Communications

Letters to the Editor

To the Editor:

I am writing in response to the note about organized sub-fields in the recent issue of *PS*. My purpose, however, is not to suggest the name of convenors but to register my very strong opposition to the whole project.

The move at the August 1976 Executive Committee meeting to seek greater clarity and continuity in the program sections and to increase participation in defining panel topics reminds me of nothing so much as the indecent haste with which the U.S. Congress moved for the adoption of the 22nd Amendment limiting the terms of the president. The Congressional action was clearly a backlash against the four terms of Franklin D. Roosevelt. I view the move towards permanent sections as still another backlash: this time against the 1976 program. Let me say immediately that I was probably as upset as many by the topics, the general tone, and the overall muckraking quality of the "bicentennial" happening. But with the specter of permanent sections stalking the APSA I'd rather have an occasional 1976 program than the "clarity and continuity" that the permanent sections would provide. No doubt, these sections would have memberships with overlapping terms so that at any one point the barbarians could be kept safely at bay. The sections would become largely self-appointed guardians of what is acceptable work and where before the discontinuity in the program organization produced at least some variations, the permanent sections will still further entrench those that are already entrenched and the sub-fields will be dominated by so many orthodoxies proclaimed in the name of "clarity and continuity."

I could possibly envisage sub-field sections that engage in various activities appropriate to the sub-field, but these same organizations should not at the same time control the program. As I reflect on the potential for mischief of the proposed sub-fields I consider the price of an occasional non-establishment convention program small indeed. In fact, even without the aid of the sub-fields the 1977 program already looks like the familiar fare of previous years. Has it occurred to those responsible for the annual meeting programs to ask why the proliferation of groups arranging panels outside the regular framework? To be sure, more people than ever want to be listed as presenting papers, for reasons too obvious for me to spell out. Rather, these groups proliferate because the standard fare of the official program does not meet the needs of substantial portions of the practicing profession. All the creation of the sub-fields and their potential control over sections of the program will accomplish is to drive still others into the non-traditional channels. Perhaps that is exactly what the proponents of the sub-fields hope to achieve. As the little boy tearfully said to Shoeless Jackson after the Black Sox scandal had broken: "Tell me it ain't so!"

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To the Editor:

Nicholas Henry has provided readers of *PS* with a helpful first look at the new copyright law in the Winter 1977 issue, but as he admits, his review is "extremely selective." Here I should like to supplement his "all-too-brief" summary by highlighting aspects of the law that he neglected to mention or did not emphasize sufficiently.

First, however, I want to question the advice he offers to scholars who present papers at conferences and the interpretation of the law on which he bases that advice. Holding that such papers would be regarded under the new law as instances of "performance" rather than "publication," he recommends that the words "limited publication for comment and criticism" be typed on the papers in order to prevent them "from entering the public domain." Now the very worst thing one could do, I should think, would be to use the word "publication": a "limited" publication is a publication nonetheless! A murderer cannot escape the legal consequences of his act by confessing to only a "little" murder. A better word to use, surely, would be "circulation," which at least has the virtue of entailing no direct legal consequences. But, beyond that, it is simply wrong to suggest that lack of such a notice would place the manuscript in the public domain. If it were truly possible to regard the work as unpublished, as Mr. Henry seems to think, there is no way that it could fall into the public domain because no notice of any kind is required for protection of the copyright in an unpublished work for the full statutory period of the author's life plus fifty years. And if it were to be treated as a published work, as I think it probably would be in some circumstances, copyright protection would not be forfeited unless the author failed to register the work and did not attempt to add a proper copyright notice to all the copies distributed in the U.S.

within *five* years after publication—a generous allowance of time for remedying an error. One major difference between the new law and the old, indeed, is that it will be very difficult to lose or invalidate copyright beginning in 1978 whereas it could easily happen before merely by accident. But why should conference papers be considered published works? Well, at least at the national APSA meeting, and probably at other meetings too, papers are offered for sale to the public, and this circumstance alone should be sufficient to render them "published" under the law. It would be safer, then, whether or not a paper would be considered legally "published" if presented at a conference, to include a copyright notice on it than to use any other kind of notice at all. After all, what is sacrificed by treating it as published? Nothing, essentially, for the term of copyright is the same under the new law for published and unpublished works, and registration is required for both as a prerequisite to filing a suit for infringement.

This reference to registration brings me to what I want to say in supplementing Mr. Henry's remarks. He did not point out just what role registration plays under the new law and why it is important for authors, even of unpublished works, to be aware of the law's requirements. In the past common law afforded protection to authors of unpublished works for an indefinite period without requiring them to take any action at all to secure full protection. Under the new law authors of such works have to register them with the Copyright Office if they want to be in a position to recover statutory damages (which can amount to as much as $50,000) as well as actual damages for infringement; and this is important because actual damages are often very difficult to prove in copyright cases. Of course, published works also have to be registered to gain full protection of this kind, but normally (except when sale constitutes publication as in the conference situation mentioned above) registration will be taken care of by whoever publishes the work rather than the author.

