

# Copyright

Review of the  
WORLD INTELLECTUAL PROPERTY  
ORGANIZATION (WIPO)

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

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# NATIONAL LEGISLATION

## CANADA

### An Act to amend the Copyright Act

(Assented to 23<sup>rd</sup> December, 1971) \*

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. — Subsection (3) of section 4 of the *Copyright Act* is repealed and the following substituted therefor:

*“ Copyright in records and contrivances*

(3) Subject to subsection (4), copyright shall subsist for the term hereinafter mentioned in records, perforated rolls, and other contrivances by means of which sounds may be

\* 19-20 Elizabeth II, Chapter 60.

mechanically reproduced, in like manner as if such contrivances were musical, literary or dramatic works.

*Nature of copyright*

(4) Notwithstanding subsection (1) of section 3, for the purposes of this Act “copyright” means, in respect of any record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced, the sole right to reproduce any such contrivance or any substantial part thereof in any material form.”

2. — This Act shall have effect on and after the 1<sup>st</sup> day of January, 1971.

## LUXEMBOURG

### Copyright Law

(Of March 29, 1972) \*

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#### Section I. — Copyright in general

*Article 1.* — The author of literary or artistic work shall enjoy therein an incorporeal property right which shall be exclusive and exercisable against all persons.

This right shall carry intellectual and moral attributes, and likewise economic attributes as determined by this Law.

The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans,

\* This Law was published in the *Mémorial*, Official Journal of the Grand Duchy of Luxembourg, on April 12, 1972 (A - No. 23).

sketches and three-dimensional works relative to geography, topography, architecture or science.

Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

Collections of literary or artistic works which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

*Article 2.* — Except as otherwise provided in this Law, copyright shall continue to exist for fifty years after the death of the author, for the benefit of his heirs or successors in title.

The term provided under the preceding paragraph may, however, be extended by administrative regulation.

*Article 3.* — The right to reproduce the work or to disclose it in any other way to the public, and to authorize the reproduction or disclosure thereof, shall constitute the author's exclusive right of exploitation.

The right of exploitation may be assigned or transferred, wholly or partially, in accordance with the provisions of the Civil Code.

*Article 4.* — Copyright in photographic works and works of applied art shall continue to exist for fifty years after the making of such works.

*Article 5.* — The person whose name is indicated on the work in the usual manner as being that of the author shall be presumed to be the author of the work.

*Article 6.* — Subject to the provisions of Section VI, where the work is the product of collaboration so that the individual contributions of the authors are indivisible, copyright shall exist for the benefit of all the copyright owners for fifty years after the death of the last surviving co-author.

*Article 7.* — Where copyright is undivided, its exercise shall be regulated by agreements. Failing such agreements, none of the co-authors may exercise it individually; in case of disagreement, however, the courts may decide.

Nevertheless, each of the co-authors shall remain free to institute proceedings, in his own name and without the intervention of the other co-authors, in the event of an infringement of copyright, and to claim damages for his part.

*Article 8.* — The publisher of an anonymous or pseudonymous work shall be deemed to represent the author with respect to third parties. The term of protection shall expire fifty years after the work has been lawfully made available to the public.

Nevertheless, if the identity of the author is established, he, or his successors in title, shall revert to their respective rights.

*Article 9.* — Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

The right referred to in the preceding paragraph shall be attached to the author personally. After his death it shall be maintained until the expiry of the economic rights and throughout the term of protection it may be exercised by the author's heirs or by a third party to whom the author may have granted such exercise by testamentary provision.

*Article 10.* — For the calculation of the terms of protection provided for in this Act, such terms shall be deemed to begin on the first of January of the year following the event considered.

## Section II. — Exceptions from copyright

*Article 11.* — Speeches made in deliberative assemblies, at public hearings of the courts or at political meetings may be freely published and broadcast. Lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press and broadcast in original form or in translation when such use is justified by the informative purpose.

Nevertheless, the author alone shall enjoy the right of printing separately or making a collection of his works mentioned in the preceding paragraph.

*Article 12.* — Official texts of the authorities and official translations of such texts shall not give rise to copyright.

All other writings executed by the State, the communes or public establishments shall give rise to copyright, either for the benefit of such administrations for a term of fifty years following their publication, or for the benefit of the author if he has not transferred it to such administrations.

*Article 13.* — The author's right in a literary or artistic work which has already been lawfully made available to the public shall not preclude the right to make quotations, in original form or in translation, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

The same rule shall apply with respect to the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

Any such quotation or utilization shall be accompanied by an indication of the source, and of the name of the author if it appears thereon.

*Article 14.* — Literary or artistic works seen or heard in the course of a current event may, to the extent justified by the informative purpose, be reproduced and made available to the public on the occasion of a report on the event by means of photography, cinematography or broadcasting.

