ENGRAVINGS AND COPYRIGHT

HOW DOES A DEFINITION AIMED AT FINE ARTS APPLY TO FRISBEE® DISKS?

by
Laurent Carrière*
LEGER ROBIC RICHARD, Lawyers,
ROBIC, Patent & Trademark Agents
Centre CDP Capital
1001 Square-Victoria- Bloc E – 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel. (514) 987 6242 - Fax (514) 845 7874
www.robic.ca - info@robic.com

---

* Lawyer and trademark agent, Laurent Carrière is a senior partner in the lawfirm LEGER ROBIC RICHARD, g.p. and in the patent and trademark agency firm ROBIC, g.p. Publication 121.

"ENGRAVINGS"	**«GRAVURE»****
"engravings" includes etchings, lithographs, woodcuts, prints and other similar works, not being photographs;	**«gravure» Sont assimilées à une gravure les gravures à l'eau-forte, les lithographies, les gravures sur bois, les estampes et autres oeuvres similaires, à l'exclusion des photographies.**

R.S.C. 1985, c. C-42, s. 2

§1.0 Related Sections

Section 2—Definitions: "artistic work", "photograph", "plate", "work" "performance"; section 2.2—Definition of "publication"; section 7—Term of copyright in posthumous works; section 13—Ownership of copyright; section 28.2—Nature of right of integrity; section 32.2—Permitted acts; section 64—Interpretation (Industrial design and topographies).

§2.0 Related Regulations

None.

§3.0 Prior Legislation

§3.1 Corresponding Section in Prior Legislation

Section 2 (h) from 1924-01-01 to 1971-07-14; section 2 from 1971-07-15 to present.

§3.2 Legislative History

S.C. 1921, c. 24, s. 2(h); C.I.F. 1924-01-01; R.S.C. 1927, c. 32, s. 2(h); C.I.F. 1928-02-01; R.S.C. 1952, c. 55, s. 2(h); C.I.F. 1953-09-15; R.S.C. 1970, c. C-30, s. 2; C.I.F. 1971-07-15; R.S.C. 1985, c. C-42, s. 2; C.I.F. 1988-12-12.

3.2.1 S.C. 1921, c. 24, s. 2(h)

** Note: "Gravure", as the French translation of "engravings", was numbered 2(e) from 1924-01-01 to 1953-09-14; and was numbered 2(h) from 1953-09-15 to 1971-07-14.

"ENGRAVINGS"	«GRAVURE»*
(h) "engravings" include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs;	e) l'expression «gravure» comprend les gravures à l'eau-forte, les lithographies, les gravures sur bois, les estampes et autres œuvres similaires, à l'exclusion des photographies;

§3.2.2 R.S.C. 1927, c. 32, s. 2(h)

"ENGRAVINGS"	«GRAVURE»*
(h) "engravings" include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs;	e) «gravure» comprend les gravures à l'eau-forte, les lithographies, les gravures sur bois, les estampes et autres œuvres similaires, à l'exclusion des photographies;

§3.2.3 R.S.C. 1952, c. 55, s. 2(h)

"ENGRAVINGS"	«GRAVURE»*
(h) "engravings" include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs;	h) «gravure» comprend les gravures à l'eau-forte, les lithographies, les gravures sur bois, les estampes et autres œuvres similaires, à l'exclusion des photographies;

§3.2.4 R.S.C. 1970, c. C-30, s. 2

"ENGRAVINGS"	«GRAVURE»*
"engravings" include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs;	e) «gravure» comprend les gravures à l'eau-forte, les lithographies, les gravures sur bois, les estampes et autres œuvres similaires, à l'exclusion des photographies.

§4.0 Purpose

This section provides for a non-exhaustive definition of "engravings", one type of artistic work.

§5.0 Commentary

§5.1 History

This section which has remained relatively unchanged since coming into force in 1924, is a mere duplication of subsection 35(1) of the United Kingdom *Copyright Act, 1911.*

In the United Kingdom, statutory protection for engravings could be tracked back to *An Act for the Encouragement of the Arts of designing, engraving and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned* (1735), section 1 of which read partly as follows:

> (…) That (…) every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-oscuro, or from his own works and investigation shall cause to be designed and engraved, etched, or worked, in mezzotinto or chiaro-oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; (…)

The United Kingdom Act (sometimes referred to as "Hogarth's Act"), as well as its subsequent amendments of 1767, 1777, 1836 and 1852 were held, however, not to be applicable in Canada: *Henry Graves & Co. v. Gorrie,* (1903) A.C. 496 (J.C.P.C. - Canada) Lindley J., at p. 500.

A statutory definition of "engraving" was first introduced in Canada by the Canadian *Copyright Act, 1921.* Prior to that time, however, "engravings" were nevertheless protected in Canada: see, for instance, section 1 of the Lower Canada *Copy Right Act, 1832,* section 3 of the Canadian *Copyright Act, 1868* and section 4 of the Canadian copyright Acts of 1875, 1886 and 1906.

§5.2 Interpretation

§5.2.1 "Includes"

The word "includes" is generally used in interpretation clauses to extend the meaning of words or expressions in the body of a statute. When these words or expressions are used, they must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. "It has

been established that when the statute employs the word `including' or `includes' rather than `means' the definition does not purport to be complete or exhaustive and there is no exclusion of the natural meaning of the words": see *Laidlaw v. Metropolitan Toronto (Municipality),* (1978) 2 S.C.R. 736, Spence J., at pp. 744-745.

Therefore, since introduced by the word "includes", the definition of "engravings" should be construed as illustrative or extensive and not as a complete and exhaustive enumeration. Such a definition does not provide for a complete and exhaustive enumeration and should not be restricted to the dictionary meaning since the enumeration following the word "engravings" in section 2 is added to the usual sense thereof: CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada,* 2nd ed. (Cowansville, Blais, 1992), at pp. 55-58; DRIEDGER (Elmer A.), *Construction of Statutes,* 2nd ed. (Toronto, Butterworths, 1983), at pp. 18-22; PIGEON (Louis-Philippe), *Drafting and Interpreting Legislation* (Toronto, Carswell, 1988), at pp. 32-35.

§5.2.2 "Includes"/"est assimilé"

In the process of the 1985 revision of the *Copyright Act,* the word "comprend" in the French text (as it was used since 1921; see §3.2 *Legislative History, supra*) was replaced, albeit unfortunately, by "est assimilé" which conveys the idea of comparison, similarity in a classification or incorporation in a system (*i.e.*, "assimilation") rather than one of placing in a class or category (*i.e.*, "inclusion").

§5.2.3 Ejusdem generis

A general word which follows specific words of a similar nature (as in "and other similar works"), takes its meaning from them and shall be construed as applying only to things of the same general class as those enumerated: CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada,* 2nd ed. (Cowansville, Blais, 1992), at pp. 264-270; DRIEDGER (Elmer A.), *Construction of Statutes,* 2nd ed. (Toronto, Butterworths, 1983), at pp. 111-119; LANGAN (P. St. J.), *Maxwell on the Interpretation of Statutes,* 12th ed. (Bombay, Tripathi, 1969), pp. 297-306.

To paraphrase Martland J. in *Superior Pre-Kast Septic Tanks v. R.,* (1978) 2 S.C.R. 612 at 618, to restrict the meaning of the words "and other similar works" only to engravings would mean that its use in the definition would serve no useful purpose. As the word "works" is preceded by the word "other", it certainly indicates that it is intended to refer to something other

than engravings but of the same genus. See also *British Columbia Forest Products Ltd. v. Minister of National Revenue* (1971), (1972) S.C.R. 101, Martland J., at 110.

§5.3 General

When dealing with "engravings" it is important to remember that "(A)n important characteristic of the print, therefore, is its identity as a *multiple*. While an artist could certainly create just one impression from a block or plate, the usual practice is for an *edition* of many prints to be struck". See generally SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at pp. 3-4.

"A further point concerning engravings is that each print struck off the master-block (that is, supposing a substantial amount of skill and labour went into making the block); in other words, the word 'copy' as applied to authentic prints is misleading, for each print is as authentic as its fellows and each is an 'original'. The block is a 'plate' within the meaning of s. 18 of the (1956 United Kingdom Copyright) Act" (*cf.* definition of "plate" in section 2 of the Canadian *Copyright Act*): see LADDIE (Hugh) et al., *The Modern Law of Copyright* (London, Butterworths, 1980), at no. 3.17 but see LADDIE (Hugh) et al., *The Modern Law of Copyright and Designs,* 2nd ed. (London, Butterworths, 1995), at no. 3.22 with respect to the United Kingdom Copyright Act of 1988.

§5.3.1 Printmaking

The definition of "engravings", found in section 2 of the *Copyright Act* has a larger scope than its dictionary definition as it covers also other printmaking techniques, provided the resulting work is not a photograph as defined in section 2.

The four major traditional categories of printmaking are:

i) *relief prints* which result from a raised printing surface; these techniques include woodcut, linocut and wood engraving;

ii) *intanglio printing* in which the image areas are depressed below the surface of the plate; these techniques include engraving, etching, drypoint, mezzotint, and aquatint;

iii) *lithography* which is a planographic process where the printing surface is flat and the printing depends on chemical reaction;

iv) *serigraphy* (also known as silkscreen, screenprinting or mitography), which is an adaptation of the basic stencil-making technique.

See also GILMOUR (Pat), *Understanding Prints: a Contemporary Guide* (London, Waddington, 1979), at p. 6.

