

What is copyright?

The fundamental idea lying behind copyright is that while all ideas are free, authors, artists and composers should have property rights over the way in which they express their ideas. They therefore have rights over what they produce, which prevents others from benefiting from their work without permission. Publishers, film makers and others, who produce the work of the author, are also protected by copyright.

How is copyright protected?

Individual countries have copyright laws which protect works originating within that country against "piracy" but, since the world does not consist of a series of national literary and artistic islands, national copyright laws need the backing of international agreements.

The Berne Union The Berne Copyright Union was founded in 1886 and the countries belonging to it undertake to grant reciprocal protection to each other's works, in effect assimilating to the national repertoire, and protecting according to the same principles, works of which another country of the Union is the country of origin. No formalities have to be completed before protection is granted.

Universal Copyright Convention Established in 1952 to accommodate those countries which, either because their legislation did not conform to Berne standards, or because of fundamental differences between their systems of protection and that of the Berne Union, did not accede to the Berne Convention. Protection under UCC depends upon the inclusion in the work of a copyright notice consisting of an encircled C, the name of the copyright proprietor, and the year of first publication.

Appendix A shows which countries belong to Berne and which to UCC. Of the two, the Berne Union provides the more complete cover. When dealings take place between two countries which belong to both conventions they are made under the Berne rather than the UCC rules.

Countries which are signatories of either convention have an obligation to keep their copyright laws in line with agreed policy. Within these broad guidelines, however, it is possible

for individual nations to work out their own solutions on specific issues, such as permissible photocopying practices.

Why is copyright protection necessary?

It is generally considered proper that authors, like the originators of any other kind of property, should have a reasonable return for their work. Such evidence as has been gathered shows that - apart from a tiny number of "bestselling" authors - most authors receive little enough reward for their work, even with copyright protection.

It is also in the public interest that authors' rights should be protected. Without copyright protection authors would be reluctant to engage in the exacting work of writing with no reasonable hope of financial reward. Publishers would also find it impossible to disseminate their work if competing editions, carrying none of the financial overheads of the original edition, could appear in competition on the market.

Can a country choose which products should be protected?

A country must either accept or reject the conventions. It is not possible, for instance, to choose to accept international conventions to protect a national film industry while rejecting them for the printed word.

What rights are protected?

Authors control the following rights in their works:

- a) reproducing the work in any material form;
- b) publishing the work;
- c) performing the work in public;
- d) broadcasting the work;
- e) causing the work to be transmitted to subscribers to a diffusion service;
- f) making any adaption of the work

It is normal for the author to assign these rights to a publisher or agent, with whom negotiations will usually take place on his behalf.

Under the Berne Convention works remain in copyright for 50 years after the death of the author. Under UCC the period is 25 years following the author's death or from first publication in cases where a country's domestic law has a term so counted, as does the USA at the present time.

What educational problems did the Conventions pose for the developing countries?

During the 1960s many developing countries embarked upon wide-ranging educational programmes. It was then found that problems existed, particularly in the provision of advanced books for university and other forms of higher education. The rights in these books were generally controlled by publishers in developed countries who, at least in the first instance, produced editions primarily geared to the needs and purchasing power of their home market. Only an inadequate number of such books became available locally in cheap editions.

Representatives of developing countries argued that it was wrong for educational programmes to be hampered by copyright restrictions. The copyright owners countered by saying that it was not right for an author to be deprived of his return, just because his work was educational in content and that to do so would inhibit further needed educational writings. Moreover, the world market for tertiary textbooks was often small, and most developing countries needed too few copies to justify local production of a separate edition. Since both sides had a powerful case, it was manifestly an issue for negotiation and compromise.

What was done about this situation?

At meetings of the two international copyright authorities at Brazzaville in 1963 and again at Geneva in 1964, representatives of the newly independent African countries pressed for revision of copyright laws to enable an author to be obliged to release his works for educational purposes, subject to reasonable financial provision being made.

What was the "Stockholm Protocol"?

In 1967 a Joint Committee of experts was established which, noting the points made at the two earlier meetings and aware of the attitude and aspirations of many African and Asian countries, recommended the inclusion in the Berne Convention of a new Article which would enable developing countries to take advantage of certain privileges. At the international copyright Conference in Stockholm these privileges or provisions were put forward and agreed upon in the form of a Protocol to be annexed to the Convention. Among these provisions was the waiving of copyright restrictions in respect of works required "exclusively for teaching, study and research in all fields of education" provided that the author was assured of "a compensation which conforms to standards of payment made to national authors". It also permitted such editions to be exported between developing countries. In the event none of the major publishing countries acceded to the Stockholm Act which, as the Protocol could not be applied unilaterally by a developing country, was therefore rendered virtually unworkable.

What were the next steps?

