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Interdepartmental Committee on Copyright

This refers to your memo of January 12, 1970 under the heading - Report of Paris Meetings on Copyright.

As you point out in your memorandum, the matter of Copyright is very complex. In the past there has been little government competence in the matter, but the establishment of the Interdepartmental Committee has served to create a small cadre of knowledgeable people. In effect, the Interdepartmental Committee has created a Specialist Working Committee of the Commissioner of Patents, the CBC, the National Film Board and this Division of our Department.

The background for the creation of the Interdepartmental Committee is important and may be summarized as follows:

At the time of the Stockholm Conference convened by the Bureaux Internationaux pour la Protection de la Propriété Intellectuelle (BIRPI), Canada was invited to attend. The Conference was held in Stockholm from June 12 - July 14, 1967. The Conference was convened to revise the Berne Convention of 1887 (on Copyrights) and the Paris Convention of 1883 (on industrial property) to both of which Canada has subscribed. The proposed revisions were of concern to Canada inasmuch as Canada is a party to the agreements and also because they have a bearing on the rights of Canadians.

The Canadian Copyright Institute sent a memorandum to the Department of Consumer and Corporate Affairs reading in part as follows:

"The Canadian Copyright Institute believes Canada should send a strong delegation to participate actively in the Stockholm Conference on Copyright with a view to acceding ultimately to the revisions if at all possible."

"We note that no experts from Canada participated in either the International Advisory Committee of Experts or the Committee of Government Experts Meeting in Geneva. Several countries much smaller than Canada did provide experts at these Committees. Participation in these preliminary studies by Canada might well have made it possible for Canadians with an interest in copyright to be supplied with valuable information and advice on matters of international copyright. We hope that Canada will participate more

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fully in the future in such matters and will take appropriate steps to keep the public informed of all developments."

Several hastily-called meetings were held under the aegis of the Privy Council Office, and as a result of these meetings it was decided that a Canadian Delegation should attend. The following persons comprised the Canadian delegation:

Head of Delegation

H. E. Arthur J. Andrew, Canadian Ambassador at Stockholm

Deputy Head of Delegation

Mr. Jean Miquelon, Q.C., Deputy Registrar-General for Canada

Delegates

Mr. Jean Richard, M.P., House of Commons

Mr. Roy N. Davison, Combines Investigation Branch

Advisors

Mr. Jacques R. Alleyn, General Counsel, CBC

Mr. Jean-Charles Bonenfant, Parliamentary Librarian of Quebec

Mr. A. A. Keyes, Liaison Officer, National Film Board

Mr. Roy C. Sharp, Director, Canadian Copyright Institute

Mr. Gillivier Mercier Guin, Canadian Labour Congress

Secretary

Mr. Bruce C. McDonald, Faculty of Law, Queen's University

A full awareness of the economic consequences of Canada's adherence to these Copyright Conventions began to emerge at the preparatory meeting of the Canadian Delegation and the Minister of External Affairs reported as follows to the Cabinet:

"The Canadian Delegation to the Stockholm Conference will be seeking to avoid having Canada's copyright commitments strengthened. Our reasons for adopting such a stand are that the Economic Council has been asked by Cabinet to conduct a penetrating enquiry into the extent to which Canadian interests are really being served by the protection we now offer to copyright in accordance with the provisions to the Conventions to which we are party. For some time now, in fact, there has been cause to question the cost to Canada of maintaining existing copyright protection since the vast majority of the copyrights being protected are, in the final analysis, held by foreign owners to whom the copyright dues must be paid."

In a background paper to the Cabinet the following seems relevant:

"The Government, on July 22, 1966, referred to the Economic Council a number of matters relating to the Department of the Registrar General including the economic policy objectives of patent and copyright legislation. The Economic Council is studying these matters and its recommendations are expected within a year. In the meantime, however, the following considerations should provide appropriate guidance to the Delegation:

Successive revisions of the Berne Convention have progressively extended the monopoly rights of copyright holders. The current

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revisions suggested for the Stockholm Conference are intended to extend these rights still further. Unfortunately, this raises the question of the cost in relation to the value of present copyright legislation as a device for encouraging creativity in Canada before the Economic Council's report is available. An important consideration in the study of this matter is the fact that as much as 90% of the total cost (about \$8 million) of copyright to the public in Canada is accounted for by the protection given foreign works. In turn, compensation to Canadian authors by way of payments from overseas to Canada is minimal. This raises the fundamental question of whether protection of the kind Canada is committed to by adhering to the Berne Union is in the national interest."

