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**EMERGING PROBLEMS IN THE FIELD OF COPYRIGHT,
ESPECIALLY WITH RESPECT TO PIRACY**

Memorandum by the Commonwealth Secretariat
and a paper by Mr. DENIS DE FREITAS, OBE, MA
a Consultant on intellectual property and
Chairman of the British Copyright Council

In recent years the laws of copyright in Commonwealth countries, as in others, have come under increasing tension. The explosion in new technology, and the remarkable reduction in the costs of reproduction, appear to many to have rendered existing legal protection meaningless.

2. Arising from concern expressed to us by a number of Law Ministers, the Commonwealth Secretariat invited Mr. Denis de Freitas, a distinguished lawyer from the Caribbean who has practised in the UK specialising in intellectual property matters and who is currently Chairman of the British Copyright Council, to prepare a discussion paper on aspects of the problem of contemporary concern. His paper is annexed hereto.

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A paper prepared by Mr. DENIS DE FREITAS, OBE, MA,
a Consultant on intellectual property and Chairman
of the British Copyright Council

I. Introductory

Life in this century has been transformed by technology, and perhaps nowhere has the change been more spectacular than in the field of communication. The principal concern of copyright is with communication. The copyright system has been devised and developed over the last century or more to encourage the creation of culture, the dissemination of information and ideas, and thereby to enrich people's lives by opening their eyes and minds to wider and more diversified views of the world and by giving them a greater understanding of themselves and each other.

2. The copyright system pursues this purpose by giving those who create cultural works rights of control over the use to which the public may put those works, in effect over the communication of such works to the public by one means or another; and the first point to be made is that the ambit of this control has evolved to meet new forms of use as they have appeared. In the 18th Century when the first copyright statute was enacted - the Statute of Anne 1709 - the communication to the public on any significant scale took place solely through the printing and publishing of literary works, and copyright control was correspondingly concerned with the right to make and distribute copies. By the end of the 19th Century copyright laws had been amended to give copyright owners control over other forms of use, such as public performance. By the first decade of the 20th Century the first glimpses of technology were beginning to appear and primitive applications of Baird's scientific discoveries were being made; but the copyright laws of the turn of the century knew nothing, and said nothing, about broadcasting or about films - Hollywood was merely a foggy area not far from Los Angeles - and the art of recording sound was in its early scratchy state of development; electronic computers were undreamt of.

3. Today we are surrounded by technological marvels - radio and television broadcasting (terrestrial and by satellite), cable distribution systems, audio and video recording, reprography in all its forms, and computers - and the skills to link these technologies into vast multi-facility networks.

4. Practically every Commonwealth country or territory has a law of copyright; in some cases it is still the United Kingdom Copyright Act 1911 which applied directly, upon enactment, to all Her Majesty's Dominions; an example of this is Singapore. In others, the current United Kingdom law, the Copyright Act 1956, has been expressly extended to the Country; an example of this is Guyana; but in an increasing number of Commonwealth countries, and certainly in the majority of them, the current law relating to copyright has been enacted, usually after independence, by the national legislature. Examples of these are Australia (Copyright Act 1968), India (Copyright Act 1957), Nigeria (Copyright Decree 1970), and the most recent, Barbados (Copyright Act 1982).

5. On the international plane, starting in 1886 when the Berne Union was first established, an international copyright community has evolved through membership of either the Berne Union or the Universal Copyright Convention, both of which are multilateral copyright treaties with two principal objectives -

- (a) to stipulate minimum standards of copyright protection which the national laws of member States must meet; and
- (b) to require each member State to protect the works from all other member States to the same extent as its own national works are protected.

Appendix I to this paper contains two lists published by the World Intellectual Property Organisation (WIPO) in Geneva, showing the membership of both the Berne Convention and

the Universal Copyright Convention as at 1st January 1982. It will be seen that although most Commonwealth countries belong to one or other of the two Conventions - and many belong to both - there are some which appear on neither list, either because of deliberate Government policy against membership, such as Singapore, or because of uncertainty over the membership status of the country following its independence, as is the case with the West Indian countries such as Barbados, Jamaica, Trinidad and Tobago. The Berne Convention has been substantially revised six times, the last being at Paris in 1971/72; the Universal Copyright Convention has been revised once, also in Paris in 1971/72; and as the lists in Appendix I show, not all member States belong to the same text as either Convention.

6. Examination of national laws reveals very considerable diversity in legislative language, drafting style and length (the Australian Copyright Act 1968 runs to 249 sections, the Nigerian Copyright Act 1970 is contained in 20 sections). However, notwithstanding this diversity, all laws will be found to give the author (or his assignee) exclusive rights over certain important forms of use, and, in particular, over the reproduction, the public performance and the communication to the public by either wired or wireless means of communication, of literary, dramatic, musical and artistic works. Examination of the practical implementation of the laws of copyright in the Commonwealth will also reveal a common feature, viz: that, notwithstanding the existence of these basic rights, it is probably true that all existing copyright laws, even the most recent, are to some extent inadequate for dealing with the impact on the copyright system of various forms of technology. The following paragraphs of this paper will examine in more detail the effect on the copyright system of some of these technologies and will identify the problems and discuss solutions.

II. Forms and scale of the contemporary use of copyright works made possible by technology

Reprography

7. Article 9 of the Berne Convention (Paris Act 1971) stipulates that "authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form", and all contemporary copyright laws contain provisions implementing this principle. Reproduction means the making of copies. At the turn of the century copies of copyright protected works were only produced for the public in any significant quantity by the age-old process of printing and publication; duplicating apparatus did exist but it was mostly used in offices for producing copies of commercial documents and was hardly ever used by individuals in their homes; by the middle of the century duplicating equipment was more sophisticated and in greater use, for example, in schools and libraries, so that the second generation of 20th Century legislation began to exclude the making of copies by duplicating processes from the exemption enjoyed by the educational institutions, e.g. section 41(1) of the United Kingdom Copyright Act 1956. Today the scene is totally different; the facilities for making copies of literary, dramatic, musical and artistic works are almost limitless in their possibilities. Photocopying equipment enables facsimile copies indistinguishable from the original to be made instantly and cheaply on equipment which is simplicity itself to operate. Today, no office, school or library is without photocopying equipment and the number of copies churned out by this apparatus around the world is astronomical. In the United Kingdom the Publishers Association has estimated, on the basis of two detailed studies, that the amount of photocopying in schools each year amounts to the equivalent of 1,000,000 books. There can be little doubt that a high proportion of the material copied is protected by copyright. An American study of library copying indicated that 60 per cent of the material copied was protected. In principle the copyright law will give the author or his assignee (usually his publisher) the right to control this form of reproduction of his work; but in practice, there are formidable difficulties in the way of enforcement. Rights of copyright are individual rights subsisting in individual works, so the individual copyright owner has to obtain evidence of the actual infringement of specific works of his - which in practice can be most difficult, if not impossible. Authors and other copyright owners do not wish to deprive the public of the benefits of technology, but simply to ensure that they are not the only sector of the public which does not share in the benefits of the technology which leads to such extensive public use of their works. The copyright system must therefore be adapted to accommodate both the interests of the public and of the author.

