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MEMORANDUM TO THE CABINET

May 1971  
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Instructions to the Canadian Delegation to the  
 Diplomatic Conferences to Revise the Berne  
 Convention for the Protection of Literary and  
 Artistic Works and the Universal Copyright Convention,  
 Paris - July 5 to 24, 1971.

Delegation - On May 6, 1971 Cabinet approved Canadian participation in the above conferences and requested that another Memorandum be presented recommending instructions to the delegation. The delegation will be composed of representatives of the Departments of Consumer and Corporate Affairs, External Affairs, Secretary of State, Industry, Trade and Commerce, together with a representative of the Canadian Conference of the Arts and representatives of La Société Canadienne-Française de Protection du Droit D'Auteur and the Canadian Copyright Institute, the two main francophone and anglophone author and publisher groupings.

Purpose of the Conferences - The purpose of the conferences is to find new solutions for the international protection of literary and artistic works with particular reference to the needs of developing countries in the fields of translation and reproduction of such works for educational purposes. The background of, and the reasons for, the conferences have an important bearing on the conduct of Canada's participation. Of equal importance is the fact that Canada's copyright policy, both national and international, is under review.

Background - In 1967 the Berne Convention was amended by the Stockholm Act, and a Protocol known as the "Stockholm Protocol for Developing Countries" was included as an integral part of the amendment. The intent of the Protocol was to meet the desires of the developing countries which then, as now, attached great importance to achieving limited, temporary concessions permitting the reproduction and translation of copyrighted materials for education purposes. They believe that easier access to such material, primarily in the fields of science and technology, will accelerate the development process. The special concessions which they desired departed substantially from the levels of protection in the Berne Convention. No country which is a major exporter of copyright material has ratified the Stockholm Act, nor has Canada. As the privileges provided were considered to be too broad, inadequately defined, and uncontrollable in their application, both the Stockholm Act and the Protocol have remained dead letters.

The failure of the Stockholm (1967) Revision of the Berne Convention and the Developing Countries Protocol led to a round of international meetings to find a more viable solution. The results of these meetings are that the copyright exporting countries and the developing countries appear to have reached a mutual agreement which we expect will culminate in agreed texts at the revision conferences.

General Considerations - Against this background, certain general considerations should be borne in mind by the Canadian delegation. The Canadian copyright situation has been under continuous study, first by the Ilsley Commission of 1954 and latterly by the Economic Council of Canada. This state of fluidity has somewhat restricted Canadian participation in international copyright matters, particularly since 1966. However, the impact of technological developments, increasing national awareness and the commercial importance of copyright coupled with international developments have made it necessary that Canada engage more actively in copyright matters, both nationally and internationally.

Since 1966 Canada's international posture has been to adopt a holding position, awaiting the report of the Economic Council, with the aim of achieving the greatest possible degree of flexibility. Canada has now achieved some

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 Deputy Minister's Office

Influence in international copyright, the direction of which can be a reflection of Canada's interests. At the inaugural meeting of the World Intellectual Property Organization (WIPO), Geneva, September 1970, Canada was elected to the Executive Committee of the Berne Union and, as a result, to the Coordination Committee of WIPO. These elections provide a means whereby Canada's national interests in the field of international intellectual property can be pursued and protected, once they have been fully defined and developed. There is also the possibility that our influence may be increased should Canada be elected to membership in the Intergovernmental Copyright Committee of the Universal Copyright Convention (U.C.C.) at the revision conference in 1971.

At international meetings Canada has urged the necessity of seeking long-range solutions with particular emphasis on the impact of technological developments, for example in the fields of communication satellites, and the transfer of computer technology to developing countries. Canada has demonstrated leadership in both of these important fields, by chairing recent international meetings on these subjects.

