

Copyright Protection for Works of Foreign Origin Under the 1909 Act

Professor Tyler T. Ochoa
Santa Clara University
School of Law

Common Law Copyright

- Unpublished works protected under state common law before publication
- State common-law copyright ended upon first publication anywhere in the world
- Work entered public domain unless it obtained a federal statutory copyright by complying with formalities of federal law

Revised Statutes 1874-75

- Register title page before publication
- Deposit published copies after publication
- Notice “in the several copies of every edition published”: “Entered according to act of Congress in the year _____, by [author], in the office of the Librarian of Congress, at Washington.”

After 1891 Amendment

- Register title page before publication
- Deposit published copies after publication
- Notice “in the several copies of every edition published”: “Entered according to act of Congress in the year _____, by [author], in the office of the Librarian of Congress, at Washington.”
- **Comply with Manufacturing Clause**

United Dictionary Co. v.
G. & C. Merriam Co.
208 U.S. 260 (1908)

“We are satisfied that the statute does not require notice of the American copyright on books published abroad and sold only for use there.”

1909 Copyright Act

- Section 9 (renumbered §10 in 1947; repealed 1978): Any person entitled thereto by this title **may secure copyright for his work by publication thereof with the notice of copyright required by this title; and such notice shall be affixed to each copy thereof published or offered for sale in the United States** by authority of the copyright proprietor ...”

Heim v.
Universal Pictures Co.
154 F.2d 480 (2nd Cir. 1946)

Published in Hungary on Nov. 11, 1935
with notice “Copyright 1936 by
Rozsavolgyi & Co. Budapest”
Registered in U.S. on Sept. 14, 1936

Heim v. Universal Pictures Co.

154 F.2d 480 (2nd Cir. 1946)

“We construe the statute, as to publication in a foreign country by a foreign author, not to require ... that any notice be affixed to any copies whatever published in such foreign country, regardless of whether publication first occurred in that country or here, or whether it occurred before or after registration here.”

Heim v. Universal Pictures Co.

154 F.2d 480 (2nd Cir. 1946)

Clark, J., Concurring: “The opinion holds that American copyright is secured by publication abroad without the notice of copyright admittedly required for publication here. This novel conclusion ... seems to me impossible in the face of the statutory language.”

37 C.F.R. §202.2(a)(3) (1959)

“Works first published abroad ... must bear an adequate copyright notice at the time of their first publication in order to secure copyright under the law of the United States.”

Twin Books Corp. v. Walt Disney Co.

83 F.3d 1162 (9th Cir. 1996)

- Published in 1923 in Germany with no notice.
- Re-Published in 1926 in Germany with notice.
- Registered in U.S. in 1927.
- Renewal application made in 1954 (28 years after 1926).
- Did copyright begin to run in 1923 or 1926?

Twin Books Corp. v. Walt Disney Co.

83 F.3d 1162 (9th Cir. 1996)

HELD: Publication in Germany without notice in 1923 had no effect. Copyright term did not begin to run until 1926, when the work was re-published in Germany with proper notice.

Question: What was the status of the work between 1923 and 1926?

Société Civile Succession

Richard Guino v. Renoir

549 F.3d 1182 (9th Cir. 2008)

- Statues by Renoir and Guino published in France in 1917 without copyright notice.
- Renoir died in 1919; Guino died in 1972.
- Are the works still under copyright in U.S.?

Remoin



GVINO





Société Civile Succession

Richard Guino v. Renoir

- If *Heim* is correct: Statues acquired valid U.S. copyright when published in France in 1917.
- Statues lost U.S. copyright in 1945, when initial 28-year term expired without renewal; but
- Statues did not have copyright restored in 1996, because 75-year term (28 + 47) would have expired in 1992. Not eligible for restoration or for 20-year term extension added in 1998.

Société Civile Succession Richard Guino v. Renoir

- If *Twin Books* is correct, statues were neither in public domain nor copyrighted in 1917.
- Work first came under U.S. copyright in 1978, when 1976 Act came into effect.
- Duration of work lasts for life of longest-surviving author + 70 years, thru 2042.