time as the purposes of this Act may require."

Mr. Cooke. It follows the exact language of the present law.

Mr. Browne. It follows the exact language of the present law, and so far as I am aware is satisfactory.

MECHANICAL COPIES.

On behalf of the music men, we want to add one more section. The committee may or may not be familiar with the extent to which musical compositions are manufactured into mechanical devices without the permission of the owner of the copyright, and without any compensation to him therefor. There (illustrating) is an article which I am told sold for $24 — that thing there.

Mr. Furniss. That is a book, Mr. Chairman, or in the language of biblical history, a scroll.

Mr. Browne. But not in the language of the Court. On that $24, of course, someone has made a good profit. I will explain to those gentlemen who may not be familiar with it that this is a set of valves governing the action of the reeds or pipes of an instrument of the organ class, and as these valves pass through the machine, various tones are produced, which together make a musical composition.

The Courts have decided that that is not an infringement of the present copyright law. I had the honor of representing the plaintiff, and Judge Lowell, in deciding the case, said upon the bench: "Mr. Browne, that is a valve and nothing more. When you can satisfy me that the copyright law gives you any control over the manufacture of valves, you get your injunction." That was the fallacy in my position from the start. I know it and was hoping the judge would not see it.

Mr. Cooke. It is something in addition to a valve, is it not.

Mr. Browne. It is a series of valves.

Mr. Cooke. It is the reproduction of the music from a piece of paper by an engraving, or striking through the paper of the impression which produces it.

Mr. Browne. That is another way to do it (illustrating).

Mr. Furniss. That (indicating) is an instrumental piece of music; that (indicating) is vocal.

The Chairman. Suppose a man sings into a phonograph.

Mr. Browne. That is another way to do it.

All of these people make their profit on these things. They would be worthless if it were not that the valves or their equivalents were arranged in an order, or according to a plan, which is the property of the copyright owner. These people make their money and laugh at the owner of that plan, which makes these things valuable, and say, "We will pay you nothing." Is it not fair that the owner in the first place should say whether or not he wishes to have his literary composition phonographically repeated, or hand-organically repeated, as the case may be, and if it is not fair, if he does wish to have it so repeated, that he should be entitled to make a charge for the privilege, and if necessary make a contract with one person, firm or corporation, whereby prices may be maintained and injurious competition avoided? We suggest that it is fair to the author.

In the case that I have mentioned, Kennedy v. McTammany, the plaintiff was Harry Kennedy, the author of a great many, the plaintiff was Harry Kennedy, the author of a great many well-known and popular songs, McTammany being the manufacturer of sheet, hand-organ music — music for the organette.
The music trade of this country, I feel sure I am authorized to say, wish this addition to the law in view of the decision that I have quoted: —

"It shall be unlawful for any person, without the consent of the owner of any copyrighted literary composition including any musical composition, to make any reproduction of the same, or the notation thereof, in the form of any device or instrument whereby the said composition may be mechanically reproduced, expressed or performed, or to lease, sell or offer for sale any such reproduction, device or instrument, and such making, leasing, selling or offering for sale shall be deemed to be a violation of the copyright, and shall subject the person so offending to the actions and penalties hereinafore provided for other violations of the copyright."

Mr. Fairchild. What would you say to having that wording changed so as to only apply to those who should mechanically reproduce a copyrighted article for the purpose of selling? In your wording, if I had one of those instruments, and I was a little adept at cutting out a piece of brown paper, and I could buy one of your copyrights and pay your price for it, and could use it on my own instrument, in my own house, that would prevent me from doing it.

Mr. Browne. You are not obliged to cut it out. You can go and buy it at a great deal less expense from the gentleman who makes a business of cutting it out. This provision is not aimed at the person who performs. It is aimed at the person who makes or sells.

Mr. Fairchild. My criticism of the wording as you just read it is that it would apply to such a man.

Mr. Browne. In the — if I may be allowed to say — very unlikely event that any gentleman would personally make one of those things with his own hands when he can buy them already made for ten or fifteen cents, I agree with you.

Mr. Fairchild. He would do it just for the amusement of the thing.

Mr. Browne. He would do it for the amusement of the thing. Nobody would know anything about it and it would not do any harm to anybody. I do not think it would be worth while to see him.

Mr. Fairchild. That may be.

