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MEMORANDUM FOR CONSIDERATION BY THE
CABINET COMMITTEE ON ECONOMIC AND FISCAL POLICY

The Stockholm Conference on Copyright
Instructions for the Canadian Delegation
Covering the Protocol Favouring Developing Countries

One of the contentious matters to be discussed at the Stockholm Conference on Copyright (June 12-July 14) will be the Protocol favouring developing countries. As this Protocol is now drafted it would permit developing countries to accede to the Convention under conditions which would permit them to restrict normal copyright protection accorded under the Convention in five different ways. The most important of these restrictions could be applied to literary and artistic works, if those works could be shown to be "for exclusively educational, scientific or scholastic purposes"; another would permit works to be translated into local vernaculars (but not for export) under the authority of a non-exclusive license from a competent authority with provision that the author would be compensated and would retain his moral rights. These restrictions would be exercisable in the first instance for ten years but could be extended for a second period of ten years.

2. The terms of this Protocol were worked out during the past four or five years by a number of study groups. The majority of those concerned were of the view that exceptional measures for the benefit of the developing countries were, in principle, justified. There is indeed something to be said in favour of supporting the Protocol because, in a manner of speaking, it is an inducement to developing states to accede to the main terms of the Berne Convention without at the same time having to assume the full burden which the Convention imposes. This, in turn, would extend the area over which normal copyright protection would be guaranteed. Thus, at least one reason for accepting the Protocol is to encourage non-member countries to join the 20 developing states which have already acceded to the Berne Convention. In addition, the Protocol recognizes the problems faced by the developing countries--their shortage of foreign currency to meet external obligations and their need to import not only material things but ideas to hasten their development.

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3. This question has aroused considerable interest in other international discussions on the problems of development notably in UNCTAD (United Nations Committee on Trade and Development) where, for example, developed countries have been urged to encourage the holders of patented and unpatented technology to facilitate the transfer of licenses, know-how, technical documentation and new technology in general to developing countries. An attempt is only now being made at the international level to determine the cost of the transfer of technology in terms of balance of payments to developing countries and to analyze existing methods and arrangements for the transfer of such data to them. It is anticipated, therefore, that this subject will be receiving increased attention in international discussions in the future. On general political grounds, and in the light of the considerations which govern our expanding aid programme, Canada will wish to examine sympathetically any developments aimed at the establishment of machinery which will be of benefit to developing countries in this field.

4. Despite these arguments, the publishing industry and other producers and holders of copyright in Canada and elsewhere have objected most strenuously to the Protocol. Statistics have been produced to show that copyright owners cannot fail to lose financially by any such scheme, which some would characterize as "legitimized piracy". Piracy is, in fact, already being practiced in some countries outside the Union; it is hoped that if the cost of joining can be kept low enough, some of this piracy at least can be stopped. It has also been pointed out that if the proposal is accepted and its terms implemented, the copyright holder will be required to make his own personal contribution to foreign aid because he will, in effect, be subsidizing (to the extent that copyright dues are not being paid) a competitive publishing industry in developing countries and providing it free of charge with the intellectual material to reproduce for general distribution.

5. Canada, whose exports of intellectual property are not in any event an important item would not be a major sufferer should the Protocol be approved. Indeed, like many of the developing countries, Canada is a net importer of intellectual property and can, therefore, be sympathetic to their problems. However, it is not possible to forecast at the moment what Canada's attitude on such a Protocol will be in, say, ten years time when our present trading position in this commodity may have been radically altered.

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With respect to these matters there appears to be a

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6. In considering the attitude Canada should take towards the Protocol, it is important not to overlook certain inherent advantages which the so-called "developing" countries offer to Western intellectual output. In the original languages, for example, literary and artistic works (books, films and video tapes) in English, French, Spanish and Portuguese still enjoy a special place in these areas of the world. It may, therefore, be in the interest of Canadian and other Western producers of copyright material to make some sort of concession to these developing countries if they wish to retain these advantages. Since Canada is, at the moment, no more than a marginal beneficiary of this situation, however, the Canadian Delegation will be in no position to take the lead in the matter. The most that we can expect perhaps is that those whose interests are more deeply involved will see to it that the Protocol will not impose too heavy a burden on the creators of intellectual property, nor on its users in Africa, Asia and Latin America and that its terms will be more clearly defined.

7. The Canadian Delegation to the Stockholm Conference, under separate instructions that have already been issued, will be seeking to avoid having Canada's copyright commitments strengthened because the whole question of copyright and related matters was submitted about a year ago to the Economic Council for examination and a report. In these circumstances I recommend that the Canadian Delegation to the Stockholm Conference on Copyright be guided in respect to the Protocol by the following instructions:

- (1) Refrain from supporting any provision 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;
- (2) Bear in mind para 13 of the General Instructions;
- (3) But otherwise, work for clarifications and sharper definitions.

Paul T. Hellyer
Secretary of State
schl External Affairs.