Relief printing. Relief printing is a technique in which the image is printed from a raised surface to which ink has been applied. The block surface is usually produced by cutting away non-image areas: cutting away the background as in a woodcut or a linocut; carving the image as in wood engraving or xylography; metal collage or adding objects to a flat surface as in metal relief. "In relief printing the flat surface of a block is cut into, removing the non-printing parts of the design, so that the desired image or pattern provides a printing surface. The surface is inked with a roller and printed in a press or burnished by hand using a wooden spoon": see ALLEN (Trevor), *Relief Printing,* in RUSS (Stephen) ed., *A Complete Guide to Printmaking* (New York, Viking, 1975), at p. 69.

Intanglio. "The several processes grouped under the category of intanglio have in common the incision of lines or images into a surface, usually of metal. Intanglio prints result when the incised areas are filled with ink or similar substance for transfer of the image to paper. Whereas the relief processes rely on a raised printing surface, the printing areas in intanglio are depressed below the surface of the plate. The vehicle for cutting into the metal or other material may be either a sharp tool (engraving, wood engraving, drypoint, mezzotint) or an acid solution (etching, aquatint). Once the plate has been cut, the depressed areas are filled with ink and the non-printing surface wiped clean. Pressure forces the paper into the depressed areas, and the image is transferred": see SAFF (Donald) et al., *Printmaking: History and Process* (NewYork, HRW, 1978), at p. 89.

Lithography. Lithography is a planographic process in which, unlike the wood block or intanglio plate, the printing and non-printing areas of the stone or plate share the same surface. The printing in the lithographic process is based on the principle that grease and water do not mix.

Serigraphy. Serigraphy is a printing technique that "makes use of a squeegee (i.e., a tool for pushing the ink to a screen) to force ink directly onto a piece of paper or canvas through a stencil (i.e., a means of blocking the passage of

ink through the non-image areas of the screen) containing the image": see SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 429.

§5.3.2 Enumeration

The definition of "engravings", provided for in section 2 refers specifically to several specific techniques, namely engraving, etching, lithograph, print, and other similar works.

In order to ascertain the true meaning of these terms, which are not otherwise defined in the *Copyright Act*, reference could be made to common dictionaries as well as technical ones. See *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1984), (1985) R.P.C. 128 (N.Z.C.A.) Davidson J., at p. 150: "In so far therefore as those definitions (of "engraving" and "sculpture") are merely inclusive and are not exhaustive of the original meanings of "engraving" and "sculpture", the court can have regard to the ordinary meanings of such words as ascertained from various sources".

Furthermore, in order to ascertain the meaning of these words, one has also to refer to their meaning at the time of their introduction in the *Copyright Act, 1921*, since words in a legislative act possess the definition they had at the time when the act was adopted: see BARBE (Raoul P.), *Les définitions contenues dans les actes législatifs et réglementaires* (1983), 43 Revue du Barreau 1105, at pp. 1119-1120.

§5.4 Definitions

§5.4.1 Engravings

In the 1984 Third Revised Edition of the *Shorter Oxford Dictionary Based on Historical Principles* ("SOED"), "to engrave" is defined as "to sculpture; to cut into; to mark by incisions; to carve upon a surface; to represent by incisions upon wood, metal, stone, etc. *with the view of reproducing by printing"* (emphasis added). From a more technical point of view, "engraving" is an intanglio technique "in which the image is produced by cutting a metal plate directly with a sharp engraving tool. The incised lines are inked and printed with heavy pressure": see SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 427.

To "engrave" includes not only the making of the plate but also the making of prints from the engraved plate: see *James Arnold & Co. Ltd. v. Miafern*

Limited, (1980) R.P.C. 397, Baker J., at 403-404 (Ch. D.), where it was held that the production of a flying disc by injection moulding from a mould which was an engraving did not prevent the disc from also being an engraving. To the same effect, see also *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1984), (1985) R.P.C. 128, Davidson J., at 152 (N.Z.C.A.). Under this New Zealand case, the definition of "engravings" has been extended to mean the process as well as the resulting product. In Australia, however, a view contrary to this liberal interpretation was expressed in *Greenfield Products Pty. Ltd. v. Rover-Scott Bonnar Ltd.* (1990), 17 I.P.R. 417, Pincus J., at 428 (Austr. F.C.); *Talk of the Town Pty. Ltd. v. Hagstrom* (1990), 19 I.P.R. 649, Pincus J., at 655 (Austr. F.C.), where the court refused to consider a mould and the resulting product as "engravings".

§5.4.2 Etchings

In the SOED, "to etch" is defined as "to engrave by eating away the surface of with acids; chiefly, to engrave (a metal plate) by this process for the purpose of printing from it" while, from a more technical point of view, "etching" is an intanglio technique "in which a metal plate is first covered with an acid resistant ground (i.e., surface), then worked with an etching needle. The metal thus exposed is "eaten" in an acid bath, creating depressed lines which are later inked and printed": see SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 425.

"Etching is a process that uses the reaction of acid to 'bite' selected lines or areas below the surface of a flat metal plate" while in engraving, "lines incised into metal plates by hand rather than by the action of acid": SHIRREF (Jack), *Etching and Engraving,* in RUSS (Stephen) ed., *A Complete Guide to Printmaking* (New York, Viking, 1975), at pp. 101 and 118.

§5.4.3 Lithographs

In the SOED, "lithography" is defined as "printing or impressing from a drawing on a stone", while on a more technical point of view, it is a "printing technique in which the image areas on a lithographic stone or metal plate are chemically treated to accept ink and repel water while the non-image areas are treated to repel ink and retain water. Because the printing surface remains flat, lithography is sometimes referred to as a planographic technique": see SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 428.

> The basic principle of the lithographic process is the natural antipathy of grease and water. The sensitized stone or plate is drawn upon with a

> grease-based material, such as liquid ink or chalk, which is instrumental in making the positive marks of an image. The surface is then treated chemically by means of an etch, which desensitizes the undrawn areas of the stone to the reception of further grease during the printing process and stabilizes the drawn image. (…) The grease image which has been stabilized on the stone through the etching process is then 'washed out' with a grease solvent; the original drawing material is washed away, leaving a grease deposit which has been absorbed into the grained surface of the stone. The surface is then dampened with water which rides away from the grease areas; when a roller charged with oily ink is passed over the surface the ink is attracted only to the greasy areas of the stone, the water film on the non-image areas acting as a barrier to the ink between roller and stone. The plate or stone now has an image holding printing ink and is ready for printing.

(See COX (Alan), *Lithography*, in RUSS (Stephen) ed., *A Complete Guide to Printmaking* (New York, Viking, 1975), at p. 37.)

§5.4.4 Woodcuts

"Woodcut", which is an engraving performed on wood, is defined in the SOED as "a design cut in relief on a block of wood, for printing from". In SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 430, it is the "relief print made on the plank side of a block of wood", "wood engraving" (or xylography) being therein described as the "relief print made on the end grain of a block of wood. The relief areas are inked and printed".

§5.4.5 Prints

As found in SOED, "to print" is the action "to stamp or impress characters, figures, patterns or the like, transferred by pressure from plates, type, or the like". More technically, it is described in SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 429, as the "image produced on paper or another material by placing it in contact with an inked block, plate, collage or stone and applying pressure; or pressing ink onto a sheet of paper through a stencil".

As a print is an indentation or mark in a surface made by the pressure of one body on another, it allows Davidson J., in *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1984), (1985) R.P.C. 128 (N.Z.C.A.) to conclude, at p. 154, "that in the ordinary sense an image produced from an engraved plate is a print and thus falls within the definition of 'engraving'".

"The inclusion of the word "print" in the list is puzzling, since all of the other things mentioned are also prints: in each case a print is made from a plate or block, Presumably, therefore, the phrase "print or similar work" is meant to include prints made by the processes not falling within any of the preceding categories, but is also to be construed *ejusdem generis*. It is not supposed that it does not include a mere printed page of letterpress made from a stereotype in the usual way, but is confirmed to pictures or designs or other things meant to be appreciated visually": (see LADDIE (Hugh) et al., *The Modern Law of Copyright* (London, Butterworths, 1980), at no. 3.17).

§5.5 "Or other similar works"

In view of the *ejusdem generis* rule discussed above, engravings could also encompass other printmaking techniques such as: chromolithography, which is a lithography technique used principally to reproduce paintings and watercolors; aluminography (or algraphy), which is lithography on aluminum plate; zincography, which is lithography on zinc plate; autolithography, where the original is made directly on the plate; vacuum forming; or gum printing.

"Engravings" are not to be construed as limited to the process of cutting or otherwise working a surface. In *James Arnold & Co. Ltd. v. Miafern Ltd.*, (1980) R.P.C. 397 (Ch. D.) it was held that rubber stereos for use in making designs on printed textiles such as scarves were engraving even though produced by moulding rather than by cutting out.

Whether the "records, perforated rolls and other mechanical contrivances by means of which sounds may be mechanically reproduced" aimed by former subsection 5(3) (R.S.C. 1985, c. C-42) or the newly defined "sound recordings" (S.C. 1997, c. 24, s. 1(5)) could also — at least with respect to the older techniques of manufacturing them — constitute "engravings" within the meaning of the section 2 definition of this term, is left open for judicial determination; see also paragraph 64(2)(b).

§5.6 "Not being photographs"

It is noteworthy that photographs are specifically excluded from the broad definition of "engravings". Such an exclusion may result from the state of the art at the time when the *Copyright Act, 1921* was passed, as some techniques used in the infancy of photography were parental to those used in engraving and etching.

The fact is that the "processes analogous to photography" referred to in the non-exhaustive definition of "photograph" in section 2, were sometimes of a similar nature to those referred to in the art of engraving, or intermingled with them. See the related discussion under section 2 and section 10.

