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HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 3976

TO AMEND TITLE 17 OF THE UNITED STATES CODE TO REMOVE THE EXPIRATION DATE FOR A LIMITED COPYRIGHT IN SOUND RECORDINGS, TO INCREASE THE CRIMINAL PENALTIES FOR PIRACY AND COUNTERFEITING OF SOUND RECORDINGS, TO EXTEND THE DURATION OF COPYRIGHT PROTECTION IN CERTAIN CASES, TO ESTABLISH A NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS, AND FOR OTHER PURPOSES

NOVEMBER 26, 1974

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THE HISTORY OF

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY NATHANIEL BENTLEY
IN TWO VOLUMES
VOL. I.

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TUESDAY, NOVEMBER 26, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:15 a.m., pursuant to call, in room 2237, Rayburn House Office Building, Hon. Robert M. Kastenmeier (chairman) presiding.

Present: Representatives Kastenmeier, Danielson, Drinan, Owens, Railsback, and Smith.

Also present: Herb Fuchs, counsel; Bruce A. Lehman, counsel; and Thomas E. Mooney, associate counsel.

MR. KASTENMEIER. The hearing will come to order.

We are meeting this morning to receive the testimony of Ms. Barbara Ringer, Register of Copyrights, on S. 3976, an act to amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes. A copy of the bill will be inserted in the record.

[S. 3976 follows:]

[S. 3976, 93d Cong., 2d sess.]

AN ACT To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMEND TITLE 17 UNITED STATES CODE, AND FOR OTHER PURPOSES

SEC. 101. Section 3 of the Act of October 15, 1971 (85 Stat. 391), is amended by striking out "and before January 1, 1975".

SEC. 102. Section 104 of title 17, United States Code, is amended—

(1) by striking out "Any person" and inserting in lieu thereof "(a) Except as provided in subsection (b), any person"; and

(2) by adding at the end thereof the following new subsection:

"(b) Any person who willfully and for profit shall infringe any copyright provided by section 1(f) of this title, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than \$25,000 or imprisoned not more than three years, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than seven years, or both, for any subsequent offense."

SEC. 103. Section 2318 of title 18, United States Code, is amended by striking out all after "fined" and inserting in lieu thereof "not more than \$25,000 or imprisoned for not more than three years, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than seven years, or both, for any subsequent offense."

SEC. 104. In any case in which the renewal term of copyright subsisting in any work on the date of approval of this bill, or the term thereof as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, by Public Law 91-555, by Public Law 92-170, or by Public Law 92-566 (or by all or certain of said laws), would expire prior to December 31, 1976, such term is hereby continued until December 31, 1976.

TITLE II—NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

ESTABLISHMENT AND PURPOSE OF COMMISSION

SEC. 201. (a) There is hereby created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works (hereafter called the Commission).

(b) The purpose of the Commission is to study and compile data on:

(1) the reproduction and use of copyrighted works of authorship—

(A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and

(B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and

(2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.

(c) The Commission shall make recommendations as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

MEMBERSHIP OF THE COMMISSION

SEC. 202. (a) The Commission shall be composed of thirteen voting members, appointed as follows:

(1) Four members, to be appointed by the President, selected from authors and other copyright owners;

(2) Four members, to be appointed by the President, selected from users of copyright works;

(3) Four nongovernmental members to be appointed by the President, selected from the public generally;

(4) The Librarian of Congress.

(b) The President shall appoint a Chairman, and a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve ex officio as a nonvoting member of the Commission.

(c) Seven voting members of the Commission shall constitute a quorum.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

COMPENSATION OF MEMBERS OF COMMISSION

SEC. 203. (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of \$100 per day while engaged in the actual performance of Commission duties, plus reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.

(b) Any members of the Commission who are officers or employees of the Federal Government shall serve on the Commission without compensation, but such members shall be reimbursed for travel, subsistence, and other necessary expenses in connection with the performance of their duties.

STAFF

SEC. 204. (a) To assist in its studies, the Commission may appoint a staff which shall be an administrative part of the Library of Congress. The staff shall be headed by an Executive Director, who shall be responsible to the Commission for the Administration of the duties entrusted to the staff.

(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.

EXPENSES OF THE COMMISSION

SEC. 205. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

REPORTS

SEC. 206. (a) Within one year after the first meeting of the Commission it shall submit to the President and the Congress a preliminary report on its activities.

(b) Within three years after the enactment of this Act the Commission shall submit to the President and the Congress a final report on its study and investigation which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

(c) In addition to the preliminary report and final report required by this section, the Commission may publish such interim reports as it may determine, including but not limited to consultant's reports, transcripts of testimony, seminar reports, and other Commission findings.

POWERS OF THE COMMISSION

SEC. 207. (a) The Commission or, with the authorization of the Commission, any three or more of its members, may, for the purpose of carrying out the provisions of this title, hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary material.

(b) With the consent of the Commission, any of its members may hold any meetings, seminars, or conferences considered appropriate to provide a forum for discussion of the problems with which it is dealing.

TERMINATION

SEC. 208. On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire.

Passed the Senate September 9, 1974.

Attest:

FRANCIS R. VALEO,
Secretary.

Mr. KASTENMEIER. As its title indicates, this measure deals with three major issues:

(1) It would establish a National Commission on New Technological Uses of Copyrighted Works;

(2) It would extend the duration of expiring copyright in certain cases, and

(3) It would render permanent the prohibition against piracy of sound recordings.

Inasmuch as the hearing this morning is limited to about 10 o'clock or thereabouts because of the full committee hearings on the Rockefeller nomination, I will not make extended remarks, but I should state that the purpose of the provision establishing a national commission to be established by the bill is stated in the report accompany-

ing S. 1361, the Senate's omnibus copyright law revision bill passed by the Senate as follows:

To establish a National Commission to study and compile data on the reproduction and use of copyrighted works of authorship (1) in automatic systems capable of storing, processing, retrieving, and transferring information, and (2) by various forms of machine reproduction; and the creation of new works by the application or intervention of automatic systems or machine reproduction. The Commission is directed to make recommendations to the President and the Congress concerning such changes as may be necessary to assure for such purposes access to copyrighted works and to provide recognition of the rights of copyright owners.

