

# Copyright

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International Bureaux for the Protection  
of Intellectual Property (BIRPI)

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## Contents

	Pages
<b>WORLD INTELLECTUAL PROPERTY ORGANIZATION</b>	
— Senegal. Ratification of the WIPO Convention . . . . .	210
<b>INTERNATIONAL UNION</b>	
— Senegal. Ratification of the Stockholm Act of the Berne Convention . . . . .	210
— Interunion Coordination Committee. Sixth Session (Geneva, September 24 to 27, 1968) . . . . .	211
<b>BILATERAL AGREEMENTS</b>	
— Germany (Fed Rep.)—Norway . . . . .	213
<b>NATIONAL LEGISLATION</b>	
— Norway. Royal Decree concerning the free use of works for educational purposes in some specific cases (of October 20, 1967) . . . . .	214
<b>GENERAL STUDIES</b>	
— The Role of the United States in International Copyright (Barbara A. Ringer) . . . . .	215
<b>NEWS ITEMS</b>	
— Malta. Accession to the Universal Copyright Convention (with effect from November 19, 1968) . . . . .	227
<b>CALENDAR</b>	
— BIRPI Meetings . . . . .	227
— Meetings of Other International Organizations Concerned with Intellectual Property . . . . .	227
Vacancy for a Post in BIRPI . . . . .	228

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# WORLD INTELLECTUAL PROPERTY ORGANIZATION

## SENEGAL

### Ratification of the WIPO Convention

*Notification of the Director of BIRPI to the Governments  
of the countries invited to the Stockholm Conference*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . . . and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of the Republic of Senegal, referring to Article 14(3), has deposited on September 19, 1968, its instrument of ratification dated

August 24, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Republic of Senegal has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety and the Stockholm Act of the Berne Convention in its entirety.

Geneva, September 20, 1968.

WIPO Notification No. 5

## INTERNATIONAL UNION

## SENEGAL

### Ratification of the Stockholm Act of the Berne Convention

*Notification of the Director of BIRPI to the Governments  
of Union Countries*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . . . and, in accordance with the provisions of the above international instrument, adopted at Stockholm, has the honor to notify

him that the Government of the Republic of Senegal, referring to Article 28, has deposited on September 19, 1968, its instrument of ratification dated August 24, 1968, of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Stockholm on July 14, 1967.

Geneva, September 20, 1968.

Berne Notification No. 6

## Interunion Coordination Committee

### Sixth Session

(Geneva, September 24 to 27, 1968)

#### Report <sup>1)</sup>

##### Composition of the Session; Officers

The Sixth<sup>2)</sup> Ordinary Session of the Interunion Coordination Committee (hereinafter referred to as "the Committee") was held at Geneva from September 24 to 27, 1968.

Twenty-five of the 27 members of the Committee were represented: Argentina, Australia, Austria, Belgium, Brazil, Denmark, France, Germany (Federal Republic), Hungary, India, Iran, Italy, Japan, Kenya, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America. The two members not represented were Cameroon and Morocco.

The following seven States were represented by observers: Algeria, Canada, Cuba, Czechoslovakia, Holy See, Israel, Lebanon.

The list of participants follows the present Report.

##### Reports on the Activities of BIRPI since the 1967 Session of the Committee

Professor G. H. C. Bodenhausen, Director of BIRPI, presented reports on the activities of BIRPI since the last session of the Committee, covering a period of some nine months. Among other events, the reports mentioned the following:

— the progress made in respect of the BIRPI plan for a *Patent Cooperation Treaty* ("PCT"), including the preparation and publication by BIRPI of a second, revised draft of the proposed Treaty;

— the preparation and publication by BIRPI of a *draft agreement on the international classification of industrial designs*;

— the *training program* of BIRPI for government officials of developing countries;

— the *continued cooperation or contacts* between BIRPI and the United Nations, including the Economic and Social Council (ECOSOC), the UN Commission on International Trade Law (UNCITRAL), the UN Conference on Trade and Development (UNCTAD), the UN Industrial Development Organization (UNIDO), the UN Conference on the Law of Treaties, the International Law Commission, and the Economic Commission for Europe (ECE);

— the contacts with the Council of Europe with a view to a possible structural reform of the *Convention on the International Patent Classification*;

— the meeting of a working group on ways and means of setting up financial machinery permitting authors to be assured of equitable and fair remuneration under the *Protocol Regarding Developing Countries* attached to the Berne Convention and adopted by the Stockholm Conference in 1967;

— the publication of a new BIRPI quarterly periodical, in the Spanish language, *La Propiedad intelectual*.

##### Financial Reports for the Year 1967

These reports of BIRPI were noted with approval by the Committee.

##### Program and Budget of BIRPI for the Year 1969

The Director of BIRPI presented to the Committee the program and budget of BIRPI for the year 1969.

In addition to the usual activities contemplated in the framework of the Paris and Berne Unions, the following are among the activities planned for 1969:

— studies will start with a view to the possible revision of the *Madrid Agreement Concerning the International Registration of Marks*, in order to: (i) eliminate the disadvantages of the Nice Act which have become apparent in the practical application of that Act, and (ii) make changes in the Agreement which should allow countries to accede which are not now party to it;

— the *alphabetical list of goods* under the Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, will be drawn up;

— a committee of experts will meet to study the possibilities of establishing an *international classification of the figurative elements of marks*;

— the Permanent Committee of the Berne Union will probably meet to set up, possibly jointly with the Intergovernmental Copyright Committee established under the Universal Copyright Convention, a working group to examine the general situation with regard to *international copyright relations*;

— a working group will meet to examine the copyright law implications of the *use of computers* in the reproduction of literary and artistic works.

The proposed program and budget were noted with approval by the Committee.

##### Staff Matters

The following were among the main decisions of the Committee in matters concerning the staff of BIRPI.

The Committee endorsed the proposal of the Director of BIRPI to appoint Mr. Joseph Voyame, Director of the Swiss Federal Bureau of Intellectual Property, as Second Deputy Director of BIRPI.

It also endorsed the intention of the Director of BIRPI to promote Mr. Claude Masouyé, Counsellor (BIRPI), to the rank of Senior Counsellor.

The Committee paid tribute to Mr. Charles-Louis Magnin, Deputy Director, and Mr. Ross Woodley, Senior Counsellor, in view of their impending retirement from the service of BIRPI.

<sup>1)</sup> This Report was prepared by BIRPI on the basis of the official documents of the session.

<sup>2)</sup> Reports on the first five sessions were published in *Le Droit d'Auteur (Copyright)*, 1964, pp. 23 and 177; in *Copyright*, 1965, p. 238; 1966, p. 254; and 1968, p. 10, respectively.

## List of Participants

### Member States of the Committee

#### Argentina

Mr. L. M. Laurelli, Secretary of Embassy, Permanent Delegation of Argentina, Geneva.

#### Australia

Miss J. H. Barnett, First Secretary, Permanent Mission of Anstralia, Geneva.

#### Austria

Mr. T. Lorenz, Connsellor, Federal Ministry of Commerce and Industry, Vienna.

#### Belgium

Mr. G.-L. de San, Director-General and Legal Connsellor, Ministry of National Edncation and Culture, Brussels.

Mr. P. Peetermans, Secretary of Administration, Service of Industrial and Commercial Property, Ministry of Economic Affairs, Brussels.

#### Brazil

Mr. J. C. Ribeiro, Second Secretary, Permanent Delegation of Brazil, Geneva.

#### Denmark

Mr. T. Lund, Professor at the University of Aarhus, Risskov.

#### France

Mr. F. Savignon, Director, National Institute of Industrial Property, Paris.

Mr. R. Lahry, Connsellor of Embassy, Ministry of Foreign Affairs, Paris.

Mr. A. Kerever, Maître des requêtes, Council of State, Ministry of State for Cultrnal Affairs, Paris.

#### Germany (Federal Republic)

Mr. A. Krieger, Ministerialrat, Federal Ministry of Justice, Bonn.

Mr. R. Singer, Leitender Regierungsdirektor, German Patent Office, Munich.

Mrs. E. Steup, Regierungsdirektorin, Federal Ministry of Jnstice, Bonn.

Mr. P. Schönfeld, First Secretary, Permanent Delegation of the Federal Republic of Germany, Geneva.

#### Hungary

Mr. A. Kiss, Vice-Chairman, National Office for Inventions, Bndapest.

Mr. J. Bohrovsky, Legal Advisor, National Office for Inventions, Bndapest.

#### India

Mr. K. K. S. Rana, First Secretary, Permanent Mission of India, Geneva.

#### Iran

Mr. M. Naraghi, Head of Department of Registration of Companies and Industrial Property, Teheran.

#### Italy

Mr. G. Trotta, Legal Advisor, Ministry of Foreign Affairs, Rome.

Mr. G. Galtieri, Head, Literary, Artistic and Scientific Property Office, Presidency of the Council of Ministers, Rome.

Mr. V. De Sanctis, Attorney-at-Law, Legal Advisor, Italian Society of Authors and Publishers, Rome.

Mr. A. Pelizza, Inspector-General, Ministry of Industry, Rome.

Mr. M. Angel-Pnlsinelli, Inspector-General, Ministry of Indnstry, Rome.

#### Japan

Mr. T. Sakai, First Secretary, Delegation of Japan, Geneva.

Mr. T. Suzuki, Counsellor, Delegation of Japan, Geneva.

#### Kenya

Mr. D. J. Coward, C. M. G., Registrar-General, State Law Office, Nairobi.

#### Mexico

Mr. H. Cardenas, Second Secretary, Permanent Delegation of Mexico, Geneva.

#### Netherlands

Mr. J. B. van Benthem, President of the Patent Board, The Hague.

Mr. W. M. J. C. Phaf, Head of the Division of Legislation and Legal Affairs, Ministry of Economic Affairs, The Hague.

Mr. H. J. A. M. Vronwenvelder, Head of the Accounts Division, Ministry of Economic Affairs, The Hague.

#### Poland

Mr. J. Ciesielski, Director, National Patent Office, Warsaw.

Mr. M. Zoledowski, Head of Section, National Patent Office, Warsaw.

Mr. J. Dalewski, Head of the Legal Section, National Patent Office, Warsaw.

#### Portugal

Mr. F. de Alcamhar-Pereira, Permanent Representative of Portugal to the United Nations, Permanent Mission of Portngal, Geneva.

Mr. L. Pazos Alonso, Secretary of Embassy, Permanent Mission of Portugal, Geneva.

#### Rumania

Mr. C. Mitran, Second Secretary, Permanent Mission of Rumania, Geneva.

#### Spain

Mr. A. F. Mazaramhroz, Director, Industrial Property Registration Office, Madrid.

Mr. F. Utray, Deputy Permanent Delegate, Permanent Delegation of Spain, Geneva.

Mrs. I. Fonseca-Ruiz, Technical Secretary, General Directorate of Archives and Libraries, Madrid.

#### Sweden

Mr. G. Borggård, Director-General, National Patent and Registration Office, Stockholm.

Mr. C. A. Uggla, Legal Advisor, National Patent and Registration Office, Stockholm.

