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*M. [Signature] 1592*

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DES  
AFFAIRES EXTÉRIEURES

DEPARTMENT  
OF  
EXTERNAL AFFAIRS



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FAC/R. Blackburn/dl

MESSAGE

AFFI

Unclassified

FAC

May 7, 1971

UNESCODEL Telegram UN-122 of May 6

PATRIOT OFFICE (SIMONS)

Diplomatic Conferences on Copyright: Paris  
July 5-24: Entertainment

55-19-4-Berne - Dec

Cabinet has now agreed to Canadian participation in the above-mentioned conferences. At the last Conference of this kind, held in Stockholm in 1967, the Canadian delegation held a very successful reception for the other delegates, and it is hoped that a similar reception for some 80-85 guests including heads of other delegations and selected officials from the Conference Secretariats might be held on July 6 in the Canadian Cultural Centre in Paris. The Permanent Delegation has indicated that the proposed reception would cost approximately \$500.00.

2. We would therefore appreciate receiving authorization for a delegation entertainment allowance of \$650 to pay for the cost of the reception, the printing of invitations and other entertainment at the discretion of the head of the delegation.

FREEMAN M. TOVELL  
Cultural Affairs Division.

REDACTED

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

R. BLACKBURN/dl

FAC

6-3034

R. BLACKBURN

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Reference number/no de référence :

RG 25 Vol. 10904 File 55-19-4-BERNE Pt. 5.1

position to determine future Canadian policy requirements and the type of international legal rules which may be required in the field of remote sensing.



# MESSAGE

PLACE LIEU	DEPARTMENT MINISTÈRE	ORIG. NO. N° D'ORIG.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
OTT	EXT	FAC-831	7 MAY 71	55-19-4-Berne-Ucc 9	UNCLASSIFIED

GNVA, UNESCODEL PARIS

INFO PATENT OFFICE (SIMONS)

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SUB/SUJ

COPYRIGHT REVISION CONFS. PARIS JULY 5-24

RECEPTION

PLS INFORM WIPO AND UNESCO SECRETARIATS THAT CANDEL WILL LIKELY INCLUDE 11 MEMBERS NAMES TO FOLLOW ASAP.

DES DELS 6 JUL AU CENTRE CULTUREL. CHERCHONS ACTUELLEMENT AUTORISATION FINANCIERE ET VOUS INDIQUERONS CODING DES POSSIBLE. ENTRETEMPS POUR AVANCE PREPARATIONS SERAIT UTILE QUE VOUS ETABLISSEZ AVEC AIDE D'UNESCO LISTE DES DELS ET DES MEMBRES DU SECRETARIAT UNESCO ET OMPI QU'ON DEVRAIT INVITER JUSQU'AU TOTAL DE 80 OU 85.

2. HOTEL

DELS PAIERONT EUX-MEMES CHAMBRES MAIS VOUS DONNERONS CODING POUR DEL BUREAU-SALON. MERCI POUR AVOIR SOULEVE QUESTION DES DATES. ETANT DONNE REUNION DES DELSCONS PREVU DIMANCHE 4, PLUPART ARRIVERONT MATIN SAMEDI 3 ET POUR AVOIR CHAMBRE RESERVATIONS DEVRAIENT COMMENCER VEND 2. DANS CETTE LIGIERE ET Y COMPRIS ADDITION EVENTUELLE D'UN DEL JUSQU'ICI NON PREVU, PERSONS SERONT COMME SUIT (NOMS PAS ENCORE OFFICIEL)

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

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position to determine future Canadian policy requirements and the type of international legal rules which may be required in the field of remote sensing.



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

PDM (via FLA, ECD)

FROM  
De FACREFERENCE  
RéférenceSUBJECT  
Sujet Diplomatic conferences to revise Berne and Universal  
Copyright Conventions - (July 5-24, 1971).SECURITY  
Sécurité

CONFIDENTIAL

DATE

April 27, 1971.

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
55-19-4-Berne-Ucc	
MISSION	

ENCLOSURES  
Annexes

## DISTRIBUTION

cc. ECD  
FLAPatent Off.,  
Mr. Laidlaw.