The proposed extension of the duration of expiring copyrights involves the enlargement of the term of copyrights that would, under the existing term of 28 years plus 28 years, plus earlier extensions, expire prior to December 31, 1976. If adopted, this provision would make the ninth such or similar extension of copyright term that has come before this subcommittee since the revision program's beginning. It is no secret that I have opposed enactment of the extension on the last two such occasions publicly.

The Register is expected to comment among other things on the identity of the beneficiaries of extension and the impact of the extension on them.

Beyond this, the Register has been asked to review generally the present status of copyright law revision, with particular reference to S. 1361, the Senate copyright law revision act that passed the Senate in September.

Inasmuch as the House, on October 7, passed my bill, H.R. 13364, dealing with the piracy of sound recordings, the Register is not expected to discuss that subject.

At this time the Chair is very pleased to welcome the Register of Copyrights, from whom we have heard so often in the past and who is so helpful to this subcommittee.

Ms. Ringer, would you identify the lady accompanying you?

**TESTIMONY OF BARBARA RINGER, REGISTER OF COPYRIGHTS;
ACCOMPANIED BY DOROTHY SCHRADER, GENERAL COUNSEL OF
THE COPYRIGHT OFFICE**

Ms. RINGER. Mr. Chairman, I am Barbara Ringer, the Register of Copyrights in the Copyright Office of the Library of Congress. I am accompanied by my colleague, Ms. Dorothy Schrader, who is the General Counsel of the Copyright Office.

As you indicated, I am here at your request to testify on two aspects of the bill before you: Title II of S. 3976, and section 104 of title I of that bill, and to report on the current status of the bill for general revision of the copyright law.

I should like to start with a discussion of title II of S. 3976, which would create a National Commission on New Technological Uses of Copyrighted Works in the Library of Congress. This study commission, as you undoubtedly recall, Mr. Chairman, was first proposed after the revision bill had passed the House of Representatives in 1967. It emerged from testimony that was being given in the Senate at almost the same time the House was passing the bill. This testimony produced

a new issue that hadn't been raised before your subcommittee; namely, the issue of computer uses of copyrighted material.

Actually there are a range of problems involving the impact of automation and technology on copyrights and vice versa. Taken together they represented a whole new issue that hadn't really been recognized as such during your consideration of the bill in the middle sixties. As the result of this new development, the Senate independently developed a separate bill, S. 2216 which was intended to establish a National Commission to study the computer question. At that time the Commission was not intended to deal with anything else. The Senate passed that bill and referred it to your subcommittee in the 90th Congress.

Since the revision bill seemed to be moving quickly at that time, the Commission bill was not taken up in the House, and was later incorporated with some changes in the package revision bill in the Senate. Unfortunately, that package bill pended in the Senate for quite a long time.

As things developed, the computer issue was not the only unsettled business relating to the new technology. The question of library reprography and photocopying, including library microphotography and storage in photographic or similar forms, had been brought before your subcommittee. It was considered something that was best dealt with through individual negotiations, and the issue was really left untouched in your bill back in the 1960's.

As time went on, it became apparent that this was an urgent copyright issue and it deserved consideration in the context of the general revision of the copyright law. As a result, revisions that accompanied reintroduction of the package revision bill in successive Congresses, the second part of the Commission's mandate was added. This was basically intended to cover library photocopying and reprography for libraries.

The provisions establishing the Commission have stayed in the revision bill all these years, and on September 9 of this year they passed the Senate twice: Once as part of the general revision package, and again almost immediately, as the bill you are now considering.

The Commission is intended to study and compile data on the use of copyrighted works "in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities."

That rather cryptic "not including" phrase is intended to leave alone an issue which was considered settled; namely, that of classroom and instructional photocopying.

The Commission would also study "the creation of new works by the application or intervention of such automatic systems or machine reproduction."

The Commission as it was constituted would be appointed by the President. It would consist of 12 members with 4 each from among 3 groups: (1) authors and other copyright owners; (2) copyright users; and (3) the general public.

The Librarian of Congress would serve as the 13th voting member, and the Register of Copyrights would serve ex officio as a nonvoting member. The Commission would be set up in the Library of Congress with an executive director and a staff.

The Commission's mandate has rather short deadlines as to reporting. Within 3 years after enactment of the bill the Commission would be called upon to make a final report including—and this is, of course, the real purpose of the Commission—recommendations for changes in the copyright law for the purposes of assuring access to copyrighted work while providing appropriate recognition of proprietary interests. An interim report would be due within 1 year of the Commission's first meeting.

From the very beginning there was some feeling of urgency about this. It is a little ironic that here we are 7 years down the road, saying the same things.

The inadequacy of the present law to deal with the problems arising from the use of copyrighted works in computer systems is certainly something that no one can deny. This is still in a developmental stage. We really have no experience with the copyright patterns—the concepts and the needs that will arise from this new technology. In the many discussions that took place on this subject the feeling was that what was being expressed on both sides were fears rather than facts. As the result, there was a genuine emphasis on the part of both the users and the potential users on the one side, and the authors and the copyright owners on the other, to have a study of this subject, so that they could base their suggestions on facts rather than fears.

The revision bill literally does nothing to solve this problem. The compromise, if you can call it that, was to specify expressly that the status quo would be preserved. In other words, whatever is the copyright law now with respect to computer uses of copyrighted works would remain the law. This is not very desirable as a legislative solution, but it was tied in directly with the understanding that a Commission would be operating in this area, and would be studying and recommending on a rather short deadline.

