

IMPLEMENTATION OF COPYRIGHT

Publishing and Other Agreements

Authors not
businessmen -
professional
advisers,
administrators
needed

50. Authors, composers and artists are creative people and are not normally good businessmen. If their works are to be disseminated effectively so as to reach the widest audiences and realise their full commercial potential, authors need the services of those who have experience and expertise in the work of publishing and promoting cultural works. In a developed country there are many sources from which an author may obtain these services. He may, of course, deal directly with the publisher, the record company, the film producer or the broadcaster; but in most cases he will be assisted, directly or indirectly, by the services of a wide range of expert advisers and organisations.

Authors' agents

51. In the literary field there are authors' agents who specialise in evaluating the potential of a literary work, in negotiating the most advantageous terms for the author with the publishers and other persons or enterprises which may wish to exploit the work commercially, and in servicing those contracts when made.

Societies,
guilds etc.

52. There are also societies, guilds and associations of authors, composers, artists and photographers (sometimes constituted as trade unions, sometimes not) which look after the interests of creative people in various ways. They may negotiate standard or minimum

contract terms with users - e.g. with broadcasting services or national bodies representing publishers or record producers or film companies. They may provide advice and help about individual contracts, either in the initial negotiation or - more often - in resolving disputes arising after a contract has been made. Agents, societies, guilds or other bodies are not alone in serving creative people in developed countries. In both the legal and the accountancy professions there are individuals and firms which specialise in this branch of law and business. Their services are available for negotiations, litigation, or just general advice or guidance.

Contractual terms

53. Because cultural works - books, articles, plays, scripts, music, paintings - may be disseminated and commercially used in an infinite variety of ways, it is impracticable to include in a short booklet like this a comprehensive set of precedents for contractual terms. However, Appendix E contains a list of guidelines which identify some of the essential matters with which most contracts involving copyright should deal. It also mentions some of the important considerations that should be taken into account.

Guidelines in Appendix E

Collective Administration

Origins of "authors' societies"

54. By the middle of the last century European copyright laws had evolved to give copyright owners the right to control public performances of their works. In the case of literary works - i.e. plays - there was usually no insuperable difficulty in the individual author, or his agent or publisher, controlling the use of this right. Because performances took place in a limited number of theatres or other suitable premises, it was quite practicable for the copyright owner to monitor them. However, in the case of musical works the situation was different. They could be publicly performed in a multitude of different places. It was not

practicable for each individual composer and publisher to ensure that on each occasion his music was performed in public, the person responsible had obtained permission in advance and paid an appropriate royalty. Composers, song writers and music publishers therefore banded themselves together into associations to administer collectively the public performance rights in their music. The first of these societies was established in France but by the turn of the century there was a national society in most European countries and in the United States. In the United Kingdom the Performing Right Society was established in 1914.

Constitution
of "authors'
societies" -
main features

55. The constitutions of these societies vary, of course, depending upon the laws and practices of each country; but in general character, function and method of operation they are all cast in a common mould. Their function is to administer the "performing rights" of their members. They license those who use these rights. They collect the royalties due under those licences and distribute them among the composers, lyric writers and publishers whose music is performed. Save in exceptional cases, such societies do not issue licences in respect of individual works. Instead they issue blanket licences under which licensees have access to all or any of the works in the Society's repertoire. The term "performing right" has become a term of art meaning not only the right to perform a musical work in public, but also the right to broadcast it on radio or television or to transmit it via a wired relay service such as cable TV (sometimes referred to as a "diffusion" service). These bodies operate on a non-profit basis. All the royalties collected are distributed to the composers, lyric writers and publishers after deducting simply the costs of administration. Today there are such societies either in, or with agencies in, most of the countries where there is a copyright law. All these societies are linked with each other by reciprocal representation agreements so that, within its own country or other territory for

which it is responsible, each national society controls the "performing rights" in virtually the world repertoire of copyright music.

Value of services of "authors' societies"

56. These societies perform a valuable twofold service. First, they enable individual composers, lyric writers and music publishers to obtain fair remuneration from public performances (including broadcasting and wire diffusion) of their works throughout the world. By this means the continued composition and dissemination of music is encouraged. Second, they provide a single central source in each country from which all those who use music for giving public performances or broadcasts may obtain permission.

Under the blanket licences issued by such societies, the user has access to almost every musical work in copyright, whether it comes from a developed or a developing country, a capitalist or a socialist country, an aligned or a non-aligned country. For example, any broadcasting service, even in a small developing country, may transmit hundreds of musical works every day. Through the services of the international network of composers' societies, such a broadcasting station can fulfil its obligations under the copyright law to the composers, arrangers, lyric writers and publishers of all the music it broadcasts simply by obtaining a single annual licence from the appropriate composers' society.

Collective administration of "mechanical" and other rights

57. In addition to administering the "performing rights" in music, many societies administer also the "mechanical rights" - i.e. the right to record music on to a disc or tape for retail sale. Societies also sometimes administer the "synchronisation right" which is the right to record music on to the soundtrack of a film intended for use in cinemas or on television. The collective administration of rights for other categories of works, such as literary works, has not been much developed until recently. But with the tremendous increase in the volume of use which modern technology

has made possible (e.g. the copying of extracts from books and articles by photocopiers) other right owners have begun to realise that collective administration is necessary if their interests are to be protected.

Supporting Services in Developing Countries

Societies in developing countries

58. In the first decades of this century the societies in the developed countries made their services available in many of the developing countries through agencies or representatives. However, with the coming first of self-government and then independence national societies have begun to be established to assume full responsibility for the administration of rights in their country. In Commonwealth countries, for example, there are now national societies serving Australia, Canada, Hong Kong, India, New Zealand, Sri Lanka and Zimbabwe; and at the date of printing there are projects in hand to establish composers' societies in Kenya, Nigeria and Singapore.

Infrastructure of supporting services not fully available in developing countries

59. In developing countries the range of services available to creative people to help them in implementing their rights of copyright is smaller than that outlined above for developed countries. Indeed, in some developing countries there are few such services and hardly any of the infrastructure needed to operate the system. Moreover in many developing countries there is a limited knowledge of either the law or the practice of the copyright system.

UNESCO/WIPO development programmes

60. The international copyright secretariats - WIPO which administers the Berne Convention, and the Copyright Division of Unesco which administers the Universal Copyright Convention - both operate programmes to help developing countries in this field. They organise seminars in developing countries at which the purposes, principles and practices of the copyright system are discussed and explained with particular reference to the circumstances and needs of

CISAC

developing countries. They sponsor courses of instruction for selected trainees from developing countries (usually officials nominated by governments) involving attendance at lectures given in various centres in developed countries. They arrange visits to the two international secretariats in Geneva and Paris and to a number of the authors' and composers' societies which administer rights collectively (see paras. 54 - 58). Besides these two secretariats there is the International Confederation of Societies of Authors and Composers (CISAC) based in Paris, to which about a hundred authors' and composers' societies from about fifty countries - both developed and developing - belong. It has earmarked resources for providing copyright aid programmes, in collaboration with the two international secretariats, to assist in the implementation of copyright laws and the improvement in their enforcement in developing countries. Appendix F contains information about these copyright organisations.