Articles published in newspapers or periodicals on current economic, political or religious topics, and broadcast works of the same character, may be reproduced by the press or broadcast, in original form or in translation, where the authors or publishers have not expressly stated, in the newspaper or periodical in which such works appeared, that they prohibit any such reproduction or broadcast; nevertheless, the source must always be clearly indicated. In the case of collections, it is sufficient for a general prohibition to appear on the heading of such issue.

News of the day and miscellaneous facts having the character of mere items of press information may be freely utilized.

### Section III. — Copyright in literary, dramatic, dramatico-musical and musical works

*Article 15.* — Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (1) the public performance of their works, including such public performance by any means or process; (2) any communication to the public of the performance of their works.

Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the rights referred to in the first paragraph with respect to translations thereof.

Authors of literary works shall enjoy the exclusive right of authorizing: (1) the public recitation of their works, including such public recitation by any means or process; (2) any communication to the public of the recitation of their works.

Authors of literary works shall enjoy, during the full term of their rights in the original works, the rights referred to in the third paragraph with respect to translations thereof.

*Article 16.* — Copyright in the works referred to in Article 15 shall include the exclusive right of making or authorizing translations, arrangements, adaptations and other alterations of such works.

*Article 17.* — In the case of works comprising words or texts and music, the composer and the author may not make arrangements for their work with a new co-author. Nevertheless, they shall have the right to exploit it separately, provided this is not prejudicial to the exploitation of the joint work.

### Section IV. — Copyright in works of the figurative arts

*Article 18.* — The transfer of a work of art shall not imply an assignment of copyright to the acquirer.

*Article 19.* — Neither the author nor the owner of a portrait shall have the right of reproducing it or exhibiting it in public without the consent of the person represented or his successors in title, during a period of twenty years after his death.

*Article 20.* — A work of art reproduced by industrial processes or applied to industry shall nevertheless remain subject to the provisions of this Law.

*Article 21.* — A work of art, including a work of architecture, which is permanently situated in a public place may be reproduced and made available to the public by means of cinematography or broadcasting. This shall likewise apply in cases where the inclusion of such a work in a film or broadcast is only of an accessory or incidental character in relation to the principal matters represented.

*Article 22.* — Notwithstanding any transfer of the original work, the authors of the graphic and plastic arts shall have an inalienable right to share in the proceeds of any sale of such work by public auction or through a dealer.

After the author's death, this right shall subsist to the benefit of his heirs, but excluding all legatees and assigns, for the current calendar year and fifty years thereafter.

The royalty rate, which may not exceed three percent, shall be applicable only as from a minimum selling price. It shall be charged on the selling price of each work and on the total sales price without any deductions at source.

The tariff for the royalties and the minimum selling price referred to in the preceding paragraph shall be fixed by administrative regulation, which shall also determine the conditions in which authors shall claim the rights conferred upon them by the provisions of this Article.

### Section V. — Broadcasting of literary and artistic works

*Article 23.* — I. Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

- (1) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- (2) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
- (3) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

II. In the absence of any contrary contractual stipulation, the authorization provided for in the preceding paragraph shall imply, for the broadcasting organization to which it has been granted, permission to use, for the purpose of broadcasting, instruments recording sounds or images where such recordings have been lawfully made.

*Article 24.* — In the case of a work that has already been lawfully made available to the public and where the exploitation thereof, whether entirely or in part, has been entrusted on whatever basis to any organization referred to in Article 48, and in the absence of a friendly arrangement between the parties concerned, the broadcasting or communication to the public of the work shall be lawful, subject to payment of equitable remuneration. In the absence of agreement or arbitration between the parties concerned, the ordinary courts, acting as in the case of a summary and urgent matter, shall fix the amount of the equitable remuneration lawfully due.

The broadcast or communication to the public made under the conditions of the preceding paragraph shall in no circumstances be prejudicial to the right provided for in Article 9.

*Article 25.* — In the absence of any contrary stipulation, authorization granted in accordance with Article 23 shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast.

It shall, however, be lawful for a broadcasting organization to make ephemeral recordings by means of its own facilities and for its own broadcasts, provided such recordings are used for broadcasting purposes only within three months following the performance or recitation recorded and are thereafter destroyed or rendered unusable.

The recordings referred to in the preceding paragraph may nevertheless be preserved in official archives where they are of an exceptional documentary character. The terms and conditions for such preservation shall be fixed by administrative regulation.

#### Section VI. — Cinematographic works

*Article 26.* — Authors of literary or artistic works shall have the exclusive right of authorizing:

- (1) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
- (2) the public performance and communication to the public by any means or process of the works thus adapted or reproduced.