→ Now the Library photocopying issue is slightly different. From the beginning that issue was well known and hotly debated. Both sides at the outset felt that it was better not to say anything on the subject in the bill, and agreed for exactly opposite reasons to leave the whole subject untouched as far as statutory language was concerned. Gradually I think both sides came to realize that this was a mistake—that the problem was really agitating people all over the country and all over the world, and was too important not to deal with directly in the bill.

As a result, a rather modest provision concerning archival preservation that you had included in the 1967 bill has grown into a rather extensive provision dealing primarily with the making of single photocopies by libraries. This provision—section 108 of the revision bill—is by no means sufficient to solve the larger problems of reprography, especially in libraries. Moreover, as you well know, the problem is before the Supreme Court at this very moment. We are told that the *Williams and Wilkins* case will be argued on the 16th or 17th of December. Until the Supreme Court makes its decision the issues involved in that case are up in the air too.

Neither the enactment of the revision bill in the form in which it passed the Senate nor a definitive decision of the Supreme Court in the *Williams and Wilkins* case is going to settle the larger issues here, however. I think everyone recognizes that, and also recognizes that they need study.

Discussions are underway in the private sector now on this subject, in recognition that nothing the Congress does, and nothing the Court does, is going to solve this issue for the future, and that it is an issue that very desperately needs solving. Both of these important public issues; namely, computer uses and reprography, urgently need to be studied in depth by recognized experts.

MR. KASTENMEIER. On that point, is there any other way to resolve these issues other than a Commission in your view? If the Court decisions are not going to give us sufficient guidance and if the Congress is or is not able to reconcile or resolve these issues in legislation—and it may or may not—is there any other way to resolve them?

MS. RINGER. Well of course, Mr. Chairman, if the issues were not as urgent as they are, your committee and the corresponding committee in the Senate could undertake extensive hearings. I think that this would automatically produce quite a bit of evidence that could be sifted through and could result in legislation. But I think it was felt, when this bill was originally introduced in 1967, that this would be an unfortunate thing. Both Houses were actively involved in the broader issues of general revision.

The Copyright Office was considered as a possible source of study and consideration and a focal point of discussions, and so forth. The possibility was discussed at the time and I think there was a feeling—and I am quite blunt about this—a feeling on the part of some people that the Copyright Office was not completely objective. I think some of these feelings have changed, but different people would feel the same way now. I just don't know.

Obviously a government agency that has some expertise in this area could undertake this responsibility if the undertaking were funded. I also assume that, if the Commission bill were passed in this form or some other form, the Copyright Office would provide some staff support by transfers within the Library of Congress.

It seems to me that what you need is some kind of organism to develop a factual basis for legislation, and provide a forum in which the representatives of the various interests involved can get together and suggest solutions to the problems under some sort of structured arrangement. I don't think the Commission is necessarily the only way of doing it, Mr. Chairman. There are others.

I should add that obviously this idea was first introduced at a time when commissions were much more popular than they are now. I think there is a certain amount of disillusionment with them, probably with some reason.

MR. KASTENMEIER. I might add that there is very strong congressional resistance to creating new commissioners even though I suppose the cost of the Commission is not large or extensive considering the overall resources, but nonetheless, there is very great resistance to commissions.

MS. RINGER. I am well aware of that.

To summarize my answer to your question, Mr. Chairman, I do feel that the purposes of this bill are worthy and deserve consideration either in connection with this bill or in connection with the general revision bill. We supported the separate bill at the outset, and then the provision in the revision bill, and we are now supporting it again as a separate piece of legislation.

Another point I think is worth making in this connection is that, as Senator McClellan remarked in introducing this bill, there is no need to wait for general revision before undertaking the studies and consultations contemplated here. The two are independent of each other. It is a mistake to think in terms of the one proceeding from the other; but, at the same time, the establishment of the Commission should not in any way impede the progress of the general revision bill. I would find it very unfortunate if the existence of the Commission were used as a reason for delaying further progress of the revision bill.

In supporting the purpose and provisions of title II of S. 3976, our hope is that the studies and consultations needed to provide solutions to the copyright problems presented by reprography and the storage and transfer of information can be undertaken without further delay, and that they be considered independent of the general revision bill itself.

The second item on which you requested my views is the interim extension of subsisting renewal copyrights for another 2-year period, as provided in section 104, title I, of S. 3976. As you indicated in your opening remarks, Mr. Chairman, if section 104 is enacted it would be the ninth in a series of interim extensions of the renewal term of expiring copyrights, which began in 1962 with Public Law 87-668. The first bill in the series—and I think they were joint resolutions, actually—was a 3-year interim extension; it was enacted in anticipation of the general revision bill, which had not yet been introduced. It was then followed by a 2-year extension at a time when the activity on the bill was very, very great. This was Public Law 89-142.

And then followed five 1-year extensions. I won't read the numbers; they are in my printed statement. Finally, we had another 2-year extension, Public Law 92-566, which expires at the end of this year. S. 3976 would add another 2-year extension, ending on December 31, 1976.

Throughout this long and—I take it everyone would agree—rather painful history, the principal, although perhaps not the only, justification for the extensions was the existence and pendency of the bill for general revision of the copyright law. Enactment of the general revision bill would add 19 years to the renewal terms of all subsisting copyrights, making a total term of 75 years. We support this extension to 75 years very strongly.

We feel, and have felt from the beginning, that the United States is out of line with the countries of the rest of the world which give protection equivalent on the average to 76 years. The standard copyright term throughout the world is the life of the author plus 50 years after his death, and this averages out to 76 years.

In the past, support by the Copyright Office of these temporary extensions was based on our view that a total 75-year term for subsisting copyrights was fully justified. As long as the revision bill pro-

viding a 75-year term was progressing toward enactment, it was felt unfair to allow subsisting copyrights to expire while the bill was moving through the necessary legislative process.