Countries with major book industries were still concerned to identify and meet the needs of developing countries, as long as there was no undermining of the foundation of the structure of the international copyright system, the author's exclusive right to his work. A Joint Study Group met in Washington in 1969 which, realising that the Stockholm Protocol was unlikely ever to be operative, suggested in its place certain relaxations of the main text of the Berne Convention, and looked forward to the eventual combination of the Berne Convention and the UCC. The recommendations of the Joint Study Group were then considered at various international meetings leading up to the conference in Paris in 1971.

What were the Paris negotiations of 1971?

For three weeks in July 1971 representatives of the Berne and UCC countries met in parallel sessions in Paris to thrash out the problems. The discussions concerned only those books used "for teaching, scholarship or research" or "for use in connection with systematic instructional activities". The final agreement, applicable under both conventions, laid down the terms under which either the state or a private publisher in a developing country could get a compulsory licence to produce a book locally.

How can a copyright proprietor avoid compulsory licensing?

It was agreed that there would be no case for compulsory licensing if a copyright proprietor made freely available a translation or reprint of his book "at a price reasonably related to that normally charged (in the developing country concerned) for comparable works". Furthermore the copyright owner was given a period in which to make such editions available, or to grant his own licence to publish locally.

After what period, under the Paris revisions, can compulsory licences be sought for translations?

Before 1971 the copyright owner had a period of seven years in which to bring out a translation of his work before compulsory licensing could be applied. This applied only to countries whose copyright relations were governed solely by UCC, and in fact no such compulsory licences were issued by anyone. At Paris the rules were redrawn for both UCC and Berne countries under three categories:

- a) for non-world languages, i.e. "languages not in use in one or more developed countries", licences could be sought after one year from first publication. The copyright owner could then, if he so wished, seek a period of six months' grace to issue his own licence for the translation
- b) for translation into English, French and Spanish, licences could be granted after three years, plus a six months period of grace
- c) for other world languages, i.e. "languages in use in one or more developed countries", the rules as in b) apply, with the proviso that if a developing country can secure the unanimous agreement of developed countries using a language also in use in the developing country, then that country may, with the developed countries' consent issue compulsory licences after a shorter period than three years (but never less than one year). This would mean, for instance, that Brazil would need to get permission from Portugal before applying compulsory licensing within the shorter period.

After what period, under the Paris revisions, can compulsory licences be sought for same language reprints?

Compulsory licences for same language reprints could be granted after the following periods:

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

The three year period has a separate six months' period from the date of the refused application or the sending of copies of the application as the case may be, but this period may be concurrent with the three year period and not consecutive as in the case of translation. This "period of grace" nevertheless gives the copyright proprietor a minimum of six months in which to make available in the country an edition published at a price reasonably related to that normally charged there for comparable works.

What limitations are placed on publication under compulsory licence?

It is fundamental to the Paris agreement that concessions were made for educational need and not for private or national profit. Books produced under compulsory licence must therefore be printed within the developing country itself unless facilities are unavailable, in which case they must be printed in another Berne or UCC country. In this case, all copies would have to be brought into the licensing country. No copies of the book may be exported. In the case of developing countries using the same language, separate translations would have to be made for each country's compulsory edition.

What compensation will be paid to the copyright holder?

It was agreed that all compulsory licences should carry an obligation for the payment of a "just compensation that is consistent with standards of royalties normally operating on licences freely negotiated between persons in the two countries concerned". Following international trade practice, royalties will therefore normally be highest for straight reprints, rather less for reprints in which substantial amendment is involved, and at the lowest level for translations.

Will compulsory licensing become common practice?

It is to be noted that a compulsory licence may not be granted until a request for a voluntary licence has been refused by the copyright proprietor. It is to be expected, therefore, that compulsory licensing will be very rare, and the Paris revisions will be used by publishers as a basis for negotiation for voluntary licences. However, the readiness with which voluntary licences are granted can be and often is lessened in cases where double taxation is levied on the author's earnings, that is in the country to which the licence is to be granted as well as in his country of residence. It is generally felt that this is a genuine obstacle to the licensing of local editions, the removal of which would be beneficial to both parties and increase the number of voluntary licences.

What international formalities have to be completed before compulsory licensing can be applied?

As will be seen from Appendix A, more developing countries are signatories of the UCC than of the Berne Convention. The Paris revision of Berne cannot become operable until the UK, USA, France and Spain have ratified the revised UCC on behalf of the three world languages of English, French and Spanish. By the end of 1972 the UK, USA and France had ratified the agreement. Ratification by the developing country seeking the compulsory licence is also necessary. The UK was the first country to ratify the revised UCC, in May 1972, and even before that was first to endorse the concessions in the Paris Act of Berne, which it did in September 1971.

What procedures must the publisher in a developing country follow when seeking translation or reprint rights?