#### Switzerland

Mr. J. Humhert, Ambassador, Permanent Mission of Switzerland, Geneva.

Mr. J. Voyame, Director, Federal Bnreau of Intellectual Property, Berne.

Mr. W. Stamm, Head of Section, Federal Bnrean of Intellectual Property, Berne.

Mr. A. Coigny, Diplomatic Assistant, Federal Political Department, Berne.

Mr. P. Ruedin, Consnlar Assistant, Federal Political Department, Berne.

#### Union of Soviet Socialist Republics

Mr. Y. E. Maksarev, Chairman, Committee for Inventions and Discoveries Attached to the Council of Ministers of the USSR, Moscow.

Mr. V. I. Iljin, Assistant Head, External Relations Division, Committee for Inventions and Discoveries Attached to the Council of Ministers of the USSR, Moscow.

Mr. Y. A. Gyrdymov, Committee for Inventions and Discoveries Attached to the Council of Ministers of the USSR, Moscow.

#### United Kingdom

Mr. G. Grant, C. B., Comptroller-General, Patent Office, London.

Mr. I. J. G. Davis, Principal Examiner, Patent Office, London.

#### United States of America

Mr. E. J. Brenner, Commissioner of Patents, Washington, D. C.

Mr. H. J. Winter, Assistant Chief, Business Practices Division, Department of State, Washington, D. C.

Mr. G. D. O'Brien, Assistant Commissioner of Patents, Washington, D. C.

**Observers****Algeria**

- Mr. S. Bouzidi, Head of Division, National Industrial Property Office, Algiers.  
 Mr. A. Abdelouahab, Head of Service, National Industrial Property Office, Algiers.

**Canada**

- Mr. F. W. Simons, Assistant Commissioner of Patents, Patent Office, Ottawa.  
 Mr. J. Corbeil, Second Secretary, Permanent Mission of Canada, Geneva.

**Cuba**

- Mr. M. Garcia Incháustegui, Ambassador, Permanent Mission of Cuba, Geneva.  
 Mr. F. Ortiz Rodriguez, First Secretary, Permanent Mission of Cuba, Geneva.

**Czechoslovakia**

- Mr. M. Všečka, Head of the Legal and International Department, Patents and Inventions Office, Prague.

**Holy See**

- Rev. Father H.-M. de Riedmatten, Permanent Observer of the Holy See to the International Organizations at Geneva, Geneva.

**Israel**

- Mr. Z. Sher, Registrar of Patents, Designs and Trade Marks, Patent Office, Jerusalem.

**Lebanon**

- Mrs. R. Homsy, First Secretary, Permanent Mission of Lebanon, Geneva.

**Officers of the Session**

- Chairman: Mr. G.-L. de San (Belgium)  
 Vice-Chairman Mr. N. Naraghi (Iran)  
 Mr. F. Savignon (France)  
 Secretary: Dr. A. Bogsch (BIRPI)

**United International Bureaux  
 for the Protection of Intellectual Property (BIRPI)**

- Professor G. H. C. Bodenhausen, Director.  
 Dr. A. Bogsch, Deputy Director.  
 Mr. Ch.-L. Magnin, Deputy Director.  
 Mr. R. Woodley, Senior Counsellor.  
 Mr. B. A. Armstrong, Counsellor, Head, Division of Finance, Personnel and General Administration.  
 Mr. C. Masouyé, Counsellor, Head of the Copyright Division.  
 Mr. K. Pfanner, Counsellor, Head of the Industrial Property Division.



## BILATERAL AGREEMENTS

**GERMANY (Fed. Rep.)—NORWAY****Exchange of Notes**

**between the Government of the Federal Republic of Germany and the Government of Norway  
 concerning the extension of the term of copyright protection**

MINISTRY OF FOREIGN AFFAIRS

V 5 - 32.01 - 94.05

Bonn, November 30, 1966

To the Royal Embassy of Norway

**Note**

The Ministry of Foreign Affairs has the honour to refer to the Note of the Royal Embassy of Norway dated September 20, 1966, No. 61/66, in which the view expressed is that Norwegian works whose copyright term was extended in Norway until December 31, 1968, by the Provisional Law of December 2, 1955, as amended, also benefit to the same effect and by right, pursuant to Article 7(2) of the Berne Convention for the Protection of Literary and Artistic Works, from the provision in the German Copyright Law of September 9, 1965, which extended the term of protection from 50 to 70 years after the death of the author.

The German Government shares this view and consequently also believes that there is no need for a bilateral agreement between the German Federal Republic and Norway on the extension of the term of copyright protection. It assumes,

therefore, that, reciprocally, the extension of copyright protection provided for in the above-mentioned Norwegian Law applies, by right, pursuant to Article 7(2) of the Berne Convention, to works of German origin in Norway following the entry into force of the German extension of the term of protection, that is, from September 17, 1965, according to Article 143(1) of the Law of September 9, 1965.

However, the Norwegian Law of December 2, 1955, as amended, has not only extended the period of copyright protection, for works still protected when the Law entered into force, so that it expires on December 31, 1968, but Article 1 of the Law further provides for a general six-year extension of the period of protection for all works the authors of which died before the end of 1955 and which were still protected at the time the Law entered into force. The German Government is of the opinion that Article 7(2) of the Berne Convention is also applicable with regard to this extension of the period of protection following the entry into force of the extended period of protection in Germany, with the result that works of Norwegian origin the authors of which died before the end

of 1955 and which were still protected when the German extension of the period of protection entered into force are protected in Germany until 56 years have elapsed after the death of the author and that, reciprocally, works of German origin benefit, under the same conditions, from this longer period of protection in Norway. Again, the German Government does not deem it necessary to conclude a special reciprocal agreement in this respect.

Admittedly, there is a certain doubt that results from Article 3(2) of the Norwegian Law of December 2, 1955, as amended, as to whether it applies to works of German origin. According to the Article in question, the King may declare, subject to reciprocal treatment, that the Law is wholly or partially applicable to works of foreign origin. In so far as the Norwegian Government considers that this stipulation takes precedence over the provision of Article 7(2) of the Berne Convention and that, in consequence, works of German origin may only benefit from the extended period of protection granted under the Law of December 2, 1955, by virtue of such a declaration made by the King, the German Government asks that this declaration be made as soon as possible, so that, with regard to the term of copyright protection in Germany and Norway, the principle of reciprocity will be fully applied. Here, too, the German Government is of the opinion that a special agreement would not be necessary.

The German Government would be grateful to be informed whether the Norwegian Government shares the legal interpretation set forth herein, according to which, upon the entry into force of the German extension of the period of protection, the above-mentioned six-year extension of the period of

protection, provided for in Article 1 of the Norwegian Law of December 2, 1955, also becomes effective by right — whether immediately or by virtue of a Royal Declaration under Article 3(2) of that Law — in respect of works of German origin in Norway and works of Norwegian origin in Germany, pursuant to Article 7(2) of the Berne Convention.

The Ministry of Foreign Affairs takes this opportunity to renew to the Royal Embassy of Norway the assurances of its highest consideration.

\* \* \*

No. 56/67

Bonn, July 6, 1967

To the Ministry of Foreign Affairs  
Bonn

#### Note

The Royal Embassy of Norway has the honour to refer to the Note of the Ministry of Foreign Affairs dated November 30, 1966, V 5 - 82.01 - 94.05, and takes the liberty of informing it that the following has been decided by the Royal Resolution of May 12, 1967:

“The provisions of the Law of December 2, 1955, on the provisional extension of the term of protection of intellectual works shall apply to works of German nationals as well as to works considered to be of German origin, in so far as such works had not fallen into the public domain before September 17, 1965.”

The Royal Embassy of Norway takes this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

## NATIONAL LEGISLATION

### NORWAY

#### Royal Decree concerning the free use of works for educational purposes in some specific cases

(Of October 20, 1967) \*)

Pursuant to the Copyright Act of May 12, 1961, § 16, second paragraph, and on the recommendation of the Ministry of Church and Education, the following provisions are issued:

For use as an aid in school teaching, it is permitted to make sound recordings of published school broadcasting programs or other broadcast programs having mainly an educational nature. Such recordings can be made only by schools or by recording centers approved by the Ministry. The produced recordings must not be used for other purposes, nor outside the school area.

This rule does not include a right to make recordings direct from gramophone records or tape recordings, produced for commercial purposes. Nor does this recording right apply

to dancing schools or schools which, as specifically provided by this Ministry, do not come under these rules.

Regardless of the nature or composition of the program, recording centers which engage in such activities for commercial purposes, shall pay a fixed royalty based on the number of produced copies. The royalty payments will be divided between the Fund for Performing Artists, the Norwegian Authors Fund, and TONO, the Norwegian Composers Association's International Music Bureau. Failing agreement on the amount or the division of the royalty, the dispute will be finally settled by the Ministry.

\*) Published in *Norsk Lovtidend, 1. avdeling*, of November 13, 1967. Translation communicated to BIRPI by courtesy of the Norwegian Authorities.



### Development of the Berne Convention

A conference held under ALAI auspices in Berne in 1883 marked the end of the discussion phase and the beginning of actual work on what became the Berne Convention of 1886. The goals of the conference were: " (1) The study of the legislative enactments affecting literary property in all civilized countries; (2) the study of important points of these enactments with a view to unification and the foundation of a union for the protection of literary property; (3) the drawing up of certain articles, clear and concise, setting forth the principles that are most likely to be accepted by the various powers and which should constitute the text of a universal convention " <sup>12)</sup>.

A draft convention prepared by the ALAI was discussed at the 1883 conference, and the government of Switzerland agreed to circulate it to "all civilized countries " <sup>13)</sup>. The Swiss president's letter of transmittal emphasized the "imperative necessity " of protecting the rights of writers and artists in international relations. He stated that previous agreements were "far from protecting the author's rights in a uniform, efficacious, and complete manner " and that the problem was "connected with the divergency of national laws, which the conventional regime ha[d] necessarily been obliged to take into account " <sup>14)</sup>.

Intergovernmental conferences considering the draft convention were held at Berne in 1884, 1885, and 1886, the last comprising a full diplomatic conference at which the final instrument was signed. The original Berne Convention of September 9, 1886, was a modest beginning; nevertheless, it was the first truly multilateral copyright treaty in history, and it established some important basic principles. Rather than reciprocity ("I'll protect your works, but only to the extent you protect my works"), the Berne Convention adopted the principle of national treatment ("I'll protect your works to the same extent I protect my own works, if you promise to do the same"). The convention set up a "Union for the protection of authors over their literary and artistic works " consisting of the contracting states <sup>15)</sup>, and established a requirement that among Union members the right of translation had to be protected for a minimum of ten years <sup>16)</sup>.

The original Berne Convention provided that rights enjoyed under it "shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and must not exceed in the other countries the term of protection granted in the said country of origin " <sup>17)</sup>. In the successive revisions of the Convention <sup>18)</sup>,

<sup>12)</sup> Solberg, "The International Copyright Union," 36 *Yale L. J.* 68, 81 (1926).