Proposed Revisions - The main purpose of both revision conferences then is to devise a system acceptable to the exporting countries which would enable the relaxation of the provisions of both Conventions for the benefit of developing countries in order to assist them in acquiring books and other copyright materials for educational purposes. The effect of the revisions will be to give limited rights, under certain conditions, to translate and/or publish editions of protected works in national languages. Various provisions of the Draft Texts specify the exact relaxations that may be obtained with reference to the rights of translation and reproduction. The relaxations also apply to those audio-visual works prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Also provided for are the procedures under which the exceptions may be applied; the periods of time after which developing countries may make translations and reproduce works; the rules governing payment and prohibiting export.

Canadian Position - Although Canada could agree to the proposed system of concessions for the developing countries since they include protection for the legal and economic rights of copyright owners, Canadian accession to the revised Conventions would entail the provision of higher copyright protection to all states members of the Conventions. It is a package deal. Canada has been a sympathetic participant in all of the preparatory meetings, although it has not committed itself on the substance of the revisions proposed because Canadian copyright policy was under review by the Economic Council.

- (a) The Economic Council Review - The Economic Council review is now complete and Canadian policy is being considered in the light of that review. Although no decisions have been taken to implement the Economic Council's report, the position outlined below and the specific instructions to the Delegation do not conflict with the Council's recommendations. In general, the Council suggested that since Canada is primarily an importer of copyrighted material, it is likely to have an interest in adhering to the international conventions at less than the maximum level of protection afforded by the conventions. This will likely preclude, at this time, Canadian accession to either the revised Berne or the Universal Convention, both of which entail acceptance of a higher level of international copyright protection.
- (b) Possible Canadian Declaration - There is provision in the draft revision to the Berne Convention and a similar provision may be added to the draft revision to the Universal Convention, for a country not yet able to accede to the revised Convention to make a declaration that it will admit the application of the revised Convention, if adopted, to its works by developing countries. Such a declaration would not alter substantially the Canadian position on fundamental international arrangements.
  - (i) Concessions to Developing Countries - In view of the complex copyright studies now being undertaken, it does not appear possible to obtain, in the short time available, a Government decision to make a declaration at the conferences. Nevertheless, it would be advantageous, for Canada's relations with the developing countries, to be in a position to state at the conferences that Canada is seriously and sympathetically considering the possibility of making such a declaration. This

would add a positive element to our explanation of why Canada is not in a position to sign the revisions, which otherwise may be interpreted negatively by other delegates who are aware of the results of the Economic Council's review.

(ii) Protection of Canadian Author and Publisher Interests

In looking favourably towards a possible declaration, we do not intend to do so at the expense of Canadian authors and publishers. The Delegation will be in a position to emphasize, strengthen, and clarify the draft revisions which provide for a) a reasonable time lapse before compulsory licences are issued, b) a clear and satisfactory system for seeking authorization from the copyright holder, and c) fair compensation for the latter in convertible currency.

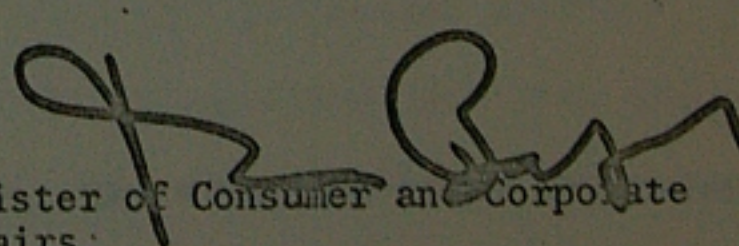
(c) Other Positive Elements - As other positive elements to support such a Canadian position, we can indicate the assistance which Canada is providing bilaterally in the book development field, and can refer to recent positions taken at Commonwealth meetings, at which Canada supported various programmes for book development in the developing world.

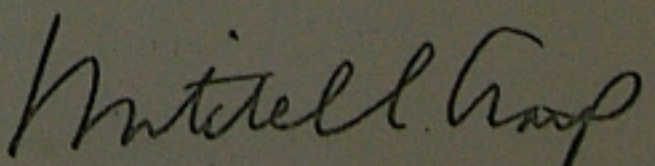
It follows from the foregoing that it is in Canada's interests to attend the conferences and participate therein to a degree consistent with Canada's present aims and objectives.