As you are aware, one of the principal issues to be discussed in July at the diplomatic conferences to revise the Berne and Universal Copyright Conventions will be whether and how to provide easier access for the developing countries to copyrighted materials for educational purposes on a limited and temporary basis. In preliminary discussions with officials of the Patent Office on various questions raised by the draft revisions, a number of factors have been identified as meriting consideration in relation to the position to be adopted by Canada on the proposals regarding developing countries.

FACTORS:

- i) At the Stockholm Conference held in 1967 to revise the Berne Convention and at subsequent intergovernmental copyright conferences and conferences of UNESCO and the Commonwealth, it has become increasingly evident that the developing countries attach great importance to achieving limited, temporary concessions permitting the reproduction and translation of copyrighted materials for educational purposes.
- ii) Both draft revisions to be considered in July propose concessions which have been widely discussed by developed and developing countries and appear to be acceptable in substance to both sides.
- iii) Although Canada has participated in all of the preparatory meetings, it has not taken a position on the substance of the revisions proposed because Canadian copyright legislation was being reviewed by the Economic Council.
- iv) The Economic Council review is now complete and new Canadian legislation is being drafted in the sense of the review. In general, the Economic Council recommended that since Canada is primarily an importer of copyrighted material, it would not be in the Canadian interest to encourage or become bound by a higher level of international copyright protection. This will likely preclude, at this time, Canadian accession to either the revised Berne or the Universal Convention, both of which would entail acceptance by Canada of a higher level of international copyright protection.

.../2

Ext. 407A/Bil.  
(Admin. Services Div.)

29.4.16/05

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... experience in data handling and processing and be in a better position to determine future Canadian policy requirements and the type of international legal rules which may be required in the field of remote sensing.



- v) The views of Canadian author and publisher interests on the proposed revisions were requested in writing on January 5, 1971 and to date all replies have indicated that the specific provisions related to developing countries present no difficulties for the private sector. It has been speculated by government officials that this is because the concessions proposed would have a negligible effect on the Canadian situation. Their main impact would be on the principal book exporting countries, U.S.A., U.K., France and Spain.
- vi) It is anticipated that provision will be made for representatives of the Canadian Copyright Institute and la Société canadienne-française de Protection du Droit d'auteur, the two main anglophone and francophone author-publisher groupings, to attend the revision conferences as advisers or observers with the Canadian delegation. It can be expected that these representatives, in corridor discussions with other delegations, will make it known that private sector interests in Canada have no problem with the concessions proposed, thus placing the onus for a Canadian decision to cooperate or not on the Canadian Government.
- vii) There is provision in the draft revision to Berne, and a similar provision may be added to the draft revision to the Universal Convention, for a country not yet able to accede to the revised Convention to make a declaration that it will apply the provisions of the revised Convention, if adopted, in its relations with developing countries. Such a declaration would not alter substantially the Canadian position on fundamental international arrangements and could be changed at any time. The Patent Office sees no particular advantage in such a declaration, from the copyright point of view, but would be willing to accept our guidance on whether it would be politically desirable to make a declaration, in due course.

PROPOSED POSITION:

2. Bearing these factors in mind, we believe that rather than continuing its "no comment" stance on the developing country question, the Canadian delegation should now be able to take a more positive stand. In view of the new copyright legislation now being prepared, it does not appear possible to obtain, in the short time available, a Government decision to make a declaration of the nature described above at the conferences in July. Nevertheless, we believe that it would be advantageous, for Canada's relations with the developing countries, to be in a position to say publically and in the corridors of the conferences that Canada is seriously and sympathetically considering the possibility of making such a declaration. This would add a positive element to our explanation of why we are not in a position to sign the revisions, which otherwise may be interpreted negatively by other delegates who are aware of results of the Economic Council's review.

.../3



3. The statements of position which have been given to us by representatives of the principal Canadian anglophone and francophone author-publisher interests (see letters attached) can be used in support of such a policy. We can further indicate that in looking favourably towards a possible declaration, we do not intend to do so at the expense of these interests. This can be done by emphasizing, strengthening and clarifying the provisions in the draft revisions which provide for a) a reasonable time lapse before compulsory licence are issued, b) a clear and satisfactory system for seeking authorization from the copyright holder, and c) fair compensation for the latter in convertible currency.