"(From the foregoing) it is evident that the Conference at Stockholm will be considering provisions strengthening existing copyright protection. It is also clear that the current work of the Economic Council should not be prejudiced by the assumption of any additional commitments by Canada in this field. In short, the options for future government action in the area of copyright must be kept open. THEREFORE, it is recommended that the Canadian Delegation should:

- (a) Refrain from supporting any proposed revision to the Berne Convention which would reduce the Government's flexibility of action until such time as there has been an opportunity to give full consideration to the report and findings of the Economic Council;
- (b) Refrain from signing the Stockholm text but work in committee to ensure that the text that emerges will give Canada the maximum freedom of action should Canada decide subsequently to accede to the Stockholm text;
- (c) Encourage any move to postpone or delay the final drafting of any new text.

At the conclusion of the Conference, Ambassador Andrews made a Confidential Report to his Minister which reads in part as follows:

- "(a) For reasons which I can understand, the preparation of the delegation left much to be desired. However, the Stockholm Conference has been in the process of preparation for several years and most countries with delegations the size of ours had taken part in preparatory meetings where the drafts presented to the conference were first hammered out. Our knowledge of the background and the implications of the draft proposals was often superficial.
- (b) The subject of intellectual property, copyrights as well as patents, is, I am now convinced, one in which long familiarity is required, and on which experts in the public service should be continuously employed, assuming that an interest in the subject is sufficiently substantial to warrant our taking an active part.

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- (c) The instructions given to the delegation fortunately fitted well with the delegation's lack of expertise and preparation. We were, on the whole, able to follow the spirit of the instruction without difficulty and with one possible exception, without embarrassment."

Professor McDonald's published report of the Conference is equally forceful in its language:

"It is obvious that as a general rule the key decisions in the "conference process" are made at two points: in the meetings held to prepare for the conference, and in the working groups at the conference. It is here that the real decisions are made and compromises hammered out which are later submitted as proposals to the main committees of the conference. These proposals owe their large measure of success to the nucleus of countries which stand behind them. Canada attended only one of the several preparatory meetings, which began over four years prior to the Stockholm Conference. She participated in none of the working groups at the Conference. Certain other countries, on the other hand, were notably present at all preparatory meetings and participated in most of the working groups."

"Attendance at and participation in the preparatory meetings is particularly critical for the following reasons:

- (1) it is in Canada's own self-interest to participate in formulating the agenda and framing the conference proposals,
- (2) it is an important contribution to "international civil service" work,
- (3) it provides many key contacts for Canadian personnel at related meetings,
- (4) it supplies invaluable background for effective participation at the conference itself.

It is perhaps trite to note that subject to its instructions, the impact which any given delegation makes upon a conference, and the contribution it makes to the results of the conference, depend almost entirely upon the qualities of knowledge, experience, intelligence, foresight, tact and courtesy possessed by the delegates as individuals. The Government can by deliberate policy go a long way to ensure the important qualities of knowledge and experience. It may do this by appointing as its representatives people with specialized knowledge in the subject matter, and by striving for some continuity in representation at related meetings. Intellectual property, particularly at the international level, is a complicated subject requiring long attention for adequate familiarity.

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The other important feature of a high quality of representation is some continuity of personnel attending the meetings. The Canadian delegation at Stockholm suffered seriously from the unavailability of any of the very limited group of persons who had attended either previous revision conferences or the preparatory meetings. Nor, of course, did it have the time for the increased amount of advance preparation thereby required. The advantages of continuity of representation are more or less obvious:

- (1) Personal familiarity with the substance, issues and stands taken at past conferences facilitates preparation and improves participation at the conference.
- (2) Established personal contacts are valuable and can be crucial at conferences.

Many of the NIMT meetings inter-relate in substance and administration, and a wide variety are attended by the same people. Canada could profit from the example set by other important countries and improve the general quality of its representation. Specifically, it would be well advised to:

- (1) cultivate at least one or two government servants in a specialized knowledge of copyright law, and
- (2) where possible, take advantage of the existence of a few persons who, as a result of the Stockholm Conference, now have a reasonable basis from which to contribute effectively in the future.

Specialists from the private sector of the economy have a valuable advisory role to play in the decision making process, but the Government would be in a more favourable position if it had its own qualified representation as well, particularly for the interim and preparatory meetings. This would meet the requirements of guaranteed impartiality, knowledge and security, as well as the need to have reliable people who could supply continuity of representation."

The tangible result of all this comment was a letter from the Deputy Minister of Consumer and Corporate Affairs to our Deputy Minister dated February 27, 1969 as follows:

"We propose to establish an Interdepartmental Committee on Copyright to help us deal with a number of current problems in Copyright and to help prepare for a review of the Copyright Act which will be undertaken as soon as the Economic Council makes its report on the reference made to it by the government two years ago."

"I would propose that the Commissioner of Patents, Mr. A. E. Laidlaw, Q.C. be the Chairman of the Interdepartmental Committee. I should appreciate it if you would name a representative of your Department on the Committee".