Authors and their families are the direct beneficiaries of the royalties from the majority of these copyrights. This is a point I will return to. The Copyright Office has considered it a matter of equity to avoid throwing their works into the public domain during active legislative consideration of a bill that would definitively extend the term in all subsisting copyrights.

Variety, during the consideration of one of the extension bills, referred to the situation as a cliffhanger. You do see people who are in this cliffhanging position right now—awaiting enactment either of author extension or of the general revision, and seeing the prospect of what in some cases is really their livelihood going into the public domain before the general revision bill can be enacted. It should be noted that in no case would any of these works be given protection longer than the 75-year term, which was established as the norm under the revision bill.

Now as you know, and as we are all well aware, the revision bill became stalled in the Senate, but it didn't become stalled over this issue. The length of the copyright term has not really been an issue in the Senate. It became stalled because of the dispute over the cable television transmissions of copyrighted works. This was completely unrelated to the length of the copyright term and was, in effect, a business or an interindustry dispute. Although the Copyright Office supported the last extension 2 years ago, we have been extremely concerned about continued extension of the term under the 1909 law unless there was good reason to hope for enactment of the revision bill.

As a personal aside, Mr. Chairman, when I came back to the Copyright Office about a year ago it looked as though the bill was pretty solidly stalemated. I didn't expect it to achieve the progress it has had in the last year. Last year this time I had grave doubts about supporting any further extensions.

If the Senate had failed to pass the revision bill this year, I would have had considerable difficulty in supporting section 104 of S. 3976. The Senate voted passage of S. 1361 by a margin of 70 to 1, which I think is pretty impressive. It means that a good deal of the legislative momentum has been regained, and, of course, not a moment too soon. If the Senate had not taken decisive action this year, I would have grave doubts about the future of the whole program. But the momentum does seem to have been regained, and as long as the revision bill is making rapid progress we continue to favor enactment of another interim extension of subsisting copyrights.

The prospect for revision does seem brighter now than at any time since 1967. A total of 150,000 valuable copyright properties are involved in section 104, and they are caught up in this question of whether or not an extension can preserve them until the revision bill can pick them up along with all later subsisting copyrights. About two-thirds of these works are musical compositions. In other words, out of 150,000, Mr. Chairman, about 100,000 are musical compositions. In the great bulk of these cases, the composers and authors or their heirs will benefit personally from royalty payments flowing from these works.

Under the structure of the music industry in this country, authors and composers get at least 50 percent of the performance royalties from their works. In some of these cases—and I know you have been told this many times, Mr. Chairman, but it is true nonetheless—this is one of the principal, if not the only, source of income for some authors and composers and their heirs.

As I have indicated, it is the status and prospects of the general revision bill that provide the justification for another interim extension. In the debate on S. 1361 in the Senate on September 6, Senator McClellan said:

Mr. President, it is doubtful if the House of Representatives will have time to act on this legislation in the remaining weeks of this session. However, Senate passage of S. 1361 will serve a useful purpose in that it will facilitate final action on copyright revision legislation in the next Congress. I anticipate that the bill passed by the Senate will be reintroduced at the start of the 94th Congress, and it should be then processed expeditiously. Our goal should be enactment of a new copyright statute by the end of 1975.

Three days later, after some amendments, the Senate passed the revision bill. This is 7 years and 5 months after the House of Representatives passed an earlier version of the same bill.

The House last held hearings on the revision bill in 1965 and further hearings will be necessary next year, at least on certain key issues. I hope that it will be possible to move ahead very early in the next session with House hearings, without waiting for Senate action. Experience has shown that we should allow as much time as we can to assure final enactment in the 94th Congress.

I am told that Senator McClellan will introduce the revised Senate version of the bill on the first day of the next Congress.

The Copyright Office and its staff welcomes the opportunity to assist the House Members in every possible way when you turn to consideration of the bill next year. With your approval, I hope to prepare another supplementary report of the Register of Copyrights, which will bring you up to date on what has happened that produced the Senate version of the bill and what has remained the same. We should also like to prepare a series of briefing papers, in other words, brief analytical summaries of the revision bill, identifying areas of general agreement and area where some proposals for adjustment, major or minor, might be expected.

Unquestionably the areas of agreement far exceed the areas of disagreement. In terms of chapters and sections, the bulk of the bill, probably 80 to 90 percent of the Senate bill, passed the House in 1967, and has been left alone. Fundamental provisions such as the single Federal copyright system, duration based on life of the author plus 50 years, ownership and transfer of rights, subject matter, and formalities are still intact. These represent the heart of the bill.

The key controversies and the major changes have arisen over certain of the provisions of chapter 1. These are the provisions dealing with the scope of the copyright owners' rights, and here you do find interests pitted against each other. These provisions have to do with matters such as performing rights in sound recordings and the library photocopying issue, and the notorious cable television problem—which is notorious only because of the immense difficulty in finding a satisfactory solution—and in the proposals for a Copyright Royalty Tribunal, which are tied in with questions involving rights.

In addition, title II, the National Commission on New Technological Uses, and title III, establishing a new form of design protection, were not considered by the House in 1967, although similar design bills had previously been under separate consideration in the House.

The legislative phase of the copyright revision program passed its 10th anniversary last July. It was not really an anniversary to celebrate, although I know of at least one private, rather bittersweet commemoration, and at least one toast to your subcommittee for its efforts in the middle sixties. If it had not been for these efforts, we would certainly not be sitting here now.

In its essentials the revision bill is your committee's, and remains a very good bill as it stands. Some phrases, some provisions, some sections can be changed and will be changed. It will take a great deal of effort to bring it to enactment during the next Congress, but it would be unthinkable not to try.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. Thank you. I should like the record to show that the former Register of Copyrights, Abraham L. Kaminstein, is with us this morning, and we are very pleased to see him.

I have several questions, and I am sure my colleagues have some but we won't be long because we have another hearing this morning in the full committee.