The publisher should send his request by air mail to the copyright proprietor. If he is unable to trace the copyright proprietor he should send a copy of his request to the publisher whose name appears on the work, with a copy to the National Clearing House of the country concerned (where such a clearing house exists - see Appendix B). Help may also be obtained from the Unesco International Copyright Information Centre.

If a request is refused and the time periods noted above have already lapsed, the publisher can immediately apply to his own government for compulsory licencing. He may similarly apply for compulsory licencing if, after a period of two months, he has received no reply to his original air mail application.

What rules govern the reproduction of illustrations for voluntary licences?

In many cases the original publisher does not control the copyright in the illustrative material in his book and permission to use these illustrations must be negotiated separately. A list of the copyright holders will normally be found under "Acknowledgement". The original publisher should be prepared to give assistance in clearing rights on illustrations for books reproduced under voluntary licence.

What rules govern the reproduction of illustrations for compulsory licences?

When a publisher in a developing country has been granted a compulsory licence for a book whose illustrations are not controlled by the original publisher, permission to reproduce the illustrations must be sought separately. Where permission is refused for the illustrations, they may be used but "just compensation" must be made. For works which are composed mainly of illustrations, a compulsory licence may be granted only after the periods affecting same language reprints.

Does compulsory licensing apply only to foreign works?

It should be remembered that all compulsory licensing under UCC or Berne applies not only to foreign works but also to domestic works, so that authors and publishers in developing countries which adopt compulsory licensing are equally vulnerable to it. This is because of the "national treatment" requirement of both conventions.

How long do illustrations in a book remain in copyright?

If the illustrations are the copyright of the author or of the original publisher, they are regarded as in copyright for the same length of time as the text, according to the Convention under which it was first published.

What is the situation with regard to photographs in a book for which the author or the original publisher does not control the copyright?

Under the 1956 UCC Act, copyright in a photograph lasts for 50 years from the end of the calendar year in which it was first published in any form. Strictly the copyright is vested in the individual who took the photograph or in the person or organisation to whom he has assigned the copyright. Institutions, museums, etc., to whom collections of photographs are donated or bequeathed should, therefore, ensure that they are given also the rights of reproduction.

Is it a breach of copyright to make a drawing from a photograph without asking permission?

Provided that the subject of the photograph is not the arrangement of the original photographer, no breach of copyright is involved in making a drawing from it for publication, however exactly or accurately the photograph is followed. Therefore a publisher in a developing country may well find it cheaper and easier to re-illustrate a text with drawings where permission to reproduce the photographic illustrations cannot readily be obtained from or through the original publisher.

What rules govern the reproduction of audio-visual aids?

Much educational material is now being produced in "package" form, with print and non-print materials. The regulations laid out above for same language reprints apply, according to subject, and the same preliminary conditions must be observed. These "reprint" periods also apply to translations of any incorporated text.

What rules govern copying of copyright material?

Two rules apply to copying in any form -

- 1) No infringement of copyright is committed unless a "substantial part" of the work is involved. ("Substantial" is defined in terms of the relationship of the quotation to the length of the work and of the importance of the extract or extracts to the work as a whole. Where there is any doubt at all on these matters, permission should be sought from the copyright holder).

- 2) Copying even of a substantial part of the work can be permissible as "fair dealing" when -
- a) It is for the purpose of research or private study, or
 - b) it is for the purpose of published criticism or a review.

What about photocopying?

No infringement of international copyright is committed where any of the conditions in the previous paragraph apply. But it is a breach of copyright to produce by photocopying or any other mechanical means more than one copy of an extract or a work for the purposes, for example, of class study, without first obtaining the permission of the copyright holder.

What are the arguments against developing countries adhering to international copyright agreements?

A developing country may clearly gain short term advantages by withdrawing from copyright obligations. All published materials may then be reproduced without delay and without payment to the copyright proprietor - although, of course, not without cost. This may ease immediate problems in the mass production of books for educational use where individual titles are required in sufficient numbers to make local production economic. These advantages have, however, been substantially eroded by the Paris revisions, since delay is now greatly reduced and the charge made by copyright proprietors to developing countries is related to local published prices rather than the published price in the country of origin.

What are the arguments in favour of developing countries observing international copyright?

The copyright Conventions provide the framework for a broad international community of literature and the arts. By withdrawing from the Conventions a country cuts itself off from this community and in effect admits that it has nothing to offer to the world from its own publishing, film making and similar industries.

Without the international Conventions local authors and publishers have no protection for their products in overseas markets and few developing countries have home markets large

enough to support a publishing industry deprived of export outlets. It would also be expected that national writers with potential world sales would place their works with publishers in countries that can offer international protection in preference to local houses.

Withdrawal would therefore have serious long term consequences for future developments in local publishing, which could well be judged to outweigh any short term benefits. It would also have detrimental effects on library development. Both academic and public libraries need access to the whole range of the world's literature. Publishers are not unnaturally reluctant to set up distribution channels for their books in countries in which those books will have no protection in law against "piracy".

