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A MANUAL OF COPYRIGHT PRACTICE
(Second Edition), by Margaret Nicholson. Oxford
University Press, New York, 1956. \$6.50.

Bernard Korman

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BOOK REVIEW

A **MANUAL OF COPYRIGHT PRACTICE** (Second Edition), by Margaret Nicholson. Oxford University Press, New York, 1956. \$6.50.

This *Manual of Copyright Practice*, although directed to laymen rather than lawyers, is an authoritative work by one who knows the subject of copyright law and has taken the pains to learn what the business practices are.

The first edition of Miss Nicholson's manual was cited to the United States Supreme Court by petitioner and *amici curiae* in an important recent case¹ construing the renewal provisions of the copyright statute, as evidence of how those dealing in copyrights interpreted the renewal provision. It was asserted in one such brief that "Margaret Nicholson's work has become almost a bible — certainly a universal desk-aid — to the entire publishing industry."²

This highly regarded volume, first published in 1945, has now been revised by its author, who is head of the Contract and Copyright Department of the MacMillan Company. Its value has been enhanced by references to the Universal Copyright Convention, to which the United States has subscribed, and by the attention given to statutory and judicial developments since 1945.

A Manual of Copyright Practice belongs in any comprehensive bibliography of copyright law and in every copyright lawyer's library. One ought not to take literally the two sentences with which Miss Nicholson begins her preface:

"This is a book for the author, editor, agent, permissions department, publisher and his secretary — for anyone in the literary world who wants to know what to do in a specific situation involving copyright. It is not for copyright lawyers or even for law students who plan to specialize in copyright law."

1. *De Sylva v. Ballentine*, 351 U.S. 570 (1956). Amicus briefs were filed by the Motion Picture Industry of America, the Music Publishers Protective Association and the American Society of Composers, Authors and Publishers.

2. Briefs of *amici curiae* American Society of Composers, Authors and Publishers, page 7, submitted in *De Sylva v. Ballentine*, 351 U.S. 570 (1956).

The first sentence is just, but the second is too modest. This volume is not a treatise on copyright law but it is a careful, lawyerly manual of practice, as the title promises. Like any good manual, this one leaves the reader, including the reader who is a law student or copyright lawyer, familiar with practices in at least some fields of which he would otherwise be innocent. The reader is given the necessary immersion in the facts which enable one to consider the theory of copyright law in the practical light necessary to master any field of law.

The subject of copyright law embraces matters as complex, varied, and distinct from each other, as, say, musical comedies and product labels. The uses to which property protected by copyright may be put are as different as a disc jockey's radio broadcast of a phonograph record and the manufacture of a lamp with an artistic statuette as a base.

Miss Nicholson describes the kinds of property subject to copyright protection and what must be done to secure that protection. Enforcement of rights secured by copyright is beyond the scope of her book, so that the entire subject of infringement proceedings is omitted. The reader faced with a problem involving infringement or "any copyright trouble," is referred to a lawyer — "and the best copyright lawyer available."³ No lawyer can quarrel with that advice.

Being a manual the work has necessary limitations as to style and content — lacking continuity and being repetitious, it is not a book to be read from cover to cover, nor does it attempt an analysis of the law. These shortcomings are inherent in any manual, and the author recognizes them in her preface.

However, it has the virtues a manual is supposed to have: it tells what to do.

In clear, concise, and correct manner, Miss Nicholson describes what steps can or should be taken in various situations where the question of copyright or the less clear-cut question of unfair competition is or may be relevant.

Despite the fact that matters of copyright practices are emphasized, the careful reader will not be left uneducated in copyright law or policy. There are chapters on the background of copyright law and on the subject matter of copyright and the

3. Page vi.

seminal ideas which are essential to proper understanding of our copyright law are succinctly stated.

For example, here is Miss Nicholson on the difference between a patent, which is a monopoly, and a copyright, which is not:

"A copyright is not a patent. A merchant or manufacturer cannot monopolize an unpatented article by copyrighting a catalogue in which it is illustrated. Other manufacturers can copyright illustrations of it too, if they work from the original and not from a copyrighted pictorial reproduction. His copyright protects only the actual expression or illustration in his catalogue."⁴

On the underlying purposes of copyright legislation:

"The purpose of copyright legislation is not to provide employment for publishers, printers, bookbinders, salesmen, paper manufacturers, theatrical and moving-picture producers, labor unions, copyright lawyers, radio sponsors, or even book reviewers. It is to secure to the author a reasonable profit from his work, and thus to promote 'the progress of science and the useful arts'.⁵"

