

NATIONAL COPYRIGHT LAWS

Standard Provisions

International
harmony -
with national
variations

13. As most countries belong to the Berne Union, the UCC, or to both, there is a large measure of harmonisation amongst the copyright laws of member countries. Nevertheless considerable differences in legislative provision, judicial interpretation or accepted industry practice exist. It is possible to determine precisely what rights of copyright exist in a given country only by referring to the copyright law and practice of that country. The provisions and practices described in the following sections of this booklet are not necessarily part of the law of every developing country. In any particular case the law and practice of the country in question must be examined. This guide is intended to help in such examination by indicating what points should be looked for.

Categories of
copyright laws

14. Having regard to the origins of their copyright laws, developing countries fall, broadly speaking, into three categories:

inherited laws

- (a) Countries in which the copyright law of the former administering metropolitan country was extended to the developing country prior to independence and has not yet been replaced by national legislation after independence. For example, in Jamaica, Singapore, and Trinidad and Tobago the law of copyright is the United Kingdom Copyright

Act, 1911 (with minor modifications); in Chad the law is the Copyright Act, 1957 of France.

*laws modelled
on laws of
former
administering
country*

- (b) Countries which, either before or after independence, have enacted their own copyright laws but have based them closely upon the copyright law of the former administering country. Examples are Australia, India and Pakistan, whose Copyright Acts of 1968, 1957 and 1962 respectively are modelled closely (though not identically) upon the United Kingdom Copyright Act, 1956; and Senegal, whose Copyright Law, 1973 closely follows the Copyright Act, 1957 of France.

new laws

- (c) Countries which, since their independence, have enacted copyright laws which are not closely modelled upon the copyright legislation of the former administering country. Examples are the Copyright Act, 1961 of Ghana, the Copyright Act, 1966 of Kenya, the Copyright Decree, 1970 of Nigeria, and the Copyright Ordinance, 1973 of Algeria.

Content of
copyright laws

15. Although the texts, and to some extent the provisions, of national copyright laws vary from each other, they all deal with the same range of matters.

eligible works

- (a) They identify the kinds of works which are eligible for protection under the law.

*conditions of
protection*

- (b) They stipulate, by reference to the residence or nationality of the author, or place of first publication, which works are eligible to be protected, and, in addition, provide for the protection of foreign works.

*copyright
ambit - extent
of control
and duration*

(c) They define the ambit of copyright (i.e. the specific kinds of use over which the copyright owner is to have control) and fix the period or periods during which the rights will last.

exceptions

(d) They set out a list of special cases where the control of the copyright owner is overridden or may only be exercised subject to certain conditions.

*ownership and
transmissions*

(e) They deal with the ownership of copyright and its transmission by assignment, licence and other methods.

legal remedies

(f) They prescribe the methods by which a copyright owner may legally enforce his rights.

*statutory
arbitration*

(g) They often, particularly in the laws of developing countries, make provision for statutory arbitration in cases of dispute over the rate or level of payment due to a copyright owner.

Categories of Works Eligible for Copyright Protection

**Lists in Berne
and UCC**

16. Both the Berne Union and the UCC describe the categories of works which should be entitled to protection under the national laws of member states. In the UCC the description is a brief one in Article 1 in the following terms:

Literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works and paintings, engravings and sculpture.

In the Berne Union a full list is set out in Article 2(1), the text of which is contained in Appendix C. National laws vary in the language used to describe the range of works

eligible for copyright. Whatever the language, however, it is generally the case that national copyright law extends protection to all categories of literary, dramatic, musical, artistic and audio-visual works in the widest possible sense of those terms.

What Works are Protected by Copyright?

Wide range covered by literary, dramatic, musical and artistic works

17. The following list is necessarily not comprehensive but will indicate the wide range of works which may be protected by copyright.

- (a) *Literary and dramatic works.* These include not only books, pamphlets, plays and articles for magazines, but virtually every form of written communication - e.g. the script for a programme for radio or television, a computer programme, a compilation of data such as a trade directory, the text of a TV commercial, even private correspondence.

Copyright does not protect the *title* of a book or play, nor a name as such, even if the name has been especially devised for a particular purpose. Nor does copyright protect an idea as such, but if the idea is recorded in written or other form, then the description of the idea contained in that record will be protected and may not be used save with the permission of the author or other copyright owner. Thus, the recipes in a cookery book may be used freely, but the instructions in each recipe may not be copied and published without the copyright owner's permission.

