

I appreciate your kind offer of a copy of your commentary on the revision report. It appears in a forthcoming issue of the *Journal*. July 9, 1962. and look forward with interest to reading it.

If I can be of any further service with respect to the subject of our correspondence, please

Morton David Goldberg, Esq.,
Greenbaum, Wolff & Ernst,
265 Madison Avenue,
New York 17, N.Y.

Yours very truly,

Dear Mr. Goldberg:

Thank you for your letter of July 2, 1962.

The main reason for making reference to the United States Copyright Law Revision report with respect to term was that, as you are probably aware, the Royal Commission on Patents, Copyright and Industrial Designs (the Ilale Commission), in its report, recommended a term for published (and publicly performed, delivered, recorded, etc.), literary, dramatic and musical works of 56 years from the year of publication, performance, etc., or death of the author, whichever is later. The "56-years from publication" recommendation was specifically, of course, to line up with the United States term. At the same time we in the department were watching with interest the reports on copyright duration recommendations and the commentaries thereon, which the United States Copyright Office provided us from time to time. It became evident that the United States might perhaps abandon its term and Canada would then find herself out on the 56-years-from-publication limb all by herself, rather than in the company she expected. It was therefore for the purpose of bolstering the department's view that our present term should not be drastically shortened that we drew attention to the views expressed in the United States revision report.

revised

I appreciate your kind offer of a copy of your commentary on the revision report, to appear in a forthcoming issue of the Cornell Law Quarterly, and look forward with interest to reading it.

If I can be of any further service with respect to the subject of our correspondence, please let me know.

Yours very truly,

Harris Arbique,
General Executive Assistant.

PRESS RELEASE

DEPARTMENT OF EXTERNAL AFFAIRS



1962 CANADA 17

COMMUNIQUE

07
MINISTÈRE DES AFFAIRES EXTÉRIEURES

No. 25

FOR IMMEDIATE RELEASE
THURSDAY, MAY 10, 1962.

The Department of External Affairs announces that Mr. L. V. J. Roy, Canadian Permanent Delegate to UNESCO, Paris, today deposited with the Director-General of UNESCO Canada's Instrument of Ratification of the Universal Copyright Convention. The Convention will accordingly come into force for Canada three months from this date.

Canada signed the Universal Copyright Convention in 1952 but did not ratify it at that time. On March 1 the Senate approved a resolution to provide for ratification; this was followed by approval by the House of Commons on April 16, 1962.

There are forty other states that apply the Convention including the U.S.A., United Kingdom and France. Ratification by Canada will bring substantial benefits to Canadians, especially to authors and publishers. It will permit Canadian authors to publish their works in Canada and export copies to all member countries with full copyright protection. This is of particular importance in the U.S.A. where there is a substantial market for Canadian publications.

ROUTING INSTRUCTIONS

Send to.....

Attach to file No. 5-3-5-2

Send also.....

Economic/Mr. Warden
Referred to Sec. of State (Arbiqu)
Liaison Services
Information Division
(Miss Dench)
Legal Division
T & C (Weiser)
File

May 10, 1962

FM UNESCODEL PARIS MAY9/62 RESTD

TO EXTERNAL UN12 OPIMMED

REF YOURLET E34 APR30

UNIVERSAL COPYRIGHT CONVENTION

ARRANGEMENTS HAVE BEEN MADE FOR ME TO DEPOSIT THE INSTRUMENT OF
RATIFICATION THURS MAY10 AT 1700 HRS PARIS TIME.

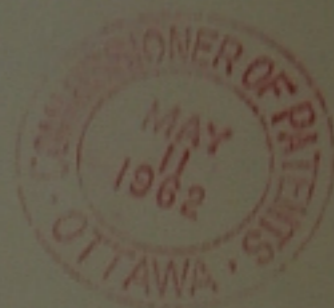
2. IN ORDER TO PERMIT SIMULTANEOUS RELEASE UNESCO HAS AGREED TO
ISSUE ITS PRESS COMMUNIQUE AT 1800 HRS PARIS TIME ON SAME DAY

ROY

Economic/Mr. Warden
Referred to Sec. of State
(Arbique)
Liaison Services
Information Division
(Miss Dench)
Legal Division
T & C (Weiser)
File

FM UNESCODEL PARIS MAY9/62 RESTD
TO EXTERNAL UN13 OPIMMED
REF OURTEL UN12 MAY9

May 10, 1962



THE TEXT OF UNESCO PRESS RELEASE TO BE ISSUED TOMORROW THURS
READ AS FOLLOWS:QUOTE MR LIONEL ROY,PERMDEL OF CDA TO UNESCO,TO-DAY
DEPOSITED WITH MR RENE MEHEU,ACTING DIRGEN OF UNESCO,CDAS INSTRUMENT
OF RATIFICATION OF THE UNIVERSAL COPYRIGHT CONVENTION.
FORTY-ONE COUNTRIES HAVE NOW JOINED THIS CONVENTION DESIGNED TO FILL
THE GAPS IN EXISTING INTERNATIONAL COPYRIGHT LEGISLATION.THE CONVENTION
CALLS UPON STATES TO GRANT FOREIGN WORKS THE SAME PROTECTION ACCORDED
WORKS BY THEIR OWN NATIONALS.

