

Foreword

THE PROTECTION of property in the products of the mind has long presented the challenging problem of balancing several important and competing social interests. Although the number of writers and inventors among us is small, their contribution to the intellectual and material advancement of society is unique and indispensable. The importance of that contribution was early recognized in the Constitution, in the grant of power to Congress “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” (U.S. Const. Art. I, Sec. 8.) It is significant, perhaps, that “Authors and Inventors” are the only callings thus singled out for such special attention, and it is also significant that the need for balancing the interest of the creator and the interests of society is emphasized in this constitutional language, which refers to the creator’s “exclusive Right” to his creation, but recognizes the public interest by restricting the duration of such rights to “limited Times.”

Copyright protection became necessary with the invention of the printing press and had its early beginnings in the British censorship laws. The fortunes of the law of copyright have always been closely connected with freedom of expres-

sion, on the one hand, and with technological improvements in means of dissemination, on the other. Successive ages have drawn different balances among the interest of the writer in the control and exploitation of his intellectual property, the related interest of the publisher, and the competing interest of society in the untrammeled dissemination of ideas. It is this striking of balances in the law of copyright in the past, at present, and for the future, which constitutes the central theme of the James S. Carpentier Lectures delivered by Professor Benjamin Kaplan at the Columbia University School of Law in March, 1966. His counsel that greater emphasis should be placed on the public's interest in the free accessibility of ideas is particularly appropriate in an era when freedom of expression is frequently under attack and when the means of dissemination of ideas are increasingly concentrated in fewer hands.

The timeliness of Professor Kaplan's analysis of the law of copyright in the light of technological and social developments is underscored by current efforts, begun some ten years ago by the Register of Copyrights, to accomplish a sweeping revision of our Copyright Law to take into account developments after 1909, when it was last redrawn. Since then, of course, the phonograph, motion picture, radio, television, magnetic tape, and other methods of visual and sound reproduction have provided newer, and for some purposes, better means of dissemination than the printed page. Even more recently, new aids to dissemination, including the growth of computer technology, have magnified the problem of control in securing "exclusive rights," and increased the numbers of claimants for protection.

Benjamin Kaplan brings a wealth of experience and learn-

ing to the analysis of the complex problems involved in the development of copyright. A frequent contributor to legal journals, he brings to the field of protection of literary property scholarly insights gained from several fields of law. An authority on the subject of civil procedure, he made a major contribution to the revision of the Federal Rules as Reporter to the Advisory Committee on Civil Rules, Judicial Conference of the United States. A teacher in the field of copyright and unfair competition at Harvard Law School for many years, he is the coauthor of a widely used and highly regarded casebook on the subject. His acceptance of the Carpentier lectureship was particularly gratifying for the additional reason that it brought back to Columbia Law School an alumnus of the institution ('33) and a former editor-in-chief of its Law Review.

Professor Kaplan's emphasis on the desirability of greater freedom of dissemination of ideas is especially significant because it is at odds with a strong contemporary trend toward more restrictive and longer protection of the exclusive rights of writers and composers. In addressing himself to the challenging issues involved in the protection of literary property, with clarity, erudition, and wit, he renders a special service by questioning some of the timeworn assumptions in the copyright field.

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