8. Reprography equipment does not merely enable private individuals to make copies for their personal use or institutions such as schools, universities, libraries, to make copies for

their various non-commercial activities, but, of course, it enables the entrepreneur to make copies for commercial purposes. He may be a legitimate operator obtaining permission from the copyright owner of the works he reproduces and paying agreed royalties. But he may not, and there are, unfortunately, a large and growing number of such persons within, though by no means confined to, Commonwealth countries. Until the last decade the term "pirate" conjured up visions of Henry Morgan and other swashbuckling buccaneers of the 17th Century Caribbean; but today in the field of intellectual and industrial property there is world-wide piracy of books on a staggering scale. The International Publishers Association has estimated that piracy costs publishers around the world something of the order of £500 million per annum; and it is said that in some countries pirated paper-backs of current best-selling hard-backs are on the market before a legitimate paper-back has been published anywhere. In December 1982 in Port Harcourt, Nigeria in proceedings brought by five publishers (two Nigerian, three foreign) a court ordered the inspection of five containers lying on the docks and consigned it is thought, from Taiwan. When opened two of the containers were filled with pirated books (about 150,000 in number with an estimated value of perhaps N.250,000; the other three containers held contraband goods of various kinds and goods infringing patent rights- all five containers, with contents were seized; legal proceedings are continuing.

Audio and Video Recording

9. The audio or video recording of a work protected by copyright is also an exercise of the reproduction right in the work. Under standard copyright legislation the private recording of a copyright work, unless done for private research or study, is an infringement if the copyright owner's permission is not obtained in advance. Tape recorders have been available to the general public for a number of decades and it is common knowledge that this equipment has been extensively used to make recordings of musical works, either by recording off-air broadcasts of performances or recordings of such works, or by recording from a record or another tape recording. Until recent years, however, copyright owners paid little attention to this form of infringement, extensive though it was. There were, perhaps, two main reasons for this - in retrospect - unfortunate failure to enforce their rights.

10. The first was that the record industry was booming and the composers, music publishers and record companies were content with the annually increasing income generated simply by the manufacture and sale of more and more records and tapes; but with the coming of the world-wide economic recession the record industry, though still basically sound, can no longer afford to overlook a significant source of potential but unrealised income. The other reason was, and is, the difficulty of obtaining the necessary evidence to establish that a specific work protected by copyright had been reproduced in a private house, otherwise than for private research or study.

11. The growing concern of the record industry at the growth in sales of recording equipment and blank tape has led to various surveys being carried out so that today there is a substantial amount of statistical evidence - as opposed to the "common knowledge" guesses of the past - showing the actual extent of the damage to the interests of copyright owners caused by this particular use of recording technology. For example, the report of a taping survey carried out during January 1982 in Australia on behalf of the Australian Record Industry Association concluded from a sample designed to represent 74 per cent of the Australian population, that during a period of 12 months an equivalent of 55.1 million LPs were taped either from records, pre-recorded tapes or from radio and television. At an average retail price of Aust. \$8.00 per LP this represents Aus. \$440.8 million per year. However, not all this necessarily represents lost sales; the survey concluded that from the volume of home taping the loss to the copyright owners and other interests in the music industry was the equivalent of 7 million LPs in 12 months representing Aust.\$56.16 million.

12. In the United Kingdom the British Phonographic Industry commissioned a series of surveys of the volume, nature and effect of home recording of recorded works, principally music. These surveys commenced in 1973, and the two latest - the 4th and 5th - were conducted in November 1980/January 1981 and November 1981/January 1982. They indicate that in 1979 the amount of music recorded by home taping was 158.5 million hours, and in 1981, 179.7 million hours; of these gross totals the surveys indicated that in 1979, 25 per cent, and in 1981, 22 per cent of the music recorded prevented the purchase of a corresponding record or tape from normal retail outlets, and that the total value of those lost sales were £282 million in 1979 and £305 million in 1981.

13. In addition to the erosion of the rights of composers, musicians and record companies resulting from home taping, the losses suffered from record piracy are enormous. It has been estimated that probably half the records currently being sold around the world are either "pirated", "counterfeit", or "bootlegged". These three expressions have come to denote different versions of unauthorised recordings. A "pirated" recording is one made by transferring without permission a legitimate recording intended for retail sales on to a blank tape carrying no label, or a new label which is not simply a copy of the original label. A "counterfeit" recording is made in the same way save that it carried a label imitating the original label, i.e. purporting to be an authorised recording. A "bootlegged" recording is a recording made of the music played at a live concert without the authority of either the performer(s) or the copyright owner(s) of the music. The International Federation of Phonogram and Videogram Producers has been mobilising anti-piracy action internationally, and has collected data on the extent of piracy around the world. The following selection of statistics provided by IFPI show that record piracy (i.e. the unauthorised re-recording for commercial purposes of legitimately produced recordings) is wide-spread throughout the Commonwealth, indeed the world. Thus -

- (a) in the late 1970s reports from Fiji indicated that 90 per cent of the cassette market had been captured by pirated recordings, principally from Singapore;
- (b) reports from India indicate that for 1980, 12.5 million units to the value of Rs. 320 million were sold capturing 90 per cent of the cassette market;
- (c) in Kenya the reports indicate that in 1980, 1.5 million units to the value of Ks. 40 million representing 60 per cent of the cassette market were sold;
- (d) in Malaysia the reports suggest that in 1980, 15 million units to the value of Rps. 45 million representing 60 per cent of the cassette market were sold, but this represents a substantial improvement as in earlier years the whole cassette market was regarded as supplied by pirated products;
- (e) in Nigeria in 1980, 10 per cent of the disc market and 95 per cent of the cassette market was pirated product, of a total value of N.12.5 million;
- (f) Singapore is regarded as the world's most prolific producer of pirated audio-cassettes: the Singapore market is nearly 100 per cent pirated and exports of pirated product are estimated to be in excess of 100 million cassettes per annum.

14. Paragraphs 9 to 13 describe the audio recording scene and the huge scale of piracy in that field, but the dimensions of piracy of sound recordings are likely to be exceeded by similar unauthorised and illegal activity in the video field. The manufacture of video recording equipment began over ten years ago but only in the last few years has it established significant markets; however, since its establishment, the growth in the use of this technology has been phenomenal. Video recording equipment in its various forms and configurations enables three different operations to be carried out -

- (a) By connecting a video recorder to a standard television set, a broadcast programme received by that set may be recorded onto a blank video tape and subsequently projected onto the screen of the television set whenever and as often as desired; moreover, the recorder may be pre-set so as to record automatically a selected programme, or set of programmes, to be transmitted up to two or more weeks ahead.
- (b) By linking two video recorders via a television set, it is possible for an authorised video programme to be played on one video recorder and recorded onto blank tape on the other, thereby producing an unauthorised copy.
- (c) Feature films produced for cinema and/or television exhibition may be recorded onto video tape and unlimited copies may be made from such recordings.

15. In the present state of the technology, video recorders capable of the operations described in (a) and (b) retail at prices starting around £300; and blank video tapes with a playing time of 130 minutes can be bought for £5 or less. This equipment, and the operations they make possible, are therefore within the reach of the general public, and the public is buying this equipment at an ever increasing rate. So far, most of the production of video recording equipment suitable for domestic use has come from Japan and the production has roughly doubled annually since the 1970s, growing from 763,000 units in 1977

to 9.54 million in 1981, and an output of 15 to 15.5 million units has been forecast for 1982. These statistics are a measure of the capacity existing today in private homes for the video recording of programmes of one kind or another. Save in quite exceptional cases, programmes produced for television broadcasting and films (whether produced for cinema and/or television exhibition) will be protected by most national copyright laws; programmes and films are normally protected as entire works separate and distinct from their various components; in addition, the literary (the script), musical (the score), artistic (photographs, illustrations) components, will normally all enjoy separate copyright protection; and the performers (the actors, singers, musicians, dancers) may have rights subsisting either directly under statute, or by virtue of contract. The operation of this equipment, therefore, affects the interests of a wide spectrum of right owners, with a very considerable investment in the original programmes and films. By comparison with sound recording technology, the art of video is a newcomer to the scene and there are not, as yet, reliable statistics which show how the new equipment is being used and the extent to which that use involves the unauthorised recording of material protected by copyright.