The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

The application of the provisions of Section V shall remain reserved.

*Article 27.* — Copyright in a cinematographic work shall vest in the maker thereof. The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

Copyright in a cinematographic work shall expire fifty years after the work has been lawfully made available to the public.

*Article 28.* — In the absence of any contrary or special stipulation, the contract concluded by the maker of a cinematographic work with the authors of the works used therein, with the exception of musical works with or without words, shall imply a transfer to the maker of the right to exploit the cinematographic work by all means and processes, including the subtitling or dubbing of texts, and to make all necessary alterations for such exploitation, provided that such alterations shall not be prejudicial to the right provided for in Article 9.

#### Section VII. — Infringements and the repression thereof

*Article 29.* — Any willful or fraudulent violation of copyright shall constitute the offense of infringement.

Any person who knowingly sells, displays for sale, stocks for purposes of sale, imports, or puts into circulation on the territory of Luxembourg for commercial purposes, any infringing article, shall be guilty of a like offense.

*Article 30.* — The offenses referred to in the preceding Article shall be punishable by a fine of five hundred and one francs to twenty thousand francs.

Confiscation of infringing works or objects, as well as of plates, molds or matrices and other implements having directly served for committing such offenses, shall be ordered against the guilty party.

*Article 31.* — In the case of a performance or recitation constituting an infringement of copyright, the proceeds may be seized by the judiciary police as being objects derived from the offense, and shall be awarded to the claimant as constituting part of the damages due to him, but solely in proportion to the share which his work represented in the said performance or recitation.

*Article 32.* — Any willful or fraudulent affixation on a literary or artistic work of the name of the author, or of any distinctive sign adopted by him to identify his work, shall be punishable by an imprisonment of three months to two years and by a fine of two thousand francs to twenty thousand francs, or by one of these penalties only.

Confiscation of infringing objects shall be ordered in all such cases.

Any person who knowingly sells, displays for sale, stocks for purposes of sale, imports, or puts into circulation on the territory of Luxembourg for commercial purposes any object designated in the first paragraph, shall be liable to the same penalties.

*Article 33.* — Article 191 of the Penal Code shall be replaced by the following provisions:

“If any person affixes, or causes to be affixed, by addition, excision or any alteration whatsoever on manufactured articles the name of a manufacturer other than he who is the author thereof or the business style of a factory other than that of the manufacturer, he shall be punishable by an imprisonment of one month to six months and by a fine of five hundred and one francs to ten thousand francs, or by one of these penalties only.

The same penalty shall be imposed on any merchant, auctioneer or retailer who has knowingly displayed for sale, imported or placed in circulation objects marked with a fictitious or falsified name.”

*Article 34.* — With respect to infringements of this Law, other than those referred to in Article 32, proceedings may be instituted only following a complaint by the person who alleges to be injured.

*Article 35.* — The provisions of Title 1 of the Penal Code and the Law of June 18, 1879, as amended by the Law of May 16, 1904, entrusting the courts and tribunals with the evaluation of extenuating circumstances, shall apply to the infringements provided for in this Law.

*Article 36.* — The following provision shall be added to Article No. 23, of the Law of March 13, 1870, on Extraditions: “. . . as well as for the offense specified in Article 32 of the Copyright Law.”

#### Section VIII. — Civil proceedings with respect to copyright

*Article 37.* — Copyright owners may request the authorization of the president of the tribunal of first instance of the place where the infringement was committed, to have a detailed description drawn up by one or more experts, designated by the magistrate, of the objects alleged to be infringing, or of the facts of the infringement and of the implements directly employed in committing it.

The president, by the same order, may enjoin the holders of the infringing objects to part with them, may allow the appointment of a custodian, or may even place the objects under seal. This order shall be notified by a bailiff appointed for the purpose.

In the case of acts which give rise to monetary receipts, the president may order the impounding of such monies by a bailiff appointed by him.

*Article 38.* — The request shall include election of domicile [for the purposes of service] in the district where the description is to be drawn up.

The experts shall take oath before the president before commencing their activities.

*Article 39.* — The president may require the petitioner to deposit a surety. In such case, the order shall be issued only after proof is shown that the surety has been deposited.

*Article 40.* — The parties may be present at the drawing up of the description, if specially authorized by the president.

*Article 41.* — If doors are closed, or if there is a refusal to open them, proceedings shall be taken in accordance with Article 587 of the Code of Civil Procedure.

*Article 42.* — A copy of the description shall be sent by the experts by registered mail and with the least possible delay to the person distrained against and to the person seeking distraint.