In a royalty agreement between author and publisher what rights are usually controlled by the publisher?

- a) The exclusive right, during legal term of copyright or such other term as shall be agreed, of producing, publishing and selling the work in volume form in the original language throughout the territory determined with the author.
- b) Book club, cheap edition or paperback rights leased to another publisher within the country or territory determined, on which sales he will pay the author an agreed percentage of his receipts.
- c) Anthology quotation rights, Digest and Condensation rights, One-shot periodical or newspaper rights, Strip cartoon rights, mechanical reproduction rights; the proceeds from which he will share with the author.

These rights are known as "volume rights".

What other rights need to be considered?

- a) Foreign rights (i.e. the right to publish the work in a country or territory outside that normally covered by the publisher)
- b) Translation rights
- c) Serial rights

- d) Film, broadcasting and television rights
- e) Advertising or other commercial use of the work or material based on the work.

These rights are known as "subsidiary rights", and are usually handled by the publisher on behalf of the author, the publisher retaining an agreed percentage of the proceeds from their sale. Further, in countries where more than one language is used in the education system, it is the usual practice for the publisher automatically to have first option on the translation rights in all the languages involved, either to publish himself or in conjunction with a publisher whose expertise is in a particular language.

Are there accepted or standard royalties for particular kinds of book?

Not usually, though 10% of the published or selling price of the book is often suggested as a "normal" figure, except in the case of heavily illustrated books, translations and adaptations.

Royalty payments are calculated as a percentage either of the selling price of the book or of the net receipts from sales, and are normally paid once or twice a year. The rate of royalty is just one of the factors which the publisher has to take into account when computing the price of the book. A higher rate of royalty can mean a higher price and thus lower sales. So what matters to the author is not so much the rate of royalty as the ultimate rewards he may expect. The publisher can help to establish good relations with his author from the start by explaining how the rate of royalty has been worked out and what it means in terms of ultimate reward for the author's efforts.

What about advance payments to the author?

The offer of an advance against royalties is standard practice, and it is usually paid in two or three instalments; e.g. on signature of contract, delivery (or approval) of manuscript, and publication. The advance gives the author some immediate return for his work, encourages him to get on with the job, and reassures him of his publisher's good intentions. The actual amount of advance payment is negotiable between the two parties.

Is the author bound to supply illustrations?

Not unless this is specifically stated in the agreement, which it might be if the book is to be illustrated with photographs, in which case it must be clearly defined whether the payment of copyright fees is the responsibility of the author or the publisher. In the case of a technical work the author may well be asked to supply rough drawings of the diagrams and/or visual references for the artist to follow.

Does the author have any say in the design, illustration or production of the book?

These aspects of the publication of the book are normally left to the sole discretion of the publisher. But especially in the case of a technical work or where the publisher does not have a skilled editorial staff, the author should be invited to check and comment upon the illustrations, their positioning and the captions.

What other factors should an author bear in mind when discussing the contract?

- a) The publisher should undertake to publish the work within a specified period (e.g. 12 or 18 months) after delivery or approval of the manuscript.
- b) The author should be entitled to receive six free copies of the work on publication, and to buy further copies for his own use at trade terms.
- c) In the event of the book going out of print and the publisher (after being given reasonable notice by the author) is unable or unwilling to issue a reprint, all residual rights (including that of publication) should revert to the author.
- d) The regular royalty statement should specify how many copies of the book have been sold; it might also state how many remain in stock.

What further points should the publisher bear in mind?

- a) The author should undertake to deliver his manuscript on or before an agreed date.
- b) No royalty will be paid on gratis copies or copies given away for review or exhibitions, or as aids to sales.

- c) If at any time in the opinion of the publisher the book shall cease to have a remunerative sale, he should be entitled to dispose of the stock in any way he chooses, paying the author a percentage of any money he receives for the stock. However, before doing so, he should make an offer of the stock to the author, and he should only proceed if this offer is not accepted within a short period.
- d) The author should undertake that his work contains nothing that is libellous or violates copyright, and that he will hold the publisher blameless in the case of any claim or action in these respects.
- e) The author shall pay for any alterations he makes to the work once it has been set in type above an agreed percentage of the cost of setting the original manuscript.
- f) The author should be prepared, without further payment, to up-date or revise the work for subsequent editions.
- g) The author should undertake to give first offer to the publisher of his next book of the same length and character.
- h) The author should undertake not to publish any other work by him which might directly or indirectly affect the sales of the work which is the subject of the contract.

What happens if there should ultimately be a disagreement between the two parties over the interpretation of any point in the contract?

It is usual for the contract to include a clause to the effect that in the case of any disagreement the matter shall be referred to two independent arbitrators, one to be named by each party.