Mr. Browne. Mr. Chairman and gentlemen, I think that concludes what I have to say on direct examination.

If there is any cross examination I am here for that purpose.

The Chairman. I think there has been considerable cross examination as you have gone along. Has any gentleman of the committee any desire to ask Mr. Browne questions? I certainly feel very much indebted to him for his clear exposition of the subject; and whether I agree with all that he has recommended or not, I feel that I know more about the copyright business than I did when he commenced.

Mr. Browne. That is very gratifying, sir.


Mr. Chairman and Gentlemen,—Regarding the enlargement of the manufacturing clause, which requires also musical publications to be engraved and printed in the United States in order to be entitled to a copyright, I desire in the name of Edward Schuberth & Co., New York, to protest emphatically against its retention in Mr. Treloar's bill.

It is morally wrong: American labor does not need it for its protection and it is detrimental to the healthy development of the legitimate publishing business in the United States. By legitimate publishing business I mean the acquisition of original works from authors, composers and artists, whether American or foreign, by an honest barter with them for the control of the copyright. Let me point out to you what this manufacturing clause really means.
The great majority of composers are happy when they find one purchaser for their work. To find, however, two purchasers for a work before publication is next to an impossibility in nine hundred and ninety-nine cases out of a thousand.

Suppose the composer is a talented young American, loving enthusiastically his art and studying very hard; suppose he has written one or more high and extensive educational works, or a large orchestral work, or an oratorio, or grand opera; suppose he is unable to make satisfactory arrangements with an American music publishing house, of which the number for the kinds of works which I have mentioned is still extremely limited in the United States; and suppose he finally succeeds in finding a purchaser for his work in a European country, he, under the proposed new law, would be able to obtain copyright in his own country only either if his publisher would agree to have the work engraved in the United States, which is not likely, or he would have to engrave the same expensive work here over again, also before publication, at his own expense. If he fails to do so, his work would be at the mercy of every reprinter in this country, and it would not at all be surprising if the same firms that refused to buy his manuscript would then appropriate his work, or parts of it, for their own benefit without paying any consideration whatsoever to him. We should then witness the disgraceful fact that an American author, or his widow, or his children would be deprived of the fruits of his labor simply because he found a purchaser and producer for his work outside of the limits of the United States. If restrictions are necessary to prevent the sale of foreign editions copyrighted in the United States, well and good, but under no circumstances deprive an author, composer, or artist of his copyright, whether he be American or foreign.

If American labor has a right to protection, the American author, composer, artist and publisher has certainly the same right, but the protection which they need is not a high tariff, but a protection against the competition by the sale of stolen property. If musical publications must, like books, be engraved and printed in the United States in order to be entitled to a copyright, there will be so much valuable material remains unprotected that the reprinter will have full sway again, as they have had once before, in running the legitimate business of the United States. The commercial conditions under which the majority of authors, composers and artists have to sell their works are such as to produce the state of facts mentioned by me. It has been said that musical publications should likewise be subjected to the manufacturing clause as a matter of fairness towards the manufacturers of books. There is, however, a vast difference between the publication of books and that of musical publications.

The publication of a few books of even moderate size
requires considerable money, while every Tom, Dick and Harry who has a hundred dollars at his disposal can engrave and print half a dozen of valuable musical, unprotected works by foreign authors and sell them for whatever he can get. I presume our colleagues in the trade know what this means. How can a publisher pay a royalty on the retail price of copies sold by him when the reprinters have an opportunity to flood the market with compositions which are just as good as those written by American composers at one or two cents a copy to the trade and five and ten cents a copy to the general public? If there are any music publishers in the United States who are in favor of applying the manufacturing clause also to musical compositions, they should be aware of the fact that they are undermining their own business, because, as stated before, the true foundation of every publishing business is the possession of copyrights of original works acquired by honest barter with the author.

The manufacturing clause in the copyright law of the United States is the breeding place of pirates. Remove that, and there will be little need for harassing the people with fines on account of piratical compositions. These will all die a natural death as soon as the people of the United States themselves set a good example by abstaining from issuing them.

**Answers to Questions by the Chairman.**

We are in theory against all manufacturing clauses in the copyright law.

We are against that concerning books, but do not consider it our business to have it removed. We simply desire to prevent an increase of the evil.