*Article 43.* — If, within eight days from the date of this mailing as evidenced by the postmark, or from the date of the impounding of receipts, there has been no summons before the Court within whose jurisdiction the description was drawn up, the order shall automatically cease to have effect and the holder of the objects described or of the funds seized may apply for the delivery to him of the original description, as well as for an injunction prohibiting the use or publication of the description, but without prejudice to any claims for damages.

*Article 44.* — Without prejudice to the right of the injured party to petition jurisdiction under criminal law, actions deriving from this Law shall be within the exclusive competence of the civil courts.

Cases shall be heard as being matters of urgency.

*Article 45.* — Confiscated receipts and objects may be allotted to the injured person on account and up to the amount of the damages incurred.

*Article 46.* — In the case of any infringement of the provisions of Article 22, the acquirer and the law officials may be held jointly liable for the benefit of the parties entitled to claim damages.

#### Section IX. — Rights of foreigners

*Article 47.* — Foreigners shall enjoy within the Grand Duchy the rights guaranteed by this Law, provided that the term of such rights shall not, in so far as they are concerned, exceed the term fixed by the legislation of Luxembourg.

The effects of international conventions are reserved.

#### Section X. — Organizations exercising copyright

*Article 48.* — I. Any organization exercising, in whatever capacity, copyright in the territory of Luxembourg for the account of more than one author or copyright owner must obtain an authorization. If the organization is established abroad, it must in addition have a general authorized agent domiciled in the Grand Duchy who shall represent it in the country in both judicial and non-judicial matters. The agent must be officially approved.

The authorization and approval, which are prescribed subject to preclusion of any action, shall be granted by the member of the Government having responsibility for copyright matters.

II. The organization established abroad must produce a copy of the proxy given to its general agent. The proxy must unequivocally specify the powers delegated which must include the power to represent the organization before the law.

Any writ of summons or notification to be served on an organization established abroad may be served at the domicile of the general agent, who shall be competent to bring any action under this Law and more particularly those actions which are based on copyright contracts concluded in the Grand Duchy with persons or bodies corporate established there and concerning either residents of the Grand Duchy or undertakings situated therein.

The domicile of the general agent shall also be decisive for determining the time limits to be observed for any writ of summons or notification.

III. For the purposes of this Law, any contract concerning copyright concluded with a user resident or established in the Grand Duchy shall be deemed to have been concluded in the Grand Duchy.

IV. Any clauses in copyright contracts that are not in conformity with the foregoing provisions shall be null and void.

V. The organizations referred to in I above shall draw up a list of the authors of works represented by them and shall keep it up to date.

The said list may be consulted by impresarios, broadcasting organizations and, in general, by all users and by all persons having an interest therein. In the case of organizations established abroad, the list shall remain deposited with the general agent.

The member of the Government having responsibility for copyright matters may grant exceptions from the requirements set forth in the two preceding paragraphs to the extent that lists deposited abroad can be consulted by users through the intermediary of Luxembourg organizations or of the general agents of organizations established abroad.

VI. Administrative regulations shall be issued specifying the conditions concerning the authorization and approval referred to in I above and the conditions in which the organizations mentioned therein may carry on their activities. The

said regulations shall be issued only after the Council of State has given its opinions and shall determine the date of entry into force of the provisions of this Article.

#### Section XI. — Transitional provisions

*Article 49.* — Contracts on these matters lawfully concluded under the provisions of earlier laws shall remain unaffected by this Law. Authors or their successors in title whose exclusive rights derived from such laws have not expired at the time of entry into force of this Law shall hereafter be governed by this Law.

#### Section XII. — Repeal of existing legislation

*Article 50.* — The Law of May 10, 1898, on Copyright and the Orders of May 10 and 13, 1898, concerning the implementation of that Law are hereby repealed.

#### Section XIII. — Entry into force

*Article 51.* — The provisions of this Law, with the exception of the provisions of Article 48, shall enter into force three months after their publication in the *Mémorial*.



The Council felt that in the past a disproportionate amount of attention had been devoted to the social benefits of intellectual and industrial property, and not enough to the counterbalancing social costs, with what was considered to be a resultant distortion in the law.

In searching for an accommodation between producer and consumer interests, the Council recommendations expressed the view that a private right to exclude was an unnecessarily costly technique to guarantee financial reward, and opted instead for compulsory licensing whereby public access and private compensation were both ensured. The costs of the existing system were seen as being measurable in terms of certainty, speed, opportunity, and contestation expenses. In general, the Council thought that intellectual and industrial property laws should be related, more than they have been in the past, to the information and service of the members of the public.