For instance, the *collotype* (or heliotype, or photogelatine printing) is a "high-quality reproduction process using a gelatine coated glass plate to hold the image related to lithography": see SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978), at p. 426. The *glass print* (or cliché verre), print made by photographic means from an image scratched through a light-resistant emulsion on a sheet of clear glass; the *heliogravure* is a photomechanical intanglio printing process; *photogravure* is an intanglio printing process in which the image has been placed on the plate by photographic means using carbon tissue (i.e., gelatine-coated paper that can be light-sensitive); *photolithogravure* (which is specifically mentioned in the definition of photograph) is a technique for producing an image on a lithographic plate by photographic means.

"Since products of photography and kindred processes are not engravings it follows that such works as photolithographs, photogravures and products of typesetting are not included in the scope of the term": LADDIE (Hugh) et al., *The Modern Law of Copyright* (London, Butterworths, 1980), at no. 3.17. In this regard it is of interest to note that the definition of "plate" in section 2 could apply to photographs as well as engravings.

An interesting but unresolved problem arises when engraving and photograph techniques are mixed (as in photo-engraving, photo-screenprint or photo-etching) so as to form one work of art: see SHIRREF (Jack), *Etching and Engraving,* in RUSS (Stephen) ed., *A Complete Guide to Printmaking* (New York, Viking, 1975), at pp. 122-128.

§5.7 Term of Copyright

Engravings and photographs are two types of artistic works within the meaning of section 2. Their respective term of protection, however, may differ as engravings are governed by the general rule of "life plus fifty" laid down in section 6, while the term of protection for photographs is, according to section 10, set the remainder of the calendar year of the making of the original negative and a period of fifty years thereafter.

Furthermore, the special computation of the term of copyright in posthumous work referred to in section 7 applies to engravings but not to other artistic works.

§5.8 Author and Owner

§5.8.1 The engraver

As expressed by STERLING (J.A.L.) et al., *Copyright Law in the United Kingdom,* 1st ed. (London, Legal Books, 1986), at no. 243: "The author of the engraving, as regards the copyright in the engraved plate, will be the person who engraved it. Where a separate and distinct copyright in the impression belongs to the person who produced the impression (other than the person who engraved the plate, see above), there will be two authors to consider, the author of the engraved plate, and the author of the impression. The exercise of the impression copyright must, however be subject to the rights of the author in the engraved plate, since every impression will reproduce in material form the work incorporated in the plate". As to the impression of the engraving, the authorship has nevertheless to answer to the general test of originality: see commentary under section 2 definition of "every original … work".

§5.8.2 Derivative works

Moreover, the fact that an engraving is based on an existing work will not prevent this engraving from being copyrightable by itself. In *Martin v. Polyplas Manufacturers Ltd.*, (1969) N.Z.L.R. 1046 (H.C.) it was decided that engravings made from photographs of a third party's original designs of decimal coins were nevertheless original artistic works, at pp. 1049-1050:

> The engraving represents a change of medium in which the original design has been converted into a three-dimensional form. (…) it was the skill in working out the third dimension which makes the work an original artistic work. (…) I hold, then, that the independent labour and skill employed by the plaintiff in working from the photographs of Mr. Berry's designs was such as to entitle him to copyright protection in respect of his engravings as an original artistic work.

See also PHILLIPS (Charles Palmer), *The Law of Copyright in Works of Literature and Art and in the Application of Designs* (London, Stevens, 1863), at pp. 213-214 and LADDIE (Hugh) et al., *The Modern Law of Copyright* (London, Butterworths, 1980), at no. 3.18.

However, the creation and exploitation of the engraving, as a derivative work, could, depending on the circumstances, be subject to the rights of the copyright owner in the underlying work: see, for instance, BRAITHWAITE (William J.), *Derivative Works in Canadian Copyright Law* (1982), 20 Osgoode

Hall Law Journal 191 and LEVENTAL (Jessica A.), 1 Intellectual Property Journal 271, at pp. 273-274.

§5.8.3 Commissioned engraving

Ownership of the copyright in engravings is governed by the general rule laid down in subsection 13(1) (*i.e.*, the author is the first owner of copyright) and section 14.1 (*i.e.*, moral rights). Apart from the exceptions of subsection 13(3) (*i.e.*, work made in the course of employment) and section 12 (*i.e.*, where copyright belongs to the Crown), it is important to bear in mind the specific provision of subsection 13(2) by virtue of which the first owner of the copyright in an engraving is the person

i) by whom the plate or other original of an engraving

ii) was ordered and

iii) was made for valuable consideration

iv) in pursuance of that order,

v) unless there is an agreement to the contrary and

vi) subject to the moral rights of the author.

See *Con Planck Ltd. v. Kolynos Inc.,* (1925) 2 K.B. 187 (K.B.D.); *Toronto Carton Co. v. Manchester McGregor Ltd.*, (1935) O.R. 144 (Ont. H.C.J.).

An engraving could constitute a "contribution" to a periodical so that even the ownership of the copyright will be vested in the employer. The engraver will nevertheless be entitled to restrain the publication of his engraving otherwise than as part of a periodical: subsection 13(3). See also *Nicol v. Barranger* (1920), (1917-23) MacG. Cop. Cas. 219, Peterson J., at 227-228 (Ch. D.); reversed on other grounds (1921), (1917-23) MacG. Cop. Cas. 230 (C.A.).

§5.9 Artistic Character

It is not necessary to make an aesthetic judgment in respect of an engraving, as a species of artistic work, before determining the subsistence of copyright therein: see *L.B. (Plastics) Ltd. v. Swish Products Ltd.,* (1979) R.P.C. 611 (H.L.). Therefore, an engraving may be protected

irrespective of any artistic merit: *Martin v. Polyplas Manufacturers Ltd.,* (1969) N.Z.L.R. 1046 Wild J., at 1049, (H.C.).

In that regard, it should be remembered that "the phrase 'artistic work' (found in section 2) is used merely as a general description of the type of works which follows. It is used as a general description of works which finds expression in a visual medium as opposed to works of literary, musical or dramatic expression": see *DRG Inc. v. Datafile Ltd.* (1987), (1988) 2 F.C. 243, Reed J., at 253 (F.C.T.D.); see also the definition of "design" in subsection 64(1).

It follows that etchings, lithographs, prints and engravings as well as their casts and moulds, could be protected under the *Copyright Act* as "artistic works" even though those works are deprived of artistic merit, at least from a merely aesthetical point of view.

§5.10 Infringement

Copying an engraving by photography, lithography or any other process, whether mechanical or otherwise, may constitute an infringement of the exclusive rights conferred by subsection 3(1): see *Gambart v. Ball* (1863), 14 C.B.N.S. 306, Erle J., at 315-316 (C.P.); see also section 2 definition of "infringing" and LADDIE (Hugh) et al., *The Modern Law of Copyright,* 2nd ed. (London, Butterworths, 1995), at no. 3.22.

§5.10.1 Statutory exceptions

Subsection 32.2(1) provides that, in certain circumstances, some acts will not constitute an infringement of copyright.

Paragraph 32.2(1)(b) provides that the reproduction of, *inter alia,* engravings of an architectural work will not constitute an infringement of copyright provided that the copy is not in the nature of an architectural plan or an architectural drawing.

Paragraph 32.2(1)(b) provides that the reproduction of, *inter alia,* engravings of i) a sculpture, ii) a work of artistic craftsmanship, iii) a cast of a sculpture, iv) a model of sculpture, v) a cast of a work of artistic craftsmanship, or vii) a model of a work of artistic craftsmanship work provided these are permanently situated in a public place or public building will not constitute an infringement of copyright.

Paragraph 32.2(1)(a) provides, *inter alia,* that it is not an infringement of copyright for the author of an artistic work to use any i) mould, ii) cast, iii) sketch, iv) plan, v) model, or vi) study this author made for the purpose of that work, provided the author does not repeat or imitate the main design of that work.

Copyright protection for an engraving does not require that such engraving be made in a single copy. However, in respect to engravings created *before June 8, 1988*, former section 46 of the *Copyright Act* creates an exception to the general rule regarding copyright protection wherein an engraving may be deprived of copyright protection under certain circumstances if they are intended to be reproduced in more than fifty copies and capable of being registered under the *Industrial Design Act* (R.S.C. 1985, c. I-9): see FOX (Harold George), *The Canadian Law of Copyright and Industrial Designs*, 2nd ed. (Toronto, Carswell, 1967), at pp. 159-165; GOULD (Robert D.), *Copyright in Three Dimensions — New Dimensions* (1980-81), 8-10 Patent and Trademark Institute of Canada Bulletin 534.

With respect to engravings created *after June 8, 1988,* reference should be made to subsection 64(2) which provides that such works are still copyrightable but that copying of same, under certain circumstances, may not constitute infringement of the copyright therein; see related discussion under section 64.1.

§5.10.2 Criminal law

Paragraph 42(2)(a) of the *Copyright Act* enacts that every person who knowingly makes or possesses any plate, for the purpose of making infringing copies of any work in which copyright subsists, is guilty of an offence and liable on summary conviction or conviction on indictment.

An interesting cross-reference could be made to subsections 369(b) and 409(1) and section 459 of the *Criminal Code* (R.S.C. 1985, c. C-46) which read as follows:

369. Every one who, without lawful authority or excuse, the proof of which lies on him,	369. Quiconque, sans autorisation ni excuse légitime, dont la preuve lui incombe, selon le cas:
...	…
(b) makes, offers or disposes of or knowingly has in his possession any plate, die, machinery, instrument or other writing or material that is adapted and intended to be used to commit forgery.	(b) fait, offre ou aliène ou sciemment a en sa possession quelque plaque, matrice, appareil, instrument ou autre écrit ou matière adaptés et destinés à servir pour

commettre un faux;

…

est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans.