<sup>13)</sup> *Id.*

<sup>14)</sup> *Id.*, at 81-82.

<sup>15)</sup> Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, art. 1.

<sup>16)</sup> *Id.*, art. 5.

<sup>17)</sup> *Id.*, art. 2.

<sup>18)</sup> The original Berne Convention of 1886 came into force on December 5, 1887. It was amended and supplemented in Paris in 1896 by an additional act and an "Interpretation Declaration " put into operation on December 9, 1897. A revision took place in Berlin in 1908 and came into force in 1910. On March 20, 1914, an "Additional Protocol to the revised Berne Convention of 1908 " was signed in Berne, and took effect a year later. The Berlin text was revised in Rome, and the Rome text was signed in 1928 and came into force in 1931. The next revision took place in Brussels, where it was signed in 1948, taking effect in 1951. The last revision, signed at Stockholm on July 14, 1967, has not yet come into force.

the minimum requirements governing protection have been substantially expanded. A Berne Union member accepting the Brussels text of 1948, which is the latest revision now in effect, must, with some exceptions, accord protection to the works of other member countries without requiring compliance with any formalities <sup>19)</sup>, during the life of the author and fifty years after his death <sup>20)</sup>. The Convention provides specific minimum requirements with respect to the protection of certain exclusive rights <sup>21)</sup>, most notably the so-called "moral rights " of the author <sup>22)</sup>. Any country that now wants to join the Berne Union must obligate itself to grant a very high level of copyright protection.

The original Berne Union consisted of 14 countries <sup>23)</sup>. The present membership comprises 58 countries <sup>24)</sup> that have adhered to one or more of the Berne revisions; one country <sup>25)</sup> is still bound by the Berlin revision of 1908, 14 countries <sup>26)</sup> are bound by the Rome text of 1928, and 43 countries <sup>27)</sup> are bound by the Brussels revision of 1948. On July 14, 1967, a new revision of the Berne Convention was signed at Stockholm, but as yet it has not been ratified or acceded to by any country. The Stockholm revisions, notably the new "Protocol Regarding Developing Countries," mark a substantial departure from the high level of copyright protection that hitherto has been characteristic of the Berne Convention. The implications of the Stockholm Act for international copyright in general and the United States in particular will be examined more closely below <sup>28)</sup>.

### International Copyright in the United States Before World War II

For a century after enactment of the first United States copyright statute in 1790 <sup>29)</sup>, only published works by citizens and residents of the United States could secure statutory copyright protection. For a century, the United States was exceptionally parochial in copyright matters, not only denying any protection to the published works of nonresident foreign authors, but actually appearing to encourage piracy <sup>30)</sup>. Com-

<sup>19)</sup> Berne Convention for the Protection of Literary and Artistic Works, June 26, 1948 (Brussels), art. 4(2).

<sup>20)</sup> *Id.*, art. 7(1).

<sup>21)</sup> These include, for example, the rights of translation, recording, broadcasting, performing, arranging, and adapting for motion pictures. *Id.*, arts. 11-14.

<sup>22)</sup> *Id.*, art. 6bis.

<sup>23)</sup> Australia, Belgium, Canada, France, Germany, Haiti, India, Italy, Monaco, New Zealand, Spain, Switzerland, Tunisia, and the United Kingdom.

<sup>24)</sup> These countries include 13 of the original 14 plus Argentina, Austria, Brazil, Bulgaria, Cameroon, Ceylon, Congo (Brazzaville), Congo (Kinshasa), Cyprus, Czechoslovakia, Dahomey, Denmark, Finland, Gabon, Greece, Holy See, Hungary, Iceland, Ireland, Israel, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Madagascar, Mali, Mexico, Morocco, Netherlands, Niger, Norway, Pakistan, Philippines, Poland, Portugal, Rumania, Senegal, South Africa, Sweden, Thailand, Turkey, Upper Volta, Uruguay, and Yugoslavia. Haiti is no longer a member. By a note of May 29, 1968, Malta confirmed its continued adherence to the Berne Convention, thus bringing the total membership to 59 countries.

<sup>25)</sup> Thailand.

<sup>26)</sup> Australia, Bulgaria, Canada, Ceylon, Czechoslovakia, Hungary, Iceland, Japan, Lebanon, Netherlands, New Zealand, Pakistan, Poland, and Rumania.

<sup>27)</sup> Germany acceded to the Rome text, effective October 21, 1933. The Federal Republic of Germany acceded to the Brussels text, effective October 10, 1966. The present status of the German Democratic Republic (East Germany) is in dispute.

<sup>28)</sup> See notes <sup>120)</sup>-<sup>143)</sup> *infra* and accompanying text.

<sup>29)</sup> Act of May 31, 1790, ch. 15, 1 Stat. 124.

<sup>30)</sup> Henn, *supra* note 7), at 52.

mon law protection for unpublished works regardless of the nationality of their authors was cold comfort at a time when publication was the only profitable way to disseminate a work<sup>31</sup>). "Under such circumstances, other nations were understandably reluctant to protect American works"<sup>32</sup>).

Literary piracy, particularly of British works, became common in the 19<sup>th</sup> century, and efforts began in the United States in the 1830's to secure an "international copyright law"<sup>33</sup>). In 1837 Henry Clay, as chairman of a Senate select committee, submitted a report strongly recommending enactment of international copyright legislation<sup>34</sup>). "In principle," he said, "the committee perceives no objection to considering the republic of letters as one great community, and adopting a system of protection for literary property which should be common to all parts of it"<sup>35</sup>). Clay's report was accompanied by a bill intended to extend U. S. copyright protection to British and French authors under rigorous conditions<sup>36</sup>). The Clay bill was reintroduced several times between 1837 and 1842, but never reached a vote<sup>37</sup>).

There followed more than a half-century of agitation for international copyright protection in the United States. Efforts to conclude a bilateral copyright treaty with Great Britain failed<sup>38</sup>), and legislation to extend U. S. copyright protection to foreign authors attracted strong opposition, principally by American printing and publishing interests who believed that their livelihood depended upon cheap reprints of English books. They demanded that the extension of U. S. copyright to foreign works be conditioned on compliance with a requirement of manufacture in this country<sup>39</sup>).

The legislative phase of the international copyright movement in the United States began shortly after the Civil War and finally achieved success in the International Copyright Act of March 3, 1891<sup>40</sup>). During much of this same period the Berne Convention of 1886 was under gestation, and its development was well known to those interested in international copyright in the United States. Yet U. S. government representatives refrained from participating directly in the development of the Convention, under circumstances that leave many questions unanswered<sup>41</sup>).

The prevailing official attitude was summarized in a letter sent by Secretary of State Bayard on June 29, 1886, in response to a Swiss note inviting U. S. participation in the final diplomatic conference. Secretary Bayard stated that the question of international copyright pending before Congress had not advanced far enough in the legislative channel to enable

the Executive to act with the assurance of congressional approval, and that the pendency of measures in Congress made it impracticable for the United States to appoint a plenipotentiary to attend the conference at Berne for the purpose of signing the proposed convention<sup>42</sup>). The American government's attitude toward the project was "merely one of expectancy and reserve," favoring the plan in principle but without determinate views as to the shape it should assume. It was "unprepared to suggest modifications which might conform the convention to the legislation which Congress may hereafter deem appropriate"<sup>43</sup>). Secretary Bayard specifically held out the possibility of future accession to the convention "should it become expedient and practicable to do so"<sup>44</sup>), thus echoing President Cleveland's message to Congress on December 8, 1885<sup>45</sup>). This possibility was also reflected in the language of the International Copyright Act of 1891:

That this act shall apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party to such agreement<sup>46</sup>).

The compromise that made the Act of 1891 possible was the introduction of a requirement of domestic manufacture for "a book, photograph, chromo, or lithograph." Under section 4956 of the Act, copyright could be secured only by making registration before publication and by depositing two copies of the work on or before the date of publication anywhere. Moreover, in the case of books and certain graphic works, the two copies had to be manufactured in the United States.

The requirements of the 1891 "manufacturing clause" were so rigid that they made the extension of copyright protection to foreigners illusory. Acts were passed in 1904<sup>47</sup>) and 1905<sup>48</sup>) in an effort to liberalize the clause by giving foreigners extra time to comply with the manufacturing requirement, and finally, in 1906, Congress undertook work on a general revision of the U. S. copyright laws. This revision effort was at its peak when, on October 14, 1908, a major conference for revision of the Berne Convention was held in Berlin. The United States was invited to attend with "full freedom of action"<sup>49</sup>), but the delegate, Thorvald Solberg, the Register of Copyrights, was sent as an observer only. Mr. Solberg explained to the Conference that the United States found it impracticable to send a delegate authorized to commit it to actual adherence to the Berne Convention since some of the questions to be discussed there were pending before the Congress and premature action at the Convention might embarrass the legislative branch of the Government<sup>50</sup>).

The original Berne Convention of 1886 had allowed member countries to impose certain formalities, such as notice,

<sup>31</sup>) *Id.*

<sup>32</sup>) *Id.*

<sup>33</sup>) The fullest study of this subject is found in a 1953 doctoral dissertation prepared at the University of Maryland. W. Bezanson, *The American Struggle for International Copyright, 1866-1891*. See also R. Bowker, *supra* note 4), at 35-38, 341-72; T. Solberg, *Copyright Miscellany*, No. 18 (1939); M. Kampelman, *supra* note 11), at 414-17.

<sup>34</sup>) See R. Bowker, *supra* note 4), at 341-46; T. Solberg, *supra* note 33), at 1-5.

<sup>35</sup>) R. Bowker, *supra* note 4), at 344.

<sup>36</sup>) *Id.*, at 346.

<sup>37</sup>) See T. Solberg, *supra* note 33), at 6-10.

<sup>38</sup>) See R. Bowker, *supra* note 4), at 346-56; Solberg, *supra* note 12), at 68-80. See generally W. Bezanson, *supra* note 33), at 133-286.

<sup>39</sup>) See Sherman, "The Universal Copyright Convention: Its Effect on United States Law," 55 *Colum. L. Rev.* 1137, 1161 (1955).

<sup>40</sup>) Ch. 565, 26 Stat. 1106.

<sup>41</sup>) See Solberg, *supra* note 12).

<sup>42</sup>) *Id.*, at 94-95.

<sup>43</sup>) *Id.*

<sup>44</sup>) *Id.*, at 95.

<sup>45</sup>) *Id.*, at 94.

<sup>46</sup>) Act of March 3, 1891, ch. 565, § 13, 26 Stat. 1110.

<sup>47</sup>) Act of January 7, 1904, ch. 2, 33 Stat. 4.

<sup>48</sup>) Act of March 3, 1905, ch. 1432, 33 Stat. 1000.

<sup>49</sup>) Solberg, *supra* note 12), at 97.

<sup>50</sup>) *Id.*, at 98.

registration, and domestic manufacture, as conditions of copyright. This was changed by article 4 of the Berlin revision of 1908, which provided without qualification that "the enjoyment and exercise of these rights shall not be subject to the performance of any formality." This made it impossible for the United States to join the Berne Union without substantial changes in its domestic law.