In relation to international matters, the Council took note of Canada's treaty obligations and responsibilities and recalled that "there are international impacts to be taken into account, with some associated inhibitions on domestic freedom of action"<sup>9</sup>. Stating that Canada is a "heavy net importer"<sup>10</sup> of available information, in the form of intellectual and industrial property, the Council suggested that Canada "will have interests different from those of net exporters"<sup>11</sup> and would be likely "to have an interest in adhering to international conventions at less than the maximum level of protection available to member countries"<sup>12</sup> and, in the light of that interest, "retain its freedom to maintain patent, copyright and design protection on a shorter-term and less-extensive basis ... and to issue compulsory licenses more often ..."<sup>13</sup>. The Council suggested that Canada should be prepared to pay some price for full participation in the global information and innovation system, but it should not pay too high a price<sup>14</sup>. Specifically, as an example, it suggested that Canada not enter into any treaty agreement to protect computer programs at this time<sup>15</sup>. It also suggested that in certain areas such as copyright registration systems<sup>16</sup>, Canada might take international initiatives to change existing treaty provisions.

The Council did not suggest that the above conceptual framework necessarily led to any specific conclusions, but it stressed the relative novelty of the economics of information and also that the field of intellectual and industrial property deserved increased attention from social scientists.

As was the case in its views on Competition Policy<sup>17</sup>, the Council urged the desirability of conducting a thorough public review of the intellectual and industrial property system at least once every ten years as the dynamism of the subject matter dictated that it be assessed frequently.

### (b) Specific Proposals of General Application

The Council was of the opinion that, in cases of conflict, intellectual and industrial property rights should be subject to the principles embodied in the Canadian Combines Investigation legislation.

The Council also considered that especially in view of recent multilateral reductions of tariff barriers to international trade, and Canadian competition policy, intellectual and industrial property rights should not prevent importation into Canada from countries where similar protection was available for the thing imported.

#### *Copyright*<sup>18</sup>

In the Council's view, the most difficult general copyright problem was the accommodation of the new technology of reproduction and communication. After reviewing the historical development of copyright law and its basic principles, the Council indicated that it saw three dimensions to handling the new technology: (1) ensuring that established principles are neither eroded nor work in unintended ways, (2) making the law specific enough to offer workable guidance to the well-meaning layman, and (3) enforcement.

With respect to noneconomic cultural goals, the Council's copyright proposals explicitly assumed that Canadians are prepared to pay something for a strong and distinctive cultural identity. However, it was suggested that Canada should not sacrifice educational or scientific quality in the name of national culture<sup>19</sup>.

Concerning, for example, the price of books in Canada, a sample inquiry by the Council into international price differentials disclosed that British books sell in Canada at prices averaging 30 percent above the prices in Britain<sup>20</sup>. The Council felt that, if the Canadian book industry required financial help of this order, copyright law was not the best means with which to provide it, because the limiting of import competition and the permitting of exclusive agency distribution tended to raise the prices paid by consumers for information with no guarantee of better or more domestic culture.

The Council enunciated nine general copyright guidelines<sup>21</sup> which it felt would assist in the formulation of policy within the context of meeting specific problems<sup>22</sup>.

(1) Authors should be compensated in proportion to the extent to which their work is used, and each user should pay his fair share. The major limitations on these principles were seen as (a) the needs of libraries in terms of making information available and (b) the need to have a practicably enforceable system, without costly policing.

(2) Ready, low-cost public access to information is desirable.

<sup>18</sup> *Op. cit.*, Chapter 7, and Appendices B and C.

<sup>19</sup> *Ibid.*, pp. 138-139.

<sup>20</sup> *Ibid.*, Appendix B.

<sup>21</sup> *Ibid.*, pp. 141-148.

<sup>22</sup> Two Council members however refused approval of the Report and specifically objected to the recommendations of the copyright chapter. One member preferred that copyright be treated more as a "natural property right" rather than on an economic basis, and felt that such a change would result in more extensive protection for authors. Another member wished the recommendation of an exclusive right in performances, with the expectation that this would increase payments to performers by giving them extra control over the recording and replaying of their performances.

<sup>9</sup> *Ibid.*, p. 42.

<sup>10</sup> *Ibid.*, p. 42.

<sup>11</sup> *Ibid.*, p. 43.

<sup>12</sup> *Ibid.*, p. 43.

<sup>13</sup> *Ibid.*, p. 43.

<sup>14</sup> *Ibid.*, p. 43.

<sup>15</sup> *Ibid.*, p. 103.

<sup>16</sup> *Ibid.*, p. 149.

<sup>17</sup> Economic Council of Canada, *Interim Report on Competition Policy*, August, 1969, Queen's Printer, Ottawa, 244 pages.

(3) Copyright should be aimed at its primary incentive function, and should not be used as an economic and informational barrier to trade between Canada and other countries, nor be used contrary to competition policy.