409. (1) Commet une infraction quiconque fait, a en sa possession ou aliène tout poinçon, matrice, machine ou autre instrument destiné à être employé pour contrefaire une marque de commerce, ou conçu à cette fin.

458. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, sans justification ou excuse légitime, dont la preuve lui incombe :

(a) soit fabrique ou répare;
(b) soit commence ou se met à fabriquer ou à réparer;
(c) soit achète ou vend;
(d) soit a en sa garde ou possession,

une machine, un engin, un outil, un instrument, une matière ou chose qu'il sait avoir été utilisé à la fabrication de monnaie contrefaite ou de symboles de valeur contrefaits ou qu'il sait y être adapté et destiné.

…

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

409. (1) Every one commits an offence who makes, has in his possession or disposes of a die, block, machine or other instrument designed or intended to be used in forging a trade-mark.

458. Every one who, without lawful justification or excuse, the proof of which lies on him,

(a) makes or repairs,
(b) begins or proceeds to make or repair,
(c) buys or sells, or
(d) has in his custody or possession,

any machine, engine, tool, instrument, material or thing that he knows has been used or that he knows is adapted and intended for use in making counterfeit money or counterfeit tokens of value is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

See also section 38 of the *Copyright Act* with respect to the conversion of the plates used or intended to be used for the production of infringing copies of works or of other subject-matter of copyright.

§5.11 Typefaces

> The invention of typography confirmed and extended the new visual stress of applied knowledge, providing the first uniformly repeatable commodity, the first assembly line and the first mass-production.
>
> –Marshall MacLuhan, *The Gutenberg Galaxy* (Toronto, Routledge, 1962).

The design of a typeface could be entitled to copyright protection as an engraving or an artistic work provided such a design is original and not common to the trade: see section 2 definition of "every original … work", and LIMBERG (Theodore), *La protection juridique des caractères typographiques/The juridical protection of typographic type* (1964), 44 Revue internationale du droit d'auteur 174, at pp. 187-199.

In the United States of America, The House Report of the 1976 revision of the Copyright Act, 94th Congress, 2d Sess. (1976), at p. 5668, considered a "typeface" in the following terms:

> A typeface can be defined as a set of letters, numbers, or other symbolic characters, whose forms are related by repeating design elements consistently applied in a notational system and are intended to be embodied in articles, whose intrinsic utilitarian function is for use in composing text or other cognizable combinations of characters.

As to the artistic nature of typeface STOYANOV (Kaloyan), *La protection juridique des caractères typographiques* (Genève, Droz, 1981) wrote, at p. 11:

> Bien plus qu'un produit industriel, les caractères typographiques sont une création artistique. Leur rôle n'est pas simplement de servir de support de la pensée écrite, mais de l'illustrer. Comme le souligne A. Novarese (in *L'esprit de la création en typographie*, Paris 1962)) «Le créateur de caractères doit donner vie à ses lettres, afin d'exprimer une idée nouvelle; le dessin de l'alphabet doit colorer les mots et la pensée moyennant la seule force de sa propre forme, il doit avoir une physionomie exacte, un propre visage sur lequel peut apercevoir une émotivité». Le créateur de caractères complète ainsi l'apport intellectuel de l'auteur par une satisfaction visuelle directe. En sensibilisant le lecteur par la forme extrinsèque qu'il associe à la valeur intrinsèque du texte, il s'affirme comme un artiste à part entière.

The protection of the typefaces and their international deposit is the subject-matter of the *Vienna Agreement* of 1973 to which, however, Canada is not a party. However, it is submitted that typeface designs are artistic works that deserves the same copyright protection as other artistic works, as illustrated in the discussion of authorship found in CARROLL (Terrence J.), *Protection for typeface designs: a copyright proposal* (1994), 10-1 Santa Clara Computer and High Technology Journal 139, at pp. 144-148.

§6.0 Case Law

§6.1 Canada

1. *Toronto Carton Co. v. Manchester McGregor Ltd.*, (1935) 2 D.L.R. 94, Rose J. (Ont. H.C.J.).

> Now, if the plaintiffs had been alleging that they were the owners of the copyright in the engraving (ex. 6) — "engravings" include "lithographs, wood-cuts, prints, and other similar works, not being photographs" (s. 2(h) — and that that the copyright had been infringed, then the proviso might have assisted them, for probably the "plate or other original" from which the "engraving" (print) was made was ordered by them and was made for valuable consideration in pursuance of their order. But no "engraving" was ever made of which the sketch (ex. 1) was the original, and the claim of copyright has nothing to do with "the case of an engraving, photograph, or

portrait." What is claimed is, on the contrary, copyright in a sketch which may have been intended to be used as the original of an engraving but which never was used for the purpose intended. (at p. 98)

2. *DRG Inc. v. Datafile Ltd.* (1987), (1988) 2 F.C. 243, Reed J. (F.C.T.D.).

Specifically, then, with respect to the respondent's label designs, first of all, it is my view that they fall within the enumerated classes of works set out in the definition of artistic work. They come within the category of "engravings"; that concept is expanded by section 2, to include:

> **2.** … etchings, lithographs, woodcuts, prints and *other similar* works, not being photographs; (Emphasis added.)

Mr. Barber, in paragraph 22 of his affidavit, states "each of the labels … is a coloured print, printed on white paper in a printing press by printing plates or engravings". That evidence has not been challenged.

If I am wrong in this and the respondent's work, which I would characterize as a graphic design, does not fall within the specifically enumerated category "engravings", then I would hold that it falls within the general category of artistic works as being analogous to an engraving. (at p. 253)

§6.2 United Kingdom

1. *Newton v. Cowie* (1827), 4 Bing, 234, Best J. (C.P.).

An engraver is always a copyist, and if engravings from drawings were not to be deemed within the intention of the legislature, these acts would afford no protection to that most useful body of men, the engravers. The engraver, although a copyist, produces the resemblance by means very different from those employed by the painter or draftsman from whom he copies; — means which requires great labour and talent. The engraver produces his effects by the management of light and shade, or, as the term of his art expresses it, the chiaro oscuro. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines or dots himself, and on his choice depends the success of his print. If he copies from another engraving, he may see how the person who engraved that, has produced the desired effect, and so without skill or attention become a successful rival.

The first engraver does not claim the monopoly of the use of the picture from which the engraving is made; he says, take the trouble of going to the picture yourself, but do not avail yourself of my labour, who have been to the picture, and have executed the engraving. (at pp. 245-246)

2. *Gambart v. Ball* (1863), 32 L.J.C.P. 166 (dealing with the *Engraving Copyright Acts)* Erle J. and Keating J. (C.P.).

The object of the statute was to secure to the inventor the commercial value of his article, as a reward for making an object of attraction, and as a

stimulant to others to do likewise. As photographic copy is as good, if not better copy than any other, whether it be on a large or on a small scale. It is not the extent of the paper, but the design put upon it, and the ideas which that design conveys, that are the source of the pleasure. Nor does it appear to me that it makes any difference that the copy is produced by a process not known at the time the statute was passed. It is still a copy, and copying in any manner is prohibited by the statute. It is clear that, if these photographic copies were allowed to be made, the commercial value of these works of art would be entirely destroyed. (Erle J., at p. 168)

The intention of the act is clear, to vest property of a commercial value in the inventor or original engraver. The publication and sale of photographic copies would undoubtedly very much diminish, if not entirely destroy, the commercial value of such property, and such copies are therefore presumably within the intention of the framers of the act. (Keating J., at p. 168)

3. *Dicks v. Brooks,* (1880) 15 Ch. D. 22, James L.J. (C.A.).

Now it appears to me that the protection given by the subsequent Acts to the mere engraver was intended to be, and was, commensurate with that which the engraver did, that the engraver did not acquire against anybody in the world any right to that which was the work of the original painter, did not acquire any right to the design, did not acquire any right to the grouping or composition, because that was not his work but the work of the original painter. What, as it seems to me, the Act gave him, and intended to give him, was protection for that which was his own meritorious work. The art of the engraver is often of the very highest character, as in the print before me. It is difficult to conceive any skill or art much higher than that which has by a wonderful combination of lines and touches reproduced the very texture and softness of the dress, and the expression of love and admiration in the eyes of the lady looking up at her lover. That art or skill was the thing which, as I believe, was intended to be protected by the Acts of Parliament. (at p. 34)

4. *Banco de Portugal v. Waterlow & Sons Ltd.* (1932), (1928-35) MacG. Cop. Cas. 340 (headnote) (H.L.).

A banknote is an engraving and the copyright belongs to the bank to whose order the design was executed.

A printer employed by a bank to design, engrave and print a banknote is under an absolute obligation not to use the plate otherwise than for printing notes authorised by the bank, and if he prints and delivers to some third person any notes not so authorised he is liable in damages for breach of contract or alternatively for infringement of copyright and conversion of the infringing copies.

5. *James Arnold & Co. v. Miafern Ltd.*, (1980) R.P.C. 397, Baker J. (Ch. D.).