In 1909, the year after the Berlin revision abolished formalities in international copyright, Congress passed a complete revision of the United States copyright law. The Act of March 3, 1909<sup>51)</sup>, which was essentially the same as the present American copyright law, retained rather rigid notice formalities and, while further liberalizing the manufacturing provisions<sup>52)</sup>, retained the basic requirement of domestic manufacture as a condition of copyright in English-language books and periodicals<sup>53)</sup>. American adherence to the Berne Convention thus became impossible unless Congress could be persuaded to change the law again, but this obviously was unfeasible in the immediate future. Active U. S. participation in the development and revision of the Berne Convention in its nascent stages might not have avoided this result, but it might have prevented the paths from diverging so sharply.

The 1909 Act continued the provision of the 1891 statute under which the President is empowered to proclaim the existence of bilateral copyright relations between the United States and particular foreign countries<sup>54)</sup>. This system has proved cumbersome and ineffective in comparison with the simplicity, certainty, and other advantages offered by multi-lateral arrangements<sup>55)</sup>. In fact, efforts to achieve adherence to the Berne Convention began less than 15 years after the enactment of the 1909 statute; following the First World War, the increasing use of American works in other countries brought with it a demand that the United States adhere to the Berne Convention. Beginning in 1922, a series of bills for this purpose were introduced in Congress<sup>56)</sup>.

<sup>51)</sup> Ch. 320, 35 Stat. 1075.

<sup>52)</sup> The 1909 Act exempted foreign language works of foreign origin from the manufacturing requirements. It extended the privilege of securing an "ad interim" copyright, established by the 1905 statute, to English language works; if a copy was deposited in the Copyright Office within thirty days of the first publication abroad, and if an American edition was manufactured and published in the United States within thirty days from the date of deposit, then a full-term copyright could be secured. *Id.*, §§ 21-22.

<sup>53)</sup> The manufacturing provisions have been further liberalized by the Act of December 18, 1919, ch. 11, § 21, 41 Stat. 368, extending the two thirty-day ad interim terms to sixty days and four months, respectively, and by the Act of June 3, 1949, ch. 171, § 22, 63 Stat. 153, extending the ad interim time limits to six months and five years, and allowing importation of up to 1500 copies of the foreign edition. The Act of August 31, 1954, ch. 116, § 9(1), 68 Stat. 1030, exempted foreign works qualifying under the UCC from the manufacturing requirement altogether.

<sup>54)</sup> This provision is now codified as 17 U. S. C. § 9(h) (1964). At present the United States still has bilateral relations with 38 countries: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Costa Rica, Cuba, Czechoslovakia, Denmark, El Salvador (by virtue of the Mexico City Convention of 1902), Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Rumania, South Africa, Spain, Sweden, Switzerland, Thailand, and the United Kingdom.

<sup>55)</sup> See Dixon, "Universal Copyright Convention and United States Bilateral Copyright Arrangements," in *U. C. C. Analyzed*, *supra* note 3), at 113.

<sup>56)</sup> Goldman, "The History of U. S. A. Copyright Law Revision from 1901 to 1954," *Copyright Law Revision* (Studies prepared for the Subcomm. on Patents, Trademarks, and Copyrights of the Senate Comm. on the Judiciary, 86th Cong., 1st Sess., Pursuant to S. Res 53), Study No. 1, at 4 (1960).

The history during the 1920's and 1930's of the combined legislative programs to obtain general revision of the copyright law and U. S. adherence to the Berne Convention makes painful reading<sup>57)</sup>. One commentator attributed the total failure of both these programs to the effort to link them together, pointing out that "the development of radio and motion picture technology during the 1920's introduced new interests into the orbit of intellectual properties, and made more difficult the task of securing agreement on proposals to effect a general revision of the copyright law"<sup>58)</sup>. On the other hand, a motion picture attorney felt that the United States never adhered to Berne "primarily because it contains concepts which are foreign to our concepts of copyright, such as copyright without formalities, protection of moral rights, retroactivity and also because of the requirement of our manufacturing clause"<sup>59)</sup>.

Whatever the reason for the failure of these legislative programs, the United States had become an exporter in the copyright trade, and something had to be done. It did not take American copyright owners long to discover an attractive loophole that has come to be known as the "backdoor to Berne." By the simple device of simultaneous publication of an American work in the United States and in a country which was a Berne Union member, such as Canada, a work became entitled to protection throughout the Berne Union without any corresponding obligations on the United States to protect Berne works<sup>60)</sup>. This practice of simultaneous publication became extremely widespread, and provoked resentment that is surprising only in its relative mildness. In 1914 the Berne Union adopted a retaliatory protocol<sup>61)</sup> under which member countries could, if they chose, limit the protection of non-member authors under certain conditions<sup>62)</sup>, and there were cases in which the existence of true simultaneous publication was decided on narrow grounds<sup>63)</sup>.

In 1928 the Berne Convention was revised at Rome, and the level of protection was again raised. In an effort to induce the United States to join the Union, however, the Rome Convention permitted nonmembers to adhere to the Berlin text of 1908 until August 1, 1931<sup>64)</sup>. Strenuous efforts in Congress to meet this deadline were unsuccessful; although Senate approval of the Rome version was prematurely obtained in 1935<sup>65)</sup>, it was immediately withdrawn<sup>66)</sup>. Another major effort sponsored by a committee formed under the auspices of an American organization related to the League of Nations resulted in the introduction of a bill in 1940<sup>67)</sup>, but it died in committee.

<sup>57)</sup> See, e. g., 2 S. Ladas, *supra* note 6), at 856-76; T. Solberg, *Copyright Miscellany*, No. 15 (1939); Note, "Revision of the Copyright Law — Legislative History," 51 *Harv. L. Rev.* 906 (1938).

<sup>58)</sup> Sherman, *supra* note 39), at 1147.

<sup>59)</sup> Duhin, "The Universal Copyright Convention," 42 *Calif. L. Rev.* 89, 98 (1954).

<sup>60)</sup> See 1 S. Ladas, *supra* note 6), at 288-310.

<sup>61)</sup> Additional Protocol to the Revised Berne Convention of November 13, 1908, March 20, 1914.

<sup>62)</sup> See T. Solberg, *Copyright Miscellany*, No. 7 (1939).

<sup>63)</sup> See Sherman, *supra* note 39), at 1148.

<sup>64)</sup> *Id.*

<sup>65)</sup> 79 *Cong. Rec.* 6032 (1935).

<sup>66)</sup> *Id.*, at 6099.

<sup>67)</sup> S. 3043, 76th Cong., 3rd Sess. (1940).

### *Inter-American Conventions*

Efforts to develop multilateral copyright arrangements in the Americas began in the 1880's, at about the same time the Berne Convention and the United States International Copyright Act were being formed. These efforts produced a series of Pan-American copyright conventions, but for all practical purposes the United States is a member of only one of them, the Buenos Aires Convention of 1910<sup>68</sup>). It has failed to accept the later revisions adopted at Havana in 1928 and at Washington in 1946, which are more closely analogous to the principles of the Berne Convention<sup>69</sup>).

Under the Buenos Aires Convention a work is protected in a member country if it has been copyrighted in another member country and bears a form of copyright notice. Since no legislation implementing it has ever been enacted, the conditions and extent of protection under this convention remain somewhat unclear in the United States. Furthermore, during the past twenty years there has been an unmistakable trend away from regional conventions and in favor of worldwide copyright arrangements, and the Universal Copyright Convention has superseded the Pan-American conventions in many cases<sup>70</sup>).

### *The Universal Copyright Convention*

After the Second World War it became even more imperative for the Berne Union and the United States to reach an accommodation<sup>71</sup>). The failure of the United States to offer foreign works the level of copyright protection generally available throughout the Berne Union gave rise to indignation, which was intensified by the practice of American copyright owners' taking full advantage of Berne protection in other countries. The situation grew worse with the emergence of the United States as the leading exporter of copyrighted works in the world. As one commentator has said, "Consideration was given to attracting the Americas into Berne, but member countries refused to tolerate their own retrogression for the simple expediency of attracting the American countries"<sup>72</sup>). The postwar situation was urgent, but it seemed clear at that time that the Berne countries would refuse to lower protection sufficiently to attract American adherence and that future efforts by the United States to join the Berne Union would be futile. The approach that was adopted represented a compromise: a new "common denominator" convention that was intended to establish a minimum level of international copyright relations throughout the world, without weakening or supplanting the Berne Convention. The Universal Copyright Convention, as it came to be called<sup>73</sup>), was

<sup>68</sup>) 38 Stat. 1785 (1911). T. S. No. 593. The United States also adhered to the Mexico City Copyright Convention of 1902, but at present has relations only with El Salvador under that Convention.

<sup>69</sup>) See Rea, "Some Legal Aspects of the Pan-American Copyright Convention of 1946," 4 *Wash. & Lee L. Rev.* 10 (1946). See also I S. Ladas, *supra* note 6), at 645-53, 664-73; Kampelman, *supra* note 11), at 424-26.

<sup>70</sup>) See Henn, "Interrelation Between the Universal Copyright Convention and the Pan-American Copyright Conventions," in *U.C.C. Analyzed, supra* note 3), at 125.

<sup>71</sup>) See Chediak, "The Progressive Development of World Copyright Law," 42 *Am. J. Int'l L.* 797 (1948).

<sup>72</sup>) Wells, "The Universal Copyright Convention and the United States: A Study of Conflict and Compromise," in 8 *Copyright Law Symposium* 69, 86 (ASCAP 1957).

<sup>73</sup>) For an extensive discussion of the origins and development of the Universal Copyright Convention, see M. James, *The United States and the Movement for Universal Copyright, 1945-52* (Master's thesis, University of

sponsored by Unesco<sup>74</sup>), and one of the leaders in its development was the United States.

Advocates of international copyright protection began once again to lay the groundwork for altering the domestic law in the United States while concomitantly devising a universal agreement that would appeal to all countries committed to the promotion of cultural interchange. Furthermore, "vigorous leaders appeared in the United States among the champions of international copyright, and organizations of creators, producers, and consumers of literary works became alerted to the[se] questions"<sup>75</sup>).

The landmark Universal Copyright Convention was signed at Geneva on September 6, 1952<sup>76</sup>), and, following the required 12 ratifications, took effect on September 16, 1955. The United States was one of the first signatories to ratify it. The most significant provisions of the Convention can be summarized as follows:

1. *Adequate and effective protection.* Under article I, the contracting states are obliged to "provide for the adequate and effective protection of the rights of authors and other copyright proprietors . . ."

2. *National treatment.* Article II provides that the "published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory." There is a similar provision for unpublished works.

3. *Formalities.* Article III, which represents the great compromise of the UCC, provides that the formal requirements, such as notice, registration, and manufacture, of a contracting state's copyright law are satisfied with respect to foreign UCC works "if from the time of first publication all of the copies of the work . . . bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright."

4. *Duration of protection.* Another major compromise is embodied in article IV of the UCC. The minimum term, subject to various detailed qualifications and exceptions, is to be either 25 years from the death of the author or from the date of first publication.