(4) Canada should seek the lowest-cost access obtainable for foreign information, consistent with paying a fair share of incentives to copyright holders. Since the copyright treaties require nondiscriminatory rules, incentive tools other than copyright should be used as special encouragement to Canadian authors and artists.

(5) There was no evidence to justify either significant increase or decrease in the basic levels or kinds of Canadian copyright protection, saving that of lateral extensions to take account of new media.

(6) Copyright law was seen as having a limited capacity to alter the distribution of remuneration between creators and their distributors, and any problem was seen as more a function of relative bargaining power, dependent from the creators' point of view on quality of work, reputation, and collective action.

(7) Ownership of copyright should be easier to trace and royalties more convenient to remit than is the case today in the light of the needs of high-speed information systems.

(8) Use of the new technology to improve efficiency in the distribution and use of information should be encouraged.

(9) The risk of monopoly influence and censorship, whether State or private, should be minimized.

The Council recognized the existence of a large number of complex copyright problems but thought there were only a limited number on which it could make specific recommendations<sup>23</sup> where the issues were sufficiently clarified:

There should be no lengthening of the basic term of copyright in Canada.

Canada should press for the international adoption of compulsory registration systems and should consider adopting one herself at an early stage, even on a limited basis, if this would set a useful example for other countries.

The functions of the Copyright Appeal Board<sup>24</sup> should be absorbed by the new Appeal Board proposed for all intellectual and industrial property matters.

Canadian copyright law should not deny to anyone the right to purchase works in other countries where they also enjoy copyright protection, and to import the copies into Canada.

The maximum limits on penalties under the Act should be adjusted to fit modern conditions, with consideration being given to reducing legal costs and time spent in such actions.

Rights relating to sculpture, paintings and the moral interests of creators are in particular need of clarification.

Where publishers go to the expense of resetting and issuing public domain material, they should enjoy ten years protection for their specific editions.

There should be no performing right in sound recordings<sup>25</sup>.

No special statutory performer's rights should be created relating to individual performances.

Broadcasters should have the exclusive right over the recording and retransmission of their broadcasts, except for simultaneous (or time-zone delayed) retransmission of the complete program by cable television systems.

As to cable television systems:

(a) they would be free of copyright liability for simultaneous (or time-zone delayed) retransmission of the unaltered and complete mixture of program material and advertisements;

(b) they would be liable for copyright payments if the broadcaster carried no advertisements, or if he did and the cable system dropped them, or wherever the signal did not originate with a wireless broadcaster;

(c) where cable systems were obliged to pay for copyright there could be a system of compulsory licensing or negotiated arrangements with the program originator.

Technological change makes it desirable to extend the performing-right-society collective approach (to the problems of access, royalties and payment) to printed material. These should be voluntary systems, but the scope of compulsory licenses would also have to be enlarged.

Apart from some possible clarification of the "fair dealing" provisions of the Act, the Council stated it did not recommend that any revisions be made to the copyright law specifically affecting copying machines. After examining the economic evidence of photocopying and the nature of the motivation behind it, the Council concluded that the economic danger was not as great as was sometimes alleged. The answer to whatever problem as does exist was seen as lying in improved distribution techniques, clearer rules, and the cooperation of educational authorities.

As to computerized information systems:

(a) no copyright payments should be necessary for computer input, though "certain types of computer output" should be covered "where the case for payment of royalties is clear";

(b) other less clear areas and more complex problems should be studied, and solutions recommended as needed, by the proposed Copyright Advisory Committee;

(c) in view of potential conflicts of interest and consequent public detriment arising from the extensive federal government involvement with the copyright aspects of computerized information systems, "we recommend that the government commission a searching, objective examination of this matter".

The Council concerned itself more with fundamental principles than with detail and, aside from the specific questions with which it did deal, took the view that the detail could be worked out more or less consistently once the basic policies were established. There is however a large number of complex issues and problems not dealt with by the Council which must also receive attention as revisions of the four statutes are prepared.

<sup>23</sup> *Ibid.*, pp. 143-177.

<sup>24</sup> Which, in practise, approves tariffs of fees or charges which may be collected by performing right societies from various classes of users.

<sup>25</sup> See below under "New Legislation", letter (c).

Most of the particular and significant matters arise from the law and from private and public interest groups. Some arise through treaties or problems that are international in nature. For example, the Copyright Act has been severely dated by technological change in the last half century, and the Council gave no specific guidance on the problems of fair dealing, jukeboxes, performing right societies, satellite communications, film copyright, Crown copyright, translation, or the fundamental concept of publication. Nor were Canada's treaty commitments or responsibilities discussed in detail.

