

## APPENDIX A

### COUNTRIES BELONGING TO THE BERNE UNION CONVENTION AND THE UNIVERSAL COPYRIGHT CONVENTION AS AT 1 JANUARY 1983

Be = Berlin 1908  
Br = Brussels 1948

R = Rome 1928  
P = Paris 1971

<i>Country</i>	<i>Member of Berne Union</i>	<i>Text adhered to</i>	<i>Member of UCC</i>	<i>Member of both</i>
Algeria			x	
Andorra			x	
Argentina	x	Br	x	x
Australia	x	P	x	x
Austria	x	Br	x	x
Bahamas	x	Br	x	x
Bangladesh			x	
Belgium	x	Br	x	x
Benin	x	P		
Brazil	x	P	x	x
Bulgaria	x	P	x	x
Cameroon	x	P	x	x
Canada	x	R	x	x
Central African Republic	x	P		
Chad	x	Br		
Chile	x	P	x	x
Columbia			x	
Congo	x	P		
Costa Rica	x	P	x	x
Cuba			x	
Cyprus	x	R		
Czechoslovakia	x	P	x	x

<i>Country</i>	<i>Member of Berne Union</i>	<i>Text adhered to</i>	<i>Member of UCC</i>	<i>Member of both</i>
Democratic Kampuchea			x	
Denmark	x	P	x	x
Ecuador			x	
Egypt	x	P		
El Salvador			x	
Fiji	x	Br	x	x
Finland	x	Br	x	x
France	x	P	x	x
Gabon	x	P		
German Democratic Republic	x	P	x	x
Germany, Federal Republic of	x	P	x	x
Ghana			x	
Greece	x	P	x	x
Guatemala			x	
Guinea	x	P	x	x
Haiti			x	
Holy See	x	P	x	x
Hungary	x	P	x	x
Iceland	x	R	x	x
India	x	Br	x	x
Ireland	x	Br	x	x
Israel	x	Br	x	x
Italy	x	P	x	x
Ivory Coast	x	P		
Japan	x	P	x	x
Kenya			x	
Laos			x	
Lebanon	x	R	x	x
Liberia			x	
Libya	x	P		
Liechtenstein	x	Br	x	x
Luxembourg	x	P	x	x
Madagascar	x	Br		
Malawi			x	
Mali	x	P		
Malta	x	R	x	x
Mauritania	x	P		
Mauritius			x	
Mexico	x	P	x	x
Monaco	x	P	x	x
Morocco	x	Br	x	x

<i>Country</i>	<i>Member of Berne Union</i>	<i>Text adhered to</i>	<i>Member of UCC</i>	<i>Member of both</i>
Netherlands	x	Br	x	x
New Zealand	x	R	x	x
Nicaragua			x	
Niger	x	P		
Nigeria			x	
Norway	x	Br	x	x
Pakistan	x	R	x	x
Panama			x	
Paraguay			x	
Peru			x	
Philippines	x	Br	x	x
Poland	x	R	x	x
Portugal	x	P	x	x
Romania	x	R		
Senegal	x	P	x	x
South Africa	x	Br		
Soviet Union			x	
Spain	x	P	x	x
Sri Lanka	x	R		
Suriname	x	P		
Sweden	x	P	x	x
Switzerland	x	Br	x	x
Thailand	x	Be		
Togo	x	P		
Tunisia	x	P	x	x
Turkey	x	Br		
United Kingdom	x	Br	x	x
United States of America			x	
Upper Volta	x	P		
Uruguay	x	P		
Venezuela	x	P	x	x
Yugoslavia	x	P	x	x
Zaire	x	P		
Zambia			x	
Zimbabwe	x	R	x	

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## APPENDIX B

### SPECIAL CONCESSIONS FOR DEVELOPING COUNTRIES

#### General Background

1. The provisions under which developing countries may provide for the grant of compulsory licences to translate and reproduce certain categories of copyright works are contained in the Berne Convention in the Appendix to the Paris text, and in UCC in Articles V bis - V quater. Prior to 1971 certain members of the Berne Union enjoyed special translation rights exercisable ten years after the first publication of a work, and under UCC there was a similar provision save that the corresponding period was seven years and not ten. It is not known to what extent, if any, translations were ever made pursuant to either of these provisions.

2. The purpose of the 1971 regimes in both conventions is to enable developing countries to provide for the issue of non-exclusive, non-assignable compulsory licences carrying an obligation to make fair payment to the copyright owner, to translate and/or reproduce works protected by the conventions provided the translations and/or reproductions are intended exclusively for systematic instructional activity (or in some cases for teaching, scholarship or research). During an initial period after first publication in the developing country (the duration of which varies depending upon the category of work) the copyright owner

enjoys his normal exclusive rights and no compulsory licences may be granted during that period. However, if at the expiry of the period no translations or reproductions required in the developing country made with the authority of the copyright owner are available there, then compulsory licences may be granted by the competent authority designated by the law.

#### **Rules and Conditions**

3. The detailed rules and conditions which regulate the granting of such licences are contained in an elaborate code which is virtually impossible to condense, but the essential features are:

#### *translation licences*

4. Translation licences may be granted -

- (a) only for the purpose of teaching, scholarship or research; or
- (b) for use in broadcasting, where the broadcast is intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession.

5. If the translation is into a language which is in general use in the developing country, then three years must have elapsed from the date when the work was first published, and there must be no translation in that language made by the copyright owner currently available.

6. If the translation is into a language which is not in general use in one or more developed countries, the three year period may be reduced to one year; and the one year period may be applied even to translations into a language which is in general use amongst certain developed countries, provided those developed countries agree; but in no case may the one year period be applied to translations into English, French or Spanish.

*reproduction  
licences  
(i.e. for  
re-printing)*

7. Compulsory licences for reproducing works may be granted if, at the expiry of the periods stipulated in paragraph 8 below, copies are not available in the developed country at a price reasonably related to the prices normally charged for comparable works and provided the copies to be made under the licence will be used in connection with systematic instructional activity.

8. The stipulated periods are -

- (a) seven years for works of fiction, poetry, drama and music, and art books;
- (b) three years for works of the natural and physical sciences, including mathematics, and of technology;
- (c) five years for all other works.

*conditions  
applicable  
to both types  
of licence*

9. Each licence must be non-exclusive and non-assignable, and may be granted only to nationals of the developing country.

10. Each licence is limited to the country in which it is granted, and no copy of translations or reproductions made under it may be exported (save that translations into languages other than English, French or Spanish may be exported by the authority granting the licence for the use of its nationals in another country, provided that country agrees and the translations are to be used for teaching, scholarship or research and not for any commercial purpose).

11. The right to make copies under a licence ceases as soon as equivalent copies are made available by the copyright owner.

12. Each compulsory licence must provide for payment to the copyright owner of royalties consistent with the standard of payment normally applying to licences freely negotiated between the two countries concerned, and the competent authority in the developing country must make all efforts to ensure payment in "internationally

convertible currency".

13. No licence for either translation or reproduction may be issued if the author has withdrawn the work from circulation to the public.

#### **Procedure**

14. In a developing country which has adopted measures for the granting of compulsory translation or reproduction licences, an applicant must submit his application for a licence to the designated competent authority, and in addition to evidence that the foregoing rules and conditions have been complied with, he must show -

(a) that he has applied to the copyright owner for permission to translate or reproduce the work, and has been refused such permission; or

(b) that he has with due diligence sought and failed to find the copyright owner, and has sent copies of the application to the publisher of the work and to such copyright information centre as has been designated.

15. After an application has been submitted no licence may be issued until a period for negotiation with the copyright owner has elapsed. This period may be three months, six months or nine months depending on the type of licence sought, the category of the work and the grounds for the application.

16. If translations are issued, or reproductions are made available at appropriate prices by the copyright owner during the "negotiating period", then no licence may be issued.

17. All translations or reproductions made under a licence shall bear the original title of the work and the name of its author.

## APPENDIX C

### LIST OF PROTECTED WORKS UNDER THE BERNE CONVENTION - ARTICLE 2

1. The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.
2. It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general of any specified categories of works shall not be protected unless they have been fixed in some material form.
3. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.
4. It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.



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

6. The works mentioned in this Article shall enjoy protection in all countries of the Union'. This protection shall operate for the benefit of the author and his successors in title.

7. Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

8. The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

## APPENDIX D

### EXCEPTIONS TO COPYRIGHT OWNER'S RIGHT OF CONTROL AS CONTAINED IN SECTION 7 OF THE TUNIS MODEL LAW ON COPYRIGHT FOR DEVELOPING COUNTRIES

#### Commentary

On the basis of Article IV bis of the Universal Convention and Articles 2 bis, 9, 10 and 10 bis of the Berne Convention, Section 7 of the Model Law lists a number of exceptions which are in conformity with the spirit and letter of the two Conventions.

The *preamble* to Section 7 specifies that the uses of protected works permitted under this Section without the author's authorization, by way of exception to the rights granted to him under Section 4, may be made "either in the original language or in translation". This means that all the limitations provided for in Section 7 are likewise applicable in cases where the work has first to be translated to allow the permitted use to be made.

#### Text

7. Notwithstanding Section 4, the following uses of a protected work, either in the original language or in translation, are permissible without the author's consent:

(1) in the case of any work that has been fully published:

(a) the reproduction, translation, adaptation, arrangement or other

transformation of such work exclusively for the user's own personal and private use;

Commentary

*Subparagraph (a) of paragraph (i)* permits specified uses of a work for the user's own personal and private use. The expression "personal and private use" is interpreted with varying degrees of restrictiveness, but as a rule this concept is the reverse of collective use and presupposes that no profit-making purpose is pursued; a case in point is the student who copies a text, or causes it to be copied, in accomplishing his work of personal research or his studies. Certain delegations on the Tunis Committee wondered whether the words "adaptation, arrangement or other transformation" should be retained, as in fact such action constitutes a serious violation of the author's moral rights. It was decided that they would be kept, however, in view of the practical impossibility of controlling such acts in the hypothetical case of their being strictly private in character.

Text

(b) the inclusion, subject to the mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;

Commentary

*Subparagraph (b) of paragraph (i)* deals with quotations. A quotation consisting of the word-for-word reproduction of passages from a work, with a view to reviewing or criticizing the work or to using passages of it for purposes of illustration or explanation, can only cover extracts from works. "Press summaries", which consist almost exclusively of a compilation of extracts from articles in newspapers or periodicals, are given a special mention. A quotation may equally well be made from a book,

a newspaper, a cinematograph film, a sound of visual recording, a broadcast, etc. The limits of permissible quotation depend on the extent to which it is justified by the purpose and by fair practice. In all cases the source and the name of the author of the work must be mentioned. Respect of the "extent justified by the purpose" is a factor that varies according to the circumstances of a case, and therefore can only be evaluated by the courts. Thus a quotation made in good faith, in accordance with fair practice and within the limits of requirements, for the demonstration of a proposition for instance, is lawful. If, on the other hand, it transpires that the demonstration of the proposition did not call for quotations, or if they are too long or too numerous, the courts may rule that the extent justified by the purposes has not been respected.

Text

**(c) the utilization of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching, to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast for use in schools, education, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast or the recording;**

Commentary

*Subparagraph (c) of paragraph (i)* permits the use of a work for illustration in teaching by means of publications, broadcasts or sound or visual recordings. In some respects this exception to copyright in the work thus used joins up with the previous exception, namely, "quotation". But there is a further restriction on the exception for the purpose of illustration: the illustrations must actually illustrate the teaching, and they are permitted only to the extent justified by the purpose. In practice this means that the publication, broadcast or

sound or visual recording in which the work is used by way of illustration is itself made solely for teaching purposes. Also, as in the case of quotations, the illustration must be compatible with fair practice and in all cases the source and the name of the author of the work used must be mentioned.

This provision likewise authorizes communication, for teaching purposes, of a work which has been broadcast for use in schools, education, universities and professional training, terms merely designed to render more explicit the concept of use by way of illustration for teaching purposes.

Text

(ii) in the case of any article published in newspapers or periodicals on current economic, political or religious topics, and in the case of any broadcast work of the same character, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when published, or the said broadcast work when broadcast, is accompanied by an express indication prohibiting such uses, and provided that the source of the work when used in the said manner is clearly indicated;

Commentary

*Paragraph (ii)* deals with articles on current economic, political or religious topics published in newspapers or periodicals, or broadcast works of the same character. Unlike press news items, which are merely impersonal statements of fact, these articles are genuine works. Like many current legislations, the Model Law allows them to be reproduced in the press or communicated to the public without the author's authorization, but on certain conditions: the articles in question must be on one of the three topics limitatively enumerated, they must have been published in the press or broadcast, and the source of the work must be clearly indicated. However, the provision specifies that the use of the work may be prohibited by an express indication to this effect.

Text (iii) for the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informatory purpose, of any work that can be seen or heard in the course of the said current event;

Commentary *Paragraph (iii)* permits the use of any work that can be seen or heard in the course of a current event for reporting on that event by means of photography, cinematography or by other methods of communication to the public. It is essential that such use should be purely incidental or accidental, that the work used should be merely accessory to the subject of the report and that the use of the work should not exceed the extent justified by the informatory purpose of the report. It is natural in this case that, as many legislations moreover provide, there should be no necessity to seek the authorization of the author of the work thus used.

Text (iv) the reproduction of works of art and of architecture, in a film or in a television broadcast, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where they can be viewed by the public or are included in the film or in the broadcast only by way of background or as incidental to the essential matters represented;

Commentary *Paragraph (iv)* also exempts from the author's consent the reproduction in a film or television broadcast of architectural works or works of art in two cases: if the works are permanently located in a public place, their reproduction is totally unrestricted; if not, their inclusion in the film or broadcast is permitted only if it is by way of background or incidental to the main subject.

Text

(v) the reproduction, by photographic or similar process, by public libraries, non-commercial documentation centres, scientific institutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are limited to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;

Commentary

*Paragraph (v)* deals with the reprography of works protected by copyright. It seemed preferable to deal with this question only in very general terms and by reference to Article 9(2) of the Berne Convention, which provides that "it shall be a matter for legislation in the countries of the Union to permit the reproduction of such [literary and artistic] works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." The latter two conditions have been taken over word for word. The "special cases" are defined in the Model Law as cases where the reproduction is "by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, ... provided that such reproduction and the number of copies made are limited to the needs of their activities."

Text

(vi) the reproduction in the press or the communication to the public of:

(a) any political speech or speech delivered during legal proceedings, or

(b) any lecture, address, sermon or other work of the same nature delivered in public, provided that the

use is exclusively for the purpose  
of current information,

the author retaining the right to publish  
a collection of such works.

Commentary

Finally, *paragraph (vi)* permits the reproduction, but exclusively in the press, or communication to the public of certain oral works on specified conditions. In this connection the Model Law distinguishes between:

(a) political speeches and speeches delivered during legal proceedings; their use is subject to one restriction: they may not without authorization be brought together in a collection of the author's works, even if that collection is published in the press; and

(b) lectures, addresses, sermons and other works of the same nature delivered in public. Their use is permissible only for the purposes of current information and, like political and judicial speeches, they may not be brought together in a collection of the author's works.



## APPENDIX E

### GUIDELINES FOR NEGOTIATING A CONTRACT FOR THE USE OF A WORK PROTECTED BY COPYRIGHT

Because copyright is a specialised field and because many of the expressions used have special meanings given either by the law or by accepted business use, it is especially necessary for contracts relating to copyright works to be carefully worded. The following guidelines list a number of important points which should be borne in mind when a contract is being negotiated.

Copyright contracts should be in writing

1. Every agreement should be in writing; permission to use a copyright work may be given orally or may be implied from conduct, but in practice it is most desirable that any business arrangement affecting a copyright work should be in writing.

Describe subject of contract carefully

2. The work which is the subject of a contract must be carefully described; in the case of a musical work of which there is more than one arrangement, it is important that the contract specify either that it relates to the work in all its arranged forms or identify exactly which arrangements are covered by the contract. As titles are not protected by copyright, the names of works, particularly musical works, are often duplicated; therefore it is always desirable to describe a work by referring not only to its title but also to its author or composer or artist as the case may be.

Assignment or licence	3. The language of the contract must show quite clearly whether rights are being assigned or whether a licence is simply being granted.
Exclusive or non-exclusive	4. If a licence is granted it must be clearly stated whether it is exclusive or non-exclusive.
Rights must be precisely described	5a. The particular right or rights which are being assigned or licensed must be described with precision. Certain expressions which have been in common use in a particular industry, such as book publishing for example, have acquired a more or less generally accepted meaning but, nevertheless can give rise to uncertainty and dispute unless carefully defined in the contract. Thus in book publishing "volume form publication rights" is an expression often used but not often defined. It is generally understood to mean the right to publish a hard-back edition of a book for sale through normal retail outlets or through book clubs or in a "condensed book" form.
Expressions in common use	"Paperback rights" simply means the right to print and sell through any outlet copies of the book in paperback form.
<i>volume form publication</i>	
<i>paperback rights</i>	
Other rights to be con- sidered	5b. Neither "volume form publication rights" nor "paperback rights" include the following rights which should be expressly reserved or be the subject of specific assignment or licence -
<i>cheap editions</i>	(i) The right to publish cheap editions. If this right is granted it should be clear what a cheap edition is - usually an edition published at less than two-thirds of the price of the original publication.
<i>remainder sales</i>	(ii) The right to authorise remainder sales - i.e. the right to sell stock at substantially reduced prices on which the author normally gets no royalty. It is therefore desirable to define the price below which a sale is to be treated as a remainder sale - usually about 25% of the price of the original publication.

<i>serial rights</i>	(iii) Serial rights - i.e. the right to publish extracts in a newspaper, either before or after the first publication in hardback or paperback form.
<i>reprint rights</i>	(iv) The reprint right - i.e. the right to authorise someone else, usually a book club, to produce its own edition.
<i>reprographic rights</i>	(v) The reprographic reproduction right - i.e. the right to make facsimile copies by using photocopying or similar equipment.
<i>sound and video recording rights</i>	(vi) Sound and video recording rights - i.e. the right to make a record or a tape without or with accompanying visual images of the work.
<i>strip cartoon rights</i>	(vii) Strip cartoon rights - i.e. the right to publish the work, suitably adapted, in the form of a strip cartoon.
<i>anthology and quotation rights</i>	(viii) Anthology and quotation rights - i.e. the right to include the work, or extracts from it, in anthologies or other similar compilations, or to publish substantial quotations from it (otherwise than purely for criticism or review purposes).
<i>dramatic rights</i>	(ix) Dramatic rights - i.e. the right to adapt and present the work in dramatic form, as a play.
<i>film rights</i>	(x) Film rights - i.e. the right to adapt the work so as to make a film out of it.
<i>broadcasting rights</i>	(xi) TV and radio broadcasting rights - i.e. the right to adapt the work for the purpose of broadcasting it either on television or on radio.
<i>translation rights</i>	(xii) Translation rights.

Rights not  
mentioned  
to be  
reserved

5c. The foregoing list is not necessarily comprehensive. It indicates, however, most of the kinds of use which the parties to a contract for the exploitation of a literary work should consider. Those rights to be covered by the contract should be fully described, and the contract should always state that all rights and kinds of use not expressly mentioned in the contract are reserved to the author or other copyright owner.

Musical works  
- performing  
and mechanical  
rights

5d. In the case of musical works the terms "performing rights" and "mechanical rights" are frequently used in contracts. Their normal meanings are explained in paras 55 and 57. The contract should include definitions specifying precisely what they are to cover.

Commissioned  
portraits -  
ownership of  
copyright

6. When a photographer or painter is commissioned to do a portrait or other special assignment, the contract should clearly state whether the copyright in the photograph or painting is to belong to the photographer or artist or to the person who commissioned it. In some cases it may be reasonable for some of the rights of copyright to be retained by the photographer or artist and some acquired by the person who commissioned the work. For example, a company which commissions the painting of a portrait of a distinguished chairman might quite reasonably expect to acquire the right to make reproductions of the painting for distribution to its branch offices, whereas the painter might wish to retain the right to authorise the reproduction of the portrait in, for example, a book about the particular industry of which the firm in question was a leading member.

Territorial  
limits

7. The countries or territories for which the rights are assigned or licensed must be precisely specified. Colloquial or political regional terms, no matter how much they are in everyday use, should be avoided as few are precise in meaning. Thus, the Commonwealth, the West Indies, Latin America, South East Asia, South West Africa, are all expressions of

inexact connotation.

Financial  
terms

8. The financial terms are obviously of paramount importance. Payment may take every conceivable form - lump sum, fixed periodical payments, percentages of sales proceeds or other income, and so on. The following points indicate the main matters and alternatives the parties should consider:

(a) When an author is commissioned to write a book, a writer to produce the script for a film or television programme, a composer to compose music for a film or a lyric writer to write the words for a song, or indeed a TV commercial, his contract should provide, either expressly or in its effect, for two forms of payment -

(i) a commissioning fee for his creative effort in producing the work irrespective of whether it is ultimately used;

(ii) a royalty related to the extent and commercial value of the use to which the work is put.

Commissioning  
fees should  
be outright

(b) Lump sum payments may take various forms depending on the purpose of the payment. A fee for the purpose mentioned in subparagraph (a)(i) above should be an outright payment, neither returnable nor set off against future royalties; it may be paid in instalments, part on the signing of the agreement and part on the delivery of the script etc.

Advances may  
be set off

(c) A lump sum payment which is an advance is not normally returnable, though to such extent as the work earns royalties the advance may be set off against the author's share of the royalties. However, it is reasonable that the author should receive part of his share of the royalties, perhaps 50%, from the moment they accrue, the other 50%

being applied as a set off against the advances he has received.

#### Royalty rates

(d) The rate of royalty payable to an author or composer varies considerably depending on the kind of work, the kind of use, the standing of the author or composer, and other factors. The following examples must be regarded as very broad guides -

(i) The author of a book should expect to receive a royalty of 10 - 15% of the published retail price of his book for the volume form publication rights. It is common for the rate to increase, within the range just mentioned, as the number of copies sold rises - e.g. 10% on the first 2,500; 12½% on the next 2,500 and 15% on all further copies sold. For paperback rights an author may expect the equivalent of 7½%, rising in the case of established popular writers to perhaps 15%. If the author is unable to license the paperback rights directly and they are licensed by his hardback publisher instead, the author may only be able to receive a proportion of the royalties paid by the paperback publisher. This proportion should normally not be less than 60%.

(ii) When sales of the book are promoted abroad, (otherwise than in the case of the United States of America, for which see paragraph (cc) below), special royalty terms will normally apply. For books first published in the United Kingdom there are two common formulae -

(aa) the standard royalty rates for domestic sales are applied, but only to the *amounts actually received* by the publisher for

all copies sold abroad or for copies sold in the United Kingdom *at a discount of 45% or more* for export;

(bb) reduced royalty rates (perhaps half the United Kingdom rates) are applied to *the United Kingdom published* price for all copies sold abroad or for copies sold in the United Kingdom at a discount of 45% or more for export.

(iii) In the case of a book first published outside the United States of America but intended to be sold in that country, many arrangements are possible. Three alternatives might be -

(aa) where the first publisher has a subsidiary or established distribution arrangements in the United States of America, the author should expect to receive the full royalty rates on all American sales calculated on the American published price;

(bb) the first publisher will sub-licence an American publisher to produce a United States edition. In such a case the author should seek at least 80% of the receipts by the first publisher from the United States sub-publisher;

(cc) the first publisher may ship bound or unbound copies of his edition to the United States of America for distribution by a United States publisher. In this case the author will probably not be

able to negotiate more than 10% - 12½% of the first publisher's receipts from the United States' sub-publisher.

(iv) Unless the author employs an agent, the other rights listed in subparagraphs (i) - (xii) of para 5 above will normally be licensed by the author's main hardback publisher; in those cases where the publisher himself does not invest in the exploitation of these other rights his service to the author is, in effect, that of agent or negotiator for which it is reasonable that he should receive a share between 15% and 25% of the royalties or other payments received from the exploitation of these rights, the balance, 85% - 75%, going to the author.

(v) In the case of musical works there is a similar distinction, as in the case of literary works, between royalties from sales of sheet music (the cost of producing and selling of which are entirely borne by the publisher) and royalties on other forms of exploitation, such as recordings, synchronisation on to the soundtrack of films and TV programmes, and so on.

On sales of sheet music the royalty payable to the composer/lyric writer should not be less than 10%.

On royalties accruing from public performances, broadcasting, recordings and all other forms of exploitation, the share of the composer/lyric writer should never be less than 50%; and for established and popular composers/lyric writers there has been a growing trend for them to receive a greater share than 50%. The



important consideration is the extent to which the publisher is responsible for securing these forms of exploitation and does in fact provide a service for the composer in respect of them.

(vi) In no case should a share of the royalties or fees payable under a contract relating to the use of a copyright work - whether it be between author or composer and publisher, between publisher and sub-publisher, or between script-writer and film producer - be expressed as a percentage of "profits". The determination of "profits" is a profitable source of controversy and in relation to the commercial exploitation of a single work it is quite impracticable to attempt to ascertain. Percentage shares should always be applied to the gross proceeds from the exploitation in question.

(vii) In contracts which contemplate exploitation in other countries it is important to be clear whether the agreed percentages are to be applied to the gross proceeds accruing in the foreign countries or only to the net amounts received in the country where the contract is made. Where the party accounting for the receipts operates through subsidiaries in the foreign countries it is desirable, if at all possible, to avoid expressing the agreed shares as applying to the net amounts received in the country of contract.

#### Duration

9a. It is essential that the contract specifies with precision the duration for which the rights have been assigned or licensed. At the turn of the century authors and composers normally granted rights for the entire copyright life of the work in question; today this is not

necessarily standard practice. The overriding consideration is that the publisher, film producer or broadcaster should acquire the rights for a period which is reasonable, having regard to the use to which the work in question is put.

9b. Broadly speaking, the use to which copyright works are put falls into two categories - first, where the work is exploited on its own - i.e. the printing and publication of a book or a song; secondly, where the work is incorporated in a larger work forming simply one of the components in it - e.g. the script or sound-track of a film or TV programme.

In the first case the period for which it is reasonable that the publisher acquires rights should be related to the period within which he may be expected to recover his investment in the exploitation of the work and receive a fair return on that investment, having regard, of course, to the kind of work. Thus, today it would be reasonable to expect the publisher of a work of fiction to have realised the commercial potential of the work within a period of ten years; on the other hand, in the case of a textbook, particularly one likely to require new editions from time to time, a much longer period would probably be reasonable. In either case it is also reasonable that a publisher should have a first option at the end of the first period to obtain a renewed grant on terms no less favourable to the author than those which a competing publisher is prepared to offer.

In the second case, it is clearly reasonable that the film producer or broadcaster should acquire the *rights needed for the exploitation* of his film or programme for the entire copyright life of the film or programme.

Exploitation  
Period

10. Every contract should contain a clear obligation on the party responsible for the exploitation of the work (e.g. the publication) that it be so exploited within a specified

period, say two years, in default of which the other party should be entitled to terminate the contract in which case all rights will revert to the grantor.

#### Accounts

11. Every contract should require the party responsible for exploitation and the receipt of the revenue generated to submit accounts at regular intervals (usually six months) giving reasonable details of all income received from all sources. In the case of works likely to generate income in foreign countries in foreign currency, it is desirable to stipulate the currency in which accountings are to be made.

#### Enforcement

12. Finally, again with contracts which are likely to cover commercial exploitation in foreign countries, it is desirable to state which national legal system shall govern the interpretation and enforcement of the contract.

## APPENDIX F

### COPYRIGHT ORGANISATIONS

#### WIPO

The acronym WIPO stands for the World Intellectual Property Organisation. The origin of WIPO is the Paris Convention for the Protection of Industrial Property of 1883 which provided for an "International Bureau or Secretariat". In 1886, with the establishment of the Berne Convention for the protection of literary and artistic works, provision was also made for a Secretariat for that Convention. The two Conventions were united in 1893. Today WIPO is responsible for administering some fifteen conventions, treaties and international agreements relating to various forms of industrial property - i.e. trademarks, designs, appellations of origin, patents, type-faces, scientific discoveries and new plant varieties. In the field of intellectual property WIPO administers -

(a) The Berne Convention for the protection of literary and artistic works, in all its textual versions, reflecting some six revisions between 1886 and the last in Paris in 1971/72;

(b) The Rome Convention of 1961 for the protection of performers, producers of phonograms and broadcasting organisations;

(c) The Geneva Convention of 1971 for the protection of producers of phonograms against unauthorised duplication of their phonograms (the "anti-piracy convention");

(d) The Brussels Convention of 1974 relating to the distribution of programme-carrying signals transmitted by satellite.

The address of WIPO is 34, Chemin des Colombettes (Place des Nations), CH-1211 Geneva 20, Switzerland.

### **UNESCO**

The Universal Copyright Convention was established under the auspices of the United Nations in 1952 and a special division of UNESCO was established to administer the Convention and deal with copyright matters.

The address of the Division is UNESCO, 7, Place de Fontenoy, 75700, Paris, France.

The Copyright Division of UNESCO has, among other activities in this field, promoted the establishment of Copyright Information Centres, listed below.

#### **International Copyright Information Centres**

International Copyright Information Centre, Unesco, Place de Fontenoy, 75700 Paris, FRANCE.

#### **Regional Copyright Information Centres**

Centro regional para el Fomento del Libro en América Latina, Calle 70 No. 9-52, Bogota, COLOMBIA.

Unesco Regional Centre for Book Development in Asia, 26/A, P.E.C.H. Society, Karachi 29, PAKISTAN.

### **National Copyright Information Centres**

*Australia* Australian Copyright Council,  
24 Alfred Street, Milsons Point, N.S.W.,  
Australia 2061.

*Belgium* Centre national d'information sur le  
droit d'auteur, Fédération des Editeurs belges,  
111 avenue du Parc, B-1060 Bruxelles.

*Bulgaria* Agence pour la protection des droits  
d'auteur, Pl. Slaveikov 11, Sofia.

*Canada* Canadian Copyright Institute, Suite  
305, 8 King Street East, Toronto, Ontario  
M5C 1B5.

*France* Centre d'information sur le droit  
d'auteur, Hotel du Cercle de la Librairie,  
117 Boulevard Saint-Germain, 75279 Paris  
Cedex 06.

*Federal Republic of Germany* Urheberrechtsburo,  
Borsenverein des Deutschen Buchhandels E.V.,  
Grosser Hirschgraben 17/21, 6 Frankfurt/Main 1.

*German Democratic Republic* Copyright  
Informations Zentrum der D.D.R., Krausenstrasse  
9-10, 108 Berlin.

*Hungary* ARTISJUS, Szerzoi Jogvédő Hivatal,  
Vorosmarty tér 1, Budapest V.

*Israel* International Promotion and Literary  
Rights Department, Book Publishers Association  
of Israel, 29 Carlebach Street, P O Box 1317,  
Tel Aviv.

*Italy* Centro Nazionale del Diritto d'Autore,  
Ufficio della Proprieta Litteraria, Artistica  
e Scientifica della Presidenza del Consiglio  
dei Ministri, Via Boncompagni 15, Roma.

*Mexico* Centro Nacional de Informaci3n sobre  
el Derecho de Autor, Mariano Escobedo 438, 6°  
piso, Mexico 5, D.F.

*Spain* Centro nacional de Información sobre el Derecho de Autor, I.N.L.E., Santiago Rusinol 8, Madrid 3.

*United Kingdom* The National Clearing House of the United Kingdom, Book Development Council, 19 Bedford Square, London WC1B 3HJ.

*United States of America* International Copyrights Information Centre (INCINC), Association of American Publishers, 1920 L Street, NW, Washington D.C. 20036.

*U.S.S.R.* V.A.A.P., Agence soviétique pour les droits d'auteur, 6-a Bolchaia Bronnaia, Moscow 103-104.

### **CISAC**

The Confederation Internationale des Societes d'Auteurs et Compositeurs, established in 1926, now has a membership of over 100 authors' and composers' societies from about 50 countries. In the field of music the documentation banks maintained by the member societies contain copyright information about most of the world's music.

The names and addresses of the national member societies may be obtained from the Secretariat of CISAC, which is at 11, Rue Keppler, 75116 Paris, France.

### **IFPI**

International Federation of Producers of Phonograms and Videograms, established in 1933 with a membership today of 600 phonogram members from 70 countries; with a video division established in 1980 with a current membership of 250 members from 18 countries. Its Secretariat is at 123, Pall Mall, London, SW1Y 5EA.

## **IPA**

The International Publishers Association, representing 43 national affiliated associations, with a separate music section; the Secretariat is at 3, Avenue de Miremont, Geneva.