In terms of the Commission, the first matter you raised, is there any notable opposition that you can identify to the concept of the Commission?

Ms. RINGER. I think the answer is "No." There was considerable enthusiasm for the proposal in the late sixties when the idea was first put forward and when the bill passed the Senate as separate legislation. There is still considerable enthusiasm for that idea of making this kind of in-depth study and analysis with recommendations, if it were done as part of the revision bill. Some questions have been raised by representatives on both sides of the library photocopying issue as to having the Commission put forward as separate legislation.

I do think that there would be little opposition if you chose to pass it separately and get the study underway now, I think this would be something that would be accepted, and I think it would be a valuable thing.

I don't think that the feelings run very high on this particular issue.

Mr. KASTENMEIER. The second question is, if there is not opposition to the Commission, is there opposition to its constitution as to the way it is constituted, as it appears in this legislation and does it appear the same way in the general revision legislation?

Ms. RINGER. I understand your question, and it does appear the same way in the revision bill. I have heard exactly the same fears expressed by representatives of libraries and by representatives of authors and publishers; namely, that the public members would be weighted one way or the other. I think there are concerns, and I think that there have been suggestions that the composition be altered somewhat or that the number of members be enlarged.

In preparing this legislation we originally went through a lot of Commission bills to try to find patterns, and this is the best we could come up with. I think that almost any solution that you find will be argued about because of fears that the person who does the choosing, in

this case the President, will tend to lean one way or the other. I am not sure this is a fair argument. I think there are dangers in making the Commission too large.

Mr. KASTENMEIER. One of the problems with it as small as it is, the 12 members plus the librarian, is that the four proprietary members, for example, may not comprehend sufficiently broadly all the proprietary interests in the field, and the same with respect to user groups. Is that not true?

Ms. RINGER. Yes. Actually the present composition was drafted at a time when this was exclusively confined to computer uses, although I think that the point you make would have been valid even then. You are quite right. There is really a range of interests on both sides, and it would be hard to find four representatives for each of these interests.

Mr. KASTENMEIER. In any event, is it not true that following the recommendation of the Commission those who constitute this subcommittee and its Senate counterpart would need in any event to have public hearings on the recommendations and those hearings can be surely supplemented by any whose views are not adequately represented by the Commission. Is that not a fair statement?

Mr. RINGER. That is unquestionably true. The feeling at the outset in 1967, which I think is still valid is that it would be much better to have congressional hearings on specific recommendations made by the Commission after a thorough examination of the problem than to explore this totally unknown land as part of the general revision legislation. The two are really unrelated. There was considerable fear, which I think was well placed, that if you had Congress holding hearings on computer uses at the same time the revision bill was pending, this would complicate matters considerably.

Mr. KASTENMEIER. Do I observe that the committee is in receipt of a recent letter from the Librarian of Congress dated November 18, of this year in which the projected cost of the Commission is set forth?

Ms. RINGER. Yes.

Mr. KASTENMEIER. That letter as well as Ms. Ringer's prepared statement will be received and made a part of the record at this point.

[The letter and prepared statement referred to follow:]

THE LIBRARIAN OF CONGRESS,
Washington, D.C., November 18, 1974.

HON. PETER W. ROBINO, JR.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. ROBINO: In accordance with your request, conveyed on your behalf by Mr. Fuchs, the Register of Copyrights has prepared an estimate of the cost to the United States if S. 3976 is enacted.

S. 3976 consists of two titles. Sections 101, 102, and 103 of Title I would make the sound recording copyright a permanent feature of title 17 U.S.C., increase the criminal penalties for infringement of a sound recording copyright, under section 104 of that title, and increase the criminal penalties for counterfeit records under title 18 U.S.C. The Copyright Office estimates that claims to copyright in 15,000 sound recordings will be registered per year, and that approximately \$216,000 will be needed to support this operation. There will be a return of \$90,000 in fees to the Copyright Office, based on the present registration fee of \$6.00. In addition to the fees, 30,000 deposit copies will be received with an estimated value of \$150,000.

Section 104 of Title I of the legislation would extend until December 31, 1976 the copyright in works now in their second term of copyright and due to expire

on December 31, 1974. This section will not result in any cost to the United States. The Committee may be interested to know that copyright in approximately 124,000 works will expire on December 31 of this year unless an interim extension of the term is passed. Of this total, approximately two-thirds are musical compositions. The Copyright Office estimates that an additional 13,350 copyrights are due to expire in calendar year 1975 and 15,300 in calendar year 1976. By the end of 1976 the total of copyrights affected by interim extension legislation would be approximately 153,500.

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works, with the mandate to examine these uses and to recommend changes in the copyright law to deal with them. The Commission would report on the problem of machine reproduction of copyrighted works by photocopying machines and similar methods after one year, and would complete its work within three years.

In estimating the cost to the United States of this Commission, the Copyright Office has projected a staff of 45 technical, legal, and clerical personnel to support the work of the 13 Commission members. However, the full complement of staff would not be reached until the final year of the Commission; hence the cost the first year is slightly over half the cost for the third and final year of the Commission's life. The Copyright Office has prepared the following estimate of the cost to the United States for the salaries of the 12 nongovernmental Commission members and the supporting staff and for all expenses, including travel, space, furniture, equipment, utilities, supplies, and printing:

	1st year	2d year	3d year	Total 3-year cost
Salaries.....	\$476,800	\$692,800	\$929,800	\$2,099,400
Other expenses.....	108,000	111,500	142,500	362,000
Total.....	584,800	804,300	1,072,300	2,461,400

If I can be of further assistance, please contact me.

Sincerely yours,

L. QUINCY MUMFORD,
Librarian of Congress.

STATEMENT OF BARBARA RINGER, REGISTER OF COPYRIGHTS

Mr. Chairman, I am Barbara Ringer, Register of Copyrights in the Copyright Office of the Library of Congress.