THE STATES WHICH HAVE JOINED OR RATIFIED THE CONVENTION ARE:ANDORRA,
ARGENTINA,AUSTRIA,BELGIUM,BRAZIL,CAMBODIA,CDA,CHILE,COSTA-RICA,
CUBA,CZECHOSLOVAKIA,DENMARK,ECUADOR,THE FEDRAL REPUBLIC OF GERMANY,
FRANCE,HAITI,THE HOLYSEE,ICELAND,INDIA,IRELAND,ISRAEL,ITALY,JAPAN,
LAOS,LEBANON,LIBERIA,LICHTENSTEIN,LUXEMBURG,MEXICO,MONACO,NICARAGUA,
NIGERIA,PAKISTAN,PARAGUAY,THE PHILIPPINES,PORTUGAL,SPAIN,SWEDEN,
SWITZERLAND,UK,ANDUSA.UNQUOTE

ROY



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SEC OF STATE (ARBIQUE) FM OTT
REF OURTEL UN13 MAY9
UNIVERS COPYRIGHT CONVENTUON
INSTRUMENT OF RATIFICATION WHICH YOU HOPED WOULD LEAVE OTT MAY1
AND ARRIVE MAY2 IN FACT LEFT OTT BY AIRMAIL BAG 27 SCHEDULE DATED
MAY2. THIS AIRMAIL BAG ARRIVED IN PARIS IN THE AFTERNOON OF MAY7
AND THE INSTRUMENT OF RATIFICATION WAS ON MY DESK WHEN I
RETURNED LATE MON AFTERNOON FROM ATTENDING THE MTGS OF THE
EXECUTIVE BOARD.
2. TUES MORNING I IMMEDIATELY CONTACTED UNESCO AUTHORITIES AND
COULD MAKE ARRANGEMENTS TO DEPOSIT THE INSTRUMENT WITH THE
DIRGEN TODAY.
3. AS YOU ARE AWARE MR MAHEU IS ATTENDING ALL THE MTGS OF THE
EXECUTIVE BOARD AND HAS A VERY HEAVY SCHEDULE. NOTWITHSTANDING AN
EARLY DEPOSIT WAS ARRANGED.
4. LET FOLLOWS ABOUT YOURTEL E956 APR27

ROY



Fifth Session—Twenty-fourth Parliament

1962

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
EXTERNAL RELATIONS

To whom was referred

The Universal Copyright Convention signed by Canada
in Geneva in 1952 and Protocol 3 thereto.

The Honourable G. S. THORVALDSON, *Chairman*

THURSDAY, MARCH 1st, 1962

WITNESSES:

Mr. A. Alex Cattanach, Q.C., Assistant under Secretary of State and
Advisory Counsel; Mr. Harris Arbique, General Executive Assistant,
Department of the Secretary of State; Mr. J. W. Michel, Commissioner
of Patents, Department of the Secretary of State.

APPENDIX "A"

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

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Secretary of State
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THE STANDING COMMITTEE ON EXTERNAL RELATIONS
The Honourable GUNNAR S. THORVALDSON, Chairman
The Honourable Senators

*Aseltine	Hardy	Robertson
Beaubien (Provencher)	Hayden	Savoie
Blois	Hnatyshyn	Taylor (Norfolk)
Boucher	Howard	Thorvaldson
Bradley	Hugessen	Turgeon
Brooks	Inman	Vaillancourt
Crerar	Jodoin	Veniot
Croll	Lambert	Vien
Farquhar	MacDonald	Wall
Farris	*Macdonald (Brantford)	White
Fergusson	McLean	Wilson—35.
Fournier	Monette	
Gouin	Pouliot	

(Quorum 7)

*Ex officio member

ORDER
Extract from the Minutes of
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Pursuant to the Order of
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That it is expedient that t
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After debate,
With leave of the Se
The Honourable Sen
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The question bei
Resolved in the

and Archives Canada/Bibliothèque et Archives Canada
must be used for the purposes of research or private study only / Cette copie doit être utilisée uniquement à des fins
cherche ou d'études privées.

reference number/no de référence :

RG 103 Vol. 6 File 5-3-5-2 ATIP 147

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday,
May 21st, 1962.

Pursuant to the Order of the Day, the Senate resumed the adjourned
session on the motion of the Honourable Senator Thorvaldson, seconded by the
Honourable Senator Beaubien (*Bedford*):

That it is expedient that the Houses of Parliament do approve the Universal
Declaration of Human Rights Convention signed by Canada in Geneva in 1952 and Protocol 3
thereto, and that this House do approve the same.

After debate,

With leave of the Senate,

The Honourable Senator Thorvaldson moved, seconded by the Honourable
Senator Beaubien (*Bedford*), that the proposed Resolution be referred to the
Standing Committee on External Relations for consideration and report.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNeill,
Clerk of the Senate.

ON EXTERNAL RELATIONS
THORVALDSON, Chairman
Senators

Robertson
Savoie
Taylor (Norfolk)
Thorvaldson
Turgeon
Vaillancourt
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MINUTES OF PROCEEDINGS

THURSDAY, March 1, 1962.

Pursuant to adjournment and notice the Standing Committee on External Affairs met this day at 11.30 A.M.

Present: The Honourable Senators Thorvaldson, *Chairman*; Blois, Bradley, Fergusson, Hnatyshyn, Hugessen, Inman, Jodoin, MacDonald, Macdonald (Antford), Pouliot, Taylor (Norfolk), Turgeon, Wall and White. 16.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

The Universal Copyright Convention signed by Canada in Geneva in 1952 and Protocol 3 thereto, was read and considered.

On motion of the Honourable Senator Blois, seconded by the Honourable Senator Croll, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Convention.

Heard in explanation of the said Convention were: Mr. A. Alex Cattanach, Q.C., Assistant under Secretary of State and Advisory Counsel; Mr. Harris Arbique, General Executive Assistant, Department of the Secretary of State and Mr. J. W. T. Michel, Commissioner of Patents, Department of the Secretary of State.

After discussion, it was Resolved to print as Appendix "A" to these proceedings, the list of countries belonging to the said Convention.

On Motion of the Honourable Senator Croll, seconded by the Honourable Senator Wall, it was Resolved to report recommending that the said Convention be approved by the Senate.

At 12.30 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, March 1,

The Standing Committee on External Relations have in obedience to the order of reference of February 21st, 1962, considered the "Universal Copyright Convention signed by Canada in Geneva in 1952 and Protocol 3 thereto".