16. However, there are some indications. According to a survey recently carried out for the British Video association in 1981 total sales of blank video cassettes amounted to 13.5 million of which 6.8 million were purchased by private consumers, 5.2 million were used by pirates for making unauthorised copies for commercial purposes, and 1.5 million were used for legitimate authorised recordings. As virtually all broadcast programmes and films are protected by national copyright laws there is a clear inference that, in the United Kingdom, 6.8 million blank cassettes must have been used for recording copyright material; when the existing stock of blank tape already in the possession of video recorder owners, and the fact that recordings are probably held and used for a limited period and erased so that the tape can be used for further recordings, are taken into account, the number of individual recordings of copyright material made in private homes must be very considerable.

17. Even more serious than the volume of private recordings mentioned in paragraph 15, is the large and still growing volume of pirate recording also mentioned in paragraph 15 above. In certain countries it would appear that this has become organised crime on the scale of big business like the illicit manufacture, distribution and sale of liquor in the USA during the days of Prohibition. It is more serious, not only because of the financial losses suffered by the various interests involved in the creation, production and distribution of legitimate material and, it must not be forgotten, the considerable loss of revenue to Government resulting from lost income tax, VAT, sales tax and so on, but because of the association of this activity with more sinister anti-social behaviour. There is not much hard evidence, but there are some pointers. Thus, an increasing number of those prosecuted in the United Kingdom for video piracy are found to have criminal records, and the Parliamentary Under Secretary of State for Trade, Mr Ian Sproat, in Parliament on 9 July 1982, in relation to video piracy stated "... one hears stories about the Mafia being involved and how drug rings are funded by sales of violent video. The trade impinges on a nasty area. That is why the Government are determined to take it seriously ...". As to the dimensions of video piracy, the survey carried out for the British Video Association estimated that in 1981 pirated material accounted for 78 per cent of the video market, a statistic which, no doubt, led the President of the Motion Picture Association of America (MPAA) to describe the United Kingdom as the headquarters of world-wide video piracy.

18. The rapidity with which video piracy is developing is well illustrated by some statistics from the Copyright Divisions of the Customs and Excise Service in Hong Kong (responsible for combating piracy of intellectual and industrial property). The first complaint of video piracy was received by the division in 1979; two years later, in 1981 the division investigated 33 cases, seized 4,000 tapes, made 57 arrests and the value of tapes and equipment seized was nearly HK\$1 million.

19. The investment in the production of an audio-visual programme, whether it be a programme intended for television broadcasting or a film intended for cinema and/or television broadcasting, is considerable, and in many countries, for example, India, the film industry is a large and important part of the economic infrastructure of the country. The television set/video recorder population in India may not yet be large but the technology is racing ahead at such a rate that it must only be a matter of time before the use of the equipment becomes wide spread in developing countries; indeed, in an address to a "world-wide forum on the piracy of sound and audio-visual recordings", organised by the World Intellectual Property Organisation in Geneva in March 1981, Mr James Bouras, Vice President of the MPAA, drew attention to the fact that, at that time, the demand for pre-recorded video material was not necessarily most pronounced in either the USA or Europe, whereas, many of the developing countries qualified as "heavy users of pirated video cassettes".

20. The principal purpose of this paper is to discuss the problems of piracy in the field of copyright, which have resulted from technology. However, the impact of technology on the copyright system is not confined to the criminal activities of intellectual property pirates, and an overview of the situation would be incomplete without some focus on two other developments - cable television linked with satellite broadcasting, and computers. The following paragraphs, therefore, briefly describe how these two technologies have affected the copyright system.

Cable Television - satellite broadcasting

21. Cable television began as a community antenna service - in the USA, where most technology begins. In areas where because of mountains or remoteness the reception of television signals on ordinary domestic aerials was of poor quality, groups of householders clubbed together, erected a large central aerial which more effectively collected the signals which were then led by wire to the individual television sets. In origin it was simply a local co-operative operation, entirely non-profit and non-commercial in character. Today in North America and in Europe, cable television has become a high growth industry, serving millions of subscribers. In 1980 it was estimated that in the United States there were 15.5 million households served by cable systems; in Canada there are 4.5 million households connected to cable systems. In Europe the development has been slower, but the systems are currently expanding rapidly; in the United Kingdom there are about 2.5 million households receiving the television programmes of the BBC and independent television via cable. For copyright purposes, cable television carries two different kinds of programme -

- (a) programmes produced by, and originating with, the cable operator;
- (b) programmes produced by or for, and initially transmitted via wireless means, by broadcasting services, which the cable operators receive off-air and then retransmit via their cable networks to their subscribers.

22. Under article 11bis of the Berne Convention and under most national copyright laws, the communication to the public via wired systems of works protected by copyright is an activity requiring permission from the copyright owner. The cable television distribution of programmes in category (a) presents no particular problem; the cable operator must obtain all the necessary permissions from the copyright owners of the material to be included in his programme and there are no particular practical difficulties in the way of his doing this. The problems arise, however, in the case of the cable transmission of programmes in category (b) i.e. programmes originally transmitted by a broadcasting organisation. The main problems are -

- (i) The difficulty of distinguishing a system which is simply an extension of the act of reception (e.g. a community antenna jointly owned by the occupants of a block of flats where the cost of installation and maintenance is shared on an entirely non-profit basis) from the activities of a larger enterprise, which might or might not be conducted for profit, but which is effectively providing a transmission service as opposed to a reception service.
- (ii) The problem of deciding whether the programmes transmitted by the cable operator have been originated by him or not. For example, if, for time zone considerations, a cable company records programmes transmitted by the original broadcaster and then distributes them by its cable systems some hours (or possibly days) later, does the absence of non-simultaneity make the cable company's programme original? Where a cable operator does not distribute the original broadcast in exactly the format in which it was transmitted by the broadcaster, for example, where advertisements are deleted or are replaced with different advertisements more suitable to the new market, is the transmission of the programme element now either unaccompanied by advertisement or accompanied by different advertisement, a new original programme? Suppose the programmes distributed by a cable company on one of its channels consists of a selection of programmes transmitted by several different broadcasting services, is this mix of programmes to be regarded in its entirety as an original programme?

23. Much discussion has taken place at national and international levels on these and other related questions. The general view is that the particular questions mentioned in subparagraph (ii) are to be answered in the affirmative. But whether the programmes

distributed by cable operators are to be regarded as original or simply as retransmissions of programmes originally transmitted by a broadcasting service, there is also general agreement that permission must be obtained by the cable operator from the copyright owners of all material in the programmes transmitted over the cable system. In the case of a simultaneous transmission of broadcast programmes this presents a real practical problem; the cable operator receives from the broadcasting service a complete package so that there is no possibility for him to negotiate with individual right owners or, where some refuse to grant permission on acceptable terms, to find alternative material; nor, indeed, and this is the overriding consideration, is there any time for negotiation between cable operator and right owner in advance of the cable transmission. No generally accepted solution to this problem has yet been devised; but there is almost universal agreement that there must be some system of blanket licensing; the divergence of opinion lies in whether such a licensing system should be imposed by statute (as in the USA and Austria, and currently under consideration in some Scandinavian countries), or be left to the private right owners to establish and operate (as strenuously favoured by Francophone countries); the problem in the latter case being the fact that in many countries (certainly all Commonwealth countries) there are not as yet collective agencies representing the whole range of copyright interests.

24. In countries such as Canada, Belgium, Austria, which adjoin larger countries whose language is the same as their own with well-established and extensive broadcasting services, cable systems have in recent years been more and more carrying the programmes broadcast by the neighbouring broadcasting services which, on a spill-over basis, are receivable in those countries. However, with the development of satellite broadcasting, the availability in one country of programmes broadcast in another and transmitted via satellites, will be increased manifold and the cable television systems of the future will undoubtedly be able to carry a very large proportion of programmes originally transmitted by foreign broadcasting services. The extent to which this will be permitted will depend, not simply on arrangements for clearing the rights of copyright, but on the policies of the governments in the receiving countries regarding the protection of their national cultures and the extent to which they impose controls or restrictions on the distribution of foreign programming in their countries - but these are considerations outside the scope of this paper.

Computers

25. Computer based technology has become so sophisticated and far-reaching that the term "computer" can mean any one of a myriad different kinds of equipment. Space would not permit, and the scope of this paper not justify, an examination of the different kinds of "computers". For this discussion the term is simply used to describe equipment which is able to store and process vast amounts of data with facilities for retrieval in a variety of forms. In relation to the copyright system, computers pose two different kinds of problem

- (i) Whether the storage in, processing by, and retrieval from, a computer of a work protected by copyright, is an act which is or should be under the control of the copyright owner of that work.
- (ii) Whether computer software, i.e. the programmes which are needed to operate computers are themselves protected by copyright.

26. Like the problems arising from reprography, cable television, audio and video recordings (and piracy), the problems posed by the computer technology have also been extensively examined at national and international forums. As to the problem - or family of problems - covered by subparagraph (i) above, there is general agreement that, in principle, the storage in the computer of a copyright work, for example, a textbook or a directory of trade or scientific information, amounts to a "reproduction" of the work for the purposes of the Berne Convention and most national copyright laws; similarly, the retrieval of a work held in a computer database by presenting it on a television screen or in a material form, such as print-out, would also be within the convention rights of "communication to the public" or, as in the case of a print-out, "reproduction". Inevitably, however, a number of specific questions will arise which will need careful consideration, for example -

- (a) The distinction between the storage of bibliographic data about a work (name of author, title, publisher, subject, etc.) which would not require the copyright owner's permission, and the storage of a digest of the contents of a work, which would require permission.

- (b) When a copyright work containing statistical data has been stored in a computer, there may be problems over the right to update the statistics and over the question of ownership of the rights in the updated work.
- (c) With multi-national computer data-base systems, (such as Euronet) the "input" of copyright material may take place in one country and the "out-put" in another. Under the Euronet system a library in the United Kingdom may hold a reference book in its data-base, to which a user in Germany may have access, so that the contents of the work may be displayed on a screen in Germany, or a print-out may even be obtained. This will call for a sophisticated system for monitoring use, and calculating collecting and distributing payment for such use.

27. The question in paragraph 25 (ii) above is equally important. There is no doubt that the writing of a computer programme requires considerable skill and many argue that it involves as much imagination and creativity as composing a symphony. Moreover, in financial terms large sums have already been spent on the writing of programmes; and this investment will undoubtedly continue on an increasing scale. There is general agreement that the interests of those who have created and invested in computer software deserve protection against unauthorised use. So far, however, there has been no final decision, at international level, as to whether this protection should be provided under the copyright system, under patent law, or by some new international convention and new national legislation. In the USA computer programmes have already been registered as works entitled to copyright protection; and in the United Kingdom, opinion, in legal and official circles, is that computer programmes are entitled to protection under the Copyright Act 1956 as a form of "literary work"; and when that Act is replaced by new legislation, currently under consideration by the Government, this will probably be put beyond doubt by some new specific provision.

28. In deciding whether computer software should be protected under the copyright system there is one basic consideration which should be born in mind. Copyright does not protect ideas - an author who writes a cookery book, or an engineering manual with instructions on how to construct a bridge, can invoke his copyright to prevent others copying his books, but not from using his recipes to produce a meal nor his instructions to build a bridge. Computer software is, in essence, a set of instructions for using a computer to produce a desired result, and the protection sought by the software producer is against the unauthorised use of his instructions - a form of protection somewhat alien to the fundamental principles of copyright.

29. It has been suggested that for countries which do not as yet have a developed infrastructure concerned with computerisation and the protection of computer software, there is little point in protecting computer programmes. This is an understandable consideration, but is likely to be short-sighted. A developing country seeking to raise the level of its economic activities and generally improve the lot of its people, must surely need to make use of the technologies being developed and utilised in other countries; and it may find a natural reluctance amongst countries where computer software is produced to make programmes available if there is no, or inadequate, protection in the importing country.

III. Measures needed to adapt the copyright system to a world of technology

30. The first conclusion which emerges from the foregoing survey is that if, in today's world of technology, the copyright system is to continue to serve effectively the purpose for which it was designed, then both its statutory provisions and its practical methods of administration must be adapted - in many cases, substantially adapted. The second conclusion is that Government action is urgently needed to bring about directly, or encourage, the various adaptation that are essential if respect for private rights and the protection of the public interest in maintaining the rule of law, are to be restored and safeguarded.

31. Traditionally, although most copyright laws have always provided criminal penalties for various forms of infringement, these have seldom been invoked and copyright owners have enforced their rights, in the main, by civil litigation. The scale of unauthorised use and deliberate piracy today is such that it is no longer either practicable or appropriate for copyright legislation to be enforced solely by civil means; it is no longer simply a matter

for private individuals to assert their private rights; the dimensions of disregard for legal rights are such that respect for law and order in an important sector of human society is seriously undermined; and it has clearly become the duty of the State to take steps to combat this serious public mischief - not to the exclusion of action by the interests affected but in collaboration with those interests.

The measures needed are a combination of action of various kinds.

- Public condemnation of piracy by Governments (i) First and foremost, there must be a public commitment by Governments to the task of eradicating piracy; the public must be made aware that Governments regard such activity as a form of theft, and as such thoroughly anti-social and contrary to the public interest, and not merely as a matter affecting the private rights of individuals.
- Copyright laws and amendments (ii) Secondly, wherever necessary, Governments must, as a matter of urgency, amend national copyright laws to make them more effective; the amendments needed will vary from country to country but should cover the following -

Statutory measures

- Penalties must be increased (a) Criminal penalties for infringing acts must be increased so as to make them effectively deterrent; fines which are no more than a minute fraction of the turnover which a pirate can achieve in a day's work, are clearly useless. The United States Congress has just amended the US Copyright Act 1976 by increasing the penalties for unauthorised copying to imprisonment for five years and fines of US\$250,000 for each offence.

The copyright law of some countries contain no penal provisions whatever; this is the case, for example, in Nigeria. It is difficult to see how the copyright system can be effectively enforced if the law enforcement agencies of a country are not able to act; quite apart from the encouragement to pirates, which the absence of penal sanctions must present.

- New offences (b) New offences need to be created to deal with new forms of injurious activities. Under existing copyright laws it is usually an offence for a person to be in the possession of a plate which he knows is to be used for making infringing copies of a work protected by copyright (Australia 1968 Act s.132(3); India 1957 Act 3.65; UK Act 1956 s(21)(3)). Such provisions are directed at the person who actually makes the infringing copies, but not at those who are directly involved in the distribution of those copies. There is no reason why such persons should not also be regarded as full participants in the piratical activity. The UK Act was amended in 1982 to make it an offence for persons to be in possession of articles known to be infringing copies of sound recordings or cinematograph films. Other countries might consider a similar amendment.

These provisions give rise to another consideration. Under existing legislation the offences are only committed if the defendant knows that the plates are to be used for making infringing copies, or that the copies are infringing copies; which means that the onus of proving such knowledge is on the prosecution. Such proof may sometimes be difficult and although it is a general principle that persons should not be deemed to commit offences without guilty knowledge, there are exceptions to this principle. The Government of Hong Kong considered that piracy of intellectual property was such a special case, because the Hong Kong Copyright Ordinance 1973 makes it an offence for a person to have in his possession for trade or business an infringing copy of a work or a plate used for making infringing copies unless he proves to the court that he did not know and had no reason to believe that the copy was an infringement or that the plate was to be used for such purposes. (See Appendix II - s.6)

Control over importation required

It is worthwhile noting, perhaps, that in some Commonwealth countries there does not appear to be any control over the importation of what might be loosely described as "infringing copies". Copies of an Indian literary work published in India might be made in Taiwan, and imported into India, but as Indian works are not protected in Taiwan the making of the copies there does not amount to infringement. However, s.53 of the Indian Copyright Act 1957 empowers the Registrar of Copyrights to prohibit the importation into India of copies of a work which, if the copies had been made in India, would have been infringements. Provisions similar in effect are to be found in other Commonwealth laws (e.g. Australia 1968 Act s.102; UK 1956 Act s.5(2)). In countries where copyright laws do not contain such provisions, copyright owners appear to be defenceless against the importation of copies of their works made, without their authority, in countries which do not protect their works.

New rules of evidence

- (c) New rules of evidence need to be introduced. Copyright litigation, in both criminal and civil proceedings, is notoriously "accident-risk", especially in countries where, because of the specialist nature of this branch of law, the judicial and the legal profession have, naturally, little experience of it. Although copyright is a national right subsisting under and by virtue of national law, it is nevertheless part of an international network so that in any given country the owners of the totality of rights subsisting under the copyright law of that country will be the authors, composers, artists, record and film producers, and their assignees from the majority of the countries of the world. An unscrupulous defendant - which is what a pirate will always be - can defend an infringement action by putting in issue questions as to the subsistence of copyright and ownership of rights which can present the prosecution or the plaintiff with formidable practical problems of proof. In almost all cases, such defences are totally meritless, and the administration of justice is clearly defective if they succeed.

Statutory presumptions

Some copyright laws do contain statutory presumptions which may be invoked in infringement proceedings. These presumptions are usually of two kinds -

- (i) A presumption that copyright subsists in the work or other subject matter to which the proceedings relate, if the defendant does not put the question in issue;
- (ii) Presumptions as to the authorship, the circumstances in which a work was made, the name of the publisher and the date and country of publication, the name of the maker of a sound recording or producer of a film, unless the contrary is proved.

(Australia 1968 Act ss.126-131; UK Act s.20)

These are very helpful provisions; but by no means all copyright laws contain them and a country whose copyright laws do not make provision for such presumptions should certainly consider carefully whether they ought not to be introduced -for example Barbados, India, Nigeria, to mention just a few.

But even where presumptions of the kind described above do exist consideration might be given to amending the presumption which relates to the subsistence of copyright. If this question is put in issue by a defendant, and the work is a foreign one and created many years previously, it can be extremely difficult - and expensive - for the plaintiff to produce strict proof of the facts needed to establish the subsistence of copyright, i.e. the nationality or residence of the author at the time when the work was created, and proof that it was his original work and not copies from someone else's. In practice subsistence of copyright is seldom a genuine issue in cases involving piracy, and there would be little danger of injustice if this presumption was placed

on the same footing as those in sub-paragraph (ii) above, i.e. a presumption to be rebutted by evidence to the contrary.

Registers -
certificates
as prima
facie proof

Consideration might also be given to the establishment of registers for certain categories of copyright protected works and the attachment of evidentiary status to certificates issuing from such registries. Under the Berne Convention copyright protection may not be conditional upon compliance with formalities, such as registration (Article 5(2)); so such registration would need to be optional. It would also be important, to weigh carefully the cost of administering such a registry. The Indian Copyright Act 1957 makes provision for a registration system (ss.44-49), but no information as to how these provisions have worked in practice was available when this paper was prepared.

Affidavit
evidence

Express provision for the acceptance by courts of affidavit evidence as to the subsistence of copyright, ownership and whether or not exhibited works are true copies of an original should also be considered. The provisions in section 9 of the Copyright Ordinance 1973 of Hong Kong is an example of such a provision, which has worked very effectively in practice (see Appendix II).

Powers of
entry and
seizure

- (d) Powers to enter premises and seize evidence of infringement, and the equipment used for producing infringing copies, are indispensable if piracy is to be effectively combatted. It is also essential that such powers may be exercised swiftly and without advance warning to the pirate/potential defendant; and hence such powers must be available before proceedings are commenced (if necessary), otherwise evidence and stocks will simply disappear. In some jurisdictions, such as the United Kingdom, the High Court has power to issue ex parte orders (known as Anton Piller orders) and injunctions, which have proved to be very effective for this purpose. Application for such an order is usually made in camera and if granted the order directs the defendant/potential defendant to permit inspection of his premises by specified persons who are authorised to make copies of relevant evidence or take custody of relevant material found on the premises; and such orders may also direct the defendant to disclose immediately the names and addresses of all other persons in the chain of distribution of the infringing articles.

Freezing
defendant's
assets

Mareva injunctions may be granted to a plaintiff who has reason to believe that the defendant will move his assets out of the jurisdiction so as to prevent the plaintiff, if successful, from obtaining effective redress. The injunction, which binds third parties, such as banks, has the effect of freezing the defendant's assets until the proceedings are completed. In jurisdictions where these processes are not within the existing armoury of court orders consideration should be given to providing for them by statute.

Anton Piller
orders not
invalidated
by self-
incrimination

In connection with Anton Piller orders consideration should also be given to ensuring, by legislation if necessary, that the rules against self-incrimination do not stultify the efficacy of the orders. In the United Kingdom the Supreme Court Act 1982 contains special provisions for this purpose (see Appendix III).

Necessity for
early trial
of copyright
actions

- (e) Not only is there a need for swift, and effective, interlocutory proceedings, but it is just as important for infringement actions to be determined without delay. An action for damages against a pirate which is only heard 4/5 years after the writ has been served is an almost valueless remedy for the copyright owner; during the interim the pirate's profits will more than pay for any damages awarded in the original action. Governments should therefore examine ways and means of eliminating delay in copyright infringement cases - possibly by

establishing special courts (which might have the advantage of developing a cadre of judicial personnel with a thorough knowledge of this specialised field), or perhaps by some arrangement for copyright cases to leap-frog other actions of less urgency.