I am here at your request to testify on Title II of S. 3976 and Section 104 of Title I of that bill, and to report on the current status of the bill for general revision of the copyright law.

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works in the Library of Congress. This study commission was first proposed in a separate bill in the Senate, S. 2216, and passed that body in the first session of the 90th Congress. The proposal was later included as Title II of a package bill (including the copyright revision bill as Title I and the design protection bill as Title III) in the Senate Judiciary Committee print of S. 543 in December, 1969. This same format has been followed in the successive copyright general revision bills in the Senate. The National Commission proposal passed the Senate twice on September 9 of this year: first as part of the copyright general revision package, S. 1361, and then as Title II of S. 3976, the bill you are now considering.

The Commission would study and compile data on the use of copyrighted works "in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and . . . by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities." It would also study "the creation of new works by the application or intervention of such automatic systems or machine reproduction."

Twelve members of the Commission would be appointed by the President with four each from among three groups:

- (1) authors and other copyright owners;
- (2) copyright users; and
- (3) the general public.

The Librarian of Congress would serve as the thirteenth voting member, and the Register of Copyrights would serve ex officio as a nonvoting member. The supporting staff, headed by an Executive Director, would be an administrative part of the Library of Congress.

Within three years after enactment of the bill, a final Commission Report would be made, including recommendations for changes in the copyright law for the twin purposes of assuring access to copyrighted works while providing appropriate recognition of proprietary interests. An interim report would be due within one year after the first Commission meeting.

The inadequacy of the present law to deal with the range of problems arising from the use of copyrighted works in computer systems is well-recognized, and the revision bill does nothing more than preserve the status quo in this area. Similarly, even though section 108 of the revision bill deals with certain aspects of library photocopying, and other aspects of the problem are now before the Supreme Court in the famous *Williams and Wilkins* case, neither enactment of the revision bill nor a definitive decision in the case will solve the copyright problems presented by library photocopying or reprography generally. Both of these important public issues urgently need to be studied in depth by recognized experts, and to be reviewed by a commission or other organized body representing all of the interests affected. It is for this reason that the Copyright Office has supported creation of a National Commission as part of the general revision bill or, if necessary, as separate legislation.

As Senator McClellan's remarks in introducing S. 3976 suggest, there is no need to await enactment of the general revision package before undertaking the studies and consultations contemplated in Title II of this bill. At the same time, of course, establishment of the Commission should in no way be allowed to impede progress on the general revision bill as a whole. In supporting the purpose and provisions of Title II of S. 3976, our hope is that the studies and consultations needed to provide solutions to the copyright problems presented by reprography and the storage and transfer of information can be undertaken without further delay, and that they be considered independent of the general revision bill itself.

The second item on which you requested my views is the interim extension of subsisting renewal copyrights for another two-year period, as provided in section 104, Title I, of S. 3976.

If section 104 is enacted, it would be the ninth in a series of interim extensions of the renewal term of expiring copyrights, which began with Public Law 87-668 in 1962. The first three-year interim extension was followed by a two-year extension, Public Law 89-142, then by five successive one-year extensions, Public Laws 90-141, 90-416, 90-147, 91-555, and 92-170, and finally by another two-year extension, Public Law 92-566, which expires at the end of this year. S. 3976 would add another two-year extension, ending on December 31, 1976.

The principal justification for the extensions was the bill for general revision of the copyright law, which would add 19 years to the renewal term of all subsisting copyrights, making a total term of 75 years. In the past, support by the Copyright Office of these temporary prorogations was based on our view that a total 75-year term for subsisting copyrights was fully justified. As long as the revision bill providing a 75-year term was progressing toward enactment, it was felt unfair to allow subsisting copyrights to expire while the bill was moving through the necessary legislative process. Authors and their families are the direct beneficiaries of the royalties from the majority of these copyrights, and the Copyright Office considered it a matter of equity to avoid throwing their works into the public domain during active legislative consideration of a bill that would definitively extend the term in all subsisting copyrights. It should be noted that in no case would any of these works be given protection longer than the 75-year term which was established as the norm under the revision bill.

As you know, the revision bill became stalled in the Senate because of the dispute over rights in cable television transmissions, an issue completely unrelated to the length of copyright term. Although the Copyright Office supported the last extension, we have been extremely concerned about continued extensions of the term under the 1909 law unless there were good reasons to hope for enactment of the version bill.

If the Senate had failed to pass the revision bill this year, I would have had considerable difficulty in supporting section 104 of S. 3976. Senate passage of S. 1361 on September 9, 1974, by a margin of 70 to 1, means that a good deal of the legislative momentum has been regained, and not a moment too soon. As long as the revision bill is making rapid progress, we continue to favor enactment of another interim extension of subsisting copyrights.

The prospect for revision seems brighter now than at any time since 1967. A total of 150,000 valuable copyright properties are caught up in the question of extension by the end of 1976. About two-thirds of these works are musical compositions, and in the bulk of these cases the composer-authors or their heirs will benefit personally from royalty payments flowing from these works.

As I have indicated, it is the status and prospects of the general revision bill that provide the justification for another interim extension. In the debate on S. 1361 in the Senate on September 6, Senator McClellan said:

"Mr. President, it is doubtful if the House of Representatives will have time to act on this legislation in the remaining weeks of this session. However, Senate passage of S. 1361 will serve a useful purpose in that it will facilitate final action on copyright revision legislation in the next Congress. I anticipate that the bill passed by the Senate will be reintroduced at the start of the 94th Congress, and it should be then processed expeditiously. Our goal should be the enactment of a new copyright statute by the end of 1975."

Three days later, after some amendments, the Senate passed the revision bill, seven years and five months after the House of Representatives passed an earlier version of the same bill.

The House last held hearings on the revision bill in 1965, and further hearings will be necessary next year, at least on certain key issues. I hope that it will be possible to move ahead very early in the next session with House hearings, without waiting for Senate action. Experience has shown that we should allow as much time as we can to assure final enactment in the 94th Congress.