Your Committee recommends that the said Convention be approved by the Senate.

All which is respectfully submitted.

G. S. THORVALDSON
Chairman.

THURSDAY, March 1, 1962.

The Standing Committee on External Relations to whom was referred the "Universal Copyright Convention signed by Canada in Geneva in 1952 and Protocol 3 thereto", report as follows:

Your Committee recommends that the said Convention be approved by the Senate, 800 copies in English and 200 copies in French of their proceedings on the said Convention.

All which is respectfully submitted.

G. S. THORVALDSON,
Chairman.

THE SENATE
STANDING COMMITTEE ON EXTERNAL RELATIONS
EVIDENCE

OTTAWA, Thursday, March 1, 1962.

The Standing Committee on External Relations, to which was referred Universal Copyright Convention, met this day at 11.30 a.m.

Senator G. S. THORVALDSON (Chairman), in the Chair.

On a motion duly moved and seconded, it was agreed that a verbatim report be made of the committee's proceedings on the convention.

On a motion duly moved and seconded, it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the convention be printed.

The CHAIRMAN: Honourable senators, we have with us today Mr. A. Alex Cattanach, Q.C., Assistant Under-Secretary of State and Advisory Counsel. Is it the wish of the committee that Mr. Cattanach be asked to make a general statement on the subject of the Universal Copyright Convention, and that we then have an opportunity to ask questions and discuss the subject?

Hon. SENATORS: Agreed.

Mr. A. Alex CATTANACH, Q.C., Assistant Under-Secretary of State and Advisory Counsel: Honourable senators, the Universal Copyright Convention and the Copyright Act have been under study by a departmental committee composed of the former Under-Secretary of State, Mr. Charles Stein; Mr. Harris Arbique, General Executive Assistant, Department of the Secretary of State; and Mr. J. W. T. Michel, Commissioner of Patents, Department of the Secretary of State. Both Mr. Arbique and Mr. Michel have been on the committee for a protracted period of time. I came into the committee at the later stages. I believe Mr. Arbique has had his nose to the grindstone on this for some time and is much more qualified to answer questions as to detail and possibly has all the information at his finger tips. The purpose, of course, is the implementation of the Universal Copyright Convention. The Royal Commission on Patents—

Senator MACDONALD (Brantford): May I interrupt for a minute? I wonder if it would be helpful, in view of the Berne Convention, if one of the witnesses could tell us just what the position is today in Canada with respect to copyright, and what the position is outside of Canada with respect to copyrights obtained in Canada. It occurred to me that it might be helpful if we knew what the position is at the present time, and then have explained to us what is proposed to be done.

The CHAIRMAN: Yes, Senator Macdonald. I thought that Mr. Cattanach would just make a general statement and then, subject to the concurrence of the committee, we might ask Mr. Arbique, whom I am told has a more intimate knowledge of the subject matter than anybody else, to do the very thing you have mentioned. He will be able to speak about our present position under the Berne Convention, and then proceed to what is being done by this convention.



Will you proceed, Mr. Cattanach?
Mr. CATTANACH: I

Mr. CATTANACH: I was saying, sir, that the Royal Commission on Copyrights, Trademarks and Industrial Designs, known as the Commission, and the Royal Commission on Publications, known as the Commission, both recommended ratification of the Universal Copyright Convention, the Ilsley Commission recommending the carrying out of the recommendations contained in its report first, and the O'Leary Commission recommending immediate ratification.

I think the paramount reason for the ratification of the convention is that it would be in the interests of the Canadian printing and publishing trade, and would avoid the deleterious effect of the manufacturing clause of the copyright act of the United States. This law requires that printing in the United States shall enjoy full copyright protection in that country, and that works printed outside the United States only enjoy an interim protection for a limited number of years from the date of the first publication of the work, and this on the condition that not more than 1,500 copies are imported into the United States. Therefore, Canadian owners of copyright have to go to the United States to obtain full copyright protection in that country, and that is to the detriment of the Canadian publishing industry.

If Canada were to ratify the convention then since the United States is a member of the International Copyright Convention Canadian authors would be freed from the requirement of printing in the United States, and from other requirements as to registration and notice in the United States.

Senator POULIOT: Mr. Cattanauch will

Senator POULIOT: Mr. Cattanaeh, will you tell me what will be the change made by this? Will you give us a general outline of the changes made by the convention?

Mr. CATTANACH: The effective change, sir, would be that a Canadian author would enjoy full copyright protection in the United States.

Senator POULIOT: It is just to have protection in the United States?

Mr. CATTANACH: Yes, and in other member countries of the Universal Copyright Convention.

Senator POULIOT: Throughout the world?

Mr. CATTANACH: Not throughout the world; just in those countries who are members of the Universal Copyright Convention and in those countries who are members of the Berne Convention.

Senator POULIOT: How many countries have signed this?

Mr. CATTANACH: About 15—there might be—

The CHAIRMAN: As I said a moment ago, I thought that Mr. Cattanaach would make a very general statement in regard to the subject matter, and then Mr. Arbique, who has more intelligence on the subject than anybody else, would be, probably, more competent to answer questions such as the one you have asked.

Senator POULIOT: Mr. Cattnach is all right, but why do we not take Mr. Arbique first if he knows more. I am sure Mr. Cattnach will not be offended by that.

Mr. CATTANACH: Forty countries have ratified the Universal Copyright Convention.

The CHAIRMAN: Thank you, Mr. Cattnach. I will ask Mr. Harris Arbique, the Général Executive Assistant of the Secretary of State, to speak now.

Senator MACDONALD (*Brantford*): I wonder if Mr. Arbique could just give us the position today of publishers and authors so far as copyright, generally, is concerned. If I am a publisher of a novel where do I stand so far as copyright is concerned, both in Canada and outside of Canada, before this convention is ratified?