> "Engraving" can and usually does mean an image produced from an engraved plate. The first question here is whether the engraving can mean the actual engraved plate from which the copies are taken. Looking at the sections alone, particularly the association of the word in section 3 with sculptures, drawings and photographs, it would suggest that it must be the final picture, and of course it certainly includes that … In the Copyright Act 1911 section 5(1), the matter is set out a little more clearly as to the commissioning of engraving: "Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: provided (a) where in the case of an engraving, photograph or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of an agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright". That seems to suggest that if a person commissions a plate then he is the owner of the copyright in any engraving, in the sense of the image, made from it. The copyright was placed in the image that belonged to the person who had ordered the plate in the case of commissioned works. I cannot think that the Copyright Act 1956 meant to alter the rule so that copyright does not exist at all in the plate. It would be strange if one could infringe the copyright by copying the image but not by taking an impression from the engraved plate. It is for those reasons that I concluded that "engraving" in section 4(3), and in the Act generally, embraces not only the image made from the engraved plate but the engraved plate itself. (at 403)
>
> Then it is said that to be an engraving it must be made by the engraving process, something which is made by cutting into the metal or wood or other material. I do not consider the matter is so confined. The definition in section 48 is in terms of particular works and does not direct to the process by which they achieve that form. It is also significant that it was thought necessary to exclude photographs expressly. Evidently the draughtsmen would think that they would otherwise be engravings or produced from engravings. The purpose of the Act is to protect original artistic craftsmanship, it is not to limit to one particular mode of expression rather than another. In these days of mass production the picture or design is produced by a complex series of artefacts and I would regard the final one in the line which is used to mass produce a design as an engraving even though of itself it may not on the other hand has sufficient originality, be mechanically and slavishly reproduced from earlier artefacts, or on the other it is produced by moulding rather than by cutting out. I have not found this at all an easy matter but my conclusion is that rubber stereos are engravings for the purpose of the Act. (at 403-404)

6. *Newspaper Licensing Agency Ltd. (The) v. Marks & Spencer Plc* (2001), (2002) 3 All E.R. 977, Hoffman J. (U.K. H.L.), at paragraph 5:

> 5. Copyright in a typographical arrangement is of relatively recent origin, having been created by the Copyright Act 1956. It can be traced to two developments in the publishing industry, one of them artistic and the other technological. The first was the great improvement in typographical design which is associated with the arts and crafts movement in the last two decades of the nineteenth century and the first two of the twentieth. A new

font could be registered as a design but the typographic layout of a particular book, which may have taken considerable skill and effort, was not as such protected. The second was the development since the First World War of the technique of photo-lithography, which enabled printing plates to be made by photographic means. Publishers were concerned that the skill and labour which had gone into the typographical design of fine editions of classical works (out of literary or musical copyright) could be appropriated by other publishers who used photo-lithography to make facsimile copies.

7. *Newspaper Licensing Agency Ltd. (The) v. Marks & Spencer Plc* (2001), (2002) 3 All E.R. 977, Hoffman J. (U.K. H.L.), at paragraphs 23, 24 and 25:

> 23. In the case of a modern newspaper, I think that the skill and labour devoted to typographical arrangement is principally expressed in the overall design. It is not the choice of a particular typeface, the precise number or width of the columns, the breadth of margins and the relationship of headlines and strap lines to the other text, the number of articles on a page and the distribution of photographs and advertisements but the combination of all of these into pages which give the newspaper as a whole its distinctive appearance. In some cases that appearance will depend upon the relationship between the pages; for example, having headlines rather than small advertisements on the front page. Usually, however, it will depend upon the appearance of any given page. But I find it difficult to think of the skill and labour which has gone into the typographical arrangement of a newspaper being expressed in anything less than a full page. The particular fonts, columns, margins and so forth are only, so to speak, the typographical vocabulary in which the arrangement is expressed.
>
> 24. I would therefore agree with the general approach of the Federal Court of Australia in the appeal from the decision of Wilcox J. in *Nationwide News Pty. Ltd. v. Copyright Agency Ltd.* 136 ALR 273, where the question of substantiality is discussed in greater depth than in the court below. Sackville J. said, at p. 291:
>
> > "In relation to a published edition, the quality of what is taken must be assessed by reference to the interest protected by the copyright. That interest…is in protecting the presentation and layout of the edition…"
>
> 25. In the Court of Appeal in this case, Peter Gibson LJ, at p. 267G recorded a common submission by Mr. Silverleaf QC and Mr. Garnett QC (then appearing for Marks and Spencer and the NLA respectively) that the test of substantiality was quantitative rather than qualitative because copyright in a typographical arrangement is "not dependent on originality". I am not sure that this is right. The test is quantitative in the sense that, as there can be infringement only by making a facsimile copy, the question will always be whether one has made a facsimile copy of enough of the published edition to amount to a substantial part. But the question of what counts as enough seems to me to be qualitative, depending not upon the proportion which the part taken bears to the whole but on whether the copy can be said to have appropriated the presentation and lay out of the edition. That

is why I said earlier that I do not think it is likely to matter whether the supplements or inserts in a newspaper are separate published editions.

8. *Hi-Tech Autoparts Ltd. v. Towergate Two Ltd.* (2001-07-25), (2002) FSR 15 (Eng. Pat. County Ct.) Recorder Floyd, at pp. 264-265:

> One had to remember that both the plate itself and the print produced from it are protected. The plate is recognized by the statute to be an artistic work of its own right. The appearances of the plate may well be affected by the internal shape and texture of the cuts made in it. The skill and labour of the engraver in shaping the internal surface of the cuts he makes in the plate should in my judgment be protected along with the work which affects the appearance of the final print. (at p. 264.)
>
> It is true that *Whamp-O* (1985) R.P.C. 127 (N.Z.C.A.) Davidson at p. 153 was not approved by Pincus J. sitting in first instance in the Federal court of Australia in *Greenfield Products Pty. Ltd. v. Rover-Scott Bonnar Ltd.* 17 IPR 417. He was of the view, with which I agree, that not all cutting of metal is engraving. As he pointed out, cutting a metal rod into sections is not to engrave it. He preferred the view that engraving (see p. 428):
>
> > has to do with marking, cutting or working the surface- typically a flat surface- of an object. (at p. 265.)

§6.3 United States

1. *Wood v. Abott,* 30 F. Cas. 424, Shipman J. (C.C.N.Y. 1866).

> The principal ground upon which the plaintiffs claim the validity of the copyright is, that, as they allege, the photographs are "prints". (…) This is a new and beautiful art, discovered long after the statute in question was enacted. It is not a development of the art of making prints or engravings which existed at the date of the act. (…) This new art of photography, and all its kindred processes, is an entirely original and independent mode of taking pictures of material objects, and multiplying copies of such pictures at pleasure. (…) No block, plate, or stone is engraved. No figure is drawn, etched, raised or worked on any surface from which copies are to be produced by impression or printed. The image thrown by light reflected from the original and passed through a camera produces a negative, and, when the light passes through the transparent negative on to appear held in contact with glass, it produces a positive. The image is no more formed by pressure when the positive is made on the paper held in contact with the glass plate, than when the negative is made on the glass by rays reflected from the original at a distance. In both cases, the only force that contributes to the formation of the image is the chemical force of the light, operating on a surface made sensitive to its power. (…) It is an entirely original and independent method of producing and multiplying pictures — an art, not of printing or engraving, but of securing the delineation of pictures by light operating on sensitive surfaces. (at p. 425)

2. *Yuengling v. Schile,* 12 F. 97, Brown J. (C.C.S.D.N.Y. 1892).

> The chromo in question is nothing but a lithographic *print* in colors. Lithographs were undoubtedly embraced in the term "print" under the act of 1831. ... The only difference between chromo-lithographic prints and other lithographs is that the former are printed from several stones, namely, one for each color, while the latter are printed from one stone, with ink of some kind. It cannot be contended that a "print" is any less a "print" because struck off in different colors; and it has been held that playing cards printed in colors are "prints." *Richardson v. Miller,* 3 Law & Eq. Rep. (Am.) 614.... Chromo-lithographs were therefore copyrightable as "prints" under the act of 1831. (at p. 107)

3. *Adobe Systems Inc. v. Southern Software Inc.* (1998), 45 U.S.P.Q. (2d) 1827, Whyte J. (N.D. Cal.).

> Adobe contends that King copied literal expressions. (Literal expression is the computer code itself. Computer Associates, Int'l v. Altai, Inc., 982 F. 2d 693, 702 (2nd Cir. 1992). Non-literal expression is everything about a computer program not expressed in the code. Cognotec Services Ltd. v. Morgan Guaranty Trust Co., 862 F. Supp. 45, 49 (S.D.N.Y. 1994)) Adobe contends that while the shape of the glyph necessarily dictates some to the points to be chosen to create the glyph, it does not determine all the points to be chosen. Thus, each rendering of a specific glyph requires choices by the editor as to what points to select and where to place those points. Accordingly, Adobe asserts that the selection of points and the placement of those points are expression which is copyrightable in an original font output program. The actual code is dictated by the selected points.
>
> (...)
>
> The evidence presented shows that there is some creativity in designing the font software programs. While the glyph dictates to a certain extent what points the editor make creative choices as to what points to select based on the image in front of them on the computer screen. The code is determined directly from the selection of the points. Thus, any coping of the points is copying of literal expression, that is, in essence, copying of the computer code itself.
>
> Further, the selection of points is not dictated by functional concerns only. See 57 Fed. Reg. 6201-2 ("Registrability of Computer Programs that Generate Typefaces," 57 Fed. Reg. 35 (February 12, 1992)). Defendants argue the efficiency is the key which is driven by the goal of minimizing the number of reference points. However, simply because there are several ways to create the same glyph, some being more efficient than others, i.e. using fewer points, does not mean there is no creativity in the process of creating the software to produce the glyphs. That some creativity is involved is illustrated by the fact that two independently working programmers using the same data and same tools can produce an indistinguishable output but will have few points in common. Accordingly,

> the court finds that the Adobe font software programs are protectable original works of authorship. (at p. 1831)

§6.4 New Zealand

1. *Martin v. Polyplas Manufacturers Ltd.,* (1969) N.Z.L.R. 1046, Wild J. (N.Z.H.C.).

