

Editorial

The Supreme Court has finally reached a decision on the status of the California law concerning copyright of sound recordings. In the Supreme Court of the United States case No. 71-1192: Goldstein et al v. California, argued December 13, 1972, and decided on June 18, 1973, the Court decided in favor of the State of California.*

In case you are unaware of the situation, Goldstein et al were convicted of record piracy in 1970-71 and challenged the constitutionality of the California law under which they were convicted. Their conviction was upheld, since the Supreme Court's majority decision claims:

(1) " . . . the language of the Constitution neither explicitly precludes the States from granting copyrights nor grants such authority exclusively to the Federal Government. The subject matter to which the copyright clause is addressed may at times be of purely local concern . . . No reason exists why Congress must take affirmative action either to authorize protection of all categories of writings or to free them from all restraint. We therefore conclude that, under the Constitution, the States have not relinquished all power to grant to authors 'the exclusive Right to their respective writings.'"

(2) that the petitioners' claim that California law was in violation of that portion of the Constitution (Art. I, Section 8, cl. 8) which provides that copyrights may be granted only 'for limited Times' . . . "does not support petitioners' position. Section 8 enumerates those powers which have been granted to Congress . . . [and] can only be understood as limit on congressional, and not state, action . . . The challenged statute cannot be voided for lack of a durational limitation." The Court concluded " . . . that the State of . . . California has exercised a power which it retained under the Constitution, and that the challenged statute, as applied in this case, does not intrude into an area which Congress has, up to now, pre-empted. Until and unless Congress takes further action with respect to recordings fixed prior to February 15, 1972, the California statute may

*Copies of this decision are available @ 45¢ per copy from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Ask for Document 71-1192.

be enforced against acts of piracy such as those which occurred in the present case."

Thus the Supreme Court has handed down its first decision stating that states have the right to prohibit unauthorized dubbing of sound recordings and that they have the right to enact unlimited copyright protection of the same. The decision also seems to imply that if a criminal statute does not exist, as it does not in some forty of the fifty states, civil action under common law can be brought against unauthorized dubbing.

I view this decision with strongly mixed emotions. On the one hand I heartily applaud the conviction and punishment of record piracy, whether that piracy is carried out by an individual or by an institution. On the other hand I question the outcome of allowing states to grant copyright protection, especially if that protection is to be unlimited. This, in effect, states that the first 80-plus years of recordings will not appear as public domain items, but will continue forever as the property of their owners. In light of this, the time has clearly come to form a clearing house for procuring permission to dub recordings unobtainable through other legal means.

If such a clearing house were to be established, what better place for it than ARSC--the one body which attempts to include all areas of interest in recordings. For too long we of ARSC have lamented the state of availability of copyright coverage for recordings, of legal difficulties in dubbing out-of-print recordings, and of the damage done to manufacturers and collectors by record pirates. With this Court ruling we now have copyright coverage for post- and pre-February 15, 1972, recordings, limited though post-February 15, 1972, coverage may be. (See Leavitt & Moore, ARSC JOURNAL, IV, pp. 6-14.) We also have a means, via this decision, of dealing with pirates of pre-February 15, 1972, recordings. What is needed now is some method of working within the existing laws, both state and federal, to seek legal means of dubbing out-of-print recordings. ARSC must lead the way to a solution between record collectors and manufacturers that will allow that legal dubbing. Let us accept that responsibility NOW!

GDG

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