

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

In the opinion of the Study Group, the provision could be considered, from the systematic aspect of the texts, as being a superfluous element. However, it has formed part of the Convention for over fifty years and, at the same time, constitutes a good expression of a principle from which legislation and jurisprudence can take a lead, and a reminder of the freedom of information. Further, to a certain extent the practical importance must be recognised of fixing, in a developed manner, in relation to the interpretation of the rule discussed, the line of demarcation between copyright and other means of protection. The Study Group concludes, for these reasons, that it would be desirable to retain the provision in question.

The possibility could be considered of making the text easier to understand by means of certain amendments. The Study Group concludes, however, that it would be sufficient to discuss the questions of interpretation in the General Report of the future Conference.

In the proposed draft Convention, the Study Group still maintains that this provision should not be altered. However, since it is proposed to delete the rule relating to newspaper articles, it should not be kept in Article 9. The Study Group proposes therefore to make it the last paragraph of Article 2 (see page 17 above).

ARTICLE 10

This Article deals with "lawful quotations".

Paragraph 1

In the existing wording, this provision specifies that in all countries of the Union short quotations from newspaper articles and periodicals are lawful, even in the form of press summaries.

In its 1963 report, the Study Group proposed the following wording for this paragraph :

"It shall be permissible to make quotations from a work which has already been lawfully made accessible to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose".

Here are the reasons given in support of this amendment :

The Study Group observes, in relation to Article 9, paragraph 2, that the right of quotation should be sufficient to satisfy the needs of the press as regards giving accounts of the ingredients of articles which have appeared in other newspapers and periodicals. From this point of view, the existing wording of Article 10, paragraph 1, is not particularly happy, since it restricts the right to "short quotations". It is true that, normally, a quotation should be short, but this principle does not have absolutely universal validity. It is one of the chief tasks of the press to guide its readers in relation to current problems in the fields of politics, economics, religion, cultural life, and other questions which may form the subject of public discussion. Sufficient direction in these various fields cannot be achieved unless it is possible to reproduce, in certain cases, fairly considerable portions of articles which constitute the contributions of other newspapers to public discussion. Further, the author can have an interest in the reproduction of a certain length, when this is necessary to ensure the reporting of his opinions in a proper and exact manner. In other cases, a fairly extensive quotation may be necessary as the point of departure for a reply. A satisfactory delimitation could be reached by modelling the text upon rules generally accepted and developed in this field, and in emphasising the principle that the right of quotation can only be exercised to the extent delimited by its purpose.

For the reasons thus set out, the Study Group proposes that restriction of the right of quotation permitted in the existing text by the rule which only permits "short" quotations should be replaced by a provision stipulating that quotations are permitted, provided they are compatible with fair practice, and to the extent justified by the purpose.

Interpreted literally, the existing provision only relates to quotations from newspaper articles, but in actual fact it is applied, by analogy, to quotations from other works. The Study Group proposes that the field of universal application should be covered expressis verbis. The criteria of the right of quotation proposed by the Study Group would seem usable without modification, even outside the field of the press. Thus, it is generally recognised in the field of science that a right exists of quoting from theses, books, etc., which, in conformity with certain principles, should be considered as lawful from the point of view of copyright.

It may be observed that the proposed provision is not to the effect that any type of use should be accepted as permissible; it is essential for it to be "fair practice".

This implies that the use in question can only be accepted after an objective appreciation.

If the right contemplated by this provision is enlarged in the manner proposed, it may be desirable to establish yet another condition of the right of quotation, namely, that the work quoted has been lawfully made accessible to the public. Manuscripts or works printed for the use of a private circle should not be the subject of a right of quotation which can be exercised in respect of works intended for the public in general. The expression "made accessible to the public" relates to every form of publication of the work, not merely to the measures envisaged in the first sentence of Article 4, paragraph 4, but also to radiodiffusion and other measures mentioned in the second sentence of this paragraph.

After an exhaustive discussion, the 1963 Committee of Experts, with 2 abstentions, unanimously expressed itself in favour of a new draft for paragraph 1 of Article 10, framed in the following terms :

"It shall be permissible to make quotations from a work which has already been lawfully made accessible to the public, provided that they are compatible with fair practice, and to the extent justified by the scientific, critical, informatory or educational purpose, including quotations from newspaper articles and periodicals in the form of press summaries."

After further discussion within the Study Group, it became apparent that there was some hesitation regarding this proposal of the Committee of Experts. The Study Group could not rid itself of the impression that the list of purposes was too restricted - for instance, quotations made for an artistic purpose are not included - and that, generally speaking, it was practically impossible to indicate satisfactorily all the purposes by which quotations must be justified. For these reasons, the Study Group considered it advisable to keep its original proposal in this connection. It was of the opinion, however, that the views expressed by the experts meeting in Geneva should be adopted in so far as these views included maintaining, by way of an example, the existing provision concerning permission to make quotations in the form of press summaries.

Paragraph 2

This provision deals with the possibility open to countries of the Union to recognise the right to include excerpts from protected works in educational or scientific publications, or in chrestomathies. No changes are proposed here.

Paragraph 3

Even if paragraph 1 is amended in the manner proposed by the Study Group, it is possible to retain unchanged the provisions of paragraph 3 concerning the obligation to acknowledge the source and the name of the author in quotations and excerpts.

ARTICLE 10bis

This Article, which was incorporated in the Convention by the Brussels Conference, deals with the right of utilising protected works in the reporting of current events. In the existing wording, it is a matter for legislation in the countries of the Union to regulate the conditions under which the recording, reproduction, and public communication of short extracts from literary or artistic works can be made for the purpose of reporting current events by means of photography, cinematography or radiodiffusion.

In the 1963 report, the following wording was proposed for this provision :

"It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by radiodiffusion, it shall be permissible to record, reproduce and communicate to the public:

- (a) short extracts from literary or artistic works,
- (b) works of architecture, isolated works of graphic, plastic or applied art and isolated photographic works

which may be seen or heard in the course of the event."