**Answers to Questions by Mr. Treloar, M. C.**

We have a part of our musical publications engraved and printed in Germany, but only those which we think can also be sold in Europe.

We are not against protection of American labor. There is only a difference of opinion between us as to how to do it.

We really believe American labor is not in danger if the manufacturing clause is removed.

We do considerable business for London publishers, but as soon as a composition begins to have a sale, we engrave and print it here under contract with the owner of the copyright. While we thus sell about a thousand copies a month of the compositions re-engraved and printed here, we sell only about eighty copies of all the others in the foreign edition.

The Chairman. Mr. Freeman, of the Taber Art Company, desires to address the committee.

**Statement of William C. Freeman,**

*From the Taber Art Company, New Bedford, Mass., to the Hon. Committee on Patents, House of Representatives, at Hearing March 20, 1894.*

Mr. Chairman and Gentlemen,—I represent the Taber Art Company, publishers and printers of photographs and photogravure art reproductions, and makers of frames and art novelties. We have a paid— in capital of $300,000 and give employment to between three hundred and four hundred persons. Our business covers the entire United States, and several lines of pictures we are now exporting to foreign countries. We put out last year over eight hundred thousand pictures of various grades, and as we are only one out of a number of other manufacturers, it will be seen that the industry is of no small proportions.

This industry needs just what a great many other industries do, protection and encouragement. There is no more, owing greatly to the peculiar circumstances that surround it. We want this protection in the form as proposed in the Treloar copyright law rather than in an increased
duty on imported goods. Why? Because we believe that if the foreign publishers are compelled to do their work over here, under the same circumstances that surround us, and with the same difficulties we have to encounter, we can compete with them in price and also make the quality of our productions equal to theirs. Why cannot we do this now? First, because so many dealers and purchasers of pictures have got it into their heads that imported photographs and prints are much nicer. For the same reason that so many people will not have a suit of clothes made of any cloth but "imported." The minute we can tell our trade the foreign publishers' prints are made in the United States, under the precise conditions as ours, we can get a hearing where we do not now.

Again, by being upon the field where the most desirable paintings are found, where artists reside, who will set a much lower price for their work than artists do here, where practically all the skilled steel engravers and etchers are, where the cost of labor for printing is so much less, they have great advantages and we are sadly handicapped. Art in Europe has been going on for centuries. In this country it is hardly fifty years old. Abroad, there are innumerable artists of merit. Here, owing to the infancy of art, there are comparatively few. Most paintings executed here with enough merit for a publisher to run the risk of making plates and reproducing are beyond our reach, on account of the extravagant price placed upon them. The foreign publisher is among hundreds of good artists who set a very reasonable price on their work. Right by are the skilled plate makers and printers. The artist can let his painting go out from his studio to be photographed and have it back within a day or two. What must we do? Go to the expense of frequent trips to Europe, and then have to depend upon workmen making our negatives who do not understand our special requirements. It means a great expense in time and money; in fact, it would be just as cheap to have a branch establishment abroad. Now, is not this as inconvenient to us as it would be for the foreigner to bring his unpublished negative over here, make a new one from it, and then do the printing here? In fact, we would have to do that also. Now, if the European publisher is obliged to have the work done here, what does it mean? Well, first, it means money paid here for American labor. This alone was considered a good enough argument to require the making here of copyrighted books. Now, if it is all right for books, why not for pictures?

Again, it stimulates and encourages new industries. I knew of an American art publisher who gave an order for nearly fifty photogravure plates to a Vienna house. Why did he do this? Because he could not get plates made here good enough. In fact, the price paid abroad for good work was lower than he would have to have paid for poor work here. Is there any reason why steel engravings, photogravures, etchings, mezzo-tint engravings, should not be made and printed here by Americans? No; it can and will be done should the Treadel bill become a law. We want to be put on the same footing as the foreign publishers, and as we propose to do our business here and pay out our money here, we believe it good legislation to make them do the same if they want American copyright, which is nothing more than American protection.

Another result obtained by the necessary competition that would result if the work now done abroad was done here would be the lowering of prices, instead of the higher prices which it is claimed by those opposing this legislation would which is claimed by those opposing this legislation would result. They say the foreign publisher would be obliged result. They say the foreign publisher would be obliged result. They say the foreign publisher would be obliged result. They say the foreign publisher would be obliged result.
it would certainly be a much greater temptation for more American concerns to start in the business. Competition is not very apt to raise prices.