4. We do not think that Canada should feel inhibited from taking this position by the opinion expressed in paragraph 3, page 2, of the letter from the Canadian Copyright Institute which attempts to link the application of special provisions to developing countries to full Canadian accession to the Stockholm level of the Berne Convention. The fact that Institute wishes to use such a link as leverage, should not preclude our taking fully into consideration its acceptance of the proposals concerning developing countries.

5. Do you agree that the Canadian delegation should adopt this position?

Other elements:

6. As other positive elements to flesh out the Canadian position, we have asked CIDA to provide us with a statement of the assistance which Canada is providing bilaterally in the book development field. We shall also be able to refer to our recent positions at Commonwealth meetings, at which Canada has supported various programmes for book development in the developing world.

*Human Nelson*  
Cultural Affairs Division



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... experience in data handling and processing and be in a better position to determine future Canadian policy requirements and the type of international legal rules which may be required in the field of remote sensing.



# CANADIAN COPYRIGHT INSTITUTE

SUITE 1801 80 KING STREET WEST, TORONTO 1

ROY C. SHARP, Q.C.  
EXECUTIVE DIRECTOR

TELEPHONE  
(416) 368-6135

12th February, 1971

Mr. A. M. Laidlaw  
Commissioner of Patents  
Department of Consumer and  
Corporate Affairs  
219 Laurier Avenue West  
Ottawa 4, Ontario

Dear Mr. Laidlaw:


The Canadian Copyright Institute is pleased to reply to your letter of the 5th of January, 1971 requesting comments on the action to be taken by the Canadian delegation to the three Diplomatic Conferences to be held in Paris from the 5th to the 24th of July, 1971.

The Canadian Copyright Institute is in favour of Canada becoming bound by the proposed amended text of the Stockholm Act of the Berne Convention. It is the view of the Institute that the proposed text of the Additional Act to the Stockholm Act which takes the place of the "Protocol" is on the whole a satisfactory compromise between the developed and the developing countries. There no longer seems to be any way of using the Additional Act or the Protocol as a bargaining point with the United States for obtaining exemption for Canada from the provisions of the Manufacturing Clause in the U.S. Copyright Act.

The proposals for revising the Universal Copyright Convention are similar to the proposals contained in the Additional Act of the Stockholm Act and are necessary to complement the Berne revisions.

We accordingly would recommend that Canada accede to the Stockholm Act (Articles 1 to 20 and the Additional Act) with however the following word of caution. Should Canada become bound by the Additional Act, it will more than ever be essential that provisions similar to Sections 27 and 28 of the Canadian Copyright Act be maintained in any new copyright legislation (any recommendations of the Economic Council to the contrary).

If Canada is to increase her export of intellectual property as recommended by the Ernst & Ernst Report, one of her important markets abroad will be the developing countries. This will entail the manufacture in Canada or the licencing for manufacture in a developing country of special editions of Canadian books. It is implicit in the Additional Act that such editions cannot be sold at a price that will

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12th February, 1971

tribute their proportionate share to the overhead costs such as the costs of research, composition, typesetting, etc. These costs will have to be borne in a large measure by the Canadian edition and any contribution from foreign editions can be at best an insignificant part of the original costs of production.

Section 27 and 28 of the Canadian Copyright Act are therefore essential to ensure that the production of Canadian editions will not be penalized by special editions finding their way back into the Canadian market and being sold in competition with the Canadian edition. Even though the United States is a member of the Florence Agreement which prohibits tariffs and other trade restrictions on books, the Manufacturing Clause prohibits the importation into the United States of such special editions and this fact has always loomed large in the U.S. negotiations with the developing countries and in determining the final text of the Additional Act and the amendments to the Universal Copyright Convention. It will be noted that these amendments contemplate the publishing nations of the world bringing out special editions or licencing them in the developing countries rather than waiting until a compulsory licence is ordered.