Specific Instructions:

1. Do not sign the revised texts as these will have to be referred to the appropriate Canadian bodies for study.
2. Obtain final texts which clearly define the substantive and administrative issues involved. Favour all tendencies which will provide maximum flexibility to the Canadian government.
3. In respect of Canada's position relative to developing countries, the Delegation should state that Canada is seriously and sympathetically considering the possibility of accepting the application of the concessions to Canadian works.
4. Facilitate by all appropriate means the achieving of the primary objectives of the conferences, bearing in mind that there should be an appropriate balance between the legitimate interests of the developing countries and of Canadian authors and publishers.
5. Seek election to the Intergovernmental Committee of the Universal Copyright Convention, to parallel Canada's position as a member of the Executive Committee of the Berne Union.
6. Accept election to office at the conferences. Given its non-signing stance but its active participation Canada should accept office as indicative of its support for the aims of the conferences.

The Minister of Consumer & Corporate Affairs agrees with the instructions of the delegation, but disagrees strongly with the nature and size of the delegation, and the arrangements for the payment of expenses.

  
Minister of Consumer and Corporate Affairs.

  
Secretary of State for External Affairs.

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MEMORANDUM

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DATE

October 10, 1969

FROM De The Canadian Delegation to the  
International Copyright Joint  
Study Group

FOLD

SUBJECT Sujet Report of the Canadian Delegation  
at the Washington Meeting,  
September 29 - October 3/1969

1. The instructions to the Canadian Delegation were:
  - (a) to participate at the meeting within the confines of the Statement already presented to the Berne Convention and the Universal Copyright Convention - i.e., raise the possibility of a future single multi-level international convention;
  - (b) bring the attention of the Study Group to the possibility of a new formula to distinguish more realistically between "developing" and "developed" States insofar as world copyright was concerned; and
  - (c) to approve of any reasonable proposal that would bring to developing countries copyrighted educational material at minimum cost.
2. Mr. Eugene Braderman of the U.S. Delegation was elected Chairman of the Meeting.
3. On the discussion relating to the proposed agenda, (See Appendix "A") Canada proposed that items 5, 6, 7, being inter-related, be dealt with together.

Following an explanation by the Chairman that the words "international mechanism" (referred to in Item 5) meant in fact "international clearing house", a working party was set up to bring in a report and resolution on Item 5 separately.

The working party reported later to the meeting and recommended that UNESCO establish an international copyright centre under certain guidelines, (See Appendix "B").

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D.H.W. Kirkwood,  
Cabinet Committee on Economic Policy and Programs.

The Study Group accepted the recommendation without formal vote. The Canadian delegation considered the proposal as possibly of help to developing countries but of no value to Canada, and hence this item requires no further elaboration.

The Group then accepted Canada's proposal that items 5 & 6 of the Agenda be dealt with together.

4. Countries present then presented general statements. Canada presented its statement following receipt of instructions from Ottawa.

The Canadian delegation's statement is set out in Appendix "C".

5. After all delegations wishing to make statements had been heard, certain clear conclusions became evident.

1) The developing countries were only concerned that their own needs with respect to educational copyrighted material be met and that the "safeguard clause" and Appendix Declaration of U.C.C. be removed or suspended, thus granting to them a minimum level of copyright protection.

2) The developed countries (i.e. the largest producers of copyrighted works, namely, U.K., Germany, France etc.) appeared only concerned with the removal of the Protocol from the Stockholm Revision of Berne, thus opening the way for them to ratify that Revision and obtain the highest possible copyright protection at the international level.