The Copyright Office and its staff welcome the opportunity to assist the House members in every possible way when you turn to consideration of the bill next year. With your approval, I hope to prepare another supplementary Report of the Register of Copyrights, this time on the 1974 Senate Bill, S. 1361. We should also like to prepare a series of brief, analytical summaries of the important provisions of the revision bill, identifying areas of general agreement and areas where some proposals for adjustment, major or minor, might be expected.

Unquestionably the areas of agreement far exceed areas of disagreement. In terms of chapters and sections, probably 80 to 90 percent of the Senate bill passed the House in 1967, and has remained substantially unchanged. Fundamental provisions such as the single Federal copyright system, duration based on life of the author plus fifty years, ownership and transfer of rights, subject matter, and formalities are still intact. The key changes have occurred in Chapter 1 in reference to exemptions to the exclusive rights—principally, sections 108, 110, and 111—and in the proposal for a Copyright Royalty Tribunal. In addition, Title II, the National Commission on New Technological Uses, and Title III, design protection, were not considered by the House in 1967, although separate design bills had previously been under consideration in the House.

The legislative phase of the copyright general revision program passed its tenth anniversary last July. It was not really an anniversary to celebrate, although I know of at least one private, bittersweet commemoration, and at least one toast to your subcommittee for its steadfast efforts in the middle 60's.

In its essentials, the revision bill is yours, and it remains a very good bill as it stands. Some phrases can be improved. Some provisions will be adjusted. It will take a great deal of effort to bring it to enactment during the next Congress, but it would be unthinkable not to try.

Mr. KASTENMEIER. May I assume that you personally have worked on this?

Ms. RINGER. In part, yes.

Mr. KASTENMEIER. And the 3-year cost is projected to be \$2,461,400. Is that correct?

Ms. RINGER. Yes.

Mr. KASTENMEIER. Again, it will be very difficult to sell that to the Congress.

Ms. RINGER. I understand that.

Mr. KASTENMEIER. In terms of costs particularly since the Commission itself is not very large with only 12 members.

Ms. RINGER. The request of your subcommittee for these figures was received at the same time the Library was making a 10-year budget projection, which included estimates made by Copyright Office program and budget specialists covering a 3-year Commission. The figures in the Librarian's letter were based on these estimates, recomputed on the assumption that the Commission would have to be set up immediately and outside the Copyright Office. After the letter was sent, we had a budget review in the Library of Congress of the 10-year estimates, and agreed that the figures for the Commission come down somewhat.

Mr. KASTENMEIER. On a different subject, the extension of subsisting copyrights, you state that it is your belief that about two-thirds of the work are musical and in the bulk of the cases composers or authors and their heirs will benefit personally. Could you explain that?

Ms. RINGER. The works that are involved in this legislation were copyrighted, either in published form or otherwise, between 1906 and 1918, and they are the ones that were renewed at the appropriate time. In other words, the group of copyrights we are talking about here have substantially been narrowed by operation of the renewal provisions of the present law. I don't have these totals in percentages, but I will give you the exact figures—104,500 of the works are music and these were the musical compositions that were considered worthy of renewing in the late thirties or early forties. The remainder fall into three categories: books, periodicals, and everything else. There are only 23,000 books and 17,000 periodicals. The other classes total about 9,000, making a grand total of roughly 153,500. So you can see that the very large bulk of the material is musical, and if you want to address yourself to music, I think you are on fairly firm ground in saying that in virtually all the cases the author or his heirs is benefitting directly. This is because of the structure of the music industry and the fact that renewals return the rights to the authors at the time the renewals were made. New deals were made at the time of renewal, but this was true even under the old deals.

As far as the income is concerned, it is principally for the performing rights. These are old standards like "Take Me Out to the Ball Game" and that sort of thing. In these cases, the constitutions of the performing rights societies insure that the authors or their heirs get at least 50 percent.

Mr. KASTENMEIER. You make reference to livelihood, which to me means making a living and earnings, but in rare cases is it not true, that a person would be involved? In other words, does the composer himself benefit or is it his heirs?

Ms. RINGER. I would say that is probably true, the heirs are usually the beneficiaries, but there are some cases where the authors are still alive. I don't want to overstate this, Mr. Chairman, but I have met and corresponded with individuals in that situation. There are cases, they really do exist, where people are actually living on their royalties.

Mr. KASTENMEIER. Of course, we are talking about royalties of those particular works which would have expired not other royalties in the interim years.

You indicated life plus 50, which equals about 75 years, which is to

suggest that after the given piece is composed, that on the average that person lives 25 years beyond that point, correct? So on the average, for example, for the year 1906, which I guess is the first year we extended on the average the author-composer would have died in 1931. This is now 1974 so that mathematically we are not talking about very many composer-authors?

Ms. RINGER. Well, the revision bill, which as you know your committee debated extensively in 1965, 1966, and 1967, is based on the principle of a term consisting of the life of the author plus 50 years, with the 50 years being provided to take care of the author's heirs. In the example you give as an average or mean, an author whose work was copyrighted in 1906 could statistically be expected to have died around 1931 or 1932.

Mr. KASTENMEIER. Yes, that of course was prospective. I think we made a mistake in 1962 anticipating something we had no right to anticipate; namely, what a future Congress might do or when it might do it. It is my position we made a mistake and we compounded it each year by extending this mistake.

One last question, and that is about the general revision. I take it there are still some issues which remain which are relatively controversial?

Ms. RINGER. There is no question that your committee will be impelled to hold hearings, because the bill is a complex and very comprehensive one. It is hard to say whether there are still very controversial issues.