Harris ARBIQUE, General Executive Assistant, Department of the Secretary

A Canadian author, if he holds the copyright, or a Canadian publisher holds the copyright, publishing in Canada has copyright, of course, in it. He has copyright by virtue of the convention to which Canada belongs, namely, the Berne Union, in the countries of the Berne Union. He has a form of copyright protection in the United States because of a reciprocal agreement which already exists with the United States. He has also copyright protection in a couple of other countries with which we have reciprocal agreements, but they are not relevant. These countries are North America and Sarawak.

Senator MACDONALD (Brantford): What would my rights be under the Berne Agreement?

Mr. ARBIQUE: Under the Berne Agreement, and the other one, Canadian works are given protection in other countries according to the domestic laws of those other countries who are members of that convention, and in reciprocity Canada must grant protection under its domestic law. The Canadian copyright law gives protection to the authors of those other signatory countries.

Senator MACDONALD (Brantford): Have you a list of the signatory countries?

Mr. ARBIQUE: Yes, sir. The Berne Union is a fairly ancient one, dating back to 1886, and there have been several revisions of the Berne Convention. In general, the Berne Union was a European organization to begin with and consequently most of the countries in it are European. Russia and China are not members of any international convention and, together with the United States, they are the only major countries who are not members of the Berne Union. There are 46 countries in the Berne Union.

Senator POULIOT: Who are they? Would you table a list of them for the purposes of our record?

Mr. ARBIQUE: Yes. I will place on record a list showing the member countries of the Berne Union, the Universal Copyright Convention, and those who are dual members.

For list of membership countries see appendix "A", p. 20

There are 39 countries who are members of the Universal Copyright Convention, the other agreement we are discussing today, and of course a number of them, some 24 or 25, are dual members, that is, members of both the Berne Union and the U.C.C. For instance, the United Kingdom, France, and the Federal Republic of Germany are members of both.

Senator MACDONALD (Brantford): You did not answer the question with respect to the position of a person holding a copyright in Canada today.

Mr. ARBIQUE: A Canadian author or publisher today has copyright in Canada as defined by the Canadian Copyright Act.

Senator MACDONALD (Brantford): Do you recall offhand what that is?

Mr. ARBIQUE: Sir, the rights are very considerable and are spelled out in the act. Do you mean the length of time?

Senator MACDONALD (Brantford): Yes.

Mr. ARBIQUE: I am sorry, sir. Generally speaking, it is the life of the author plus 50 years.

Senator HUGESSEN: The life of the author plus what?

Mr. ARBIQUE: Generally speaking it is the life of the author and 50 years after his death. This period varies according to the class of works. There are classes of work which have slightly lower periods of copyrights.

Senator CROLL: In what respect will this convention improve the position of the copyright author today over his position of yesterday?

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Mr. ARBIQUE: In several ways. One is that it gives him a wider scope, because of the fact that the U.C.C. is a United Nations agreement whereas the Berne Union is a European organization. It was pressed by the United States because of the fact that there have been some disappointment in copyright circles that the United States belong to some international copyright organization. The United States instead upwards of 40 bilateral agreements with other countries. The situation has been felt both in the United States and international circles. In any case, what I was going to say was that a number of countries are members of both conventions but there are also a number of other countries, primarily South American and Central American countries, which are also members of the Universal Copyright Convention. In other words, should we become parties to the Universal Copyright Convention, we would then have international copyright relationships with a number of and Central American countries and, most important, with the United States.

We have a bilateral arrangement with the United States now but the agreement is one whereby we are subject to the copyright law of that country.

Senator MACDONALD (Brantford): Which agreement?

Mr. ARBIQUE: The bilateral agreement we have with the United States which was signed in 1923 or 1924. By this agreement our works are given protection in the United States and we protect the works of American authors in Canada. We give them protection under our act and we are given protection under their act, but their act is very restrictive in connection with certain provisions. The main one, which is the one considered in publishing circles in Canada as an infamous clause, the manufacturing clause, requires that any work in the English language must be printed and published in the United States in order to gain full protection in that country.

Senator CROLL: We agreed to that in 1923?

Mr. ARBIQUE: That is right, sir.

Senator CROLL: And it has never been varied up to this point?

Mr. ARBIQUE: No, sir. We have always been subject to that manufacturing clause in the United States copyright law. There are those who feel that agreement was a pretty poor one to have signed but, in any event, sign it we did. At that time we also attempted to inject certain printing clauses into our own legislation, but because we were members of the Berne Union we were limited in the actual restriction which we could impose against foreign authors. In other words, our printing clauses are not anything as effective as the American clauses. They are not really printing clauses but compulsory licensing clauses.

Senator MACDONALD (Brantford): Should we enter the Universal Copyright Convention I understand that under Article XVII of this convention the provisions of the Berne Union will not in any way be affected?

Mr. ARBIQUE: That is right, sir.

Senator MACDONALD (Brantford): So that the Berne Union will remain in force along with the U.C.C.?

Mr. ARBIQUE: Yes.

Senator MACDONALD (Brantford): Do I understand that the Universal Copyright Convention would only affect our copyright dealings with the United States and that in so far as copyright matters are concerned we would come under the Berne Union?

Mr. ARBIQUE: We come under the Berne Union with respect to all countries which are members of the Berne Union. Our membership in that agreement requires that. I don't know what the legal phraseology would be but the Berne Union would take precedence over the other agreement were a conflict to arise.

Senator MACDONALD (Brantford): Let us say that countries "A", "B" and "C" have entered into the Universal Copyright Convention and countries "A" and "B" are still under the Berne agreement. Would our relationship with countries "A" and "B" come under the Berne Union or under the U.C.C.?