- (b) *Artistic works.* This is a wide category covering paintings, drawings, engravings, sculptures, architectural works, maps and charts. It includes industrial designs - e.g. the drawings

for an item of household furniture or the blue-print for a piece of machinery.

- (c) *Musical works*. These include every form of musical composition from symphonies to advertising jingles.
- (d) *Films*. This category includes every form of production capable of being shown as a moving picture whether accompanied by a soundtrack or not; it includes films made for exhibition in cinemas or for television; or for use in video recording equipment.

Neighbouring Rights

Neighbouring
rights - sound
recordings

18. It is also usual for copyright legislation to protect sound recordings and broadcasts. Sound recordings may be of all kinds of sound, even bird-song or a hurricane in full blast; and the recordings may take any form - disc, tape or any other kind of sound carrier.

Broadcasts

19. The protection of broadcasts relates to the transmitted programme as an entity quite distinct from the literary, dramatic, musical or artistic material of which it may be composed.

*Rome
convention,
1961*

20. Neither the Berne Union nor UCC deal with the protection of sound recordings or broadcasts. Instead, both these categories of works are the subject of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) often referred to as the "Neighbouring Rights Convention". As at 1 January 1982, 23 countries were members of this Convention. Most countries protect sound recordings whether or not they belong to this Convention, but the nature and extent of protection varies considerably from country to country. There is also a convention concerned specifically with record piracy - the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms, (Geneva, 1971). As at 1 January 1982, 32 countries had joined this Convention.

*Geneva
convention,
1971*

Folklore

21. The Model Law on Copyright drafted at a conference organised by WIPO and UNESCO in Tunis in 1976 provides that copyright protection shall cover works of national folklore. Similar provisions are to be found in recent laws of some developing countries (e.g. Algeria, Senegal, Tunisia). The desirability of protecting works of national folklore from unregulated exploitation, especially foreign exploitation, is manifest, but the practical difficulties in defining and identifying such works are great and there is little evidence so far that copyright protection can effectively be used for this purpose.

Conditions for Protection

Protection is
national -
depends on -

22. Copyright laws are national and their primary purpose is to protect national works. Accordingly, the copyright law of a country will stipulate that eligible works will enjoy protection only if:

*nationality
or residence*

(a) the author is a national of the country (usually defined as either a citizen or a resident), or

*place of first
publication*

(b) the work was first published in the country (even if it was written by a national of another country).

The Berne Union and the UCC both require member states to protect the works of all other member states. For this reason, the national laws of a country belonging to either Convention will protect the works of nationals of, and works first published in, all other countries which belong to the same copyright Convention as it does. It will also, of course, protect works originating in a country with which it has a bilateral copyright agreement requiring reciprocal protection.

First
publication -
special meaning

23. It is important to note that under the conventions, and hence under national copyright laws, first publication has a special meaning; it includes any publication within 30 days of the actual first publication. Thus a book whose actual first publication took place in a country which belongs to neither Berne nor UCC would nevertheless be protected under the copyright laws of all the Convention countries if it was "first published" in one of them. For example, a book by a Chinese writer first published in China (which currently has no copyright law and belongs to no copyright convention) on 1 January and then subsequently published in Hong Kong on 15 January, would be protected under the copyright laws of all countries which belong to either Berne or UCC (both of which apply to Hong Kong by virtue of United Kingdom membership).

Content of Copyright and its Duration

Copyright -
essentially the
right to
control use

24. The basic purpose of copyright law is to give the author the right to control the use which others may make of his work. The ambit of this control has evolved over the years. In the last century when the copyright system as we know it today began to be systematically and internationally applied, the author's right of control was concerned principally with the right to make copies of his work and publish it. However, as developing technology gave the public more and more facilities whereby cultural works could be communicated and used, so correspondingly the author's right of control expanded to cover these new uses. Today the standard copyright law will give the copyright owner the right to control the following forms of use:

Individual
rights

In the case of literary, dramatic, musical and artistic works -

- to publish

(a) The right to make copies of his work and publish them, i.e. offer those copies to the public;