The terms of the Council's Reference only specified a study of "patents, trade marks, copyrights and registered industrial designs" and perhaps for that reason it did not comment on two alternative and supplementary bodies of law, namely, trade secrets and unfair trade practices. It mentioned them in passing, i. e. acknowledging that computer programs may enjoy trade secret protection<sup>26</sup>, and urging that certain provisions of the Trade Marks Act be more vigorously enforced<sup>27</sup>, but did not deal with the relationships between these laws and the four statutory schemes of protection.

#### Administration

The Report made certain general and specific recommendations in this area but did not attempt to set forth a complete new structure of offices or functions within the responsible Department. However, it did make some specific suggestions as to part of the administrative system.

#### Appeal Board

The formation of such a Board was recommended to be a new broadly based function embracing all forms of intellectual and industrial property which would, *inter alia*, absorb the functions of the present Copyright Appeal Board.

#### Advisory Groups

The creation of two permanent groups was recommended: (a) a Policy Advisory Planning Group with expertise in economics, technology and law to evaluate the effects of intellectual and industrial property law and to advise on international matters for general purposes, and (b) a Copyright Advisory Committee to study special issues referred to it, e. g. problems arising from communications technology.

#### Commissioner of Intellectual and Industrial Property

The basic proposal concerning government administration of the intellectual property laws were: (a) that the office of Commissioner of Patents be replaced by one for a Commissioner of Intellectual and Industrial Property, and (b) that the Commissioner be responsible for the administration of the Trade Marks Act, as well as the laws relating to patents, copyrights, and industrial designs, and (c) that intellectual property policies be coordinated with other government institutions for providing incentives and encouraging innovation.

#### Legislative Revision

At the time of the release of the Report, the Minister of the Department of Consumer and Corporate Affairs announced the formation of a Planning Group to receive com-

ments<sup>28</sup>, to study the Report and to prepare recommendations to the Minister for legislative changes.

The need for revision has been clearly stated by the Council. Apart from the broad framework of economic analysis and the development derived from that analysis remains a group of imperatives.

Without entering into detailed discussion there is the age of the present Canadian Copyright Law (enacted in 1924 with certain later amendments) and the attendant problems of relating an antiquated law to the space age. Difficulties are encountered by the Courts in construing and interpreting the Act in relation to problems the Act was not designed to solve<sup>29</sup>. The technology of today has made possible the simultaneous dissemination of works on a world-wide basis, thus creating problems in the utilization of works and, indeed, of defining new types of protected works. Novel means of infringement and new areas of legal relationships have been identified which make it necessary to respond to a technology based on such communication complexes as are now possible.

In addition, legislative changes will make necessary a thorough examination of Canada's international commitments, responsibilities and interests<sup>30</sup>. Particularly relevant in that context will be the degree of flexibility that can be exercised within the parameters and constraints imposed by the copyright conventions.

#### Other News

##### New Legislation

(a) The Federal Court Act<sup>31</sup> established that the Court of Appeal for intellectual and industrial property is the newly organized Federal Court of Canada, replacing the former Exchequer Court of Canada. The Act provides, *inter alia*, that the words "Exchequer Court" when they appear in the Patent and Copyright Acts, are replaced by the words "Federal Court". New rules of procedure for conducting appeals in the Federal Court were made on February 2, 1971.

(b) The Revised Statutes of Canada, 1970, effective July 1, 1971, modified the designation of existing legislation, without making any substantive changes, although certain sections of the various Acts have been renumbered.

(c) On December 21, 1971, the Houses of Parliament passed an amendment to the Copyright Act, effective January 1, 1971, removing the alleged performing right in records, perforated rolls or other contrivances<sup>32</sup>.

<sup>28</sup> The response has been highly varied.

<sup>29</sup> Illustrative was a decision rendered in *Warner-Bros.-Seven Arts Inc. and others v. CRSM-TV Ltd.* (Exchequer Court of Canada, January 25, 1971) that the videotaping of broadcast programs of motion picture films in one locality and the subsequent transmission of the videotapes over a local coaxial cable to private domestic subscribers in another locality — at the convenience of the cable system — was held to be an infringement of the plaintiff's right provided by Section 3(1)(d) of the Copyright Act, "in the case of a ... dramatic ... work, to make any record ... or other contrivance by means of which the work may be mechanically performed or delivered." In the view of the Court, "the videotape is a contrivance by means of which the work may be mechanically performed", and that "mechanically" included electromagnetic techniques. Not settled by the Court were arguments and issues re whether or not reproduction of the films had occurred; whether any reproduction was a duplicate; whether a public performance had occurred, etc.

<sup>30</sup> Canada is a member of the Berne Convention (Rome Act, 1928) and the Universal Copyright Convention (1952).

<sup>31</sup> 19 Elizabeth II, Ch. 1.