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Mr. Warren responded, indicating a desire to participate and naming Mr. P. T. Nathan in the Office of General relations as the departmental representative. After one or two meetings, it was determined that the Printing and Publishing Division would assume prime responsibility for departmental participation in the work of the Committee and in early April, the Deputy advised Mr. Grandy of the change in representation.

The Committee has been meeting regularly since formation and has gradually developed the working party consisting of Messrs. A. M. Laidlaw and P. W. Simons from the Copyright Office, the Administrators of the Canadian Act; J. Allyn, General Counsel of the CBC, for the Broadcasting point of view; A. A. Keyes, the liaison officer of the N.F.B., because of his expertise in the film industry; and the writer, because of his knowledge of the printing and publishing field.

In late September the Minister of Consumer and Corporate Affairs recommended to Cabinet that:

"A - The presently constituted Interdepartmental Committee on Copyright be recognized officially by Cabinet

B - A delegation be sent to the Joint Study Group Meeting in Washington."

These recommendations were approved by a cabinet Committee which also agreed that our representative on the Interdepartmental Committee should be a member of the delegation to the Washington meetings and also be permitted to attend any further meetings of the group or any of its committees.

These approvals were confirmed by the Cabinet on October 3rd, 1969.

This is the background to the creation of the Interdepartmental Committee and its working party, and the determination of the Canadian Delegations to the various international copyright committees. In turn, it is providing the knowledgeable group of public servants referred to previously by delegates to the Stockholm Conference.

The development of the Canadian book industry, must be based on future copyright law in Canada, which in turn can only be created in conformity with international copyright law. The original form of a work in copyright was a printed book. Today, the book or other manuscript is still the basis of copyright even for films, phonograph records or broadcasting.

The commercial value of copyright today is mirrored in the delegations of the United Kingdom and the United States, drawn from the Board of Trade and Business Practices respectively. Even India, at the moment an L.D.C. recognizes this fact as can be seen in these recent remarks by the Immediate past-president of the Federation of Publishers and Booksellers Associations in India.

"It is necessary to look into the specific needs of the developing countries, including India, with regard to copyright. The first

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and foremost difficulty that a developing country has to face today in the matter of international trade is the problem of balancing its trade position. It has been necessary for these countries to import a large proportion of its basic requirements - needs which no doubt differ from country to country.

The second need of developing countries is that of encouraging local industry - printing and publishing. The background of the USA rule which discourages the import of more than a limited quantity of books into that country is by now known to all students of international copyright law. This position was maintained at persistent requests from the printing industry in the U.S.A."

Canada's case could not be better presented. We may not be an L.D.C. according to the U.N. formula but we certainly are as far as a Canadian book industry is concerned.

Mr. Hjalmar Fehrsen, the General Secretary of the International Publishers' Association, focused his report of IPA activities in 1967 and 1968 on the Association's concern with copyright and the Stockholm Conference. In the course of his remarks, the following passages are of interest.

"It is possible that 1967 will one day be remembered as the year the alarm first sounded for the publishing world. This sounds a bit dramatic, because nothing has happened yet. But those who have been closely watching international copyright must have observed that the needle of the trade seismograph has suddenly announced danger.

"An important lesson has been learned in Stockholm and the meeting of the first IIRPI working group seems to prove it: the publishers of the world must work more closely together at the international level and must be on the alert at all times where their common interests are concerned."

"Stockholm has furthermore proved that copyright is no longer a purely juridical matter, it is also a technical, economic and political one."

The economic importance of copyright in a modern industrial society was clearly recognized when in 1954 the Canadian Government appointed a Royal Commission on Patents, Copyrights, Trade Marks and Industrial Designs, headed by Mr. Justice Ilseley. The Commission was "to enquire as to whether Federal legislation relating in any way to patents of invention, industrial designs, copyrights and trade marks affords reasonable incentive of invention and research, to the development of literary and artistic talents, to creativeness, and to making available to the Canadian public scientific, technical, literary and artistic creations and other applications, adaptations and uses, in a manner and on terms adequately safeguarding the paramount public interest, the whole in the light of present-day economic conditions, scientific, technical, and industrial developments, trade practices and any other relevant factors or circumstances, including practices under or related

to the said legislation and any other relevant international convention to which Canada is a party".

It was pointed out in the Halsey Report that many factors are contributing to the fast growing significance of intellectual property as a subject of Commerce and that Patents, Trademarks and Designs have long been treated as important subjects of trade to which balance of payments considerations apply. Copyright, however, has lagged far behind the other forms of intellectual property, partly due to its direct relation to "culture". It is rapidly attaining the status of a matter of trade and commerce. The commercial importance of copyright to Canada caused the comment "It may be that, in becoming a party to the Berlin Revision of the Berne Convention in 1908, Canada was not too well advised" and they further "suggest that at future convention revisions the growing economic and commercial significance of intellectual property be accorded greater recognition".