- *to perform in public* (b) The right to perform the work in public. This right applies particularly, of course, to plays and to musical and dramatico-musical works such as symphonies, operas, ballets and popular songs. Any performance which does not take place in a domestic or quasi-domestic situation is a public performance, including performances in clubs, even members' clubs.
 - *to broadcast* (c) The right to broadcast the work, either on radio or on television.
 - *to communicate to public by wire* (d) The right to communicate the work to the public by wired systems ("diffusion" networks, cable TV).
 - *to reproduce* (e) The right to make a reproduction of the work - i.e. if it is a literary work to copy it in manuscript or typescript or to make replicas of it by photocopying or some other technical device which produces facsimile copies, or in the case of a musical work or a spoken literary work to make records or tapes of the work.
- "Reproduction" definition*
- "Reproduction" means a copy of any kind: it could be hand-written or typed or be a photocopy of a literary work or a copy in the form of a recording. It is therefore an infringement to re-record or tape a copyright musical work, whether the record or tape has been bought, borrowed, received as a present - or stolen! It is an infringement to make a recording of copyright works broadcast by radio or television; it is an infringement to make copies of a play for the use of the cast or of the parts of a symphony for the use of the members of an orchestra unless, in each case, the permission of the copyright owner has first been obtained.

- *to translate* (f) The right, in the case of a literary work, to translate it into another language.
- *to adapt* (g) The right to adapt the work - i.e. to transform it from one kind of work of work into another. Examples are the making of a play or a film out of a book, and the arrangement or transcription of a musical work.

Audio-visual works In the case of a film or of other audio-visual works:

- (a) The right to make a copy of it.
- (b) The right to exhibit the work in public (e.g. show the film in a cinema).
- (c) The right to broadcast it or communicate it to the public through a wired system.

Sound recordings

In the case of a sound recording:

- (a) The right to reproduce it (i.e. to make copies of it in any form - discs, tapes, etc.).
- (b) In some countries, but by no means all, the right to use the sound recording for the purpose of giving a public performance or a broadcast.

Broadcasts

In the case of a broadcast (as defined in paragraph 19):

- (a) The right to record it, either on to disc or tape if it is a radio broadcast, or on to a film, videogram or videocassette if it is a television broadcast.
- (b) The right to re-broadcast it.

Control over
distribution

25. There is also a growing trend for copyright law to give the copyright owner an express right to control the distribution of copies of his work. Where this right is not expressly conferred by statute a copyright owner may by contract reserve or impose conditions over the distribution of copies, but this will only be enforceable against parties to the contract.

Control over
importation
and sale of
infringing
works

26. Because copyright law is national, the rights created by it are national rights. A copyright owner, therefore cannot under his own national law exercise control over the use of his work in a foreign country. He may, of course, have rights under the copyright law of that foreign country, but for one reason or another it may be difficult or impossible for him to enforce those rights; or it may be that the foreign country does not have a copyright law or that he has no rights under it. For such reasons, it is important to a copyright owner to be able to prevent the importation into his own country of copies of his works which have been made in another country without his permission. It is therefore usual to find in copyright law a provision giving the copyright owner the right to prohibit the importation of copies of his work if the making of those copies would have amounted to an infringement had they been made in his own country, and to prohibit others from selling or offering for sale such copies in his country. To take an example, hardly any foreign works are protected under the copyright law of Taiwan. Consequently, without such a provision as has just been described, an author in India or a composer in the Philippines would be powerless to prevent the Indian or Philippine market from being flooded with unauthorized copies or records of his work made in Taiwan for which he has received no remuneration whatever.

Protection of
typesfaces

27. Under the Copyright Act, 1956 of the United Kingdom, the typographical arrangement in a published edition of a literary, dramatic or musical work is protected against unauthorized reproduction for a period of 25 years from the

date of publication. This is not a requirement of either the Berne or the UCC Conventions, but in 1975 an international agreement was signed with the object of securing protection for typeface designs - the Vienna Agreement for the Protection of Type Faces and their International Deposit. The Agreement is not yet in force.

Duration of Copyright

Berne requirements

28. Under the Berne Convention (Paris text), the standard term of protection is the life of the author and 50 years after his death. However, there are exceptions to this general principle.