Mr. ARBIQUE: I think, Senator, you would find it does not really matter a great deal because the conventions do not differ that much. I think the U.C.C. would be pretty well accommodated within the Berne Union. The real significance is that different countries are involved in it. There is no getting away from the fact that the main purpose of becoming partners in this convention is with respect to our relations with the United States. That country is not a member of the Berne Union but prior to World War II considerable effort was made to bring the United States into the Berne Union. This effort was made both by the United States itself, which felt left out of international copyright arrangements, and by the other members of the Berne Union.

Senator MACDONALD (Brantford): Let us say that countries "A" and "B" belong to both the Berne Union and the Universal Copyright Convention and I have a publication and I say, "I want to come under the provisions of the U.C.C." and country "A" will say, "Oh, no, you come under the Berne Union and you will have to abide by its provisions."

Mr. ARBIQUE: I think, sir, there may be some confusion arising from the impression that these provisions have a certain legal effect on the countries concerned. The domestic legislation is the governing order. In other words, in Canadian copyright matters our Copyright Act is the thing that governs. All we have to be sure of is that the Canadian Copyright Act is so framed that it does no violate the rather open, unrestrictive provisions of the convention itself.

I have said that we are already bound in the United States by the United States law, but the United States by accession to the Universal Copyright Convention is required to leave inoperative in so far as Universal Copyright Convention member states are concerned certain of its provisions, among them the manufacturing clause. In other words, Article III of the convention requires that any country which has certain formalities which are a condition of copyright must consider these formalities as satisfied by compliance with certain other simple formalities, their formalities being the imposition of the insignia (a "C" in a circle), stating the name of the copyright owner, et cetera. If those formalities are complied with, you do not have to bother about deposit, registration, and so on, as the United States law requires. The big thing is the printing.

Senator HUGESSEN: To put it succinctly, under Article III of this convention we will escape from manufacture in the United States?

Mr. ARBIQUE: Correct, sir.

Senator CROLL: Has the United States accepted this Universal Copyright Convention?

Mr. ARBIQUE: Yes, they were the prime mover of this convention.

Senator CROLL: They passed it through their Congress and Senate?

Mr. ARBIQUE: Yes, sir. They were the seventh ratifying power. It required 12 to bring it into effect. It was signed in 1952. The United States ratified it, and it was the seventh country to do so, in 1954. The rest of them to make up the 12 were still lacking. The twelfth country ratified in June 1955, and it came into effect three months later.

Senator CROLL: Our authors have been under a considerable disadvantage, in the light of what you say about printing?

Mr. ARBIQUE: Our publishers.

STANDING COMMITTEE

Senator CROLL: Our publishers.

Mr. ARBIQUE: Yes.

Senator BRADLEY: At other times the United States was pirating outside of its own country, is that not true?

Mr. ARBIQUE: Well, it all depends on what you mean by "pirating". It is better to say that the United States was pirating for five years.

Senator CROLL: The point I make is this. Since 1952, which is ten years ago, we could have assisted our publishing people. Why didn't we do so?

Mr. ARBIQUE: I think I can explain.

The CHAIRMAN: Isn't that question contrary to what the witness said? I think he said that it required 12 countries to make the convention effective and that did not occur until 1956.

Mr. ARBIQUE: 1955.

The CHAIRMAN: Yes, 1955. So 1955 would be the effective date.

Senator CROLL: But we could in 1952 have been one of the confirming countries.

Mr. ARBIQUE: I cannot speak for the period between 1952 and 1954, but I would not worry too much, because even the United States did not come until 1954; but on June 11, 1954 the Royal Commission on Patents Copyrights and Industrial Designs was established, and it was decided that any position Canada took should await the report of the Royal Commission. This report on copyright came out in 1957 and was tabled in 1958. Then the question perhaps occurs, why we have not done anything since then. Well, it is a little harder to answer.

Senator CROLL: I think the minister said they were studying the matter which was involved, but it struck me there was a lag.

Mr. ARBIQUE: Yes, a lag.

Senator POULIOT: What do you mean by manufacturing laws?

Mr. ARBIQUE: That any literary or outside work published outside the United States, in the English language, must be printed in the United States in order to have full copyright protection in the United States. The protection there is a fairly respectable term; it is not a five year term, it is for 56 years, made up of two terms of 28 years apiece from date of publication. In order to get that term, a Canadian author must publish in the United States, and if he does not he does not get the 56 year term of protection, he only gets five years, and that only if he imports fewer than 1,500 copies.

Senator CROLL: Fifteen hundred copies from where?

Mr. ARBIQUE: From Canada into the United States.

Senator CROLL: And after that they can pirate it?

Mr. ARBIQUE: Yes. At the end of five years it has gone, anyway.

Senator FERGUSON: Have any of our authors been prejudiced because of this regulation of 1,500 copies?

Mr. ARBIQUE: Well, they have been prejudiced to this point that they do not print in Canada, they print in the United States in order to get full protection. That is where they want their sale. If they anticipate a sale of more than 1,500 copies they will print in the United States in order to get protection there. A few print simultaneously in both countries, but this is not economical under normal circumstances; so the author publishes in the United States, and therefore denies the business to Canadian publishers.

Senator FERGUSON: Then it is not the author who suffers, but the publisher?

EXTERNAL

Mr. ARBIQUE: Except that it comes from a Canadian publisher as from a Canadian publisher's favour.

Senator FERGUSON: It is better to say that the United States was pirating for five years.

Mr. ARBIQUE: Yes, that is what I mean. The length of the copyright laws in the United States is owned by a publisher or an author for 50 years after the author's death.

Mr. ARBIQUE: I think "author's life plus 50 years" is the result of our passing this law to the printers—to the publishers.

Senator CROLL: Then the advantages to the Canadian author. I think that it may be easier for the Canadian author to print in the United States than in the United States.

Mr. ARBIQUE: That is the advantage. The advantages to the Canadian author. I think that it may be easier for the Canadian author to print in the United States than in the United States.