We believe, further, that the Treloar bill is drawn so the foreign publisher will have to comply with the law. Under the present law he does not. Section 4952 of the law now in force says a person can copyright a painting and have the sole liberty of copying and vending if he complied with the provisions of this chapter (not simply this section). Section 4956 says, provided that in the case of a book photogr ah, chromo of lithograph, the two copies required to be deposited shall be printed within the United States. Now the foreign publisher copyrights his painting in the United States and then makes his copy in Germany. This copy is a photograph. They import the photograph, upon which no copyright has been obtained, and sell it in the United States marked as a copyrighted photograph, and claimed their right to do so because they have copyrighted the painting. Is not this evading the law? If not, then Congress did not mean what they said. We believe there is no question whatever but they meant photographs and lithographs to receive the same protection as books. Mr. Putnam says so in his book, the leading newspapers of the country said so, and the law itself says so.

The proposed legislation will be for the benefit, not only of American publishers of copyrighted pictures, but to hundreds of large concerns manufacturing mouldings and frames, who are more or less dependent upon the kind of pictures they can get to sell their frames. We believe further, it will be in every way for the benefit of the people of the United States, and its benefits far-reaching. It is in the line of progress of American art.

We do not agree with the argument advanced by them who think the existing law should not be disturbed. We believe that if the authors and book publishers were in the position to-day of the art and music publishers they would think differently. We believe the present law is inadequate and unjust, its provisions not clear and greatly misunderstood. The Treloar copyright bill is better in every way.

We trust these suggestions will receive the most serious consideration of your Committee.

Respectfully submitted,

THE TABER ART COMPANY,
by Wm. C. Freeman, President.

During the reading of the above remarks the following occurred: —

The Chairman. Let me ask you one question here. I thought this bill added the manufacturing clause only to music. It adds it also to works of art, you say?

Mr. Freeman. Yes, sir.

The Chairman. I thought this was already in the old law.

Mr. Browne. No, sir.

Mr. Freeman. We want to be put on the same footing exactly as the foreign publishers.

I suppose it is right to say that the foreign publishers will send a photograph over here, duty paid, that does not exceed fifty cents in price, and they charge the trade from three to six dollars for it according as they please. Then the American dealer adds anywhere from fifty to one hundred per cent on that, and the result is that a copy of some good painting is so expensive that the ordinary man cannot buy it. He cannot pay eight or ten dollars for it.

The Chairman. The extra cost of making it in America would be perhaps twenty-five cents.

Mr. Freeman. Yes, sir. Mr. Grinnell, who is on my right, is in the same business, and he will agree with me that
where they charge four dollars for a picture, we could give them an equally good one for half of that. We should charge the trade only fifty cents for that picture, but if we included in our charge the cost of the plate, and allow for an average edition, it would cost more than that. In other words, I think the American dealers are satisfied with a fair margin of profit, anywhere from twenty-five to seventy-five per cent, but the foreigners are not.

The Chairman. You are not speaking now of cases where you have to buy the copyright?

Mr. Freeman. No, sir.

The Chairman. You copyright your own things?

Mr. Freeman. Yes, sir. We sometimes pay $500 for the privilege of copyrighting a picture, and then perhaps do not sell fifty or seventy-five copies. In other cases we pay $50 for the right to reproduce it, and sell perhaps two thousand copies, so that the cost for the copyright is merely nominal.

Mr. Freeman then concluded the reading of his paper.]

Mr. Cooke. I would like to ask Mr. Freeman this question: If this Treloar bill, substantially as we have been hearing it discussed here, becomes a law, what will its effect be upon the average price in the United States of these works of art, musical compositions, etc.?

Mr. Freeman. The average price?

Mr. Cooke. What would be the average result upon the prices now paid by the public?

Mr. Freeman. As regards musical compositions, I cannot say anything at all about it. I do not know. As regards photographs, photogravures and others, I think that the American market is too big a market and too good a market for the foreigners to stay out of. They will not say: "We will not have them made in America; we will give up our copyright, rather than do that." They will come over here and make them here. What is the result? The result is competition. The foreigner will send out his travellers on the road. He has a copyright of a painting and we have one; and the salesmen and the houses are going to make their prices such as to get trade, and there is competition right away.