- (a) The copyright in a cinematograph work may be 50 years from either the publishing of the work or the making of it.
- (b) Photographic works and works of applied art which are protected as artistic works may be protected for a different period, provided it is not less than the period of 25 years from the making of the work.
- (c) Anonymous or pseudonymous works are to be protected for 50 years from the date when they were first lawfully published.
- (d) Countries which joined the Berne Convention before the "life plus 50 years" general rule was made compulsory (i.e. by the Brussels text of 1948), may in their copyright legislation provide the shorter period permitted by earlier texts. In practice this is the life of the author plus 25 years.

UCC require-
ments

29. Under the UCC the term of the protection must not be less than the life of the author plus 25 years. However, because the United States had a different basis for determining the period of protection when the UCC was established in 1952, the UCC also permits such countries to compute their period of protection by fixed terms, starting from the first publication of the work. The term of protection must not be less than 25 years from the date of the first publication.

Life plus 50
related to life
expectancy
statistics

30. The period of "life plus 50 years" is not an arbitrary period. Its rationale is that an author should be able to make provision for his heirs to the extent of one generation. At the beginning of this century, when the period of copyright protection was first established, 50 years was about the normal period of life expectancy.

Life plus 25
more usual in
developing
countries

31. The basic period of protection under the copyright laws of most developed countries is the life of the author plus 50 years; in a number of developing countries the shorter period of the life of the author plus 25 years has been adopted.

Exceptions and Exemptions

32. Both Berne and UCC permit national laws to provide for exceptions and exemptions from the copyright owner's normal right of control. Accordingly a national copyright law will always contain a list of special cases where use may be made of copyright works without having to obtain permission from the copyright owner. The list will vary somewhat from country to country but the more important cases usually covered are:

private use

- (a) The copying or translation of a work exclusively for the user's own personal and private use.

critical review

(b) The reproduction of a work for the purposes of critical review.

*reporting
current events*

(c) The use of the work for the purpose of reporting current events in a newspaper or journal or by means of broadcasting or in a cinematographical newsreel.

*educational
use*

(d) The copying of a work, to a limited extent, in schools for educational purposes.

*recordings of
music*

(e) The making of records or tapes for retail sale of a musical work if such records or tapes have already, with the consent of the copyright owner of the music, been made or imported, and provided the person making the record or tape pays royalties at the rate prescribed in the law.

*recording for
broadcasting
purposes*

(f) The recording of a work by a broadcasting organization solely for the purpose of broadcasting it, provided the copyright owner has already given his consent that the work may be broadcast. Such recordings are known as "ephemeral recordings" because national laws normally require them to be destroyed within a fixed period - 3 to 6 months - after being made. In some cases the law allows a copy to be retained solely for archival purposes.

All these special cases are normally subject to the condition that the use actually made must be fair in the sense that it does not unduly prejudice the interests of the copyright owner - that is to say it does not significantly undermine his potential income from his works.

Tunis Model -
list of excep-
tions

33. Whether or not a particular use is exempt from copyright control can be determined only by reference to the relevant provisions of the national copyright law of the country where the

question arises. The Tunis Model Law contains a detailed set of provisions listing, in effect, the widest range of exceptions and exemptions which a national copyright law might contain without being in breach of either Berne or UCC. The text of these provisions is set out in Appendix D.

Ownership and Transmission of Rights

General principle -
copyright vests
in author

34. The preamble to the Berne Union commences with the declaration that:

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform manner as possible, *the rights of authors* in their literary and artistic works ...

The Convention itself sets out the various rights which the laws of member states are required to establish in protected works. They are described as '*the exclusive rights*' of the *authors* of those works. Consistent with this emphasis on the interests of 'authors', all national copyright laws contain a basic provision stating that the ownership of the copyright in a work vests, upon the creation of the work, in the author of it. In the copyright law of the United Kingdom and of other countries whose laws have been modelled upon that of the United Kingdom, this basic principle is modified by providing that in the absence of a contractual agreement to the contrary it is presumed that in certain cases the copyright in a created work belongs initially not to the author but to some other person or entity. These special cases are usually the following:

*special cases -
authors
employed by
newspapers,
journals*

- (a) Where the author of a work is employed by a newspaper or journal and produces a work in the course of his employment under a contract of service or apprenticeship for the purposes of publication

in that newspaper or journal, it is presumed that the right to publish and make copies for publication purposes belongs to the newspaper or journal proprietor.