With respect to these matters there appears to be a

REPORT OF THE CABINET COMMITTEE ON FINANCES AND
ECONOMIC POLICY

MEMORANDUM TO CABINET:

DEPT. OF FINANCE
JUN 10 1967
Ottawa, Minister's Office
June 12, 1967.
Cab. Doc. 351/67

Instructions for the Canadian Delegation for the Stockholm
Conference on Copyright. xh

The Cabinet Committee on Finance and Economic Policy met at 3:30 p.m. on June 8, 1967 in Room 356S Centre Block to consider instructions for the Canadian Delegation to the Stockholm Conference on Copyright (Cab. Doc. 352/67 dated 8 June, 1967). Three Ministers were present at the meeting.

The Committee agreed that the Canadian Delegation should:

1. 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;
2. 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;
3. Avoid commitments in this area wherever it seems that copyright protection is being strengthened so as to circumvent or otherwise restrict the greatest possible socio-economic use of these new technological developments.
4. Seek Canadian Representation on the Co-ordination Committee and in the Secretariat of the IPC to ensure that any new proposals, patents and copyright take into account Canada's economic and social interests.
5. To the extent that this proposed Revision Conference confers benefits without reciprocity, upon countries employing the Author Certificates, explore the possibility of a quid pro quo without, however, making any formal commitment at this time because of the Economic Council reference referred to above.

In addition to the foregoing, and as a general instruction, the Canadian Delegation should seek to reduce wherever possible the technical complexities and uncertainties of the existing copyright system particularly as it applies to the communications media (motion picture, TV, radio).

Because of the largely negative role the Delegation is hereby being instructed to play during the Conference the Delegation

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should not accept Conference office. At the discretion of the Head of Delegation, however, members of the Delegation may accept assignment to participate in working groups.

Because of Rule 37 of the Draft Rules and Procedures for the Conference providing the unanimity rule for the adoption in Plenary of any new revision or new instrument (protocol, etc.) the Canadian Delegation, generally speaking, may oppose revisions in committee with a view to their amendment in a manner more suited to Canadian needs, but restrict its expression of disapproval of any particular revision to an abstention in Plenary session.

These instructions are for the delegates representing the Federal Government and will not be seen by other representatives.

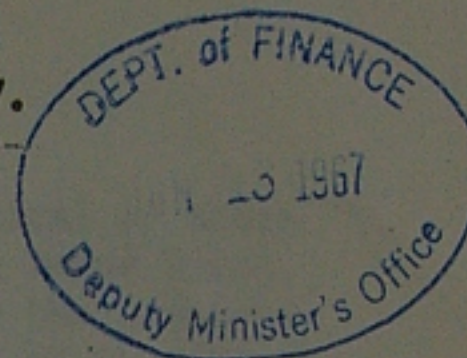
Developing Nations Protocol.

The Committee also considered a paper on the Protocol favouring Developing Countries and asked that the matter be given further study. As the Protocol was not to be considered for several weeks, instructions could be sent later by message.

O. G. Stoner,
Secretary.

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OTTAWA, June 8, 1967.



MEMORANDUM FOR CONSIDERATION BY THE
CABINET COMMITTEE ON ECONOMIC AND FINANCIAL POLICY

The Stockholm Conference on Copyright

The Canadian Delegation to the Stockholm Conference on Copyright is composed of both public servants and representatives of private outside associations of authors, book publishers, performers and so on. The broad public interest which the Government seeks to represent can at times, in a delegation of such composition, be at odds with one or several of the private interests represented within the Delegation. For that reason the Canadian Ambassador to Sweden, who is the Head of the Delegation, will require quite specific instructions on the matters to be raised at the Conference. With such instructions in his hand he will be able, with authority, to make rulings should disputes arise within the Delegation as to whether support should be given to revisions which would appear to favour one interest against another.

2. This memorandum, therefore, examines the principal matters to be considered at the Stockholm Conference and recommends a specific set of instructions for the Delegation.

Background and General Economic Considerations

3. 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:

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

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(B) The Ilseley Royal Commission on Copyright was critical of these obligations assumed by Canada at earlier conferences of the Berne Union. The Commission recommended that Canada should not accede to the Brussels Revision. Canada has not done so but would be compelled to if it were to accede to the current Stockholm proposals. The Commission considered that Canada should seek to make its law on copyright similar to that of the United States, our largest market and most important supplier. The United States is not a member of the Berne Union but only of the Universal Copyright Convention which gives its member countries much wider discretion in the application of national laws protecting foreign works.

(C) At the same time, if Canada were to withdraw altogether from the Berne Union this would of course raise the question of future protection for Canadian works in Berne Union countries, particularly those which are important markets for the works of Canadian authors. Until all these and other implications of withdrawal have been fully explored, the present excessive cost to the Canadian public in relation to the limited benefit to Canadian authors may be unavoidable if Canada wishes to retain copyright protection in the markets of the Berne Union countries.

4. 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.

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Technological Innovations

5. A new area of concern in the field of copyright protection has developed because of uncertainties surrounding the impact of modern technological innovations including photocopying devices, computer techniques and satellite transmission which would seriously erode the monopoly granted for copyright. The full implications to Canada of this modern technology are not yet clear. With respect to these matters there appears to be a clear possibility of conflict between the economic and social interests of Canada as a whole. In traditional copyright terms, for example, how is it possible to reconcile, with these innovations, the interests of authors whose work is copyrighted with the interests of industries and education which use the copyrighted material.