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Mr. ARBIQUE: That is the advantage. The advantages to the Canadian author. I think that it may be easier for the Canadian author to print in the United States than in the United States.

Mr. ARBIQUE: Except that it contributes towards losing his identity as a Canadian author. He probably does not get as good a deal from an American publisher as from a Canadian publisher, and he has to compete for the publisher's favour.

Senator FERGUSON: It is better for Canada to have them publish in Canada?

Mr. ARBIQUE: Yes, that is what this thing is all about.

Senator FERGUSON: If I may ask another question, reverting to the length of the copyright laws in Canada, you mentioned that a copyright can be owned by a publisher or an author, and you also said the copyright lasts 50 years after the author's death. Supposing it is owned by a publisher, does the copyright last 50 years after?

Mr. ARBIQUE: I think "author" is defined in the act. Copyright subsists for the life of the author plus 50 years. If the publisher has a copyright it is an assignment from the author.

Senator CROLL: Then we get the real advantage that will come as the result of our passing this copyright convention coming not to the author but to the printers—to the publishers?

Mr. ARBIQUE: That is largely so. I think it is useless to say anything else. The advantages to the author are sort of subsidiary ones. It is a fact, that it may be easier for him to find a publisher in Canada than in the United States. Then there is this question of Canadian literature and the identity of the Canadian author. Books coming into this country from the United States, printed by Americans, it might be that we might not recognize the fact that we are reading a book by a Canadian author simply because it is printed in the United States.

Senator CROLL: Is it not the common practice, and I have a couple of books in mind, as I recall it, that Macmillan will publish here almost the same day that Doubleday will publish in the United States?

Mr. ARBIQUE: I think that is probably the case but I am not at all familiar with the technicalities involved in book publishing.

Senator MACDONALD (Brantford): It would be an advantage to authors so far as the publication is sold in the United States, there is no doubt about that, is there?

Mr. ARBIQUE: No, sir. The fact that he can get over 1,500 books into the United States is an advantage and his copyright will last longer.

Senator CROLL: Fifteen hundred copies published or sold?

Mr. ARBIQUE: Imported into the United States.

Senator CROLL: Fifteen hundred copies imported into the United States.

Mr. ARBIQUE: Yes.

Senator MACDONALD (Brantford): Under the new universal convention he will have full copyright protection for 25 years, will he?

Mr. ARBIQUE: For 56 years in the United States—for 28 years and a renewal term of 28 years if he wants it. The imports are unlimited subject only to customs duty.

Senator WALL: Mr. Arbiq, I wonder if I can ask you about the length of term. I can see the advantages, but I was concerned about the fact that we were dragging our feet in this matter, but what is Canada's situation with regard to the term of protection if the Americans were to change their own copyright act? As I understand the term, there are recommendations for internal changes both in the United States and in the United Kingdom. Let us say they changed that term to 75 years, would that term be applicable to us later?

Mr. ARBIQUE: That is true. The Americans are on the threshold of their act, and one of the recommendations before them is extending the term from 56 to 76 years and also getting rid of the terminating clause—that is to come out.

Senator CROLL: Suppose that the Americans pass a more restrictive law, not know in what sense, in any sense you like—are we bound by it?

Mr. ARBIQUE: What they can pass in the first place has to be considered. So far as term is concerned they cannot pass a requirement for less than 56 years. These various things are spelt out to a degree in this convention. It is a pretty loose convention, and legislation has to be pretty bad not to be able to gear itself into this convention, but then new conventions are being made that way. The main thing is to get a lot of countries into a convention so they have to be consequently very broad and unrestricted. The Berne Convention is a good example.

Senator CROLL: I recall the O'Leary report but I do not recall the Ilsey report. Did the Ilsey report go beyond what we are covering now? Were there other aspects that were important in that report?

Mr. ARBIQUE: Very much so.

Senator MACDONALD (Brantford): I think that the Ilsey report recommended 56 years.

Mr. ARBIQUE: They recommended the American term to a considerable extent. They could not recommend the American term solely, because of obligations under the Berne convention. They recommend 56 years from date of publication or death of the author, whichever is later, and the reason for that is due to the requirement of the Berne union. Consequently they have recommended this combination of terms.

Senator MACDONALD (Brantford): Who recommended that?

Mr. ARBIQUE: The Ilsey commission recommended that. I think it is only fair to point out to you that with respect to the matter of term and the Ilsey commission recommendation thereon, ratifying this convention now closes the door on the Ilsey commission recommendation as to term. This is the reason for that: Article 4 of the convention is the term article and it says that the term of protection will be the life of the author plus 25 years minimum. This is because when this convention was framed life plus 50 years, or life plus something was the term in almost all countries, except the United States. In order to attract the United States into the convention it was necessary, since they were dead against a term based on the life of the author—they never had that term—to allow for a term based on publication; but it goes on to say that any state at the time they enter this convention having a term based on publication can keep it. But note that it says, at the time they enter the convention. At the time the convention comes into force in that country this must be in effect in order for them to have it. In other words it would not be possible to swing across to a term based on date of publication in any country ratifying the convention.

Senator WALL: In other words we are now making what is in fact a legislative decision?

Mr. ARBIQUE: Yes, in anticipation of the new copyright act. Our own act allows for this. There is nothing incompatible with our present act. If you are thinking in terms of a revision of the Copyright Act this is true, we are making a decision to stay with a term based on the life of the author, not necessarily our present term but as long as it is life plus 25 years. The United States on their part could swing over to this because this is a sort of ground or base term, this life plus 25 years. The United States could swing to that,



body could swing the other way. You cannot swing from a term based on life of the author to one based on the date of publication, once you are satisfied.

Senator WALL: You have said, in effect, that what we are doing is putting the commission's recommendations into the wastepaper basket at this point.

Mr. ARBIQUE: That is right, sir.

Senator WALL: Does that report recommend a term, or is it life of author?

