

INTERNATIONAL COPYRIGHT

- THE CONVENTIONS

International
network of
national laws

7. Strictly speaking, there is no such thing as international copyright. Rights of copyright subsist only under national copyright laws. In any given country the rights which authors enjoy, and the obligations of those who use copyright works, are governed by the national copyright law. During the last century, the traffic in persons, ideas and goods between countries brought about by the steamship, the telegraph and the technical applications of the industrial revolution, grew rapidly. It was realised that the readership or audience for a book, a play or a song was not confined to the country where the author or composer resided, but that there was a large international potential market in other countries. It was also realised that the benefits of this could not be enjoyed - either by the author or by the foreign public - unless the rights and interests of authors and their publishers could be protected in foreign markets. This led at first to the negotiation of a series of bilateral treaties between countries under which each pair of signatory countries undertook to grant protection to each other's works. As the end of the century approached, however, it became apparent that this web of bilateral treaties was creating an increasingly complicated copyright situation, so in 1886 the Berne Copyright Union - a multilateral copyright treaty - was established.

Berne Union

8. The Berne Union treaty has two notable features. First, it stipulates a set of minimum standards of copyright protection which the national copyright laws of member states must provide. Second, it imposes on each member state an obligation to grant to the works of the nationals of, and the works first published in, every other member state the same protection as the national law extends to the works of its own nationals or to works first published in its own country.

Two Berne principles

minimum period of protection

9. Among the principles in the Berne Convention there are two of particular importance. First, for most categories of protected works the duration of protection is to be calculated by the life of the author plus a fixed period of years after his death (which today is usually 50 years, but may in certain cases be 25). The other important principle is that once a protected work has been created, it is entitled to copyright protection without any formality such as registration or the deposit of a copy.

no formalities

US copyright law - registration

10. When the Berne Union was established, the copyright law of the United States did not conform to either of these principles. From its inception the US copyright law operated - as it still does - a system of compulsory registration (relaxed to some extent in respect of foreign works). Secondly, until 1978 when a new code was enacted, the period of protection was unrelated to the life of the author but was for two fixed terms of 28 years each, starting with the date of first publication. Accordingly it was not, and still is not, possible for the United States to be a member of the Berne Union, and copyright relations between the USA and other countries were, until 1952, regulated by a series of bilateral treaties. (The US system is described more fully in paras 61-63.)

UCC

11. It was clearly desirable that there should be a multilateral copyright treaty to which the United States and other countries could adhere, and in 1952 the Universal Copyright Convention (UCC) was established with this as

*copyright
notice ©*

*principally
important
for USA*

one of its principal purposes. Because of the difference between the copyright system which operated in the United States and that which operated in most other countries, the provisions of the UCC do not, unlike Berne, constitute a comprehensive code of detailed requirements which national laws must comply with. Instead, the UCC requirements are expressed in much more general terms. Unlike Berne, which expressly prohibits registration and other formalities as a condition of copyright protection, the UCC stipulates that where the copyright law of a member country makes provision for such formalities they are to be deemed to be complied with if the work from another member state carries a copyright notice - the symbol © accompanied by the name of the copyright owner and the year of first publication. It is not the case, therefore, as is often stated, that UCC requires as a condition of protection that all works shall carry this notice. UCC simply requires a member state which imposes formalities to regard those formalities as having been complied with if a foreign work carries this notice. In practice, the principal importance of the notice is therefore to ensure that foreign works from UCC countries enjoy copyright protection in the United States. The absence of such a notice does not preclude a work from enjoying protection in other UCC member countries unless they require compliance with registration or deposit formalities as a condition of enjoying copyright protection (and there are few countries which do so). As at 1 January 1982 there were 72 members of the Berne Union and 73 members of the Universal Copyright Convention. See Appendix A.

Revision of
Berne, UCC

*developing
countries -
special
compulsory
licences
available*

12. The Berne Convention has been revised six times. In the most recent revision (Paris 1971) particular account was taken of the implications of modern communications technology and the special needs of developing countries. The UCC has been revised once, also in 1971, in concurrent sessions with the revision of Berne. Both conventions now contain a regime of special concessionary provisions which any developing

country that is a member of either convention may adopt under its national laws. Under these special concessions compulsory licences for the translation or reproduction of certain categories of works may be granted without the permission of the copyright owner. The concessions in both conventions are expressed in virtually identical terms. They are complicated, and the granting of licences under the concessions are subject to a number of conditions. Appendix B contains a summary of them. Few developing countries have enacted legislation for the purpose of taking advantage of these concessions, and there are hardly any examples of compulsory licences which have been granted pursuant to them - perhaps because in practice, certainly in recent years, it has usually proved possible for developing countries to negotiate satisfactory licences for translation and reproduction from foreign copyright owners without invoking the compulsory licensing procedures.