Administrative measures

Collaboration
between
Government
agencies and
private
interests

The police and other law enforcement agencies (e.g. Customs and Excise) need to collaborate fully with organisations representing copyright owners. In 1973 Hong Kong was one of the major centres of record piracy in the world. By 1979/80 piracy had been virtually eliminated. This was achieved by Copyright Investigation Unit which subsequently became the a Copyright Division within the Customs and Excise Service with an establishment, headed by an Assistant Superintendent, of forty officers and four civilian support. This Unit/Division worked in close collaboration with the International Federation of Phonographic Industries (IFPI) and with the powers of entry and seizure, and facilities for proof by affidavit, contained in the Copyright Ordinance 1973 (see Appendix II) mounted a determined campaign against the pirates, with virtually complete success. The experience of this effective collaboration in Hong Kong could be studied as a model for similar action in other countries.

Collective
administration

(g) The rights subsisting under copyright legislation are rights which subsist in individual works and belong to individual right owners and, in the main, have up to now been administered on an individual basis by those right owners. The one exception to this generalisation has been in the field of music where from the beginning of the century composers and music publishers realised that their rights to control the public performances of their works (and later the rights of broadcasting and diffusion via cable systems) could not possibly be administered effectively on an individual work or individual publisher basis. They accordingly banded together and established non-profit organisations, like the Performing Right Society in the United Kingdom (established in 1914) to which they assign their public performance, broadcasting and diffusion rights for administration by the Society. Similar organisations were established in other countries, and they are all linked with each other by reciprocal representation agreements so that in each country the national society administers, in effect, the world's repertoire of public performance, broadcasting and diffusion rights in copyright music; later in the century similar organisations began to be established for the owner of rights in sound recordings, i.e. the record manufacturers. Until very recently, in the literary and other sectors of the copyright field there has been virtually no collective administration, and individual copyright owners, usually through a publisher, have retained control over the administration of the rights in their individual works. Moreover, authors and publishers have been positively reluctant to relinquish such control to collective agencies. Fortunately, more and more authors and publishers now realise that the only practical way to administer their rights when their works are reproduced or performed by means of technology - not simply in their own countries but around the world - is through blanket licensing systems operated by collective agencies. In the larger Commonwealth countries separate agencies exist, or are emerging, for different categories of rights; but in small countries limited resources, both of finance and of trained personnel, dictate that the number of separate collective agencies must be kept to a minimum; and indeed, in some regions where there are a number of very small countries, collective administration agencies may need to be regional, serving the authors of more than one country, e.g. possibly in the West Indies.

Final comments

32. There is little doubt that the biggest single threat to the copyright system comes from the present scale of piracy in all its forms and in all those sectors of the copyright system where it is to be found. As indicated above it can only be contained, much less eradicated, if a range of measures are taken. Moreover, the action needed must be taken in as many countries as possible. Although copyright laws, and the rights subsisting under them are national, technology has made the copyright system international. The authors and other copyright owners in one country need protection from piracy not only in that country but in as many countries as possible. Any Government which accepts the responsibility for protecting copyright owners, and securing respect for the copyright system, must join the international copyright community; and those Commonwealth countries which are not yet members of one or other of the copyright conventions should give urgent consideration to joining. It should not be forgotten that the limitation of national copyright laws to the protection of national works only means simply that those works will have greater difficulty in competing in the local market with foreign - unprotected - works.

33. Finally, although the effective operation of the copyright system on the international plain does not require complete standardisation of legislation throughout the copyright community of nations, nevertheless it is clearly desirable for as much uniformity as possible to exist. The contracts made for the commercial exploitation of copyright works today, because of technology, hardly ever contemplate simply a single national market; they relate normally to world markets. But when the rights with which such contracts deal vary from country to country, because of variations in national laws such contracts become unnecessarily complex. Some arrangement for ensuring as much harmonisation as possible, both in copyright legislation and in contracts, within the Commonwealth might be worth considering.

MEMBERSHIP OF COPYRIGHT CONVENTIONS

BERNE UNION

International Union for the Protection of Literary and Artistic Works

(Berne Union)

founded by the Berne Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), Brussels (1948), Stockholm (1967) and Paris (1971)

Member States as on January 1, 1982

State	Class chosen	Starting date of membership	Latest Act by which State is bound and effective date
Argentina	IV	June 10, 1967	Substance : Brussels: June 10, 1967 Administration : Paris : October 8, 1980
Australia	III	April 14, 1928	Paris : March 1, 1978
Austria	VI	October 1, 1920	Substance : Brussels: October 14, 1953 Administration : Stockholm: August 18, 1973
Bahamas	VII	July 10, 1973	Substance : Brussels: July 10, 1973 Administration : Paris : January 8, 1977
Belgium	III	December 5, 1887	Substance : Brussels: August 1, 1951 Administration : Stockholm: February 12, 1975
Benin	VII	January 3, 1961	Paris : March 12, 1975
Brazil	III	February 9, 1922	Paris : April 20, 1975
Bulgaria	VI	December 5, 1921	Paris : December 4, 1974
Cameroon	VI	September 21, 1964	Paris : October 10, 1974 Paris : November 10, 1973
Canada	III	April 10, 1928	Substance : Rome : August 1, 1931 Administration : Stockholm : July 7, 1970
Central African Republic	VII	September 3, 1977	Paris : September 3, 1977
Chad	VII	November 25, 1971	Substance : Brussels : November 25, 1971 Administration : Stockholm : November 25, 1971
Chile	VI	June 5, 1970	Paris : July 10, 1975
Congo	VII	May 8, 1962	Paris : December 5, 1975
Costa Rica	VII	June 10, 1978	Paris : June 10, 1978
Cyprus	VI	February 24, 1964	Rome : February 24, 1964
Czechoslovakia	IV	February 22, 1921	Paris : April 11, 1980
Denmark	IV	July 1, 1903	Paris : June 30, 1979
Egypt	VII	June 7, 1977	Paris : June 7, 1977
Fiji	VII	December 1, 1971	Substance : Brussels : December 1, 1971 Administration : Stockholm : March 15, 1972
Finland	IV	April 1, 1928	Substance : Brussels : January 28, 1963 Administration : Stockholm : September 15, 1970
France	I	December 5, 1887	Substance : Paris : October 10, 1974 Administration : Paris : December 15, 1972
Gabon	VII	March 26, 1962	Paris : June 10, 1975
German Democratic Republic	IV	December 5, 1887	Paris : February 18, 1978
Germany, Federal Republic of	I	December 5, 1887	Substance : Paris : October 10, 1974 Administration : Paris : January 22, 1974
Greece	VI	November 9, 1920	Paris : March 8, 1976
Gulnea	VII	November 20, 1980	Paris : November 20, 1980
Holy See	VII	September 12, 1935	Paris : April 24, 1975
Hungary	VI	February 14, 1922	Substance : Paris : October 10, 1974 Administration : Paris : December 15, 1972
Iceland	VI	September 7, 1947	Rome : September 7, 1947
India	IV	April 1, 1928	Substance : Brussels : October 21, 1958 Administration : Paris : January 10, 1975
Ireland	IV	October 5, 1927	Substance : Brussels : July 5, 1959 Administration : Stockholm : December 20, 1970
Israel	VI	March 24, 1950	Substance : Brussels : August 1, 1951 Administration : Stockholm : January 29 or February 26, 1970
Italy	III	December 5, 1887	Paris : November 14, 1979
Ivory Coast	VI	January 1, 1962	Substance : Paris : October 10, 1974 Administration : Paris : May 4, 1974
Japan	II	July 15, 1899	Paris : April 24, 1975
Lebanon	VI	September 30, 1947	Rome : September 30, 1947
Libya	VI	September 28, 1976	Paris : September 28, 1976
Liechtenstein	VII	July 30, 1931	Substance : Brussels : August 1, 1951 Administration : Stockholm : May 25, 1972
Luxembourg	VII	June 20, 1888	Paris : April 20, 1975
Madagascar	VI	January 1, 1966	Brussels : January 1, 1966
Mali	VII	March 19, 1962	Paris : December 5, 1977
Malta	VII	September 21, 1964	Rome : September 21, 1964 Administration : Paris : December 12, 1977
Mauritania	VII	February 6, 1973	Paris : September 21, 1976
Mexico	IV	June 11, 1967	Paris : December 17, 1974
Monaco	VII	May 30, 1889	Paris : November 23, 1974
Morocco	VI	June 16, 1917	Substance : Brussels : May 22, 1952 Administration : Stockholm : August 6, 1971
Netherlands	III	November 1, 1912	Substance : Brussels : January 7, 1973 Administration : Paris : January 10, 1975
New Zealand	V	April 24, 1928	Rome : December 4, 1947