<sup>32</sup> This action was not taken to implement the Report but to meet another situation which had arisen prior to the release of the Report.

<sup>26</sup> *Op. cit.*, p. 102.

<sup>27</sup> *Ibid.*, p. 206.

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# INTERNATIONAL ACTIVITIES

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## International Writers Guild (IWG)

(Executive Committee, Helsinki, April 26 to 28, 1972)

The Executive Committee of the International Writers Guild met at Helsinki (Finland) from April 26 to 28, 1972.

Fourteen of the twenty-five member organizations were represented by delegates from the following countries: Australia, Canada, Denmark, Egypt, Finland, France, Germany (Federal Republic), Poland, Soviet Union, Sweden, United Kingdom, United States of America.

The session was opened by Mr. Paul Vialar (France), President of the IWG, and the meetings were presided over by Mr. Leigh Vance (United Kingdom), President of the Executive Committee.

Observers from Unesco, the International Federation of Societies of Authors and Composers (CISAC), the Interna-

tional Federation of Actors (FIA) and the International Federation of Musicians (FIM) attended the session. WIPO was represented by Mr. Mihailo Stojanović, Counsellor, Copyright Division.

In the field of copyright, the Executive Committee discussed the following questions which were dealt with in recommendations or resolutions: the recent revisions of the two international Conventions (Berne Convention and the Universal Copyright Convention, Paris, 1971), the new Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 1971), the problems raised by transmission via satellites, and the problems relating to the use of video-cassettes.

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## CALENDAR

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### WIPO Meetings

June 26 to July 7, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

July 5 to 7, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

July 10 to 14, 1972 (The Hague) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

September 4 to 8, 1972 (London) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

September 11 to 15, 1972 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 20 to 22, 1972 (Geneva) — ICIREPAT — Plenary Committee

September 21 and 22, 1972 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights) — Extraordinary Session

*Object:* Consideration of various questions concerning neighboring rights — *Invitations:* Brazil, Denmark, Germany (Fed. Rep.), Mexico, Niger, United Kingdom — *Observers:* Congo, Costa Rica, Czechoslovakia, Ecuador, Fiji, Paraguay, Sweden; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Labour Office and Unesco

September 25 to 29, 1972 (Berne) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

September 25 to 30, 1972 (Geneva) — Coordination Committee of WIPO, Executive Committees of the Paris and Berne Unions, Assemblies of the Madrid, Lisbon and Locarno Unions

October 2 to 9, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees and Standing Subcommittee of the Interim Committee for Technical Cooperation

*Members of the Interim Committees:* Signatory States of the PCT — *Observers:* Intergovernmental organizations and international non-governmental organizations concerned; *Members of the Standing Subcommittee:* Austria, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil

- October 9 to 13, 1972 (Munich) — ICIREPAT — Technical Committee for Standardization
- October 16 to 20, 1972 (Nairobi) — African Seminar on Intellectual Property
- October 16 to 20, 1972 (Geneva) — ICIREPAT — Technical Committee for Computerization
- October 23 to 27, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- October 23 to 27, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems
- October 30 to November 3, 1972 (Geneva) — Committee of Experts on a Patent Licensing Convention
- November 20 to 24, 1972 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee
- November 27 to December 1, 1972 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee
- December 13 to 15, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee
- April 9 to 13, 1973 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Appellations of Origin  
*Object:* To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental organizations concerned
- May 7 to June 2, 1973 (Vienna) — Diplomatic Conference on: (a) the International Registration of Marks, (b) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces
- September 24 to October 2, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Nice and Lishon Unions (Assemblies, Conferences of Representatives, Executive Committees)

## UPOV Meetings

- November 7 and 10, 1972 (Geneva) — Diplomatic Conference  
*Object:* Amendment of the Convention
- November 8 and 9, 1972 (Geneva) — Council
- December 5 to 7, 1972 (Geneva) — Working Group on Variety Denominations
- July 2 to 6, 1973 (London/Cambridge) — Symposium on Plant Breeders' Rights

## Meetings of Other International Organizations concerned with Intellectual Property

- July 3 to 7, 1972 (Paris) — International Literary and Artistic Association — Working Session
- July 4 to 6, 1972 (The Hague) — International Patent Institute — Administrative Council
- August 4 to 15, 1972 (Libreville) — African and Malagasy Industrial Property Office — Administrative Council
- October 16 to 21, 1972 (Mexico) — International Confederation of Societies of Authors and Composers — Congress
- October 23 to 26, 1972 (The Hague) — International Patent Institute — Administrative Council
- November 12 to 18, 1972 (Mexico) — International Association for the Protection of Industrial Property — Congress
- December 11 to 15, 1972 (The Hague) — International Patent Institute — Administrative Council
- May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress