

BUREAUX INTERNATIONAUX
RÉUNIS POUR LA PROTECTION
DE LA PROPRIÉTÉ INTELLECTUELLE
GENÈVE, SUISSE

BIRPI

UNITED INTERNATIONAL
BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY
GENÈVA, SWITZERLAND

CONVENTION DE BERNE

BERNE CONVENTION

CONFÉRENCE DIPLOMATIQUE DE STOCKHOLM, 1967
(Droit d'auteur)

DIPLOMATIC CONFERENCE OF STOCKHOLM, 1967
(Copyright)

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COMITÉ D'EXPERTS GOUVERNEMENTAUX
COMMITTEE OF GOVERNMENTAL EXPERTS

(1965)

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RAPPORT GÉNÉRAL DU GROUPE D'ÉTUDE
SUÉDOIS/BIRPI
ÉTABLI AU 1^{er} JUILLET 1964

GENERAL REPORT OF THE SWEDISH/BIRPI STUDY GROUP
ESTABLISHED AT JULY 1, 1964

Article will require to be replaced by a provision to the effect that the Convention is administered by the Organisation established by the said Administrative Convention.

ARTICLES 22 and 23

In the eventuality expressed above in connection with Article 21, the provisions of these two Articles would have to be deleted.

ARTICLE 24

If the draft Administrative Convention relating to BIRPI is adopted, the second and third sentences of paragraph 2, which deal with the procedure to be adopted for the preparation of the Revision Conferences, would require to be deleted. According to this draft, these questions will be dealt with in the new Administrative Convention.

ARTICLE 25

If the draft Administrative Convention relating to BIRPI is adopted, the reference to the Government of the Swiss Confederation in paragraph 2 would have to be changed to a reference to the Organisation established by the said Administrative Convention.

For the reasons given in connection with Article 25bis, it is proposed to place the second sentence of paragraph 3 in that Article.

ARTICLE 25bis

Article 25bis, which is completely new, is intended to provide for the special needs of the developing countries. It gives

these countries the right to make reservations in respect of the provisions of the Convention on certain points.

Special provisions for the benefit of these countries have been called for on several occasions.

(1) In its Recommendation No. 1, the African Study Meeting on Copyright, convened by BIRPI and UNESCO at Brazzaville, from August 5 to 10, 1963, recommended, among other things, that in the course of the preparations for the Stockholm Conference the following should be considered :

1. a review of Article 7 concerning the term of protection, with a view to its reduction;
2. the modification of Article 20, with a view to making possible bilateral agreements promoting exchanges, in derogation of the present text of that provision; and
3. the inclusion of special provisions safeguarding the interests of the African countries in respect of their own folklore, on the one hand, and permitting, on the other hand, the free use of protected works for educational and scholastic purposes.

(2) The 1963 Committee of Experts hoped that these questions would be examined by the Study Group or by a special expert committee to be convened for that purpose.

(3) In Resolution No. 8, adopted at their joint session in New Delhi in December 1963, the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee,

having heard the proposals of the Indian delegation that there should be a study of the possibility :

- a) of introducing into the Conventions the right of member countries to grant compulsory licences to reproduce copyrighted works for educational purposes, and
- b) of introducing in the Berne Convention provisions relating to translation, similar to those in the Universal Copyright

Convention,

invited the Secretariats to make a study of these questions and report on them to the next joint session of the Committees.

(4) Some international non-governmental organisations also expressed the hope that the developing countries would be able to organise protection on a lower level than that provided by the Brussels text of the Berne Convention.

Most of those concerned are probably aware that these hopes are in general well-founded. The objection has of course been made that if the developing countries find themselves unable to organise protection as effective as accession to the Berne Convention would imply, they ought to become parties to the Universal Copyright Convention, instead of the Berne Convention. There is no doubt, however, that the adoption by the developing countries of copyright legislation within the framework of the Berne Convention would be of considerable advantage to the authors. Conditions in several of these countries will certainly eventually improve and one of the consequences of this development will be the increasing exploitation of literary and artistic works. In these circumstances, it will naturally be to the authors' advantage if protection has been organised from the start, on the pattern of the Berne Convention.

From the technical angle, there are various ways of organising a system of special rules. One possible solution would be to incorporate such a system in an additional protocol annexed to the Berne Convention. The Study Group felt, however, that in many respects the introduction of special rules within the text of the Convention itself was a better solution. It has been decided to give these rules in the form of provisions entitling the countries in question to make reservations, within limits, in respect of some of the rules in the Convention.

This solution owes its inspiration to the fact that the Convention already contains a provision allowing for national

reservations, which was of course designed particularly for the benefit of the less-advanced countries. The provision in question is that contained in Article 25, paragraph 3, which deals with the right to make reservations in respect of the right of translation.

It is desirable that the new provisions should only operate for the benefit of the developing countries. The Study Group found it difficult however to establish criteria suitable for defining objectively the countries coming within this category. Instead of choosing this solution, it is proposed that each State should be left free to decide whether its stage of development allows it to take advantage of the right of reservation. Up to a point, it would seem possible to invoke, by way of a precedent, the provision in Article 23 concerning the right granted to each member country to choose the contribution class in which it wishes to be placed.

It is proposed that the reservations will be valid for ten years and may be extended for a further period of ten years. The question whether the reservations may be extended beyond that date will have to be settled by the Revision Conference after the one held at Stockholm. The proposed draft Convention further provides that a reservation may be withdrawn when the country availing itself of such reservation considers that it no longer has any need of it.

It was felt advisable to place the new rules relating to reservations in a special text, within the framework of the Convention. Also included in this new Article (Article 25bis) is the provision on the right of translation referred to above, which is at present in Article 25.

Consequently, the new Article contains five reservations :

(a) The first corresponds, as stated, to the provision in Article 25 on the right of translation. No alteration has been made to the wording of the Brussels text. The fact that the provision has changed its place, however, means that the right of reservation will be more restricted than hitherto, because the new

Article only operates in favour of developing countries. In this respect, the proposed draft Convention represents a strengthening of copyright.

(b) The second reservation possible concerns the term of protection. On this point, the Brussels text fixes a compulsory minimum of fifty years from the date of the author's death. This stipulation was considered to be too rigid for developing countries and the proposed draft Convention offers them the possibility of substituting for it the Rome text, which contains no compulsory provisions on the term of protection.

(c) The third reservation concerns the right of radio-diffusion. This prerogative was extended at the Brussels Conference, so that its scope is very considerable at present. It applies, for instance, to the use of receiving sets in cafés, etc. It was considered reasonable to grant to developing countries the possibility of applying the rules of the Rome text here, instead of those of the Brussels text, that is to say, the possibility of protecting this right within the limits which were considered adequate for industrialised countries between 1930 and 1940.

(d) The fourth reservation concerns the right to limit the copyright in cases where a work is used for educational or scholastic purposes. Developing countries seem to attach great importance to the possibility of reserving to themselves the right to determine their own national regulations in such cases. The question is probably of no great importance to authors.

(e) The fifth reservation relates to the right of developing countries to make between each other regional Arrangements in the field of copyright. According to Article 20, regional Arrangements can only be made on condition that they confer upon authors more extended rights than those granted by the Convention or embody other provisions not contrary to the Convention. However, the developing countries expressed the wish to be given the right to make Arrangements between each other, even if the above

condition were not fulfilled. The proposed text is aimed at offering them this possibility.

The Study Group submits below a brief résumé of the facts behind the request of the developing countries. As is known, the Berne Convention does not govern the protection granted by the member countries to their own nationals. Each country is therefore free to introduce copyright legislation which grants its citizens protection inferior in certain respects to that granted by the Convention. The representatives of the developing countries declared that there seemed to be every indication that such a right would be to their advantage. At the same time, they would like to keep the same level of protection (inferior to that offered by the Convention) in respect of authors who were nationals of other countries which were at the same stage of development and with which they maintained cultural relations. The Study Group thought it reasonable to allow such Arrangements, whose importance and influence would mainly be local.

The Study Group has not proposed any special rules relating to folklore. It has already been stressed by the Brazzaville Meeting in its Recommendation No. 5 that the best means of protecting the integrity of this heritage known as folklore would be the adoption by the Governments of the African States concerned of appropriate legislation in order to prevent its exploitation to the detriment of the African communities. The Study Group shares this opinion and ventures to point out that, even although there are no special provisions on folklore in the Berne Convention, it is clear that the latter puts no obstacles in the way of national legislation on the subject. The Study Group recalls that some member countries of the Berne Union have introduced protection of classical works, without taking their stand on the Convention.