Mr. Cooke. But you have just said in your paper here that competition does not result perceptibly to reduce prices.

Mr. Freeman. If I said that I made a mistake. I intended to say raise prices. Competition does not raise price.

Mr. Cooke. Of course it does not raise prices. The only question is, how much does it depress prices. Nobody contends that it raises prices.

As an illustration of that, perhaps I may tell you of a case in regard to pictures. For original etchings which five years ago sold to the trade for $2.67 each, we are now receiving from the trade $1.20 a thousand, or twelve cents each. Five years ago $2.67 each was the foreign price.

Mr. Cooke. The tendency, then, in recent years has been, on this class of goods in which you are interested, to put the prices steadily down?

Mr. Freeman. Yes, sir; and there is ten times the number of them sold for that reason.

Mr. Cooke. To what do you attribute that principally?

Mr. Freeman. The prices going down?

Mr. Cooke. Yes.

Mr. Freeman. There are more in the business, for one thing.

Mr. Browne. More people, you mean.

Mr. Freeman. There are more people in the business.

Mr. Cooke. That is competition.

Mr. Cooke. That is competition.

Mr. Freeman. Yes. In the old times, perhaps fifteen years ago, before I was in the business, the foreigners
brought over pictures here, and many and many a picture, for which the bare cost of labor and material would be fifty or seventy-five cents, have sold for ten and fifteen and twenty dollars. In those days these foreign publishers and American importers made lots of money. That naturally drove a great many people into it, and now there are so many in it that there is not anywhere near the money made that there used to be. They are perhaps ten times as many things made, and therefore a great many that are gotten out do not sell at all. The result is, that while there is some money in the business, still there is nothing to what there used to be, because the prices are away down.

The Chairman. I would like to ask you if in your business there is anything like the state of facts in mechanical works. If I had a hundred articles to make, they might cost a dollar, but if I could make a million of the same articles, they could probably be made for five cents apiece. Is there anything of that sort in your business?

Mr. Freeman. There is a good deal in that. But there is another thing, still more important. In the old days steel engravings were sold almost entirely. Since the new processes, such as photogravures, have been invented, the prices have come down, so that instead of a plate costing $200 or $300, it can be made for ten or fifteen dollars.

The Chairman. All these specimens that you have here are new processes?

Mr. Freeman. Yes, sir. That makes the first cost so small, you have to spend so little money as compared with what you used to have to spend, that a picture can be put on the market for fifty cents to the trade where formerly it was $1 or $1.50. Photogravures are sold more than any other pictures, except photographs, in this country at present, and that, as I said yesterday, is simply done by making your negative from the painting. You take your painting and set it up and make your negative, and then you are through with the painting; so it is not necessary to bring the painting over to this country. The opponents of this bill have claimed right along that it would drive out the business of fine goods in this country because they could not bring over the original painting. That is not so at all.

Mr. Cooke. I understood you to say that formerly larger profits were made in proportion to the amount invested in the business by those who supplied the market?

Mr. Freeman. Yes, sir.

Mr. Cooke. That is right, is it?

Mr. Freeman. Yes, sir.

Mr. Cooke. Our prices are lower because there are more in the business, and there is greater competition.

Mr. Freeman. And greater facilities for production, which reduces the cost.

Mr. Cooke. The adoption of this Trelowar bill would lead to cutting off some of this foreign competition, would it not?

Mr. Freeman. That depends entirely upon the way the foreign manufacturers look at it. If a foreign publisher has no business to speak of in this country, he may say: "Rather than go over there and establish a branch house, or have my negatives made over there, I will let my pictures go in there without being copyrighted." But the large concerns will not say that. For instance, here is one photograph company who testified on oath that they published this St. Cecelia picture for three years, and sold ten thousand copies of it. The number has more than doubled now. The lowest net price to the trade was $0.67 each. Those pictures do not cost them fifty cents to make them. The artist that some of our friends from New York are so solicitous about got the enormous sum of 500 marks ($125) for that painting, and the foreign publishers in that case have made $20,000 or $30,000 out of it.
Mr. Cooke. You do not answer my precise question. Would this bill, if adopted as a law, operate to cut off some of this foreign competition in our market?