> The remaining question is whether the defendant has infringed that copyright. As I have already said, it is admitted that the dies for the plastic coins manufactured by the defendant were directly copied from specimen plastic coins supplied for that purpose by the Department of Education, those specimens having themselves been made by the plaintiff. That it was from the plaintiff's coins and not from his original engravings or dies that the defendant copied does not, I think, take the defendant's actions out of the category of infringement. In *King Features Syndicate Inc. v. C. & M. Kleeman Ltd.* (1941) A.C. 417 where the plaintiff claimed an injunction to restrain an infringement of their copyright by the importation of dolls, brooches and toys, the House of Lords held that the defendant's dolls and brooches were none the less reproductions in a material form of the plaintiff's original work though they were copied, not from any sketch of the plaintiff's but from a reproduction in a material form derived directly or indirectly from the original work. (at p. 1050)

2. *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1984), (1985) R.P.C. 128, Davidson J. (N.Z.C.A.).
(The plaintiff alleged that copyright subsisted in the preliminary drawings, wooden, models, injection moulds and the moulded discs of its "Frisbee", all of which had ribs on their upper surface)

> In so far therefore as those definitions (of "engraving" and "sculpture") are merely inclusive and not exhaustive of the original meanings of "engraving" and "sculpture", the court can have regard to the ordinary meanings of such words as ascertained from various sources. Counsel also pointed out that the inclusive definition of engraving set out above incorporated a "print".
>
> A reading of the definition of "artistic work" in section 2(1)(a) of the Act (which corresponds to section 3(1)(a) of the United Kingdom *Copyright Act, 1956*) indicates that the Act when it speaks of engravings primarily has in contemplation the final prints made from an engraved plate rather than the plate itself. (at p. 150)
>
> We agree with the conclusion reached by Paul Baker Q.C. (in *James Arnold & Co. v. Miafern Ltd.* (1980) R.P.C. 397 (Ch. D.)) that engraving embraces not only the image made from the engraved plate but the engraved plate itself, but we prefer to reach that result by giving the word "engraving" as used in the definition of "artistic work" in section 2(1)(a) of the Act (U.K. Act: section 3(1)(a)) its ordinary meaning as ascertained from the sources referred to earlier (i.e., *Webster's Third New International*

Dictionary, Random House Dictionary of the English Language, The Shorter Oxford English Dictionary). It is the purpose of copyright to protect the original skill and labour of the author and there is a large degree of that skill and labour brought to bear in making the engraved plate. We do not believe that it was the intention of the Parliament to deny copyright in the plate and yet allow it in the print taken from the plate. (at pp. 152-153)

The manner in which the moulds were made has been described by Mr. Gillespie. A cutting tool on a lathe was used to remove metal from the die block to create the desired shape. No doubt that it is the way in which the ribs or rings appearing on the finished product were formed. We see no reason why the process involved in the production of the die or mould, particularly the creation of the cuts to produce the ribs or rings, should not be regarded as the act of engraving within the provisions of section 2(1)(a) of the Act (U.K. Act: section 3(1)(a)), and the mould or die so created an "engraving" just as a "print" is an engraving in terms of the extended definition in section 2 of the Act (U.K. Act: section 48(1)).

Moller J. in his judgment ((1981), (1982) R.P.C. 281 (N.Z.H.C.)) came to the view that a die or mould of the kind in question is an engraving. We agree. The purpose of the Act is to protect original artistic works. The skill and labour of the craftsman is exercised by cutting and shaping the plate — engraving it — to produce the intended design. There appears to be no reason why skill and labour should not be protected equally as a print made from that plate is given protection if it can properly be described as an original artistic work. (at p. 153)

Moller J. in his judgment ((1981), (1982) R.P.C. 281 (N.Z.H.C.)) concluded that the finished product is an engraving in that it is "an image produced from an engraved plate" and that "each disc comes within the category of a "print". There can be little quarrel with the proposition that in the ordinary sense an image produced fro an engraved plate is a print and thus falls within the definition of "engraving".

However, the very nature of the injection moulding process by which plastic material under very high pressure is forced into a mould raises some doubts as to whether what is taking place is really a "print" as that word is generally understood in its ordinary meaning.

The usual concept of a print is of something created by pressure of the plate upon a material. In the system of injection moulding used by Wham-O plastic material is forced upon the plate or into the mould. Does that method of operation prevent the finished disc so created being properly called a "print"? The result is the same although achieved by a somewhat different means. The shape of the mould is imprinted upon the plastic material forced into it.

Modern technology for creating reproductions has involved various new processes being devised and we doubt that the making of a "print" can any longer be identified with any one or more particular processes or procedures. There appears currently to be no good reason why an article produced by injection moulding from a mould which is an engraving should not be itself an engraving if it is produced from that mould.

Moller J. in his judgment ((1981), (1982) R.P.C. 281 (N.Z.H.C.)) after posing the question as to whether the final plastic moulded products could be brought within the definition of sculpture or engraving, simply noted that a consideration of *Arnold's* case (*James Arnold & Co. v. Miafern Ltd.,* (1980) R.P.C. 397) had brought him to the decision that each disc is an engraving in that it is "an image produced from the engraved plate" and comes within the category of a print.

We agree with Moller J. on this point (at p. 155)

§7.0 List of Cases

§7.1 Canada

1. Henry Graves & Co. v. Gorrie, (1900), 32 O.R. 266 (Ont. H.C.); aff'd (1900), 1 O.L.R. 309 (Ont. Div. Ct.); aff'd (1901), 3 O.L.R. 697 (Ont. C.A.); aff'd (1902), aff'd (1903) A.C. 496 (J.C.P.C.-Canada).

2. Beullac Ltée v. Simard (1910), 39 C.S. 97 (Que. Sup. Ct.); aff'd (1911), 39 C.S. 517 (Que. Sup. Ct.-Revision).

3. Toronto Carton Co. v. Manchester McGregor Ltd., (1935) O.R. 144 (Ont. H.C.J.).

4. *Cardwell v. Leduc* (1962), 41 C.P.R. 167 (Ex. Ct.); appeal dismissed (1964) Ex. C.R. ix (S.C.C.).

5. *British Columbia Forest Products Ltd. v. Minister of National Revenue,* (1969) C.T.C. 156 (Ex. Ct.); aff'd (1971), (1972) S.C.R. 101.

6. *Laidlaw v. Metropolitan Toronto (Municipality)* (1975), 7 L.C.R. 111 (Land Comp. Bd.); (1976), 9 L.C.R. 270 (Ont. Div. Ct.); rev'd (1976), 9 L.C.R. 269 (Ont. C.A.); aff'd (1978) 2 S.C.R. 736.

7. *Superior Pre-Kast Septic Tanks v. R.*, (1973), 74 D.T.C. 6330 (F.C.T.D.); aff'd (1977), 77 D.T.C. 5134 (F.C.A.); rev'd (1978) 2 S.C.R. 612.

8. *DRG Inc. v. Datafile Ltd.* (1987), 16 C.P.R. (3d) 155 (F.C.T.D.-Evidence); (1987), 18 C.P.R. (3d) 538 (F.C.T.D.); aff'd (1991), 35 C.P.R. (3d) 243 (F.C.A.).

§7.2 United Kingdom

1. *Newton v. Cowie* (1827), 130 E.R. 759 (C.P.).

2. *Turner v. Robinson* (1860), 10 Ir. Ch. 121 (Ch. D.); rev'd in part (1860), 11 Ir. Ch. 510 (C.A.).

3. *Gambart v. Ball* (1863), 143 E.R. 463 (C.P.).

4. *Dicks v. Brooks*, (1880) 15 Ch. D. 22 (C.A.).

5. Cole v. Henry Graves & Co. (1910), (1905-10) MacG. Cop. Cas. 275 (K.B.D.).

6. *Tilly v. Selfridge & Co.* (1913), (1911-16) MacG. Cop. Cas. 103 (K.B.D.).

7. *Stephenson, Blake & Co. v. Grant, Legros & Co.* (1916), 33 R.P.C. 406 (Ch. D.); aff'd (1917), 34 R.P.C. 192 (C.A.).

8. *Nicol v. Barranger* (1920), (1917-23) MacG. Cop. Cas. 219 (Ch. D.); rev'd on other grounds (1921), (1917-23) MacG. Cop. Cas. 230 (C.A.).

9. *Masson Seeley & Co. v. Embosotype Manufacturing Co.* (1924), 41 R.P.C. 160 (Ch. D.).

10. *Con Planck Ltd. v. Kolynos Inc.*, (1925) 2 K.B. 187, L.J.K.B. 823, 133 L.T. 798, (1923-28) MacG. Cop. Cas. 187 (K.B.D.).

11. *Banco de Portugal v. Waterlow & Sons Ltd.* (1930), 47 T.L.R. 214 (Ch. D.); var'd (1931), 100 L.J.K.B. 465 (C.A.); aff'd (1932) A.C. 452 (H.L.).

12. *Charles Walker & Co. v. British Picker Co.* (1960), (1961) R.P.C. 57 (Ch. D.).

13. *L.B. (Plastics) Ltd. v. Swish Products Ltd.* (1976), (1979) R.P.C. 565 (Ch. D.); rev'd (1979) R.P.C. 546 (C. A.); rev'd (1979) R.P.C. 511 (H. L.).

14. *James Arnold & Co. v. Miafern Ltd.*, (1980) R.P.C. 397 (Ch. D.).

15. *Newspaper Licensing Agency Ltd. (The) v. Marks & Spencer Plc*, (1999) R.P.C. 536 (Eng. Ch. Div.), reversed (2000), (2001) R.P.C. 5 (Eng. C.A.), affirmed (2001), (2002) R.P.C. 4 (U.K. H.L.).

16. *Newspaper Licensing Agency Ltd. (The) v. Marks & Spencer Plc* (2001), (2002) 3 All E.R. 977 (U.K. H.L.).