On the policy of the law to protect the copyright proprietor even against "unintentional" infringement:

"The intention to infringe is not essential to infringement. It is the author's responsibility to be sure that his work is his own."⁶

And on the exception made for the benefit of contributors to periodicals to the doctrine of the "indivisibility" of copyright:

"The magazine can assign to authors (or others) the copyright of the individual contributions without vitiating the copyright of the periodical as a whole. This is the one exception to the 'indivisibility' of copyrights."⁷

The arrangement of the book necessitates a good deal of repetition. Following several short chapters on Background of Copyright Law, The Copyright Office, The Subject Matter of Copyright, the general procedure to secure copyright and outlines of the Copyright Law and the Universal Copyright Con-

4. Page 41.
5. Page 61.
6. Page 62.
7. Page 119.

vention, the major portion of the book consists of chapters arranged alphabetically on subjects ranging from "Abridgments and Adaptations" to "Unpublished Works." These include chapters on "Alien Authors," "Author," "Common Law Rights," "Fair Use," "Moral Rights," "Music," "Proprietor," "Publication," "Radio and Television," "Renewals," and "Unfair Competition," to name eleven of forty-eight such chapter headings. These are covered in a span of only 139 pages. Each chapter could be expanded to book length, so that it is obvious Miss Nicholson has limited her aim to saying enough about each subject to alert the reader to possible problems, telling what should or should not be done in certain typical situations, suggesting when a lawyer should be consulted and, briefly, why.

Correct and concise information in the area of literary property is essential to authors, publishers, editors, and others in the field — correct information because failure to comply precisely with a very complicated statutory scheme can result in forfeiture of property that otherwise might have great economic value, and concise because people making on-the-spot decisions cannot be expected to become experts on copyright law in the process of finding answers to specific problems.

The third part of the book contains a number of questions submitted to Miss Nicholson by publishers, authors, and agents, and her answers. This section is probably the most valuable for the student of copyright law, since it enables him to test his knowledge of the subject by comparing his answer with Miss Nicholson's. The virtue of the Socratic method is here, enabling the ambitious reader to cement his knowledge by pondering the questions and checking the sources on which the answers are based, and which Miss Nicholson has withheld on her good-natured pretext that the copyright law student and lawyer are not her intended readers.

Following the questions and answers Miss Nicholson has included a series of forms used by the Copyright Office, correctly completed for illustrative purposes.

The Appendix contains the texts of the Copyright Law (Title 17 United States Code), the Universal Copyright Convention, and the Berne Convention. There is a short bibliography and a list of cases. Unfortunately, the cases are listed by names of parties and year of decision only. They are not specifically re-

ferred to in the text. For each listed case, a page reference is given to the text where subject matter relevant to each case appears. This arrangement is not satisfactory for lawyers or students, but is not unreasonable in a book intended for quick reference use by non-lawyers.

In 1955 Congress appropriated funds for a study of our copyright law which the Copyright Office is now undertaking, directed by the Register of Copyrights. Readers of Miss Nicholson's manual will be interested in the recommendations for change which will undoubtedly be made. While it is impossible to predict with certainty what these will be, it is clear that the study will consider generally the matter of formalities, which so often in the past have caused creators to lose all rights in their works through failure of compliance with statutory requirements found unnecessary in nearly every other country in the world; duration of the copyright term and the related question of copyright renewal; the doctrine of indivisibility of copyright, under which there can be only one copyright owner, making licensees of those to whom separate rights are granted and preventing them from suing for infringement of the licensed rights, since the exclusive right to bring infringement actions is given to the copyright owner; the out-dated exemption under which performances of copyrighted musical works rendered by coin-operated devices ("juke boxes") are not regarded as public performance for profit, unless there is an admission charge made for entry to the place of performance; so-called neighboring rights, that is, the rights of performers in their renditions; and the question of how far protection should be granted under the copyright law to manufactured items based on artistic drawings.

These matters are not discussed analytically by Miss Nicholson, but her manual serves the useful function of supplying the background of copyright practice against which discussions of revision are taking place. One who has read her volume, even if he has read nothing else on the subject, can proceed to the study of our copyright law, properly furnished with the essential details of copyright practice in the United States.

*Bernard Korman**

*Member, New York Bar; member, Legal Staff of American Society of Composers, Authors and Publishers (ASCAP). The views expressed are those of the writer and not necessarily those of ASCAP.