Mr. ARBIQUE: The Ilsley Commission report recommends a term for published works of 56 years from the date of publication, or life of the author, whichever is the later. That is, on the date of death, if that is more than 56 years from the date of publication, the copyright would cease—not as is the present case. It would be shortening the term. I should like to point out that the Ilsley Commission recommendation was for this shorter term. This was to line up with the Americans primarily, because they did not want American works remaining in copyright in Canada when they went into the public domain in the United States. But they did not take cognizance of a provision in both the Universal Copyright Convention and the Berne Union—they did not take sufficient cognizance of it—in which it is set forth that under no circumstances should the term for a work be longer than the term in the country of origin. In other words, we would not be bound to protect American works in Canada for the life of the author plus 50 years, but only for 56 years from publication.

Senator MACDONALD (Brantford): Does this have any retroactive effect? Does it affect any authors who published in the United States before we entered this agreement?

Mr. ARBIQUE: Yes. Interim copyright under American law would be converted to full American copyright on Canadian accession to the convention. In other words, a Canadian author now enjoying say, the third of five years of interim copyright, on the date of accession of Canada to the convention it is automatically converted, under American law, to the present 56-year period.

Senator HUGESSEN: As I understand you, what has really happened since the Ilsley Commission is that the shoe is now on the other foot: instead of coming under the American system of 28 plus 28 years we are hoping the United States will come under the general system of life of author plus so many years?

Mr. ARBIQUE: No, they will not do that. There has been a considerable amount of pressure in the United States to do that. This existed before the war and since the U.C.C. came into effect, but they will not abandon it. They are not making the term one of life plus 50 years, but instead propose to raise the term from 56 to 76 years, which, when you figure it out, works out to about the same thing. But it is still based on the date of publication. It will continue for 76 years beyond the date of publication.

Senator POULIOT: From the practical point of view, quotations are permissible for literary reviews?

Mr. ARBIQUE: Yes, sir.

Senator POULIOT: Is it necessary to get the permission of the publisher who has the copyright, or the author who has the copyright, to publish a page from any author, in the report? Is it necessary to have special permission to publish a page from a book in the report?

Mr. ARBIQUE: This is spelled out in our own Copyright Act, and it is not governed by the convention. This is a matter for domestic legislation. Within our own Copyright Act there is certainly provision with respect to the reasonable usage of work.

Senator Proulx: But what I would like to know is if it is by this too? I have not read this.

Mr. Anagnost: I do not think it is. I rather doubt the Berne law: all they do is to set limits within which domestic legislation and must guarantee a certain minimum or a certain measure of protection. Nowhere in the convention, in either this convention or the Union, does it say what the rights of the author will be. This is a domestic law.

Senator Proulx: When an excerpt from a book is published with the references—such a book, by such an author, published by such a party—it is rather an advertisement.

Mr. Anagnost: Mr. Cattanach has drawn this to my attention covered in the Canadian Copyright Act, section 17(2), which says:

"The following acts do not constitute an infringement of copyright—
—and those acts are: For purposes of study; when author not owner permanently situated in public place; short passage for schools; not more than two passages; newspaper report of public lecture unless notice to contrary; reading of extract—and so on. This is found in our present legislation, but the convention does not go any further than the present legislation.

Senator Proulx: Will a page be considered as a short passage?

Mr. J. W. I. MICHEL, Commissioner of Patents: It depends on the length of the book. If the book were two pages long and you published one, you would be publishing half the book. The act is very stingy about it, and says, "short passages". If you published three or four pages out of 300, there is nothing wrong there.

Senator Wynn: I should like to come back to this problem of limiting our flexibility for changing our own copyright law if we accede to this convention. I am still not perfectly clear as to how far we are limiting ourselves, so that we may not make changes or accept some of the recommendations of the Isley report. In this connection I am thinking of a private member's bill that has been introduced in the other place, which I have not had a chance to study very fully, but which, I gather, is in large measure an implementation of the Isley Commission report, minus certain things. Apparently, it would be an alternative procedure if we were to go ahead and accept this, but I am wondering whether you can tell me in what important areas is our flexibility to change our own Copyright Act—maybe to bring it in line with some of the recommendations of the Isley Commission—circumscribed if we agree to this.

Mr. Anagnost: The Isley Commission's recommendations are all in line with the Universal Copyright Convention because they recommend adherence to this convention. The only reason why the convention was to be ratified after the change in the law was because of the nature of the recommendation that the Isley Commission was making just in that one respect we have discussed—that is, the term. That is the only one.

In other words, any other recommendation of the Isley Commission could be implemented within the terms of the Universal Copyright Convention.

Senator Cahan: This refers to literary, scientific and artistic works. Does the coverage extend to radio and television?

Mr. Anagnost: Radio and television broadcasting and sound recordings are not covered in the Convention. In other words, we could enact what we like with respect to those particular things. Moving pictures are covered.

Senator Macdonald (Bromfield): I thought radio and television were covered in the Berne agreement, in the last revision.

ARBIQUE: Yes sir, I am sorry; that is true; but the recommendation of the Ilsley Commission is that we do not accede to the Brussels revision.

Senator MACDONALD (Brantford): I thought the Canadian Authors' Association requested that our act should provide for radio and television.

Mr. ARBIQUE: For ratification, certainly, of the Brussels revision of the agreement.

Senator MACDONALD (Brantford): It was approved by the Brussels revision?

Mr. ARBIQUE: And sound recordings.

Senator MACDONALD (Brantford): But we have not ratified that?

Mr. ARBIQUE: No sir; and the recommendation of the Ilsley Commission is that we do not ratify the Brussels revision.

Senator MACDONALD (Brantford): Did the Canadian Authors' Association take the representations to the Ilsley Commission or to the Secretary of State?

Mr. ARBIQUE: To both. They continue to press their case in that connection.