17. *Hi-Tech Autoparts Ltd. v. Towergate Two Ltd.* (2001), (2002) FSR 15 (Eng. Patents Ct.).

§7.3 United States

1. *Wood v. Abott,* 30 F. Cas. 424 (C.C.N.Y. 1866).

2. *Rosenbach v. Dreyfuss*, 2 F. 217 (D.C.N.Y. 1880).

3. *Yuengling v. Schile*, 12 F. 97 (C.C. N.Y. 1882).

4. *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (U.S. 1903).

5. *National Cloak & Suit Co. v. Kaufman*, 189 F. 215 (C.C. Pa. 1911).

6. *Stecher Lithograhic Co. v. Dunston Lithograph Co.,* 233 F. 601 (D.C.N.Y. 1916).

7. *Jeweler's Circular Publishing Co. v. Keystone Publishing* Co., 274 F. 932 (D.C.N.Y. 1921); aff'd, 281 F. 83 (C.C.A.N.Y. 1922), cert. denied, 259 U.S. 581.

8. *Ansehl v. Puritan Pharmaceutical Co.*, 61 F. 2d 131 (8th Cir. 1932).

9. *Alfred Bell & Co. v. Catalda Fine Arts*, 68 U.S.P.Q. 447 (D.C. S.D. New York—Practice 1946); (1947), 75 U.S.P.Q. 67 (D.C. S.D. New York—Merit 1947); 75 U.S.P.Q. 283 (D.C. S.D. New York—Costs 1947); 90 U.S.P.Q. 153 (2nd Cir. 1951).

10. *Eltra Corp. v. Ringer*, 194 U.S.P.Q. 198 (E.D. Va. 1976); aff'd 198 U.S.P.Q. 321 (4th Cir. 1978).

11. *Adobe Systems Inc. v. Southern Software Inc.* (1998), 45 U.S.P.Q. (2d) 1827 (N.D. Cal.) (settled out of court 1999-06-03).

§7.4 Australia and New Zealand

1. *Greenfield Products Pty. Ltd. v. Rover-Scott Bonnar Ltd.* (1990), 95 A.L.R. 275 (Aust. F.C.).

2. *Martin v. Polyplas Manufacturers Ltd.,* (1969) N.Z.L.R. 1046 (H.C.).

3. *Talk of the Town Pty. Ltd. v. Hagstrom* (1990), 99 A.L.R. 130 (Aust. F.C.).

4. *Wham-O Manufacturing Co. v. Lincoln Industries Ltd.* (1981), (1982) R.P.C. 281 (H.C.); aff'd (1984), (1985) R.P.C. 127 (C.A.).

§7.5 France

1. *Association Guy Levis Mano v. Monti* (1994), 159 R.I.D.A. 316 (Cassation — 1re Chambre civ.).

§8.0 Authors

§8.1 Canada

§8.1.1 Interpretation issues

1. BARBE (Raoul P.), *Les définitions contenues dans les actes législatifs et réglementaires* (1983), 43 Revue du Barreau 1105, at pp. 1119-1120.

2. CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville, Blais, 1992), at pp. 55-58, 264-270.

3. DRIEDGER (Elmer A.), *Construction of Statutes*, 2nd ed. (Toronto, Butterworths, 1983), at pp. 18-22, 111-119.

4. GROUPE DE JURILINGUISTIQUE FRANÇAISE, *Guide canadien de rédaction législative française — édition permanente* (Ottawa, Justice Canada, 1984), at "Definitions".

5. JARVIS TONUS (Jill), *Databases and Type Font Designs: His, Hers or Ours?* in Software, Hardware, Data — The Legal and Business Issues in the '90s (Toronto, Canadian Institute, 1993), ch. 3, at pp. 39-52.

6. PIGEON (Louis-Philippe), *Drafting and Interpreting Legislation* (Toronto, Carswell, 1988), at pp. 32-35.

7. PIGEON (Louis-Philippe), *Rédaction et interprétation des lois* (Québec, éditeur officiel, 1965), at pp. 20-22.

§8.1.2 Copyright issues

1. BONCOMPAIN (Jacques), *Le droit d'auteur au Canada: étude critique* (Montréal, Cercle du livre de France, 1971), at pp. 61-62.

2. BRAITHWAITE (William J.), *Derivative Works in Canadian Copyright Law* (1982), 20 Osgoode Hall Law Journal 191.

3. CONSEIL QUÉBÉCOIS DE L'ESTAMPE, *Code d'éthique de l'estampe originale* (Montréal, C.Q.E., 1987).

4. FOX (Harold George), *The Canadian Law of Copyright and Industrial Designs*, 2nd ed. (Toronto, Carswell, 1967), at pp. 26-27, 32-33, 68, 151-152, 155-156, 218 and 252-253.

5. GOULD (Robert D.), *Copyright in Three Dimensions — New Dimensions* (1980-81), 8-10 Patent and Trademark Institute of Canada Bulletin 534.

6. LEVENTAL (Jessica A.), *Derivative Works and Copyright Infringement: A Case for Copyrighting Ideas* (1985), 1 Intellectual Property Journal 271.

7. RACICOT (Michel), *Jusqu'où va la protection du cybergiciel par le droit d'auteur?,* in Meredith Lectures 1996 (Montreal, McGill University, 1996), at no. 5.8.

§8.2 United Kingdom

1. COPINGER (Walter Arthur), *The Law of Copyright in Works of Literature and Art,* 2nd ed. (London, Stevens and Haynes, 1881), at pp. 11-12, 351-378.

2. CORNISH (William R.), *Intellectual Property: Patents, Copyright, Trade-Marks and Allied Rights,* 2nd ed. (London, Sweet & Maxwell, 1989), at nos. 10.001, 10.016 and 10.029.

3. DRONE (Eaton S.), *A Treatise on the Law of Property in Intellectual Productions in Great Britain and in the United States* (Boston, Little Brown, 1879), at pp. 177-178, 280-286, 316-317 and 478-483.

4. FLINT (Michael F.), *A User's Guide to Copyright,* 3rd ed. (London, Butterworths, 1990), at nos. 2.09, 14.14.

5. HALSBURY (Earl of), *The Laws of England* (London, Butterworths, 1909), at pp. 200-206.

6. LADDIE (Hugh) et al., *The Modern Law of Copyright* (London, Butterworths, 1980), at nos. 2.45, 3.17-3.18.

7. LADDIE (Hugh) et al., *The Modern Law of Copyright and Designs,* 2nd ed. (London, Butterworths, 1995), at nos. 3.21-3.22.

8. LANGAN (P. St. J.), *Maxwell on the Interpretation of Statutes,* 12th ed. (Bombay, Tripathi, 1969), at pp. 297-306.

9. LESTER (David) et al., *Joynson-Hicks on UK Copyright Law* (London, Sweet & Maxwell, 1990), at pp. 177-178, 280-286, 316-317 and 478-482.

10. PHILLIPS (Charles Palmer), *The Law of Copyright in Works of Literature and Art and in the Application of Designs* (London, Stevens, 1863), at pp. 205-217.

11. PHILLIPS (Jeremy J.) et al., *Whale on Copyright* 4th ed. (London, Sweet & Maxwell, 1993), at pp. 34-35.

12. ROBERTSON (George Stuart), *The Law of Copyright* (Oxford, Clarendon Press, 1912), at pp. 21-22.

13. SCRUTTON (Thomas Edward), *The Law of Copyright,* 4th ed. (London, Clowes, 1903), at pp. 162, 170-179.

14. SHORTT (John), *The Law relating to Works of Literature and Art: Embracing the Law of Copyright, the Law relating to Newspapers, the Law relating to Contracts between Authors, Publishers, Printers, and the Law of Libel*, 2nd ed. (London, Reeves & Turner, 1884), at pp. 110-119, 182-183, 227-234 and 254-257.

15. SKONE JAMES (Edmund P.) et al., *Copinger and Skone James on Copyright,* 12th ed. (London, Sweet & Maxwell, 1980), at nos. 33, 67, 119, 175, 270, 285, 328, 330, 338, 546, 560 and 564.

16. SKONE JAMES (Edmund P.) et al., *Copinger and Skone James on Copyright,* 13th ed. (London, Sweet & Maxwell, 1991), at nos. 1-33, 4-17 and 4-25.

17. SKONE JAMES (F.E.), *Copinger and Skone James on the Law of Copyright,* 8th ed. (London, Sweet & Maxwell, 1948), at pp. 146-151.

18. STERLING (J.A.L.) et al., *Copyright Law in the United Kingdom,* 1st ed. (London, Legal Books, 1986), at nos. 241-244, 252, 291, 2A34 and 4A02.

19. WATTS (Justin) et al., *Protection of Software Fonts in UK Law* (1995), 17 European Intellectual Property Review 133.

§8.3 United States

1. AMDUR (Leon H.), *Copyright Law and Practice* (New York, Clark Boardman, 1936), at pp. 149-164.

2. APPLEBAUM (Louis B.), *The One Line Picture Claim* (1962), 44 Journal of the Patent Office Society 379.

3. CARROLL (Terrence J.), *Protection for typeface designs: a copyright proposal* (1994), 10-1 Santa Clara Computer and High Technology Journal 139; http://www.aimet.com~smcarroll/copyright/oldtypeface.html.

4. MEZRICH (Jonathan), *Extension of Copyright to Fonts — Can the Alphabet be Far Behind?* (Summer 1998) Computer Law Review and Technology Journal; http://www.smu.edu/~smcsr/preview.htm.

5. NIMMER (Melville B.) et al., *Nimmer on Copyright* (New York, Matthew Bender, 1989), at nos. 2.08(F) and 2.08(G).

6. NIMMER (Melville B.) et al., *Nimmer on Copyright* (New York, Matthew Bender, 1989), at §2.15 and §4.312.

7. ROTHENBERG (Stanley), *Legal Protection of Literature, Art and Music* (New York, Clark Boardman, 1960), at pp. 29, 32-34 and 97.

