

commercial publication: (i) that it saves the government all out-of-pocket production costs; (ii) that it usually produces added value to the work through editorial guidance and skills that are not available at the GPO; and (iii) that it produces royalties that are payable to the government or a contracting institution as an offset against the original cost of preparing the work. True, the consumer pays a normal, unsubsidized price for a work so published, but how can this rightly be taken as a "rip off" of the public purse?

Anyone who is interested in reading a review of government policy and practice, plus a statement of the private sector's position on public domain policy, is welcome to a reprint of a paper which I prepared in 1971 for the U.S. Commission on Government Procurement. Requests should be sent to the address below.

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#### References and Notes

1. U.S. Senate, Committee on the Judiciary, *Copyright Law Revision* (Government Printing Office, Washington, D.C., 1974), report No. 93-983 to accompany S. 1361, p. 110.
2. *Report of the Commission on Government Procurement* (Government Printing Office, Washington, D.C., 1972), vol. 4, part 1, chap. 4.
3. See *Fed. Regist.* 40, 3607, 23 January 1975, for a reaffirmation of the policy of the Department of Health, Education, and Welfare on copyrightable materials developed under Office of Education programs.
4. *Copyright Revision Bill*, S. 1361, section 101.

With respect to Henry's statements about U.S. government publications, the following corrections are necessary.

1) The U.S. government's public domain policy for its publications, as embodied in the 1909 statute, appears to have resulted directly from Congressman Richardson's improper actions in 1900 and not from "policy-makers' cognizance that copyright may be inadequate in a technological society." At that period, western European nations were more technologically advanced than the United States, and none of these nations has yet adopted a public domain policy for government publications.

2) Although Henry states that the Superintendent of Documents does not oversee a losing operation, but makes a profit, the facts are the converse. In fiscal years 1972, 1973, and 1974 there were substantial (\$10 to \$20 million) deficits in that operation.

It is regrettable that so much U.S. commentary on copyright neglects international factors. This is especially significant with respect to the large outflow of U.S. tax-supported technological information to its foreign trade competitors. The public policy for promoting wide domestic utilization of government-funded information

should be compatible with the need for obtaining maximal U.S. advantage internationally. With this broader and more realistic view, the treatment of information as property appears much more acceptable.

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Although my discussion of the public domain policy constituted about one-tenth of my article, I am pleased to respond to the preceding remarks.

Benjamin confuses argumentation with evidence. The fundamental point of my public domain discussion is that public domain is one of several government policies designed to exempt large segments of literature from copyright control because such policies are more in accord with the public's interest. True, agencies have been signaled by Senate Report 93-983 (1) that they have a limited degree of discretion in determining the applicability of copyright to publicly sponsored research should S. 1361 be enacted, as Benjamin observes. But Benjamin relates only a fraction of the Senate's signal, for the report (which is among the most recent governmental analyses of copyright) goes on to state (1, p. 110) that:

A more difficult and far-reaching problem is whether the definition [of a work of the U.S. Government] should be broadened to prohibit copyright in works prepared under U.S. Government contract or grants. As the bill [S. 1361] is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee to secure copyright in works prepared in whole or in part with the use of Government funds. The . . . public should not be required to pay a "double subsidy," and . . . it is inconsistent to prohibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Government funds.

My main concern relative to the public domain policy, as expressed in S. 1361, centers on its definition of "a work of the U.S. Government" (Section 101). To define such a work as one written only by bureaucrats, as Section 101 does, and to exclude by default from that definition works written by scientists and others under government contract, potentially allows roughly 85 percent of federal R & D activities to be controlled by copyright and hence sold for private profit. While Senate Report 93-983 may ameliorate the adverse affects of Section 101, it would be more in the public's interest to define, by law, a work of the U.S. government as one funded primarily with taxpayers' money. Benjamin, as a publisher, may not agree, but the potentiality for "a 'rip off' of the public purse" is indeed there.

Knox may be correct that Congressman Richardson's literary shenanigans at the turn of the century provided the overt impetus for a public domain clause in our Copyright Act. Nevertheless, it evidently was assumed by policy-makers of the period that a public domain policy was understood—a reiteration of the obvious. This commitment would seem to be the real point; that is, that American legislators believe and have believed public domain to be a valid and major exception to the copyright concept.

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#### References

1. U.S. Senate, Committee on the Judiciary, *Copyright Law Revision* (Government Printing Office, Washington, D.C., 1974), Report No. 93-983 to accompany S. 1361.

#### Quantifiable Quality

George Basalla's review (24 Jan., p. 248) of *Zen and the Art of Motorcycle Maintenance* (1) contains a phrase which brought me up short. He writes that in a factory situation "Quality [meaning excellence, worth, goodness] has been distorted into quality control which is concerned with maintaining the barest minimum standards, not the highest ones." As Dagwood said about one of Blondie's pronouncements, "That makes a lot of sense if you don't think about it." But let's think about it.

Quality control is a unified engineering discipline which uses procedures based on mathematical statistics. One of its objectives is to establish and maintain as uniform a quality of product as is economically feasible. When a process is in "statistical control," its output is quantitatively predictable; one knows how the output will compare to a given specification. Rather than being "concerned with maintaining the barest minimum standard" (of workmanship), quality control procedures operate to protect the output from being degraded by sloppy work.

Let us exult in the fact that quality can be quantified, measured, and controlled. Had the reviewer written, "... has been distorted into a practice which is concerned with . . .," he would have made his point. However, that practice is not quality control.

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#### References

1. R. M. Pirig, *Zen and the Art of Motorcycle Maintenance* (Morrow, New York, 1974).