5. *Translation rights.* The UCC, in article V, requires contracting states to give exclusive translation rights to foreign UCC authors for at least seven years; thereafter a rather cumbersome compulsory licensing system can be established.

6. *Nonretroactivity.* Under article VII a contracting state is not obligated to protect works that are permanently in its

Southern California, 1953; photostat copy in Copyright Office Library). The basic documents of the UCC are reprinted in the Appendix of *U. C. C. Analyzed, supra* note 3).

<sup>74</sup>) Article 27 of the United Nations Universal Declaration of Human Rights declares: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits . . . [and] the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

<sup>75</sup>) M. James, *supra* note 73), at 21.

<sup>76</sup>) Detailed discussions of the provisions of the UCC can be found in A. Bogsch, and *U. C. C. Analyzed, supra* note 3). See also Dubin, *supra* note 59); Sargoy, "UCC Protection in the United States: The Coming into Effect of the Universal Copyright Convention," 33 *N. Y. U. L. Rev.* 811 (1958); Sherman, *supra* note 39); Wells, *supra* note 72).

public domain on the date the Convention becomes effective in that state.

7. *Berne safeguard clause.* An enormously important provision of the UCC is found in article XVII and the "Appendix Declaration" attached to it. These provide, in effect, that no Berne country can denounce the Berne Convention and rely on the UCC in its copyright relations with Berne Union members.

Thus, at least in comparison with the 1948 Brussels revision of the Berne Convention, the Universal Copyright Convention represents a rather low-level arrangement, resembling in many ways the original 1886 Berne text.

The minimum requirements as to exclusive rights are extremely modest, being limited to providing "adequate and effective protection" and translation rights which can be subject to compulsory licensing. The requirements as to minimum duration of protection are also very permissive, and a system of copyright notice is actually sanctioned as a substitute for other formalities. It is therefore understandable that Berne Union members regarded the UCC as a retrogressive step<sup>77)</sup>, and insisted on safeguarding the Berne Convention from the danger of being undermined by the defection of Berne members to the UCC<sup>78)</sup>.

#### Developments, 1952-1967

##### *U. S. Ratification of the Universal Copyright Convention*

Getting the United States to ratify the Universal Copyright Convention and to enact the statutory revisions necessary to implement it was more of an accomplishment than the development of the UCC itself. That there was opposition goes without saying<sup>79)</sup>, but it was neutralized or overcome in a remarkably short time. On August 31, 1954, President Eisenhower signed Public Law 743<sup>80)</sup> which conformed the indigenous copyright law to the Convention, and on November 5, 1954, he signed the instrument of ratification of the UCC itself.

Since the Universal Copyright Convention was to a considerable extent tailored to meet the requirements of existing United States law, the changes necessary to implement it were, for the most part, technical. The most important alteration involved a complete waiver of all formalities as to deposit, registration, manufacture, and importation for foreign UCC works, as long as the copies of the work bore the notice of copyright prescribed by the Convention<sup>81)</sup>. As a practical matter, this has removed the manufacturing requirement for the

majority of English language works of foreign authorship and has induced a much greater use of copyright notices on foreign works.

##### *Current Status of the UCC*

In general, the Universal Copyright Convention has been a genuine success. It has been ratified or acceded to by 55 countries<sup>82)</sup>, nearly as many as belong to the Berne Union<sup>83)</sup>. It has vastly simplified the international copyright relations of the United States with other countries and of other countries with the United States, and it has brought some newly independent or developing countries into the international copyright community on terms that they found acceptable.

For some time after the UCC came into effect, it appeared to have achieved a reasonably harmonious coexistence with the Berne Union. There was some acrimony between the two secretariats<sup>84)</sup>, but the governing bodies of the two conventions began holding their meetings together, and there was some talk of working toward a merger that would raise the level of UCC protection<sup>85)</sup>. However, the emergence of newly independent countries seeking to import foreign educational materials on favorable terms began to impair this accord in the late 1950's and the problem reached crisis proportions by 1967.

In a list of 121 countries and territories that can be regarded as "developing" under United Nations criteria<sup>86)</sup>, 56 belong to either the Berne Union, the Universal Copyright Convention, or both. Of these, 19 belong to the UCC only, 22 belong to Berne only, and 15 belong to both, making a total of 34 that belong to the UCC and 37 that belong to Berne.

With some exceptions, the developing countries have made it clear that, because of their urgent educational needs and currency exchange problems, they cannot continue to accord full copyright protection to materials imported from foreign countries. This raises a series of complex and interrelated

<sup>82)</sup> Andorra, Argentina, Austria, Belgium, Brazil, Cambodia, Canada, Chile, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, Holy See, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Malawi, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States of America, Venezuela, Yugoslavia, and Zambia. On November 14, 1955, the Philippine Minister in Paris sent a letter to the Director-General of Unesco stating that the Philippine President had directed the withdrawal of the instrument of accession before November 19, 1955, the date on which the Convention would become effective with respect to the Philippines, but the legal effect of this action is unclear. There have been recent press reports that Cuba is renouncing all of its international copyright obligations, but apparently no official action has yet been taken to denounce the UCC. See *N. Y. Times*, January 14, 1968, § 1, at 24.

<sup>83)</sup> The following 34 countries belong to both: Argentina, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Holy See, Iceland, India, Ireland, Israel, Italy, Japan, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Switzerland, United Kingdom, and Yugoslavia.

<sup>84)</sup> The administration of the Berne Union is the responsibility of the United International Bureau for the Protection of Intellectual Property (BIRPI). The secretariat of the Intergovernmental Copyright Committee, the governing body of the Universal Copyright Convention, is provided by the United Nations Educational, Scientific and Cultural Organization (Unesco).

<sup>85)</sup> See, e.g., A. Kaminstein, *United States Copyright Law Revision and International Copyright* (1967); Boutet, "The Geneva Convention and the Universality of Copyright," 9 *Unesco Copyright Bull.* 61 (1955).

<sup>86)</sup> See O'Hara, "Developing Countries: A Definitional Exercise," 15 *Bull. Copyright Soc'y* 83, 104-105 (1967).

<sup>77)</sup> See Henn, *supra* note 7), at 63-65.

<sup>78)</sup> See Bogsch, "Co-Existence of the Universal Copyright Convention with the Berne Conventions," in *U. C. C. Analyzed, supra* note 3), at 141; De Sanctis, "The Clauses Providing 'Safeguards for the Berne Convention', Contained in the Universal Copyright Convention," 8 *Unesco Copyright Bull.* 50 (1955); Mott, "The Relationship Between the Berne Convention and the Universal Copyright Convention," 11 *IDEA* 306 (1967).

<sup>79)</sup> See Dabin, *supra* note 59), at 109-11; Sherman, *supra* note 39), at 1164-67; Singer, "International Copyright Protection and the United States: The Impact of the Universal Copyright Convention on Existing Law," in 7 *Copyright Law Symposium* 176, 210-17 (ASCAP 1956); Wells, *supra* note 72), at 98-101. Compare Warner, "The Unesco Universal Copyright Convention," 1952 *Wis. L. Rev.* 493, 499-503, with Schnlman, "Another View of Article III of the Universal Copyright Convention," 1953 *Wis. L. Rev.* 297.

<sup>80)</sup> 17 U. S. C. § 9(c) (1964).

<sup>81)</sup> *Id.*; see Kaminstein, "©: Key to Universal Copyright Protection (Article III: Formalities)," in *U. C. C. Analyzed, supra* note 3), at 23.

policy questions with respect to the future of international copyright:

1. Should the 60 or more countries, and territories that are likely to become countries, presently outside both conventions, join Berne, the UCC, both, or neither?

2. Should developing countries already bound by Berne, the UCC, or both, denounce any or all of their treaty obligations unless something is done to accommodate them?

3. Should the Berne Union try to keep the 37 developing countries it now has as members and attract new ones by lowering its high level of protection for their benefit?

4. Should the UCC try to attract more developing countries by further lowering its relatively low level of protection and by repealing the Berne safeguard clause?

What started out as cooperation and coexistence between Berne and the UCC has turned into polite but fierce competition, and the ultimate outcome is very much in doubt. The United States, for its part, finds itself in a position that is ironic as it is delicate and dangerous.

#### *Preparations for the Stockholm Revision of the Berne Convention*

During the past decade there have been rumblings, mainly but not exclusively from spokesmen for India, that unless some major copyright concessions were made for developing countries, they would have to make drastic changes in their international copyright arrangements. In a speech delivered before the Stockholm Conference, Judge Hesser, one of the architects of the revised convention, made clear that an "essential task of the revision program" was "to adjust the system of protection under the Berne Convention to the economic, social and cultural needs of these countries." He noted that at previous Berne revision conferences the European members had tended to "run the show," with the result that the level of protection became too high for most non-European countries<sup>87)</sup>.

An African Study Meeting on Copyright held at Brazzaville, Congo, in August, 1963<sup>88)</sup>, recommended that the preparations for the 1967 Stockholm Conference include consideration of "provisions safeguarding . . . the free use of protected works for educational and scholastic purposes"<sup>89)</sup>. In December of the same year, the governing bodies of the Berne Union and the UCC met in a regular joint session at New Delhi and, on the basis of Indian proposals favoring the principle of compulsory licensing for both translations and educational reproductions, adopted a resolution asking the secretariats to study these possibilities<sup>90)</sup>.

The following year a study group consisting of experts chosen by the Swedish government and officials of BIRPI<sup>91)</sup>,

the secretariat of the Berne Union, recommended the text of a new article on developing countries to be added to the Berne Convention<sup>92)</sup>. The study group emphasized that "exceptional measures for the benefit of developing countries were in principle justified." The study group considered the argument that countries unwilling to adopt Berne principles should turn to the UCC, but pointed to the advantages to authors if developing countries were induced to draft their domestic copyright legislation on the pattern of the Berne Convention<sup>93)</sup>. Thus, the philosophy behind the draft provision was plain: to try to keep the developing countries from leaving or rejecting the Berne Union in favor of the UCC, hoping that the higher standards of Berne would eventually induce these countries to raise their own copyright standards. There was obviously a fear that, unless these concessions were made, Berne would become a moribund old gentlemen's club.

The text of this and other provisions was submitted to a Committee of Governmental Experts that met in Geneva in July, 1965. At the outset a great deal of lip service was paid to the needs of developing countries. Despite expressions of alarm at the trend they observed, the prevailing attitudes among the representatives of the developed Berne members seemed to be apathetic resignation and futility. They exhibited a notable lack of leadership and of affirmative programs, in contrast to the developing countries' representatives, who, under the leadership of the Indian delegation, proposed a detailed program for which they fought effectively and tenaciously. In the text approved by the Committee<sup>94)</sup> they won some major concessions, and it was obvious that they would seek more.