State	Class Chosen	Starting date of membership	Latest Act by which State is bound and effective date
Niger	VII	May 2, 1962	Paris : May 21, 1975
Norway	IV	April 13, 1896	Substance : Brussels : January 28, 1963 Administration : Paris : June 13, 1974
<u>Pakistan</u>	VI	<u>July 5, 1948</u>	Substance : Rome : July 5, 1948 Administration : <u>Stockholm : January 29 or February 26, 1970</u>
Philippines	VI	August 1, 1951	Substance : Brussels : August 1, 1951 Administration : Paris : July 16, 1980
<u>Poland</u>	VI	<u>January 28, 1920</u>	Rome : November 21, 1935
Portugal	V	March 29, 1911	Paris : January 12, 1979
<u>Romania</u>	VI	<u>January 1, 1927</u>	Rome : August 6, 1936 Administration : <u>Stockholm : January 29 or February 26, 1970</u>
Senegal	VI	August 25, 1962	Paris : August 12, 1975
South Africa	IV	October 3, 1928	Substance : Brussels : August 1, 1951 Administration : Paris : March 24, 1975
Spain	II	December 5, 1887	Substance : Paris : October 10, 1974 Administration : Paris : February 19, 1974
<u>Sri Lanka</u>	VII	<u>July 20, 1959</u>	Substance : Rome : July 20, 1959 Administration : Paris : September 23, 1978
Suriname	VII	February 23, 1977	Paris : February 23, 1977
Sweden	III	August 1, 1904	Substance : Paris : October 10, 1974 Administration : Paris : September 20, 1973
Switzerland	III	December 5, 1887	Substance : Brussels : January 2, 1956 Administration : Stockholm : May 4, 1970
Thailand	VII	July 17, 1931	Substance : Berlin : July 17, 1931 Administration : Paris : December 29, 1980
Togo	VII	April 30, 1975	Paris : April 30, 1975
Tunisia	VI	December 5, 1887	Paris : August 16, 1975
Turkey	VI	January 1, 1952	Brussels : January 1, 1952
United Kingdom	I	December 5, 1887	Substance : Brussels : December 15, 1957 Administration : Stockholm : January 29 or February 26, 1970
Upper Volta	VII	August 19, 1963	Paris : January 24, 1976
Uruguay	VII	July 10, 1967	Paris : December 28, 1979
Yugoslavia	V	June 17, 1930	Paris : September 2, 1975
Zaire	VI	October 8, 1963	Paris : January 31, 1975
<u>Zimbabwe</u>	VII	<u>April 18, 1980</u>	Substance : Rome : April 18, 1980 Administration : Paris : December 30, 1981

(Total : 73 States)

CONVENTIONS NOT ADMINISTERED BY WIPO

Universal Copyright Convention

State of Ratifications or Accessions as on January 1, 1982

Contracting State	Entry into force		Contracting State	Entry into force	
	Text of 1952	Text of 1971		Text of 1952	Text of 1971
Algeria	August 28, 1973	July 10, 1974	India	January 21, 1958	
Andorra	September 16, 1955		Ireland	January 20, 1959	
Argentina	February 13, 1958		Israel	September 16, 1955	
Australia	May 1, 1969	February 28, 1978	Italy	January 24, 1957	January 25, 1980
Austria	July 2, 1957		Japan	April 28, 1956	October 21, 1977
Bahamas	December 27, 1976	December 27, 1976	Kenya	September 7, 1966	July 10, 1974
Bangladesh	August 5, 1975	August 5, 1975	Laos	September 16, 1955	-
Belgium	August 31, 1960		Lebanon	October 17, 1959	-
Brazil	January 13, 1960	December 11, 1975	Liberia	July 27, 1956	-
Bulgaria	June 7, 1975	June 7, 1975	Liechtenstein	January 22, 1959	
Cameroon	May 1, 1973	July 10, 1974	Luxembourg	October 15, 1955	
Canada	August 10, 1962		Malawi	October 26, 1965	
Chile	September 16, 1955		Malta	November 19, 1968	
Colombia	June 18, 1976	June 18, 1976	Mauritius	March 12, 1968	
Costa Rica	September 16, 1955	March 7, 1980	Mexico	May 12, 1957	October 31, 1975
Cuba	June 18, 1957		Monaco	September 16, 1955	December 13, 1974
Czechoslovakia	January 6, 1960	April 17, 1980	Morocco	May 8, 1972	January 28, 1976
Democratic Kampuchea	September 16, 1955		Netherlands	June 22, 1967	
Denmark	February 9, 1962	July 11, 1979	New Zealand	September 11, 1964	
Ecuador	June 5, 1957		Nicaragua	August 16, 1961	
El Salvador	March 29, 1979	March 29, 1979	Nigeria	February 14, 1962	
Fiji	October 10, 1970		Norway	January 23, 1963	August 7, 1974
Finland	April 16, 1963		Pakistan	September 16, 1955	
France	January 14, 1956	July 10, 1974	Panama	October 17, 1962	September 3, 1980
German Democratic Republic	October 5, 1973	December 10, 1980	Paraguay	March 11, 1962	
Germany Federal Republic of	September 16, 1955	July 10, 1974	Peru	October 16, 1963	
Ghana	August 22, 1962		Phillipines	November 19, 1955	March 9, 1977
Greece	August 24, 1963		Poland	March 9, 1977	July 30, 1981
Guatemala	October 28, 1964		Portugal	December 25, 1956	July 10, 1974
Guinea	November 13, 1981	November 13, 1981	Senegal	July 9, 1974	July 10, 1974
Haiti	September 16, 1955		Soviet Union	May 27, 1973	
Holy See	October 5, 1955	May 6, 1980	Spain	September 16, 1955	July 10, 1974
Hungary	January 23, 1971	July 10, 1974	Sweden	July 1, 1961	July 10, 1974
Iceland	December 18, 1956		Switzerland	March 30, 1956	
			Tunisia	June 19, 1969	June 10, 1975
			United Kingdom	September 27, 1957	July 10, 1974
			United States of America	September 16, 1955	July 10, 1974
			Venezuela	September 30, 1966	
			Yugoslavia	May 11, 1966	July 10, 1974
			Zambia	June 1, 1965	

HONG KONG : COPYRIGHT ORDINANCE 1973 (No. 5 of 1973)

Offences of possession of infringing copy of a protected work

5. (1) Without prejudice to section 21 of the Act, any person who, at a time when copyright subsists in a work or other subject matter under the Act or this Ordinance, has in his possession for the purposes of trade or business -

- (a) any article that is an infringing copy of such a work or other subject matter ; or
- (b) any plate used or intended to be used for making infringing copies of such a work or other subject matter,

shall, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that the article was an infringing copy of such a work or other subject matter or that the plate was used or intended to be used for making an infringing copy of such a work or other subject matter, be guilty of an offence and shall be liable on conviction -

- (i) if it is his first conviction of an offence under this section, to a fine not exceeding five hundred dollars for each article to which the offence relates; and
- (ii) on any second or subsequent conviction of an offence under this section, to such a fine and to imprisonment for twelve months:

Provided that a fine imposed by virtue of this subsection shall not exceed fifty thousand dollars.