Senator MACDONALD (Brantford): Would you like to say why?

Mr. ARBIQUE: The primary reason is that the Rome revision provides for a limited term. Most of these representations relate to term, although the term is not the most complex part. The Rome revision provided for life of the author plus 50 years, but if all countries participating do not have such a term then the domestic law will apply.

The Brussels revision says the term will be life of the author plus 50 years. The Canadian Authors' Association is concerned with the possibility that a new copyright act might restrict the term. They do not like the Ilsley Commission recommendation because it restricts the term, it has pulled it down to 56 years from publication from the previous one of life of the author plus 50 years. Therefore, they are concerned that the term should be life of the author plus 50 years as recommended by the Brussels revision. I do not imagine there would be any complaint on the part of the Canadian Authors' Association if the act said life of the author plus 50 years; but they are afraid of the possibility that a new act might reduce the term—unless it also provides for ratification or accession to the Brussels revision.

Senator CROLL: Getting back to the suggestion I made with respect to radio and television, this Universal Copyright Convention does not cover that?

Mr. ARBIQUE: It does not cover radio, television or sound recordings.

Senator CROLL: Or sound recordings?

Mr. ARBIQUE: That is right.

Senator CROLL: In the light of the world position today, how was that overlooked?

Mr. ARBIQUE: I do not know. I cannot tell you how that come about, sir, but I would point out that since it does not cover these things, it does not impose any limitation on our freedom of action with respect to these types of works.

Senator CROLL: The reverse is also true.

Mr. ARBIQUE: Yes, that is right.

Senator CROLL: And there have been no representations by any of these people with respect to this? It is not a matter of great concern?

Mr. ARBIQUE: I gather that it is not, sir. This is a very popular convention and it is a loose one. I think that everyone welcomed it as an opportunity to move into the United States market through the front door rather than the back door. At the present time we can get full American copyright protection without printing in the United States, since we can print instead in Britain

or in one of the other countries which are signatories. However, the back door method. I repeat that we do not have to print in the United States and I am sorry if I left that impression; we can print in any of the countries which are signatories, such as Britain, France or Germany.

Senator HUGESSEN: But we cannot print in Canada?

Mr. ARBIQUE: The back door method does the Canadian printing no good, but it also does the American printing industry no good. That is not the point.

Senator MACDONALD (Brantford): Do I understand the position to be that from the day we ratify the Universal Copyright Convention a Canadian author or publisher can publish in Canada and from then on he will have copyright protection for 25 years at least in the United States?

Senator HUGESSEN: For 28.

Mr. ARBIQUE: Yes. This much is certain, but that is only under the convention. He will get much more, but that will be the minimum. There is a time lag. After accession, a certain number of months must elapse, one of the administrative provisions. It is three months.

Senator MACDONALD (Brantford): Three months after the day it is ratified he will have his minimum of 25 years from date of publication?

Mr. ARBIQUE: Yes.

Senator MACDONALD (Brantford): Therefore, I suppose there is some urgency, notwithstanding the fact that we waited all these years, to have this ratified as soon as possible, in the interest of authors and publishers in Canada?

Mr. ARBIQUE: Yes, sir, that is certainly true. Incidentally, we attempted some months ago to make diplomatic representations to the United States on the basis of pressure that was put on the Secretary of State by publishers in Canada to have these clauses made inoperative; but we knew what the answer would be, that this would require changing their law and that it would be far easier for us to ratify the Universal Copyright Convention.

Senator MACDONALD (Brantford): Why are we ratifying only one protocol? I understand there are three.

Mr. ARBIQUE: Yes, there are three. The first two protocols would require amending legislation. The third one does not. That is why we are doing it in this way. The third one is just a means of making the accession of a country conditional on the entry of the United States into the agreement, without saying so in either the convention or the protocol. It can do no good now that the United States has ratified this, but it can do no harm either, and we propose ratification.

The other two protocols have to do with extending our act to stateless persons and refugees—in other words, assimilating them with nationals of other countries. This will require legislation. They also have to do with extending our act to member countries of the Organization of American States, and this will require legislation.

In other words, there is no incumbency on a nation becoming party to this convention to ratify all the protocols. The protocols are quite separate. Protocol 3 can do no good, and it can do no harm.

Senator CROLL: I move adoption.

Senator WALL: I will second the motion with this qualification, that I think we would have been far tidier if we had made the necessary changes in our laws first.

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Senator MACDONALD (Brantford): I quite agree, but I would not want to put ratification today on that account.

The CHAIRMAN: Are all honourable senators agreed?

Senator POULIOT: I have just one more question. If that convention is to we will become signatories with the United States. When that will the rest of the laws concerning importations of books into the United States disappear?

Mr. ARBIQUE: Yes.

Senator POULIOT: So we will be able to sell in the United States any number of Canadian printed books?

Mr. ARBIQUE: That is right, sir. This is because of a provision in the United States law that says that these restrictions in the United States law must remain inoperative insofar as any member of the Universal Copyright Convention is concerned.

Senator MACDONALD (Brantford): So that the sale of Canadian publications in the United States is rather the opposite side of the question raised in the O'Leary report?

Mr. ARBIQUE: Yes.

Senator POULIOT: And vice versa?

Mr. ARBIQUE: Yes, but we already protect them in that respect.

The CHAIRMAN: Is it the wish of the committee to recommend this Convention to the favourable consideration of the Senate?

Hon. SENATORS: Agreed.

The committee adjourned.

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STANDING COMMITTEE
APPENDIX "A"

(See p. 9)

Memberships in the Convention (as at December 1, 1961)

Berne Union

Universal Copyright
Convention

Dual Memberships

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 Argentina
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 Ecuador
 France
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 Germany
 Haiti
 Holy See
 Iceland
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 Japan
 Laos
 Lebanon
 Liberia
 Liechtenstein
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 Mexico
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