Important as it is in its own right, the book publishing industry is only one part of the graphic arts industry. Collectively, the printing and publishing industries reflect to a high degree the current trends of the general economy. They are all heavily dependent upon the industrial, educational, and cultural level of the country. In seeking to meet our communication needs, newspapers, books, magazines, direct mail advertising and other printed products most of which are subject to various copyrights, licences and permissions, have become the foremost media in the dissemination of information and knowledge.

One of the most significant changes affecting the printing and publishing industries today is the impact new electronic technology is having on our traditional communications concepts and organizations. Although some of the new electronic technology for the most part still remains to be applied, the concepts now available are rapidly reshaping major segments of publishing and integrating them into a new kind of total communications industry. This industry can be seen developing today in the continuing wave of mergers and acquisitions involving book, periodical, and newspaper publishers, with broadcasting, film, and computer storage and retrieval firms. Today the nucleus of this new communications industry centers around "publishing" and the "published product". The unique element in common is "copyright".

As these new technologies are coming to full bloom we may be faced with several decades of painful conflict if our present concepts of copyright and authorship become obsolete. Copyright has been the traditional way to compensate an author for his work and it made sense at a time when the process of disseminating his work included only one stage, the printshop, where all copies appeared in one place and could be counted. Now there is no way to keep track of copies. Now a whole work or a paragraph can be run through a copying machine, it may be stored in a book, a microfilm, or computerized file, and it may be distributed in printed form, phonorecord, tape or film.

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Although the term "anachronistic concept" has been applied to copyright in this day and age, it is certainly much too early to conclude that the new technologies have obsoleted our present concept of copyright. The concept has survived for several centuries and served a useful purpose through radical technological advances of phonorecording, motion pictures, radio broadcasting and television diffusion, and it should be possible to adapt it to the demands of computer technology. If we discard copyright, we must find another way to reward authorship.

Copyright today, both nationally and internationally, is in a state of ferment for two reasons. Firstly, the technological changes now taking place, and secondly the need of developing countries to obtain economical sources of educational materials.

The financial consequences of our decisions are enormous. Canada, for historical reasons, is now providing foreign authors with levels of protection which are mainly beneficial to countries which are exporters of copyrightable works. Canada is a major importer of copyrightable works whereas its exports are minimal.

The benefit for Canadian authors resulting from Canada's position bears no proportion to the expense which Canada's position entails for it as an importer of copyrightable works. The development of Canadian authors may be better assured by fostering working opportunities in Canada for them than by favouring the Publishing trade which is mainly in the hands of foreign interests.

Whatever benefits may flow from Canada's position may very well be for the benefit of the substantially United States owned "Canadian" publishing industry rather than for the Canadian authors themselves and these benefits in no way remove the barriers to our trade with the United States by the presence of the manufacturing clause of their Copyright Law.

The purpose of asking the Economic Council to study the Canadian Copyright Act is to bring it up-to-date for Canadian needs. If the Council is to restrict its recommendations for revision of the Canadian Act to the limitations set out by our present international commitments, it may find itself incapable of making very effective recommendations unless some effort is now made to regain for Canada some freedom of choice and action.

The international meetings now taking place, at the request of a number of countries, to revise these various international agreements, may be excellent occasions for Canada to secure freedom of choice and action of sufficient scope to allow it to review effectively the level of protection that it wishes to grant foreign authors and to obtain for its Canadian authors in foreign countries. The occasion is unique. It may not come about for many years if the opportunity is not now grasped.

The report of the Economic Council of Canada should be available in the autumn of this year, and our in-depth study of the Canadian Book Publishing

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and Manufacturing Industries will be completed about the same time. We should then know what our industry is and how it operates, and also have the feelings of the Economic Council about the future direction the government might take.

As has already been pointed out, the reason for forming the Interdepartmental Committee is to have available a government group skilled in the various aspects of copyright matters, so that they can study and recommend action on the various copyright problems arising from time to time and so that they will be available and ready to act on the copyright report of the Council when it is published.

It is therefore recommended that we continue to participate in both the Interdepartmental meetings and some of the more important international meetings being planned, if Canadian Delegations are authorized. It is further recommended that we again review our needs and their priorities after the new Canadian Copyright law has come into force to determine whether we should continue to be as active as we now need to be.

Adequate funds have been allocated under Task #49 file E730-XI-1 through which this project is authorized.

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c.c. - Mr. T. C. Arnold
- Mr. P. L. MacDeugall