*photographs,
portraits
specially
commissioned*

(b) Where a photograph, the drawing or painting of a portrait or the making of an engraving has been commissioned and the person commissioning has paid for or agreed to pay for the work, it is presumed that the copyright in the work belongs to him and not to the author.

*works produced
under a con-
tract of
service or
apprenticeship*

(c) Generally, in any case where a work has been produced in the course of the author's employment under a contract of service or apprenticeship, it is presumed that the employer and not the author is the owner of the copyright in the work.

As stated above, each of these presumptions may be rebutted if the author stipulates by contract that the copyright shall belong to him.

Presumptions
contrary to
author's
interests

35. These presumptions are clearly not in the interests of the author and are not usually found in the laws of developing countries save in those where the United Kingdom law is still in force. In many of the cases covered by these special provisions it may be reasonable for the employer or the commissioner to own the copyright, but there is no reason why this cannot be achieved by an appropriate contract between author on the one hand and employer or commissioner on the other. Today many authors - for example in the fields of education and entertainment - are employed by large Government departments or powerful broadcasting services or film production companies and are seldom in as strong a bargaining position as their employers. It seems unfair that the onus should be on employee/authors to negotiate out of a statutory presumption which would

otherwise deprive them of their copyright; whereas, on the other hand, if the presumption is simply removed from the law it becomes a straightforward matter of negotiation between author/employee and employer as to what rights the latter should acquire.

Transmission of Copyright

Copyright is
a form of
property

36. As the primary purpose of the copyright system is to enable the author, by the exercise of his rights under the system, to earn his living, the law of copyright provides that copyright is a form of property which the author may exploit commercially in the widest possible way. Thus, standard copyright law normally provides that:

- (a) The author may assign his rights - i.e. transfer ownership outright to some other person.
- (b) The author may license his rights - i.e. retain ownership but grant permission to another person or persons to exercise those rights on an exclusive or non-exclusive basis.
- (c) The capacity to assign or license may be exercised not simply in relation to the total copyright but with respect to each of its components - i.e. the publishing and reproduction right may be assigned to one person, the broadcasting right to another, and the right to adapt the work (e.g. convert a book into a film) to someone else.
- (d) The transfer of rights by assignment or licence may be limited both as to time and as to territory. Thus an author may assign his rights which subsist under the country of his own nationality to A, the rights which subsist under the law of another

country to B, and the rights which subsist under the laws of a third country to C, and so on.

Assignments, exclusive licences should be in writing

37. In order to avoid uncertainty, disputes, and wasteful expenditure on litigation, it is usual for copyright legislation to stipulate that an assignment or an exclusive licence of rights of copyright must be in writing. It is not usual, on the other hand, for such a stipulation to apply to non-exclusive licences which may be in any form. Thus they may be in writing; they may be oral; they may even be implied from conduct. Obviously it is sensible wherever possible for licences to be in written form.

Assignment of future rights

38. It is usual today in the copyright legislation of countries where the principles of British common law and jurisprudence still operate to provide expressly that the copyright in a future work (i.e. a work not yet in existence) may legally be assigned. In the absence of such a provision the grant of rights in a future work will only give the grantee an equitable right which would be overridden by a subsequent grant, after the work was created, to someone without notice of the earlier grant. Such a provision is therefore important because it ensures that a publisher or a film producer, for example, who has undertaken to pay a large advance to an author to write a book or a film script, may confidently rely on controlling the income from the earnings of the book or script so as to recoup his advance.

Copyright is intangible - protectible only by legislation

39. Although copyright is a form of property, it has a special characteristic which distinguishes it from other forms of property: it is intangible. Rights of ownership over tangible property can be protected by physical means - jewelry is locked in a safe, washing machines in a warehouse, motor cars in a garage. But the melody of a song cannot be locked up, nor its lyrics; the text of a book, once released to the public, cannot be physically protected. Rights of copyright, therefore, can

in the last resort be enforced only through the courts by litigation - by an action for infringement. Accordingly, copyright laws provide that it is an infringement if anyone without the permission of the copyright owner of a work protected by copyright uses that work in any of the ways which are under the control of the copyright owner (as described in paras. 24 and 26 above).