The most controversial issue by far in the Senate was the proposal to create a performing right in sound recordings as such, as distinguished from the music on the recordings—in other words, to require royalty payments under a compulsory licensing plan for commercial use of records in disc jockey programs and juke boxes and so forth, with the royalties presumably going to the performers and the producers who created the record. The proposal was advanced very vigorously in the Senate by Senator Scott, among others but was pretty firmly voted down. I think there will probably be hearings on it as a separate issue in the Senate next year, but I don't expect the provision to be included in the bill, Senator McClellan will introduce at the beginning of the session. So, for all practical purposes, I think that issue is removed.

The cable issue remains an extremely difficult issue. There was, in the early seventies, a so-called "consensus agreement" in which the parties representing the interests involved did reach a sort of general understanding which included support of the copyright bill. Since then, there has been a Supreme Court decision favoring the cable side of that issue. And while the consensus agreement has held up, there are now some new pressures on it, if one can rely on the trade press.

My own feeling, trying to look at the thing as a whole at this particular moment, is that the consensus agreement will hold together, but that the protection the revision bill would offer to copyright owners as against cable operators will be reduced still further. The CATV problem is a major issue that will have to be dealt with in the Senate before the Senate can pass the bill. But I don't look at this as fundamental. I think there will be a lot of fussing over it, just as there was over the sports provision in the cable section in the Senate earlier this

year. These are difficult issues, but they are not fundamental as far as revision is concerned.

Mr. KASTENMEIER. I appreciate your answer. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I want to also thank you. Is it your belief that the Senate will move expeditiously on the general revision this coming year?

Ms. RINGER. Senator McClellan has promised this. He made the statement that I read, and another one to the same effect, during the Senate debates. There is no question that he wishes to push this forward. I have been fussing this bill now for—

Mr. RAILSBACK. Almost 10 years?

Ms. RINGER. A full 10 years, and it even goes back a little further than that. I have found the process usually takes three or four times longer than could be hoped for, but sometimes it can fool you and go faster than you expect.

Mr. RAILSBACK. And you generally approve of the Senate bill?

Ms. RINGER. Generally.

Mr. RAILSBACK. And you are also going to come before our subcommittee with some recommendations for change?

Ms. RINGER. Actually no. I would hope that we could provide the raw material that would allow you and your staff to perfect the bill that comes from the Senate.

Mr. RAILSBACK. I see.

Ms. RINGER. I think it is self-evident you are not going to accept what they send over without a careful reexamination and some re-drafting. We will do everything we can to help you, but I don't think it should be our role to provide independent suggestions.

Mr. RAILSBACK. And you have no objection to the penalties that we put in our bill that is now pending in the Senate?

Ms. RINGER. As I stated in my testimony on that bill, I didn't take a position on the increase. However, I feel that your committee's solution was a good one.

Mr. RAILSBACK. Thank you very much.

Mr. KASTENMEIER. The gentleman from California, Mr. Danielson.

Mr. DANIELSON. I was just looking at the clock, Mr. Chairman. I don't want to cause any continuation of any anxiety around here, so I will state my position. I am prepared to support the interim extension of the bill at this time. I am not prepared to support anything else, but if it is appropriate, I would like to move to amend this bill.

We are not putting in the revision right now and we are just kidding ourselves if we think—

Mr. KASTENMEIER. It is not appropriate at this time.

Mr. DANIELSON. All right, but that is my position on the bill. Thank you very much.

Mr. KASTENMEIER. Mr. Smith?

Mr. SMITH. Thank you, Mr. Chairman. It is always good to welcome Ms. Ringer back here having had the good fortune to participate in that great exercise about 8 or 9 years ago in getting out a copyright bill.

I think, Mr. Chairman, I would support this entire bill when it comes up for our markup committee. It seems to me that the provision

of a commission, even though commissions may not be too welcome in today's Congress, is a good one because I don't believe this committee is going to have the time to take up the technical problems to determine the facts that are needed before they are incorporated into a general revision of the copyright law.

I think it would be a good idea to have this extra help under a structure that this committee will need when it comes to those questions as to the general revision. So I would be inclined to support the entire bill.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. I want to thank Ms. Barbara Ringer also for her testimony and say we obviously have to continue the copyright law for 2 years and I would be prepared to vote on that. I have difficulties with the Commission both in its composition and its projected budget. I assume we will have an opportunity to talk about that at a later date. Thank you very much.

Mr. KASTENMEIER. The gentleman from Utah, Mr. Owens.

Mr. OWENS. In view of the time, I don't think I have any questions of great worth. I do find the concept of the Commission very worthwhile in my viewpoint. I think there is a question in my mind whether you need 3 years to issue a final report in view of the fact that you are pressing for a revision law within the next year or 2. It seems that one might want to have a report of that Commission prior to the passage of the revision law and hence a question of whether it might slow down the revision. Is it absolutely necessary to take 3 years for that Commission report do you think?

Ms. RINGER. The usual pattern in commissions is to take about a year to get operational and then study for at least 2 years. I think that 3 years is not unrealistic. On the other hand, I think the commission could be given a mandate to report earlier, and if it were, I think it would have to follow that mandate. I would agree with you, Mr. Owens, that the need for this is quite urgent.

Mr. SMITH. Would the gentleman yield?

Mr. OWENS. Yes; I yield to the gentleman from New York.

Mr. SMITH. Ms. Ringer, would it be fair to state that most of the technical background exists and somebody knows it at this time? It has to be brought together in other words?

Ms. RINGER. Yes.

Mr. SMITH. And the people who deal with computers and your great word of reprography I think must have the technical background if it can be brought together. So perhaps, Mr. Owens, it could be done sooner. It would seem to me it could be done sooner than 3 years.

Mr. OWENS. I have no further questions.

Mr. KASTENMEIER. In which case, the committee thanks you again for your appearance this morning.

The Chair will announce that the committee will meet for the purpose of considering legislation before us at some time in the future in the remaining weeks of this session. Until the time the subcommittee stands adjourned.

[Whereupon, at 10:15 a.m., the subcommittee recessed subject to the call of the Chair.]