Writing shortly after the 1965 Geneva meeting, Bénigne Mentha, the retired director of the Berne secretariat, made the following mordant but penetrating observations which are worth quoting at some length:

From the outset it was the ambition of the Berne Convention to become, in the fullness of time, universal. Its opening to the world is a requirement of our times . . . The idea is to attract the former possessions of the colonial empires by easing the adhesion clauses. In order to slake the thirst for culture of these now independent territories, the Berne Convention, Stockholm version, would institute an optional system specially tailored for the developing countries . . .

Assistance to the less developed countries . . . reflects the remorse of the western community at having been possessed too long and too deeply by the love of lucre. The desire of the wealthier peoples to spread a little of their plenty where poverty and even want hold sway is all to their credit . . . The whole problem is to reconcile the calm of reason and the spontaneity of charity . . . We should be chary of making inroads, on the pretext of democratizing culture, on the spiritual heritage handed down by our forefathers; at any rate, we should do so only when quite sure of what we are about and in case of absolute necessity . . .<sup>95)</sup>

The Programme of the Stockholm Conference<sup>96)</sup>, which recommended some further minor amendments in what had become a "Protocol Regarding Developing Countries," was published almost a year before the Conference itself, but the comments of governments on its recommendations were rela-

<sup>87)</sup> Hesser, "Intellectual Property Conference of Stockholm, 1967," 14 *Bull. Copyright Soc'y* 267, 272, 289-90 (1967).

<sup>88)</sup> See Kaminstein, "Global Copyright: Recent International Copyright Conferences in Africa, Europe, and Asia," 11 *Bull. Copyright Soc'y* 255 (1964).

<sup>89)</sup> BIRPI, Intellectual Property Conference of Stockholm, 1967, Doc. S/1, at 67 (1967).

<sup>90)</sup> *Id.*

<sup>91)</sup> Article 24(2) of the Berne Convention provides that the program of a revision conference is to be prepared by the administration of the country where the conference is to meet, with the aid of BIRPI.

<sup>92)</sup> BIRPI, *supra* note <sup>89)</sup>, at 67-69.

<sup>93)</sup> *Id.*, at 68.

<sup>94)</sup> *Id.*, at 69-72.

<sup>95)</sup> Mentha, "Looking Ahead to International Copyright Year (Stockholm 1967)," 95B *EBU Rev.* 58, 60-61 (1966).

<sup>96)</sup> BIRPI, *supra* note <sup>89)</sup>; see Masouyé, "Stockholm 1967," 102B *EBU Rev.* 45 (1967).

tively sparse and desultory<sup>97</sup>). There were expressions of serious concern and outright opposition to the protocol from various international organizations<sup>98</sup>), but there was no effort to put forward an affirmative program as an alternative to it.

Meanwhile, at the invitation of the Indian Government, BIRPI convened an East Asian Seminar on Copyright, which met at New Delhi during the last week in January, 1967<sup>99</sup>). This gave the developing countries a valuable opportunity to organize and further strengthen the position they were preparing to put forward at Stockholm five months later. The draft protocol was reviewed and debated at length, and on the motion of the representatives of Ceylon and India<sup>100</sup>), the Seminar as a body adopted a resolution recommending specific changes in the protocol that would substantially lower the standards of protection required under it<sup>101</sup>). The Director of BIRPI, Prof. Bodenhausen, expressed very serious misgivings with respect to this proposal in a remarkably prescient statement, observing that the Seminar recommendations, which departed considerably from the official proposals for the Stockholm Conference, "would require very heavy sacrifices on the part of the authors and their representatives." He also expressed the fear that radical proposals by interested countries wishing to be in a position to negotiate at the Stockholm Conference might create a feeling of hostility which, in the end, would not serve their purposes<sup>102</sup>).

#### *Proposals for Revision of the UCC*

One may ask at this point why the developing countries have been struggling so hard to achieve revision of the Berne Convention when their needs are already met in large measure by the Universal Copyright Convention. One reason, which cannot be ignored, is that the Berne Union has the prestige and traditions that the UCC lacks. Another factor is the foresight of the BIRPI secretariat in trying to widen the base of the Berne Union. The Unesco secretariat has also made efforts to foster adherence to the UCC by developing countries<sup>103</sup>), but copyright is not a major part of its program, and in recent years its copyright staff and activities have dwindled.

More specifically, the two most important reasons why the developing countries have not found the answer to their problems in the UCC are the Berne safeguard clause and the UCC obligations:

1. *The Berne safeguard clause.* Article XVII of the UCC and its Appendix Declaration prohibit countries that are now Berne members from denouncing Berne and relying on the UCC for copyright protection in their relations with other

<sup>97</sup>) BIRPI, *supra* note <sup>89</sup>), Docs. S/, S/17. The comments are summarized in Doc. S/18.

<sup>98</sup>) These were not made a part of the documentation of the Conference, but a hound volume of them is in the collections of the Copyright Office Library. The comments of the European Broadcasting Union (EBU) represent a notable exception to the general opposition of international organizations to the protocol.

<sup>99</sup>) See "East Asian Seminar on Copyright," 3 *Copyright* 42 (1967). See also Government of India, Ministry of Education, *International Copyright: Needs of Developing Countries*, Symposium, Publication No. 797 (1967).

<sup>100</sup>) "East Asian Seminar on Copyright," *supra* note <sup>99</sup>), at 46.

<sup>101</sup>) *Id.*, at 52-53.

<sup>102</sup>) *Id.*, at 47.

<sup>103</sup>) See *id.*, at 45.

Berne members<sup>104</sup>). By its terms, a country resigning from the Berne Union but remaining in the UCC would continue to have obligations under the UCC, but would have no protection under either convention. As long as the UCC remains as it is now, it is hard to imagine any circumstances under which a country would remain a member of it after it had denounced Berne.

2. *The UCC obligations.* The Berne safeguard clause would, of course, have no effect on developing countries that have not yet joined the Berne Union. The requirements of the UCC with respect to national treatment, duration of copyright, and formalities are not sufficiently burdensome to deter an underdeveloped country from adhering to the convention, but the same may not be true of the translation requirements of article V<sup>105</sup>). Moreover, the vague requirement that a UCC country insure "adequate and effective" protection could be interpreted as prohibiting compulsory and free licenses in certain situations where the developing countries feel they are needed<sup>106</sup>).

At its session in October and November, 1966, the General Conference of Unesco adopted a resolution<sup>107</sup>) stating that "Article XVII of the Universal Copyright Convention and the Appendix Declaration relating thereto have consequences that are prejudicial to the interests of the States acceding to that Convention," and requesting the Director-General of Unesco "to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution." This resolution, which was an obvious countermove to the efforts to attract developing countries into the Berne Union, was followed by a Unesco inquiry<sup>108</sup>) to UCC members dated December 30, 1966, stating that the "proposed change is intended to enable developing countries to enjoy unrestrictedly the protection guaranteed by the Universal Copyright Convention which ensures minimum rights for authors, while permitting a wide dissemination of culture." The letter asked member countries to state whether or not they wished a revision conference to be convened, and requested a reply by May 1, 1967. The Stockholm Conference was scheduled to start on June 11, 1967.

This jockeying for position prompted the Director of BIRPI to call an extraordinary session of the Permanent Committee of the Berne Union which met in Geneva from March 14 to 16, 1967<sup>109</sup>). There appeared to be general agreement that any response to the proposal to revise the Universal Copyright Convention would be premature until after the results of the Stockholm Conference were known. The Unesco observer in Geneva declared that the May 1<sup>st</sup> date "was not a

<sup>104</sup>) See A. Bogsch, *supra* note <sup>3</sup>), at 110-23; Bogsch, *supra* note <sup>78</sup>); Mott, *supra* note <sup>78</sup>).

<sup>105</sup>) See Finkelstein, "Right of Translation: Article V of the Universal Copyright Convention," in *U.C.C. Analyzed*, *supra* note <sup>3</sup>), at 51; Krishnamurti, "Needs of Developing Countries in the Field of International Copyright," in Government of India, Ministry of Education, *supra* note <sup>99</sup>), at 25, 27-28.

<sup>106</sup>) See A. Bogsch, *supra* note <sup>3</sup>), at 5-7.

<sup>107</sup>) Unesco Res. No. 5.122, reprinted in 3 *Copyright* 72 (1967).

<sup>108</sup>) This circular letter from the Acting Director-General of Unesco is quoted in part in 3 *Copyright* 71 (1967).

<sup>109</sup>) See "Extraordinary Session of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)," 3 *Copyright* 66 (1967).

deadline and that in all probability, after May 1, 1967, States which had not replied would be consulted again"<sup>110</sup>). Thus, the question was put off until the next ordinary meeting of the committee, which was scheduled for December, 1967<sup>111</sup>).

## The Stockholm Conference

### *The Conference in General*

The 1967 Stockholm Conference on Intellectual Property was probably the worst experience in the history of international copyright conventions. The varied written comments<sup>112</sup>) it has so far produced reflect the continuing confusion about its results.

The Conference was originally planned for the detailed revision of the text of the Berne Convention, to which was added the proposal to establish, within the Berne framework, a lower-level system of protection aimed at the special needs of developing countries. This ambitious program was further enlarged by proposals for sweeping revisions in the administrative provisions of all the intellectual and industrial property conventions administered by BIRPI, for creation of a new World Intellectual Property Organization (WIPO), and for amendment of the Paris Industrial Property Convention to accommodate the Soviet Union's system of "inventor's certificates." This combination of unrelated goals made the conference somewhat unmanageable and distorted the issues. The problem was exacerbated by the intense political atmosphere generated by the Arab-Israeli war.

From the outset of the conference it was obvious that the developing countries were well organized and prepared to fight, and that the developed countries were in disarray. Such open negotiations as there were took place in a febrile atmosphere of crisis and bitter debate, but most of the real decisions were made *in camera*, between the principal negotiators from India and the United Kingdom. The large American observer delegation was generally aware of what was going on, and was concerned with both the form the Protocol was taking and the danger that the whole Conference might blow up. Although Abraham L. Kaminstein, the U. S. Register of Copyrights, made an "intervention" at the Conference, commenting on the course of events, the American delegates were Berne outsiders with no real influence upon the outcome.

The Stockholm Conference accomplished some technical reforms and clarification of language in the substantive provisions of the Berne Convention<sup>113</sup>). It also adopted a com-

<sup>110</sup> *Id.*, at 67.

<sup>111</sup> *Id.*, at 68.

<sup>112</sup> The most extensive analysis of the conference appears in the "special double number" 54-55 *Revue internationale du droit d'auteur (RIDA)* (October 1967 and January 1968). The entire page issue is devoted to the Stockholm Conference, and its contents are published in four languages, including English. See also R. Barker, *The Revised Berne Convention: The Stockholm Act 1967* (1967); R. Whale, *The Stockholm Act of the Berne Copyright Union: Protocol Regarding Developing Countries* (1968); Mentha, "A Glance at the Principle [sic] Substantive Clauses of the Berne Convention Adopted at Stockholm on July 14, 1967," 3 *Copyright* 321 (1967); Ringer, "The Stockholm Intellectual Property Conference of 1967," 14 *Bull. Copyright Soc'y* 417 (1967).