THEREFORE, it is recommended that the Canadian Delegation should:

- (a) Avoid commitments in this area wherever it seems that copyright protection is being strengthened so as to circumvent or otherwise restrict the greatest possible socio-economic use of these new technological developments.

The IPO (Intellectual Properties Organization)

6. The Stockholm Conference is also expected to consider the creation of a new organization, the IPO, which will be charged with the duties of generating new concepts of protecting intellectual property for eventual submission to an IPO Assembly. This is conceived of as a continuing process. The IPO is to replace the existing individual bureaux of the various unions under which the difficult aspects of intellectual property are at present protected. Canada is interested in having a voice in the Secretariat of the IPO so that it may bring to bear on any new notions that do come forward in the future, the particular interest which countries like Canada have because of their special status as net importers of copyrighted intellectual property.

7. Patents, trade marks and copyright are growing in importance as non-tariff barriers to freer trade. It is, therefore, imperative that Canada be represented where new proposals in this area are being generated.

THEREFORE, it is recommended that the Canadian Delegation should:

- (a) Seek Canadian representation on the Coordination Committee and in the Secretariat of the IPO to ensure that any new proposals, patents and copyright take into account Canada's economic and social interests.

Protocol Favouring Developing Countries

8. A separate paper has been circulated outlining the problem in this area and recommending a new set of instructions.

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Authors' Certificates and Patents

9. Only one substantive patent matter is to be discussed at Stockholm. It is proposed that members of the International Patent Convention (the Paris Union) accept "Authors' Certificates" as being the equivalent, for dating and invention, of patent applications. The Author's Certificate device is the one used in Russia and other Eastern European countries where normally patents are held in the name of the state and the author of the invention is entitled to compensation on the basis of a scale of proving economic saving or utility.

10. It is evident from the history of this attempt to equate a notion from the field of authorship to a notion in the field of inventorship that the major benefit, should the proposal be approved, would accrue to Eastern European countries.

THEREFORE, it is recommended that the Canadian Delegation should:

- (a) To the extent that this proposed Revision Conference confers benefits without reciprocity, upon countries employing the Author Certificates, explore the possibility of a quid pro quo without, however, making any formal commitment at this time because of the Economic Council reference referred to above.

General

11. In addition to the foregoing, and as a general instruction, the Canadian Delegation should seek to reduce wherever possible the technical complexities and uncertainties of the existing copyright system particularly as it applies to the communications media (motion picture, TV, radio).

12. Because of the largely negative role the Delegation is hereby being instructed to play during the Conference the Delegation should not accept Conference office. At the discretion of the Head of Delegation, however, members of the Delegation may accept assignment to participate in working groups.

13. Because of Rule 37 of the Draft Rules and Procedures for the Conference providing the unanimity rule for the adoption in Plenary of any new revision or new instrument (protocol, etc.) the Canadian Delegation, generally speaking, may oppose revisions in committee with a view to their amendment in a manner more suited to Canadian needs, but restrict its expression of disapproval of any particular revision to an abstention in Plenary session.

14. These instructions are for the delegates representing the Federal Government and will not be seen by other representatives.

Registrar General of Canada

Secretary of State
for External Affairs

MEMORANDUM • GOVERNMENT OF CANADA

File

Plumptre

W. A. Kennett

YOUR FILE No:

1011-29

OUR FILE No:

DATE: May 26, 1961.

I spoke to Marshall Crowe this morning concerning our ratification of the Universal Copyright Convention. He informed me that a memorandum has been prepared for Cabinet recommending the ratification of this Convention. Contrary to an earlier opinion of the Secretary of State's office, the Department of Justice now maintains that we can ratify this Convention without amending the Copyright Act. By the simple step of ratifying the Universal Copyright Convention we can overcome the handicap so justly complained of by Mr. Irwin. Marshall Crowe wondered whether we would not join his Department in pressing to have the Memorandum to Cabinet recommending such action placed on the Cabinet agenda at the earliest possible opportunity?

Original Signed by
W. A. KENNETT

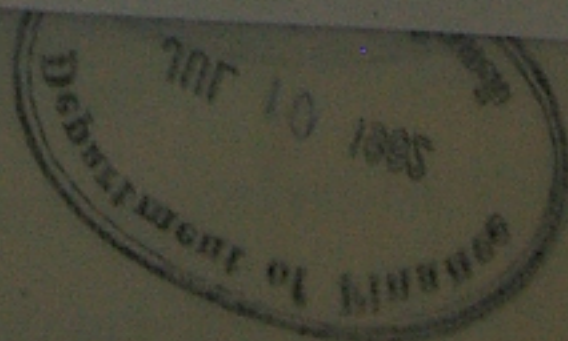
CGSB Standard 6—GP—22; P P & S Cat. No. 3588

Sir,

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similar impediment to sale of United States books in Canada.

3. This problem has been vigorously explained to the Royal Commission on Publications by a number of spokesmen for

that Canada