Remedies and Relief

Infringement
actions -
forms of
relief

40. In an infringement action the copyright owner may seek various forms of relief:

- (a) He may seek an interim injunction against the person alleged to be infringing. This means that, pending the hearing of the action, the defendant is ordered by the court to stop doing the act alleged to be an infringement. However, a court will not normally issue such an injunction before the merits of the case have been heard unless it is satisfied that damage will be done to the plaintiff which could not ultimately be put right by an award of compensation.
- (b) Where the copyright owner establishes that his rights have been infringed, he will normally be entitled to -
 - (i) An award of ordinary damages - i.e. compensation for the loss he actually suffered as a result of the infringement. (Under some laws the court may award special damages - i.e. a form of penalty - if the court is satisfied that the defendant infringed the copyright owner's rights with full knowledge of what he was doing and

deliberately intending to flout his copyright responsibilities.)

- (ii) Seizure of all infringing copies and all plates or other equipment used for producing the infringing copies.
- (iii) An account of all profits which the defendant has received from his infringing activities.
- (iv) A permanent injunction prohibiting the defendant from repeating any of the infringing acts in the future without first obtaining the copyright owner's permission. The consequence of disregarding the injunction is that the defendant is in contempt of court.

Of course, a successful plaintiff will also normally be entitled to recover from the defendant the costs incurred in bringing the action; but in practice costs awarded by a court seldom amount to full reimbursement of the expenses actually incurred by a successful party.

Special anti-piracy measures

41. Under the normal rules of civil litigation a plaintiff may seize infringing copies of his work and the equipment used for making them only after he has commenced proceedings. Because of the large scale on which piracy of books, records, films and video-cassettes takes place today, it has become increasingly apparent that this normal remedy has become quite inadequate to protect the interests of copyright owners. In practice, the moment a writ is served on an alleged infringer, the stock of infringing copies will immediately disappear together with the equipment used for producing them. This means that the copyright owner may have difficulty in establishing his case. Evidence of the magnitude of the infringements will not be available; hence the court may be

unable to award adequate compensation. In any event, by the time the case is heard and a final decision given, the defendant will have made such profits from selling the spirited-away infringing copies that an adverse decision is of little deterrent force. To meet this situation the courts in the United Kingdom have developed a new procedure. Under it a copyright owner who believes his works are being substantially infringed may, before he commences proceedings, apply ex parte to the High Court for an order directed to the person whom it is intended should be the defendant. Such an order requires that person to allow the plaintiff to enter his premises and seize all infringing copies, documents or other material which may be relevant and admissible to proving that infringements occurred. Such orders may even require the other person to provide the names and addresses of the suppliers and distributors of any infringing copies found on his premises.

"Anton Piller Orders"

42. These orders, known as "Anton Piller Orders", have been extremely valuable in providing swift and effective action against piracy. In those developing countries where the civil procedure in the courts is based upon that of the United Kingdom, it should be possible for similar procedures to be developed.

Evidence of the subsistence of copyright, authorship, etc. - statutory presumptions

43. In any infringement action it is necessary that the court be satisfied on two counts: first, that the work alleged to be infringed is protected by copyright; second, that the plaintiff is the owner or a person properly authorised to enforce the rights alleged to be infringed. The first question may in turn require proof as to who the author of the work was, the date when the work was written or composed, whether the author/composer is still alive (and, if not, the date of death), the date when the work was first published and where it was first published. The strict proof of all these matters can often involve considerable research and expense in providing original documents or properly authenticated copies, especially in the case of works by

foreign authors. The result is that the expense of taking legal action can be seriously inflated and the date of the hearing can be seriously delayed even though in many cases the real issue in an infringement action does not concern any of these matters at all. Consequently, most copyright laws provide that unless these matters are put in issue by the defendant, the court may presume that the work alleged to be infringed was protected by copyright and that the plaintiff is the copyright owner. Moreover, where a defendant elects to put the plaintiff to proof of these matters and the plaintiff does in fact prove them, the expense he incurs in producing the proof may have to be borne by the defendant even if he wins the main action.