The Institute would not be in favour of Canada subscribing to the Additional Act regarding the developing countries and not becoming bound by Articles 1 to 20 more particularly because Section (6)(a) of Article 1 of the Additional Act would seem to make it mandatory that a country such as Canada at only the Rome level provide the degree of protection required by Articles 1 to 20 for developing countries that have subscribed to the Stockholm Act, but would only be required to provide the level of protection required by the Rome Convention for developed countries members of Berne at any level. Similarly, countries at the Brussels level would be required to provide protection equivalent to Articles 1 to 20 of the Stockholm Act to works of developed countries but only provide a degree of protection for developed countries at the Brussels level.

#### PHONOGRAMS

The Canadian Copyright Institute is in favour of Canada becoming bound by an international treaty for the protection of phonograms. The Institute is also in favour of Canada becoming a member of the Rome Convention for the Protection of Neighbouring Rights. Canadian legislation however does not enable Canada to become bound by this treaty at the present time. The thinking in Canada has always lagged behind world opinion in matters of copyright and we would hope that new Canadian legislation would recognize and protect performers rights and make it possible for Canada to become a member of the Rome Convention.



12th February, 1971

Accompanying this letter is a working draft of alternative suggestions for a treaty for the international protection of phonograms. It is the Institute's understanding that at meetings held in Geneva last fall at which representatives from the Canadian Government attended, it was agreed that a Committee of Experts be set up under the direction of BIRPI to prepare a draft international treaty for the protection of phonograms. This draft was to form the basis for a meeting of the members of the Committee and representatives of interested countries at a meeting to be held in Paris from the 1st to the 5th of March. The wording of this draft leaves much to be desired and it is all together likely that the form finally adopted will be quite different. For example, should provision not be made for establishing and defining certain proprietary rights in the production and performance of phonograms?

We recommend that the following suggestions be kept in mind by the Canadian delegation when attending these meetings.

It is, we believe important to Canada that the U.S.A. pass legislation for the protection of phonograms and become bound by an international treaty for their protection. In negotiating any such international treaty, any measures which would encourage the U.S.A. to adopt legislation for the protection of phonograms and to become bound by an international agreement for their protection should be given very serious consideration.

The problem of whether a provision for the protection of phonograms should be contained in an existing international convention such as the Berne Union, Universal Copyright Convention or the Rome Convention dealing with Neighbouring Rights will therefore become important. We submit that in the absence of other considerations arising in the meantime, it would be in Canada's interests to resolve the problem by creating a new convention for the following reasons:

(a) Many countries do not treat phonograms as a matter of copyright and do not include protection of phonograms in their copyright legislation, for example, the U.S.A.

(b) Only a relatively few countries belong to the Rome Convention (Canada, the U.K. and the U.S.A. for example are not members) since many have not as yet passed legislation which would enable them to comply with the requirements for the protection of performers. It is to be hoped that eventually the legislation of various countries will gradually be brought up-to-date and the provisions for the protection of phonograms as well as the provisions in the Rome treaty for the protection of performers will eventually be included in international copyright conventions.

(c) The proposed U.S. Copyright Bill currently before Congress contains a provision for the protection of phonograms and it was hoped that this fact would hasten its adoption and



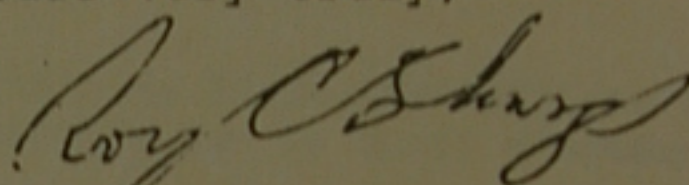
12th February, 1971

Consequently exemption for Canada from the U.S. Manufacturing Clause. Passage of the U.S. Copyright Bill now seems unlikely. *Goldman*

However, if the inclusion of the protection of phonograms in an existing treaty could be used to hasten the passage of the U.S. Copyright Bill, it would certainly be in Canada's interests to support such a measure.

We would also suggest that the Canadian delegation to the March meetings assure that any international treaty provide adequate protection against the possible mail-order sales of unauthorized duplicates from abroad (particularly the U.S.A.) to private individuals or institutions in Canada. For example, it should be made clear that the words, "provided, that any such making or importation is for the purpose of distribution to the public, and that any such distribution is to the public." do not permit the mail-order sale of unauthorized duplicates to an individual person or institution in Canada.

Yours very truly,



Roy C. Sharp  
Executive Director

RCS/ws  
Encl.