<sup>113</sup> Aside from the Protocol, the most important changes in the Berne Convention involved:

(1) *Eligibility criteria, country of origin, and definition of "publication."* The Stockholm text retains the country of publication as a criterion of eligibility for Convention protection, but follows the pattern of the UCC by establishing the alternative criteria of the nationality or habitual

promise "Protocol Regarding Developing Countries" which, if implemented, would change the character of the Berne Union and world copyright law. The Stockholm revisions, without the Protocol, would have made it easier for the United States to adhere to the Berne Convention although, by themselves these relatively minor changes would not have been sufficient for that purpose<sup>114</sup>). However, the Protocol, which cannot be ignored, remains the most significant change.

### *The Provisions of the Protocol*

As it finally emerged, the "Protocol Regarding Developing Countries" was an instrument of six articles appended to, but made an integral part of, the Berne Convention as revised at Stockholm<sup>115</sup>). Its principal features can be described under the following headings:

1. *Definition of "developing countries."* The Protocol's definition of a "developing country" — one designated as such under the "established practice" of the General Assembly of the United Nations — is so vague as to be virtually meaningless<sup>116</sup>).

2. *Effective period.* Although article 1 of the Protocol provides that the reservations made by a developing country under that article are to last for ten years from the date of accession, articles 3 and 4 make clear that this period can be extended indefinitely as long as the country remains "developing."

3. *Reservations permitted.* The Protocol allows a developing country to make any or all of five reservations to the provisions of the revised Berne Convention:

(a) *Duration.* A developing country could substitute the UCC term of copyright — not less than life plus 25 years — for the standard life-plus-fifty term.

(b) *Broadcasting.* The Protocol, with some qualifications, allows a developing country to apply article 11<sup>bis</sup> of the Rome

residence of the author. The definition of "publication" was changed in a way that may affect the practices employed by U. S. publishers in attempting to go through the "backdoor to Berne." The text of the Convention dealing with the different concepts of "eligibility criteria" and "country of origin" was substantially restructured and redrafted in the interests of clarity.

(2) *Right of reproduction.* An explicit requirement recognizing "the exclusive right of authorizing the reproduction of [protected] works, in any manner or form" was added. The qualifications on this general right do not go far beyond the U. S. concept of fair use.

(3) *Cinematographic works.* A highly controversial issue involved proposals to facilitate the international exchange of motion pictures, including television programs, by establishing certain ground rules, including rules of interpretation governing contracts between authors and film makers. The compromise that emerged should help to regularize international film exchange.

(4) *Moral right.* The Conference adopted a proposal to extend the term of protection of authors' moral rights to a period at least as long as the protection of their economic rights. However, countries adhering to the Act could continue some of their laws under which the moral right ceases at the author's death.

(5) *Duration.* The basic term of the life of the author plus fifty years was left unchanged, but minimum terms of fifty and 25 years were adopted for cinematographic works and for photographic and applied art works, respectively.

<sup>114</sup> See Nimmer, "The United States Copyright Law and the Berne Convention: The Implications of the Prospective Revision of Each," 2 *Copyright* 94 (1966); Hesser, *supra* note 87).

<sup>115</sup> Article 21 of the Stockholm text states that "the Protocol Regarding Developing Countries forms an integral part of the present Act." Article 28 requires that any country ratifying or acceding to the substantive provisions of the Stockholm Act (articles 1-21) also accept the Protocol if it has not already done so.

<sup>116</sup> O'Hara, *supra* note 86).

revision of 1928, under which broadcasting rights are more restricted than in later texts of the Berne Convention.

(c) *Translations.* Under the Protocol, the right of translation into a particular language expires unless an authorized translation in that language is published in a Union country within ten years of the first publication. If, within three years of publication, no authorized edition in the particular language has been published in the country in question, a publisher in that country may obtain a nonexclusive compulsory license, for "just compensation," to bring out his own translation if he shows that reasonable efforts at negotiation have failed. The compulsory license terminates if the copyright owner publishes his own translation in the country within the ten-year period. Compulsory licenses are also permitted if an authorized translation is allowed to go out of print in the particular country.

(d) *Reproduction for educational and cultural purposes.* Article 1(c) establishes a general privilege of reproduction "for educational and cultural purposes" under exactly the same periods and compulsory licensing conditions as those applicable to translations.

(e) *Use for teaching, study, and research.* Article 1(e) of the Protocol establishes a much broader privilege for instructional purposes. Any use, such as translation, publication, recording, broadcasting, or performance, would be permitted, without any time limits or formalities, if the use is intended "exclusively for teaching, study, and research in all fields of education" and if domestic legislation assures "to the author a compensation which conforms to standards of payment made to national authors."

4. *Currency exchange and export.* Under the provisions dealing with translations, reproductions, and instructional uses, the payments due to authors are made "subject to national currency regulations." This means that payments can be made in domestic currency and that funds can be frozen in the developing country. Translations and reproductions made under the compulsory licenses provided by paragraphs (b) and (c) of article 1 can generally be exported to other countries that have made the same reservations and have no laws or treaties prohibiting importation. To be freely exportable, however, the translation must be in one of the national languages of the importing country. The export provisions of paragraph (e), dealing with instructional uses, are somewhat more restrictive.

#### *Integration Between the Protocol and the Berne Convention*

Although article 1(e) of the Protocol, dealing with uses for "teaching, study and research," was the most controversial and bitterly contested question at the Stockholm Conference, the most important issue was the extent to which a developed country would be bound, under the Protocol, to allow the use of its works in a developing country. An effort was made early in the Conference to split the Protocol completely from the Convention, but this was summarily rejected. It was clear that a developed country choosing to accede to the substantive clauses of the Stockholm Act would have to accept the Protocol as well.

But the most crucial issue of all remained: what if a developed country that is already a member of the Berne Union

under the Brussels or Rome texts decides not to adhere to the Stockholm Act at all? Can it be bound involuntarily to allow the use of its works under the provisions of the Protocol, even though it has never acceded to those provisions?

Hindsight reveals that the entire Stockholm Act hinges on this question, but the debates on it during the Conference could not have been more obscure. It finally emerged that, as a matter of national sovereignty, countries such as France would refuse on principle to allow themselves to be hound, even by an interpretation in the report, to any provisions they had not voluntarily accepted<sup>117</sup>). When this became clear, there were expressions of consternation and doubt from the developing countries. As a move toward appeasing them it was agreed that a Union country that never accedes to the Stockholm Act may still voluntarily bind itself under the Protocol<sup>118</sup>). The developed country must, in that case, allow the use of its copyrighted works in developing countries under the sharply reduced standards of the Protocol, although there may be a possibility of retaliation.

At the end of the Conference one principle was uppermost in everyone's mind: if a developed country that is now a member of the Berne Union decides neither to ratify the Stockholm Act nor to bind itself voluntarily under the Protocol, it is not obliged to allow the use of its works under the lower standards in any Union country. Since the United Kingdom abstained in the final vote on the Protocol and deliberately refused to sign the Act<sup>119</sup>), there was increasing speculation as to whether the Stockholm Act was actually a stillborn child.

#### *The Aftermath of Stockholm*

##### *Reactions to the Convention*

Repercussions from the Stockholm Conference are still being felt. A vivid example was the reaction in Britain. There was an immediate outcry in the British press<sup>120</sup>), followed by a call to arms addressed to authors<sup>121</sup>) and exhortations to the British publishers to stand firm<sup>122</sup>). Questions were asked in Parliament<sup>123</sup>), and a government representative declared that the United Kingdom had "no present intention" of acceding to the Stockholm Act<sup>124</sup>).

Although merely signing a convention does not bind a country without subsequent ratification, it can be viewed as an indication of the country's attitude. There were 51 of the 58 Berne Union members present at Stockholm, but only 35<sup>125</sup>) signed the Act. Notable among the absentees were the

<sup>117</sup>) See Ringer, *supra* note 112), at 428. See also Joubert, "The Administrative and Final Provisions," 54-55 *RIDA* 427, 517-59 (1968).

<sup>118</sup>) See Protocol regarding developing countries, art. 5.

<sup>119</sup>) See Ringer, *supra* note 112), at 418.

<sup>120</sup>) See, e. g., Barker, "The Stockholm Conference," *Bookseller* (London), July 8, 1967, No. 3211, at 68; *Financial Times* (London), July 21, 1967, at 13; *The Times* (London), July 17, 1967, at 9; *id.*, July 23, 1967, at 1.

<sup>121</sup>) R. Whale, *supra* note 112), at 3.

<sup>122</sup>) Barker, "The Revised Berne Convention," *Bookseller* (London), No. 3216, at 1332, 1341.

<sup>123</sup>) See *Bookseller* (London), No. 3215, at 1245.

<sup>124</sup>) See *The Times* (London), October 11, 1967.

<sup>125</sup>) Austria, Belgium, Cameroon, Congo (Kinshasa), Denmark, Finland, France, Gabon, Germany, Greece, Holy See, Iceland, India, Israel, Italy, Ivory Coast, Japan, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Niger, Norway, Philippines, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, and Yugoslavia.

United Kingdom, Australia, and Canada. The Convention remained open for signature until January 13, 1968, but by that date only four additional countries<sup>126</sup>) had signed. As of this writing there have been no ratifications or accessions<sup>127</sup>).

Despite the notable lack of enthusiasm for the Stockholm Act during the months following the Conference, there was a prevailing assumption that it was a fact of life which sooner or later would come into effect<sup>128</sup>). However, as time went on and there were no moves toward ratification on the part of the developed countries, the leaders among the developing countries began to reconsider their own positions. In an article published in November, 1967<sup>129</sup>), the Indian Registrar of Copyrights spoke pointedly and rather bitterly of what would happen if it became clear that the Protocol was blocked. In that event, he declared, a country like India would have no alternative but to denounce both Berne and the UCC and "to strike out on its own or, if possible, sponsor or join a separate Union with other countries similarly placed." He emphasized "that developing countries may be in no mood to wait till the Greek Calends" for a solution to these problems, and he warned against the danger that, "trying to grasp too much, developed countries may . . . end by leaving their authors holding nothing"<sup>130</sup>).

#### *The Meetings in Geneva*

In December, 1967, the Intergovernmental Copyright Committee of the UCC and the Permanent Committee of the Berne Union held their regular biennial meetings in Geneva. The prevailing attitudes reflected confusion and uncertainty as to the future of international copyright on the part of developed and developing countries alike. Each side was waiting for the other to make a move, and the issue at stake was whether the Stockholm Act and the Protocol would survive.

In this uncertain atmosphere, the Unesco secretariat reasserted its efforts to obtain repeal of the revision of the Appendix Declaration of article XVII of the UCC<sup>131</sup>). The delegates of India supported this effort, and at the same time sought to force the developed countries to declare their intentions with respect to the Protocol<sup>132</sup>). They also sought the creation of a UCC group to reexamine the entire question of international copyright<sup>133</sup>), which everyone was beginning to realize was on the brink of chaos.

<sup>126</sup>) Bulgaria, Hungary, Ireland, and Poland.