Penal
provisions -
infringement
may be a
criminal
offence

44. In addition to the civil remedies available to a copyright owner, most copyright laws contain penal provisions under which it is a criminal offence for a person to infringe rights of copyright in various ways. Persons found guilty may be fined and, in some cases, imprisoned. However, because of the very considerable profit which may be made today by large-scale piracy, the financial penalties provided for in most laws are, unless they have been very recently revised and updated, so small that they serve as no deterrent against piracy. Developing countries where piracy is taking place on any scale and which are concerned to protect the interests of authors and other copyright owners should therefore keep these provisions under review and ensure that all penalties are large enough to be effective deterrents.

Statutory Arbitration

Collective
administration
- need for
arbitration

45. As explained in paragraphs 54 to 58 below, it has become increasingly common, indeed essential because of modern technology, for rights of copyright to be administered collectively. This development has led in turn to

the inclusion in modern copyright laws of provision for arbitration machinery to resolve disputes between users of copyright and such collective organisations administering copyright. Such machinery sometimes takes the form of a completely independent tribunal (e.g. in those countries where the copyright law either is, or has been, modelled on the Copyright Act, 1956 of the United Kingdom). Alternatively, the responsibility for determining disputes may be vested in a competent authority, either a minister or some designated official.

Jurisdiction
of tribunal/
competent
authority

46. Where national copyright legislation provides for such a tribunal or competent authority, its jurisdiction will usually cover these situations:

- (a) Where the copyright owner has refused on any terms to grant permission for his work to be used, the tribunal or competent authority may be given power to determine whether this refusal is reasonable. If it considers the refusal not to be reasonable, it may grant permission on such terms and conditions it considers reasonable.
- (b) Where the copyright owner is prepared to grant permission but the user considers the terms and conditions offered to be unreasonable, the tribunal or competent authority will be given power to determine whether or not those terms and conditions are reasonable. If it considers them not to be, then it may substitute those which it considers to be reasonable in the circumstances.
- (c) Where the law provides for a compulsory licence (see para 32 (c) and Appendix B) it is usual for the tribunal or competent authority to be given power either to prescribe the rate or amount of royalty to be paid or to arbitrate if the copyright owner and the user fail to negotiate an agreed rate.

Possible risk
of abuse of
monopoly
position

47. Statutory arbitration was first introduced because it was thought that large collective administration agencies might abuse their monopoly position, especially where they controlled so comprehensive a repertoire that users had no real alternative. Later copyright laws, however, particularly in developing countries, have tended to apply the statutory arbitration procedure to cases where there is no monopoly element. For example, in some cases it has been applied to publishers (who of course do control a number of copyrights but hardly ever amounting to a complete monopoly); and in some laws the procedure has even been applied to the exercise of his copyright by an individual author. It is doubtful whether this extension of the statutory arbitration procedure is justified, or indeed whether it is strictly compatible with the Berne and UCC principles. Where a licensing body controls the entire repertoire of a particular category of rights so that if it withhold permission for any work within that repertoire to be used, or demands exorbitant terms for permission, with the result that there are no alternative works available for the prospective user to use, the justification for compulsory arbitration is clear. On the other hand, if an individual author or publisher refuses permission for a particular work to be used and there are other works controlled by other copyright owners which are equally suitable and are available, then the justification for taking away the individual copyright owner's exclusive right to decide whether or not his individual work should be used is not so clear; indeed, such provisions might well be in conflict with the spirit, if not the letter, of the Conventions.

Moral Rights

Recognition of
authorship -
protection of
reputation

48. The elements of copyright so far described have been the constituent economic rights. In addition to these rights, the Berne Convention requires member states to protect also what are

normally referred to as the author's "moral rights". These are described in the Convention as:

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 honour or reputation ... (Article 6 bis).

The copyright laws of countries which are members of Berne, and indeed the laws of most developing countries, will contain provisions along these lines. The first practical effect is that, for example, an author of a book or article may insist on his name appearing on all copies. Similarly, a composer or a script-writer may insist on appropriate credits being given in any programme in which his work has been included. The second is that without the permission of the author a work may not be modified in such a way that it might injure his standing as an author. Thus a serious writer on theology could object if a work of his was modified so as to give it a pornographic slant.

Duration of
moral rights

49. Moral rights remain vested in the author personally throughout his life and may be exercised by him even if he has completely parted with his copyright. After an author's death the moral rights will normally last throughout the remainder of the period during which copyright will subsist, and it is usual for legislation to provide that they are to be exercised by the author's legal personal representatives.