

Abstract – The Curious Print and Label Act

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From 1874 through 1940, prints and labels in the United States were not copyrighted in the Library of Congress, but rather with the Patent and Trademark Office. While it is now generally recognized that the 1874 Act of Congress establishing this procedure was meant to have the Patent and Trademark Office issue copyright registrations, this was not at all clear at the time. This article primarily recounts the history of this procedure, starting from the request of the Librarian of Congress for such a law in 1872 (and arguing that labels and prints were not copyrightable and were trademarks), through the decision of the Commissioner of Patents in 1892 that only copyrightable subject matter would be registered as a label or print, and continuing through the Act's final repeal in 1939. Particular focus is put on how people of the time wrestled with the question of what exactly a print or (especially) label is within the taxonomy of intellectual property, where it has characteristics of both trademarks and copyrights. This debate was made particularly urgent by the Supreme Court's decision in the *Trade-Mark Cases* in 1879 limiting the scope of the copyright clause of the constitution, leading many to wonder if the 1874 act was unconstitutional as well. In reviewing this mostly forgotten area of legal history, greater insight is possible in the law regarding copyrights, trademarks, and mixed intellectual property.