Mr. Freeman. I think it would be apt to. As I say, those who have a small business here would drop out. It would not cut off any of the big concerns, I think, because this is too good a market. Owing to the trouble that we have abroad in getting those paintings, we want those concerns to come over here and do their work. Then they are put to just as much trouble and expense as we are, and we are in a fair condition to fight them. You can see that.

Mr. Cooke. Do you mean by that to say that the cost to the American purchaser would not necessarily be greatly increased?

Mr. Freeman. No. I think the cost to the American purchaser would be reduced, in any event.

Mr. Cooke. You do not think it would operate, then, to increase the average prices for this class of artistic work?

Mr. Freeman. I see no possible chance to raise prices. As I said, with prices so high, we would not dare to do it.

Mr. Browne. The representative of Oliver Ditson & Company, Mr. George W. Furniss, wishes to address the committee.

The Chairman. He may, if he will be brief. I hate to limit a man, but our time is getting short.

STATEMENT OF GEORGE W. FURNISS, OF BOSTON.

Mr. Furniss. Mr. Chairman and gentlemen of the committee, I would like to leave with you, for your personal use, if you would like them, a few books of our American manufacture. You can see by them what we are doing in the United States with regard to competing with foreign publishers.

The Chairman. As I understand it, your firm are in favor of the manufacturing clause in the Treloar bill, which seems to be the point upon which there has been the most discussion.

Mr. Furniss. Mr. Chairman, we are not printers ourselves. While we are probably the largest music publishing house in the United States, with the largest number of subjects and the largest number of books, yet we have always patronized our home printing establishments rather than have them under our own control, except in the printing from engraved plates, which we do. We are doing to-day a great deal of printing in Philadelphia, but the majority of it in Boston. We are not particularly sensitive in regard to this manufacturing clause, but as a matter enlisting our sympathies with the American people from whom we get patronage, we are willing to join the boys in American manufacture, as Mr. John C. Haynes, president of the Oliver Ditson Company, termed it a short time ago. F. H. Gilson Company, whom we patronize largely, are very much in favor of the manufacture in this country. In fact, other establishments whom we patronize are in favor of the same thing. We are perfectly willing to do our printing in this country.

I want to say a few words in reply to Mr. Johnson of New York, and Mr. Putnam.

Mr. Johnson, you will remember, on March 4, made allusion to the fact that the reason the music publishers of the United States had not got what they seemed to want was that they were not represented at the various meetings when that bill was discussed. Mr. Putnam seemed to throw out the idea that there was some sort of compromise — what it was of course I am not able to say — but that there was some sort of compromise, to give the book publishers protection
in American manufacture, but which threw the art men and musical men over into the other element.

I would like to say, in justice to ourselves, that we contributed to that fund. We sent Mr. Putnam several hundred dollars to represent the musical people at various discussions of that bill.

The Chairman. I am very much obliged to you gentlemen who have come here. We have endeavored to give you such time as we could. I am sorry we have not had an absolutely full committee. We have given more time to the hearing of this matter than to anything else that has come before us.

Mr. Browne. I would like to say that all the gentlemen feel that they have received adequate and most kindly treatment at the hands of the members of the committee in every way, and feel deeply indebted to them.

Mr. Furniss. On behalf of the Music Publishers' Association of the United States, I will echo the sentiments of Mr. Browne.

WASHINGTON, D. C., March 20, 1896.

The following petition has to-day been presented to the Committee on Patents, 54th Congress, which reads as follows:

"We, the undersigned, representing large music publishing interests in Boston, New York, Philadelphia, Baltimore, Chicago, and Washington, D. C., are in sympathy with the Treloar Copyright Bill, with the exception of the sections which tend to destroy the International Copyright Treaty of July 1, 1891. We are of the opinion that said International Treaty should not be disturbed.

"We respectfully ask that the Committee on Patents take under favorable consideration the sections of the Treloar Copyright Bill which create a new copyright department, and establish the working thereof, as mentioned in Sections 1, 2, 3, 4, 5, 6 and 7.

"Forty years for the term of copyright;

"Twenty years for the term of renewal;

"Or one term of fifty years without renewal.

"The manufacturing clause, viz., that all the work be done in the United States.

"Sections 14, 15 and 16, which make the law more stringent for the seizure and destruction of all contraband music and music books."

(Signed by thirty-three music publishing and art publishing houses.)

The hearing was therupon adjourned sine die.