8. SNYDER (Philipp), *Typeface Design after the Desktop Revolution: A New Case for Legal Protection* (1991), 16 Columbia VLA Journal of Law & the Arts 96.

§8.4 France

1. BERTRAND (André), *Le Droit d'Auteur et les Droits Voisins* (Paris, Masson, 1991), at pp. 107-111, 138-139 and 148.

2. BERTRAND (André), *Le Droit d'Auteur et les Droits Voisins*, 2nd ed. (Paris, Dalloz, 1999).

3. BERTRAND (André), *La protection juridique des caractères typographiques en droit français, en droit comparé et en droit international* (1990), 26 Les cahiers de droit d'auteur 1.

4. CARREAU (Caroline), *Mérite du droit d'auteur* (Paris, LGDJ, 1981), at nos. 239, 262, 283, 293, 296, 382 and 549.

5. PLAISANT (Robert), *Exercice du droit des auteurs — Ouvres protégées*, in Propriété littéraire et artistique — Juris-Classeurs (Paris, Éditions techniques, 1990), fascicule 303, at nos. 67-74, 129-136.

§8.5 Australia

1. LAHORE (James), *Intellectual Property in Australia: Copyright Law* (Sydney, Butterworths, 1988), at nos. 2.3.95, 2.3.104.

2. RICKETSON (Stanley), *The Law of Intellectual Property* (Melbourne, LBC, 1999), at nos. 7.345 to 7.360.

§8.6 Varia

§8.6.1 Law

1. BROWN (Arthur) et al., *The Law of Intellectual Property in New Zealand* (Wellington, Butterworths, 1989), at nos. 4.16, 4.20 and 4.84-4.86.

2. COPLING (A.J.C.), *Copyright Law in South Africa* (Durban, Butterworths, 1969), at pp. 20-25, 36.

3. *De la protection des chromolithographies dans l'union internationale* (1899), 12 Le Droit d'Auteur 130.

4. DREYFUS (John), *Pourquoi faut-il une législation internationale pour protéger les caractères typographiques?* (1973), 79 La Propriété industrielle 61.

5. FRANÇON (André), *L'Arrangement de Vienne concernant la protection des caractères typographiques et leur dépôt international* (1976), 89 Le Droit d'Auteur 134.

6. *Jurisprudence Italie: Albrecht et Meislter c. Gualassini*, (1900) Le Droit d'Auteur 145.

7. *Jurisprudence Italie: May fils c. Istituto di arti grafiche*, (1900) Le Droit d'Auteur 145.

8. *Jurisprudence Italie: Schloss c. Citterio,* (1907) Le Droit d'Auteur 36.

9. LADAS (Stephen P.), *The International Protection of Literary and Artistic Property*, 2 Vol. in Harvard Studies on International Law No. 3 (New York, Macmillan, 1938), at no. 101.

10. LIMBERG (Theodore), *La protection des œuvres typographiques néerlandaises aux Pays-Bas et à l'étranger/The protection of Dutch typographical creations in Holland and abroad* (1962), 36 Revue internationale du droit d'auteur 146.

11. LIMBERG (Theodore), *La protection juridique des caractères typographiques/The juridical protection of typographic type* (1964), 44 Revue internationale du droit d'auteur 174.

12. LIMBERG (Theodore), *La protection juridique des lettres et autres caractères typographiques/Legal protection of letters and other type faces protection of typographic type* (1972), 74 Revue internationale du droit d'auteur 86.

13. POIRIER (Pierre), *Le droit d'auteur,* in Les Novelles — Corpus Juris Belgici: Droits Intellectuels (Bruxelles, Larcier, 1936), at nos. 92, 292.

14. POTU (Émile), *La Convention de Berne pour La protection des œuvres littéraires et artistiques Révisée à Berlin le 13 novembre 1908 et le Protocole additionnel de Berne du 20 mars 1914* (Paris, Rousseau, 1914), at nos. 150, 186.

15. RICKETSON (Sam), *The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986* (London, Centre for Commercial Law Studies, 1987), at pp. 251-257.

16. STOYANOV (Kaloyan), *La protection juridique des caractères typographiques* (Genève, Droz, 1981).

§8.6.2 Arts and techniques

1. AUGER (D.), *La typographie,* coll. Que sais-je? No. 1862 (Paris, PUF, 1980).

2. BERSIER (Jean E.) *La gravure: les procédés-l'histoire* (Paris, Berger-Levrault, 1980).

3. BIGELOW (Charles), *Du piratage de fontes* (1987), 6-3 Technologies et sciences informatiques 255.

4. DUPLESSIS (Georges), *Histoire de la gravure ancienne suivie d'une indication technique sur les différents procédés de gravure* (Paris, Bonnot, 1991).

5. FAINE (Brad), *The Complete Guide to Screen Printing* (Cincinnati, North Light Books, 1989).

6. GILMOUR (Pat), *Understanding Prints: a Contemporary Guide* (London, Waddington, 1979).

7. HIND (Arthur M.), *A History of Engraving & Etching*, 3rd ed. (New York, Dover, 1963).

8. HIND (Arthur M.), *An Introduction to a History of Woodcut* (New York, Dover, 1963), Vol. 2.

9. LERNER (Ralph E.) et al., *Art Law — The Guide for Collectors, Investors, Dealers and Artists,* 2nd ed. (New York, Practising Law Institute, 1998), at chap. 5.

10. MALENFANT (Nicole), *L'estampe* (Québec, éditeur officiel du Québec), 1979).

11. MARTIN (Gérard), *L'imprimerie*, 7th ed. (Paris, Puf, 1990).

12. PHILLIPS (Phoebe) ed., *The Encyclopaedia of Glass* (New York, Crown, 1981), at pp. 265 *et seq.*

13. ROSS ((John) et al., *The Complete Printmaker* (London, Free Press, 1990).

14. ROTHENBERG (Polly), *Decorating Glass* (New York, Crown, 1977), at ch. 4 "Engraving and Etching Glass".

15. RUSS (Stephen) ed., *A Complete Guide to Printmaking* (New York, Viking, 1975).

16. SAFF (Donald) et al., *Printmaking: History and Process* (New York, HRW, 1978).

17. SIMMONS (Rosemary) et al., *The Complete Manual of Relief Printmaking* (New York, Knopf, 1988).

18. WALSH (Norman), *Frequently Asked Questions About Fonts,* version 2.1.5 dated 1999-08-14; http://www.cs.colostate.edu/~smdzubera/FAQ/fonts.faq.

§9.0 Comparative Legislation

§9.1 Comparative Legislation - Canada

§9.1.1 Copy Right Act, 1832, section 1:

" (...) that (...) any person or persons resident in this Province (...) who shall invent, design, etch, engrave or cause to be engraved, etched or made from his own design, any print or engraving (...) shall have the sole right and liberty of printing, reprinting, publishing and vending such (...) print, cut, or engraving (...)."

§9.1.2 Copyright Act, 1868, section 3:

" Any person (...) who invents, designs, etches, engraves or causes to be engraved, etched or made from his own design, any print or engraving (...) shall have the sole right and liberty of printing, reprinting, publishing and vending such (...) artistical works or compositions (...)."

§9.2 Comparative Legislation - United Kingdom

§9.2.1 Copyright Act, 1911, section 35(1):

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;"

§9.2.2 Copyright Act, 1956, section 48(1):

"engravings" includes any etching, lithograph, woodcut, print or similar work, not being a photograph;"

§9.2.3 Copyright Act, 1988, section 4(2):

"graphic work" includes- (...)
(b) any engraving, etching, litograph, woodcut or similar work;"

§9.2.4 Copyright Act, 1988, section 15:

"Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published."

§9.3 Comparative Legislation - United States of America

§9.3.1 Copyright Act, 1802, section 2:

"(...) every person (...) who shall invent and design, engrave, etch or work, or from his own works and inventions, shall cause to be designed and engraved, etched or worked, any historical or other print or prints, shall have the sole right and liberty of printing, re-printing, publishing and vending such print or prints (...)."

§9.3.2 Copyright Act, 1874, section 3:

"That in the construction of tis act, the words "Engraving," "cut" and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office."

§9.3.3 Copyright Act, 1909, section 5(k):

"That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs: (...)
(k) Prints and pictorials illustrations (...)."

§9.4 Comparative Legislation - Australia

§9.4.1 Copyright Act, 1968, section 10(1):

"engravings" includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;"

§9.5 Comparative Legislation - India

§9.5.1 Copyright Act, 1957, section 2(i):

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;"

§9.6 Comparative Legislation - South Africa

§9.6.1 Copyright Act, 1978, section 1:

"engraving" include any etching, lithograph, woodcut, print or similar work, but does not include a photograph;"

§10.0 Varia

§10.1 Registrability of Computer Programs that Generate Typefaces

USA — 57 Fed. Reg. 35 at pp. 6201-2 (February 12, 1992).

After a careful review of the testimony and the written comments, the Copyright Office is persuaded that creating scalable typefonts using already digitized typeface represents a significant change in the industry since our previous Policy Decision. We are also persuaded that computer programs designed for generating typeface in conjunction with low resolution and other printing devices may involve original computer instructions entitled to protection under the Copyright Act. For example, the creation of scalable font output programs to produce harmonious fonts consisting of hundreds of characters typically involves many decisions in drafting the instructions that drive the printer. The expression of these decisions is neither limited by the unprotectable shape of the letters nor functionally mandated. This expression, assuming it meets the usual standard of authorship, is thus registrable as a computer program.