<sup>127</sup>) Under article 5 of the Stockholm Protocol Regarding Developing Countries, before the Stockholm Act comes into effect, and even before a single country has ratified or acceded to it, particular Berne Union members can bring the Protocol into effect among themselves. On November 14, 1967, Senegal declared its intention to apply the Protocol, and on January 11, 1968, Bulgaria declared that it would admit the application of the Protocol under article 5. Thus, as of January 11, 1968, the provisions of the Protocol are applicable between Senegal and Bulgaria.

<sup>128</sup>) See Tournier, "Rykdsdag 67 or the End of a Myth?," 54-55 *RIDA* 663 (1968).

<sup>129</sup>) Krishnamurti, "Protocol Regarding Developing Countries Appended to the Stockholm Act of the Berne Convention," 106B *EBU Rev.* 59 (1967).

<sup>130</sup>) *Id.*, at 68.

<sup>131</sup>) Intergovernmental Copyright Committee, Report on the Meetings of the Intergovernmental Committee Alone, 9th Session, IGC/IX/11, INLA/CS/193/9, at 10-13 (January 31, 1968).

<sup>132</sup>) *Id.*, at 10; Berne Union Permanent Committee, Report, 13th Sess., CP/XIII/10, at 3 (December 20, 1967).

<sup>133</sup>) Intergovernmental Copyright Committee, 9th Session, Doc. IGC/IX/1 Add. 1, INLA/CS/193/1 Add. (November 24, 1967).

The U.S. delegation, a member of the Intergovernmental Copyright Committee of the UCC, was free to take an active part in the debates at Geneva. In a statement on December 13, 1967, the U.S. Register of Copyrights made clear that "the opposition in the United States to our joining the Berne Union under the conditions imposed by the Stockholm Protocol is so strong and concerted that I regard our adherence during the foreseeable future as impossible"<sup>134</sup>). He identified four principal reasons for that opposition. The most important reason was the lack of any real guarantee that authors would be paid anything for the use of copyrighted materials in cases of "teaching, scholarship, and research." He also pointed to the broad provisions allowing export of copies to other developing countries, the lack of any real standards as to what *are* developing countries, and the lack of any provision for time limits or transitional periods that would offer a developing country some inducement to improve protection over that provided by the Protocol<sup>135</sup>).

The Register strongly opposed revisions in the UCC aimed either at removing the Berne safeguard clause or at further lowering the level of protection; instead he put forward an alternative program, seeking specifically three things:

(1) a reversal of the dangerous erosion of authors' rights that seems to be taking place internationally; (2) a carefully considered program that might take various forms — further revisions of both Berne and UCC, merger of the two conventions, a third convention, or some other solution — but that would literally bring order out of chaos in multi-lateral copyright relations; and (3) international agreement upon a workable, effective program aimed at the needs of developing countries in which copyright would play a positive rather than a negative role . . .<sup>136</sup>)

He expressed the hope that the Intergovernmental Copyright Committee and the Berne Permanent Committee would set up a study group "to analyze the present international copyright situation in the light of the Stockholm Protocol and other recent developments, to evaluate . . . all existing multi-lateral copyright conventions in light of the present situation, to consider all possible methods of meeting the needs of developing countries within the framework of established copyright principles and to formulate recommendations . . ."<sup>137</sup>). The Register urged that this program be pressed forward "on the most accelerated timetable we can devise"<sup>138</sup>). The reactions to his proposals were favorable but cautious. A number of delegates felt the need to reflect and consult with respect to the long range implications of the American proposal. The committees thus adopted two highly significant resolutions<sup>139</sup>). First, the Berne Permanent Committee requested BIRPI to conduct an inquiry of the Berne Union members to discover their intentions concerning the bringing into force of the Protocol. Secondly, both committees recommended that a joint group for the study of the whole range of international copyright problems be established after replies to the inquiries concerning UCC revision and the Protocol have been received, and after a preliminary planning meeting had been held<sup>140</sup>).

<sup>134</sup>) "Statement by the Register for the United States Delegation at Geneva," 15 *Bull. Copyright Soc'y* 157 (1968).

<sup>135</sup>) *Id.*, at 159.

<sup>136</sup>) *Id.*, at 160-61.

<sup>137</sup>) *Id.*

<sup>138</sup>) *Id.*, at 160.

<sup>139</sup>) For reprints of these resolutions, see *id.*, at 162-63.

<sup>140</sup>) See *id.*

### Recent Developments

The "joint study group" approach proposed by the United States at Geneva has attracted increasing support, but it is not any sort of final answer. The immediate questions that must still be faced in international copyright include:

1. *What will happen to the proposal to amend the UCC?* At the December meetings the Unesco secretariat announced that it had received seven of the ten requests necessary to undertake calling a revision conference<sup>141</sup>). A reminder, setting a March 1, 1968, deadline, was sent out by the Director-General of Unesco on February 15, 1968, but only one more request, from India, was received before that date. Since the deadline favorable replies have also been received from two more countries (Czechoslovakia and Portugal), and further action toward a revision conference appears likely. The reply of the United States<sup>142</sup>) opposed revision until after the joint study group had met to consider the entire question.

2. *Will the Stockholm Act and Protocol be implemented?* This question is nearly impossible to answer at present, but there are indications of a movement away from the widespread acceptance of the Stockholm Act<sup>143</sup>). Certain countries are obviously waiting for others to take the lead, and it is now possible that these leaders will not act until they see what recommendations the joint study group will offer.

3. *What will the developing countries do?* India's decision is the key to this question. If it becomes clear that the United Kingdom will not accede to the Protocol, it is entirely possible that India will move toward denunciation of both Berne and the UCC. This could topple the entire structure of international copyright as it now exists. India and the other developing countries are justified for refusing to wait indefinitely for their needs to be accommodated, but drastic action on their part is likely to reduce international copyright to further confusion and uncertainty. The interests of every country in the world would be served by maintaining some semblance of stability in copyright relations until more permanent solutions can be found.

### Conclusion

The irony of the present American position in international copyright needs no elaboration. After a century as a virtual outlaw, a half century as an outsider, and 15 years as a stranger at the feast, the United States suddenly finds itself cast as a leading champion of literary property. Having refused to join the Berne Union because its standards were too high, the

<sup>141</sup>) Berne Union Permanent Committee, 13<sup>th</sup> Session, and Intergovernmental Copyright Committee, 9<sup>th</sup> Session, Docs. INLA/CS/193/7 (November 27, 1967) and INLA/CS/193/7 Add. I (December 1, 1967). The seven countries are Argentina, Ghana, Kenya, Malawi, Nigeria, Peru, and Venezuela.

<sup>142</sup>) The letter, dated February 28, 1968, was signed by Douglas N. Batson, Deputy Assistant Secretary for Educational and Cultural Affairs.

<sup>143</sup>) For example, in furtherance of a recommendation adopted by the Stockholm Conference, BIRPI convened a working group in Geneva in March 1968, for the purpose of "advising the Director of BIRPI on the ways and means of creating financial machinery to ensure a fair and just return to authors for the use of their works pursuant to the provisions of the Protocol Regarding Developing Countries." BIRPI, Working Group, Stockholm Conference Recommendation No. III (Copyright), Doc. DA/26/8, at 1 (March 14, 1968). This working party was unable to propose any recommendations, since it was clearly unwilling to assume that the Protocol would actually come into force.

United States is now faced with the prospect of being unable to join it because the standards have become too low.

In view of our dubious past performance we are hardly in a position to adopt a tone of moral indignation about the demands of the developing countries. Similarly, as a country that for years has accepted the benefits of the Berne Convention while assuming none of its obligations, we cannot blame other countries for what happened at Stockholm. But as the world's largest exporter of literary properties, we have an immediate stake in the future of international copyright. We can no longer afford to stand apart and content ourselves with sidelong glances.

The present impasse will inevitably be broken one way or another. Widespread implementation of the Stockholm Protocol is unlikely at present. Partial implementation of the Protocol would render the fabric of international copyright indescribably complicated; if this were accompanied by a revision of the Universal Copyright Convention, the result would be chaotic<sup>144</sup>). The impossibility of determining the copyright status of works in particular countries could cause the disintegration of existing multilateral copyright relationships and the national protection of authors' rights based on them.

On the other hand, the needs of the developing countries for educational materials remain urgent and immense, and the rest of the world cannot afford to wait much longer in satisfying them. Perhaps the developing countries are misguided in trying to solve these problems by reducing the protection they give to foreign works; certainly the American experience demonstrates the depressing effect this kind of policy has on native authorship and culture<sup>145</sup>). Unless copyright owners in the developed countries go forward soon with programs involving major concessions to the developing countries, however, they are likely to find their works being used in those countries without permission or payment.

No one can overestimate the job of finding a solution to this crisis: a solution that meets the needs of the developing countries, preserves the principle of authors' rights, and maintains stability in international copyright relations. The task will require considerable cooperation and effort, but not to undertake it would be absurd. Perhaps, in working with other countries to find the necessary solution, the United States can make up for some of its previous errors in the field of international copyright. Whatever it does, the rest of the world will be watching.

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<sup>144</sup>) Just as the Stockholm Act does not bind any Berne Union country that refuses to accept it, a revision of the Universal Copyright Convention would not bind any UCC member that failed to accept it. Thus, for example, if the United Kingdom accepts neither the Stockholm Act nor a UCC revision omitting the Berne safeguard clause, it would still be under no obligation to protect Indian works even if India denounced the Berne Convention and ratified the revised UCC. India, however, would still be required to protect British works under the UCC.

<sup>145</sup>) In the laissez-faire atmosphere of 19<sup>th</sup> century America, authors had great difficulty in securing publication because publishers were free to print British works without permission or payment. The argument has been made that similar results could easily be avoided in countries where the government controls the organs of publication and other forms of communication, and can require the dissemination of native works. Even if native authorship could be successfully encouraged and nurtured in this way, however, the cost of tight government control over authorship, in terms of loss of artistic independence and freedom of expression, would certainly be great.



**ANNOUNCEMENT OF A VACANCY  
FOR A POST IN BIRPI**

COMPETITION No. 69

Head of the Copyright Division

*Category and Grade:* P. 5

*Principal duties:*

The appointee will be responsible for the implementation of BIRPI's program on copyright and neighboring rights.

His duties will include:

- (a) Direction of the Copyright Division.
- (b) Writing of legal studies.
- (c) Acting as editor of *Copyright* and *Le Droit d'Auteur*.
- (d) Representation of BIRPI at meetings concerning copyright and neighboring rights and preparation of working papers for and reports on such meetings.
- (e) Directing the work of maintaining up to date a collection of copyright and neighboring rights legislation.

*Qualifications:*

- (a) University degree in law or equivalent legal qualifications.
- (b) Wide experience in the field of copyright and neighboring rights, including its international aspects.
- (c) Excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other. Additional languages would be an advantage.

*Nationality:*

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

*Age limit:*

The candidate designated must be less than 55 years of age at date of appointment.

*Date of entry on duty:*

As mutually agreed.

*Application forms and full details regarding the conditions of employment may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland.*

*Application forms, duly completed, should reach BIRPI not later than December 2, 1968.*