3) Neither the developing nor developed countries, other than Canada, showed the slightest interest in providing copyright protection on a basis other than that of the highest level for producing countries, and the lowest level for those countries earning less than \$300 U.S. per capita per year (U.N. formula for developing countries).

4) The mandate of re-examining world copyright problems as expressed in agenda items 6 & 7 was not carried out, and in fact seemed of no concern to most countries present due to the narrow wishes of both groups (i.e. developed and developing States).

6. Thirteen countries representative of developing and developed countries (not including Canada) led by Brazil presented a draft resolution which, after study, was referred back to the Plenary Session. See Appendix "D".

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The Resolution envisages a Revision of both Conventions which will include:

In the Universal Copyright Convention,

- 1) suspension of Article 17 (safeguard clause) and Appendix Declaration for developing countries only;
- 2) a slight raising of the present minima of protection; and
- 3) certain relaxing of these minima for developing countries only.

In the Berne Convention,

- 1) separation of the Protocol regarding developing countries from the Stockholm Revision;
- 2) a proviso that the separation of the Protocol only becomes effective upon ratification of the revised U.C.C. by France, Spain, the U.K. & the U.S. (large producers of copyright thus exercising effective control over the whole scheme);
- 3) granting certain additional relaxation of restrictions to developing countries; and
- 4) suspension of any financial contributions by developing countries.

The Resolution was approved in principle.

7. Few changes - and these merely related to semantic corrections - were made to the draft Report and Resolution after one day's discussion. The Report is attached as Appendix "E".

8. The two Revision Conferences - for both Conventions - are scheduled to take place simultaneously at Geneva September 1-16, 1970; although towards the conclusion of the Meeting it was suggested that the Spring of 1971 might be the earliest time possible for holding such Conferences.

9. Canada (with some support, but perhaps for different reasons) introduced a resolution that the International Copyright Joint Study Group be reconvened at some future date to continue its study of long term solutions to world copyright problems as set out in the mandate and not dealt with at Washington. The resolution carried.

CONCLUSIONS

10. Nothing accomplished at the Washington Meeting was of direct benefit to Canada.

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Of possible indirect and long-term benefit to Canada was its first major participation in an international copyright meeting.

12. That, to assist the Economic Council of Canada in its present study of copyright matters, this Report be drawn to that body's attention with emphasis to be placed on the following matters:

1) Consideration by the Council of Canada's past participation in international copyright matters - e.g. at the Rome Revision 1928, at the Brussels Revision 1948 and at the Stockholm Revision 1967 - and consideration by the Council of Canada's participation, if any, at future meetings;

2) Consideration by the Council, if Canadian options respecting international copyright matters are not now closed, of whether or not Canada should carry out the necessary research, analysis and preparation if she should continue to engage in such activities; and, if so, whether Canada should try to obtain membership in the Interdepartmental Committee of U.C.C. in order to exert more pressure for future economic advantage. Elections take place next December in Paris;

3) Consideration by the Council to amending Canadian copyright legislation within the broadest interpretation of the Rome Revision of the Berne Convention. (This was suggested in private discussion by the Director of the Secretariat of the Berne Convention who felt that the Convention could be "bent" to satisfy sufficiently Canada's economic needs);

4) Consideration by the Council as to what effect the entrance of the U.S.A. and the U.S.S.R. into the Berne Convention would have on Canada's creators and users.

(The U.S. Senate now has legislation before it to lengthen its term of copyright protection to meet the Berne standard of life of the author plus 50 years. The impression of the delegation was quite strong that the Berne Secretariat wanted the work of the International Copyright Joint Study Group continued to see what "links" could be provided to permit the entrance of the U.S.A. into Berne while still permitting the U.S.A. to retain its present formalities, registration requirements, manufacturing clause etc. "Links" likewise would be required if the U.S.S.R. was permitted into Berne. Suggested continued study by the Group into a new, single, multi-level Convention was not, as stated, received with enthusiasm).

*Aula Hlaw*

Chairman,  
Canadian Delegation

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