(2) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance or a plate used or intended to be used for making infringing copies of such a work or other subject matter shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

(3) Where an article is seized by a police officer or an authorized officer in connexion with a suspected offence under the Act or this Ordinance a court, on the application of the Attorney General or the Director, may, if it is satisfied that the article is -

- (a) an infringing copy of a work for other subject matter in which copyright subsists under the Act or this Ordinance ; or
- (b) a plate used or intended to be used for making infringing copies of any such work or other subject matter,

order that the article be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit, notwithstanding that no person has been charged with the suspected offence.

Powers of investigating officers

6. (1) Any police officer not below the rank of Inspector or any authorized officer may -

- (a) (i) subject to section 7, enter and search any premises or place;
- (ii) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft);or

(iii) stop and search any vehicle, in which he reasonably suspects that there is an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance or a plate used or intended to be used for making infringing copies of any such work or other subject matter; and

(b) seize, remove or detain -

(i) any article which appears to him to be an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance or any plate which appears to him to be intended for use for making infringing copies of any such work or other subject matter; and

(ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under the Act or this Ordinance.

(2) Any police officer not below the rank of Inspector or any authorized officer may -

(a) break open any outer or inner door of any place which he is empowered or authorized by this Ordinance to enter and search;

(b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board and search;

(c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Ordinance;

(d) detain any person found in any place which he is empowered or authorized by this Ordinance to search until such place has been searched;

(e) detain any vessel or aircraft which he is empowered by this Ordinance to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

(f) detain any vehicle which he is empowered by this Ordinance to stop and search until it has been searched.

Restriction
on the entry
and search
of domestic
premises

7. (1) No domestic premises shall be entered and searched by a police officer unless -

(a) a magistrate has issued a warrant under subsection (2);
or

(b) the Director has given an authorization under subsection (3).

(2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any article which may be seized, removed or detained under section 6(1)(b), issue a warrant authorizing a police officer not below the rank of Inspector or an authorized officer to enter and search the premises.

(3) The Director may, if he is satisfied that there is reasonable ground for suspecting -

(a) that there is in any domestic premises any article which may be seized, removed or detained under section 6(1)(b); and

(b) that unless the premises are entered and searched immediately such thing is likely to be removed from the premises,

authorize in writing a police officer not below the rank of Inspector or an authorized officer to enter and search the premises.

(4) A police officer not below the rank of Inspector or an authorized officer authorized under subsection (2) or (3) to enter and search any domestic premises may call upon any police officer or any authorized officer to assist him in entering and searching the premises.

Obstruction of
investigating

- 8 (1) Without prejudice to any other Ordinance, any person who-
- (a) wilfully obstructs a police officer or an authorized officer in the exercise of his powers or the performance of his duties under the Act or this Ordinance;
 - (b) wilfully fails to comply with any requirement properly made to him by any such police officer or authorized officer; or
 - (c) without reasonable excuse, fails to give such police officer or authorized officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under the Act or this Ordinance,

shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three months.

(2) Any person who, when required to give information to a police officer or to an authorized officer in the exercise of his powers or the performance of his duties under the Act or this Ordinance, knowingly gives false or misleading information to any such police officer or authorized officer shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three months.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

Affidavit
evidence

9. (1) An affidavit which -
- (a) purports to have been made by or on behalf of the owner of a work or other subject matter in which copyright subsists under the Act; and
 - (b) states that -
 - (i) at a time specified therein copyright subsisted in the work or other subject matter;
 - (ii) the person named therein is the owner of the copyright in the work or other subject matter; and
 - (iii) a copy of the work or other subject matter exhibited to the affidavit is a true copy of the work or other subject matter,

shall, if it complies with subsection (3), be admitted without further proof in any proceedings under the Act or this Ordinance.

(2) The court before whom an affidavit is produced under subsection (1) shall presume, until the contrary is proved -

- (a) that the statements made therein are true; and

- (b) that it was made and authenticated in accordance with subsection (3).
- (3) An affidavit for the purposes of this section shall be -
 - (a) made on oath -
 - (i) before a magistrate or a notary public if it is made at any place within the Commonwealth; or
 - (ii) before a consular officer of Her Majesty's Government in the United Kingdom or a notary public if it is made at any place outside the Commonwealth; and
 - (b) authenticated, so far as relates to the making thereof, by the signature of the magistrate, notary public or consular officer before whom it is made.

Time limit for prosecutions

10. No prosecution for an offence under the Act or this Ordinance shall be commenced after the expiration of three years after the commission of the offence or one year after the discovery thereof, whichever date last occurs.

APPENDIX III

UNITED KINGDOM : SUPREME COURT ACT 1981 (c.54)

Withdrawal of privilege against incrimination of self or spouse in certain proceedings.

72. (1) In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose that person, or his or her spouse, to proceedings for a related offence or for the recovery of a related penalty -
- (a) from answering any question put to that person in the first-mentioned proceedings; or
 - (b) from complying with any order made in those proceedings.
- (2) Subsection (1) applies to the following civil proceedings in the High Court, namely -
- (a) proceedings for infringement of rights pertaining to any intellectual property or for passing off;
 - (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights or to any passing off; and
 - (c) proceedings brought to prevent any apprehended infringement of such rights or any apprehended passing off.
- (3) Subject to subsection (4), no statement or admission made by a person -
- (a) in answering a question put to him in any proceedings to which subsection (1) applies; or
 - (b) in complying with any order made in any such proceedings,
- shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.
- (4) Nothing in subsection (3) shall render any statement or admission made by a person as there mentioned inadmissible in evidence

against that person in proceedings for perjury or contempt of court.

(5) In this section -

"intellectual property" means any patent, trade mark, copyright, registered design, technical or commercial information or other intellectual property;

"related offence", in relation to any proceedings to which subsection (1) applies, means -

(a) in the case of proceedings within subsection (2)(a) or (b) -

(i) any offence committed by or in the course of the infringement or passing off to which those proceedings relate; or

(ii) any offence not within sub-paragraph (i) committed in connection with that infringement or passing off, being an offence involving fraud or dishonesty;

(b) in the case of proceedings within subsection (2)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

"related penalty", in relation to any proceedings to which subsection (1) applies means -

(a) in the case of the proceedings within subsection (2)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement or passing off to which those proceedings relate;

(b) in the case of proceedings within subsection (2)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.

(6) Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.