On the vexed question of photocopying, which despite the codification of the principles of fair use that the new law contains will continue to be a source of controversy and differing interpretation, Mr. Henry does not sufficiently emphasize the protection that the law affords teachers (and librarians) against innocent infringements. He says that "if a copyright owner can show that his or her work's potential profits have been affected, then the user probably is in violation of copyright." Now, besides mentioning that effects on a work's potential market (which is not the same as "potential profits") are frequently hard to demonstrate conclusively, it is also worth noting that the law imposes the burden of proof on the copyright owner for showing a teacher not to have acted in good faith where he or she infringed a copyright while claiming to believe the use made of the copyrighted work to be "fair" under the provisions of the law. On the other hand, the legislative record accompanying the law, in the form of the House committee report, recognizes a set of guidelines for classroom copying endorsed by organizations representing authors, publishers, and educators as "a reasonable interpretation of the minimum standards of fair use." Teachers can be certain of acting within the law when they follow these guidelines; going beyond them, they take a risk of violating copyright. The courts will no doubt place great weight on these guidelines in rendering decisions in copyright cases. It is therefore important for teachers to familiarize themselves with them. They are printed, along with other useful information, in a booklet entitled *Explaining the New Copyright Law: A Guide to Legitimate Photocopying of Copyrighted Materials* available from the Association of American Publishers, 1707 L Street, Suite 480, Washington, D.C. 20036.

Another feature of the new law that Mr. Henry should have stressed but unaccountably did not, despite his awareness of the APSA's concern about reprint rights, is that the author of an article in a journal or other collective work (such as a symposium volume or anthology) is presumed to have transferred only the first serial rights and a very restricted reprint right to the publisher in the absence of any written agreement providing otherwise. Henceforth a publisher will *not* have any right to revise the article or include it in an anthology or license any other publisher to translate or use it in any way unless a written agreement with the author explicitly gives the publisher such a right. Copyright is considered divisible under the new law, and an author can decide just what rights he or she wants to yield to the publisher. If the author does not grant the publisher any rights beyond those that the mere act of publication of a collective work entails, it would be wise for the author to insist on the inclusion of a copyright notice in his or her name on the first page of the article; for, otherwise, the article will be considered as printed with an error in the notice. The predictable response of publishers of journals and other collective works in light of this provision of the new law will be to devise contracts for each contributor to the collective work to sign. But this development should be welcomed by authors, for it will formalize what has hitherto often been a very informal and uncertain relationship between publisher and authors of a collective work. No longer need authors find out after the fact that certain assumptions they made about reprinting and the like were not shared by their publisher. Everything will be in writing from the start, and authors and publishers will both know when they have grounds for justifiable complaint.

Yet another way in which the new law reinforces the author's position vis-à-vis the publisher is the right it gives him or her to terminate a transfer of any or all rights in a work after a specified period of time. Unlike the old law, the new law prevents an author from waiving or contracting away this right in advance. Thus it

ensures an author (or his heirs) of the opportunity to renegotiate an agreement that may originally have been disadvantageous to the author or may have become inequitable in view of the work's unforeseen success. However, unlike the old law, under which the reversion of rights happened automatically if not assigned in advance, the new law requires that the author wishing to retrieve any rights take positive action to do so by serving notice on the publisher within a given period of time before the termination is to become effective.

In these and other respects the Copyright Act of 1976 marks what Register of Copyrights Barbara Ringer has called "a fundamental shift in our copyright philosophy" away from the publisher toward the author as the primary source and beneficiary of copyright. Political scientists as authors and as teachers and researchers, too, have much to be thankful for in greeting the dawn of a new era in copyright. Their lives should be easier and more rewarding in many ways as a result of the miracle that Congress (with the help and advice of many others) has worked in bringing this long-awaited act into being at last.

Sanford G. Thatcher
Chairman, Copyright Committee
Association of American University Presses

To the Editor:

For the second year in a row the University of Missouri-St. Louis was omitted from the list of Data on Women in Departments of Political Science. Again, we did not receive a questionnaire. Last year you were kind enough to print the information in a later issue of *PS*. The data is as follows:

Full		Associate		Assistant	
M	W	M	W	M	W
5	0	4	1	7	0

Graduate Students		
Number of Students in M.A. Program		Total M.A. Degrees to Women in Last 3 Years
M	W	W
69	17	7

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