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UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

GENEVA

**BIRPI**

**ADMINISTRATIVE BODIES  
OF WIPO AND OF THE UNIONS ADMINISTERED BY WIPO AND BIRPI**

**First Series of Meetings**

**Geneva, September 21 to 29, 1970**

**PREPARATION FOR A CONFERENCE FOR  
THE REVISION OF THE BERNE CONVENTION**

Report by the Director of BIRPI

**SUMMARY**

This document deals with the preparation for the Conference, now being proposed, for the revision of the Berne Convention. It provides a short background of the work accomplished since the Stockholm Conference of 1967. It is submitted to the Assembly of the Berne Union and to the Conference of Representatives of the Berne Union, which are called upon to give directions to the International Bureau and to make comments, respectively, concerning the said preparation.

I. Provisions adopted at Stockholm

1. Among the tasks attributed to the Assembly of the Berne Union by the Stockholm Act of the Berne Convention is that of giving directions to the International Bureau concerning the preparation for conferences of revision (Article 22(2)(a)(ii)).

2. In view of the fact that a new revision of certain substantive provisions of the Berne Convention is currently in preparation, this question appears on the draft agenda of the first ordinary session of the Assembly of the Berne Union (see item 10 of document B/A/I/1).

3. Given the possibility that some members of the Berne Union may not be bound by the texts adopted at Stockholm (either because they have not deposited instruments of ratification or of accession, or because they have not made use of the transitional provisions - the five year rights -), which is the case at the moment, the Stockholm Act of the Berne Convention (in the provision cited above) provides that the directions shall be given by the Assembly, "due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26".

4. To enable these countries to express their views on the preparation for conferences of revision, as well as on other questions, it is proposed that there be established a Conference of Representatives of the Berne Union (see paragraphs 24 and 25 of document AB/I/1); the draft agenda of its first ordinary session refers to the preparation for a conference of revision of the Berne Convention (see item 9 of document B/CR/I/1).

II. Competence of the bodies of the Berne Union

5. On the basis of the preceding paragraphs, the Assembly of the Berne Union is called upon to give directions to the International Bureau and the Conference of Representatives of the Berne Union is called upon to make comments. In order to facilitate the taking into consideration of such comments, which the directions must take into account, it is proposed that the question be examined at a joint meeting of the two bodies.

III. New revision of the Berne Convention - background

6. The last revision of the Berne Convention took place at Stockholm in 1967. The required minimum number of ratifications or accessions having been achieved, Articles 22 to 38 of the Stockholm Act (the administrative provisions and the final clauses) entered into force at the beginning of 1970. On the other hand, Articles 1 to 21 (the substantive provisions), as well as the Protocol Regarding Developing Countries, have not entered into force at the date of the establishment of this document.

7. Given that the Protocol mentioned above has been accepted so far by only a very small number of States, and that it is probable that it will not be accepted by those industrialized countries whose works are most used in the developing countries, given also that, because the Protocol forms an integral part of the Stockholm Act, the fact that it is not accepted hinders the entry into force of the other substantive provisions of the Convention, given finally that it has appeared necessary to review the position of the developing countries in the entire situation of international relations in the field of copyright, a new revision of the substantive provisions of the Berne Convention has been proposed.

8. At its thirteenth ordinary session, held in Geneva in 1967 (the first session held after the Stockholm Conference), the Permanent Committee of the Berne Union, sitting with the Intergovernmental Copyright Committee (established by the Universal Copyright Convention, which is administered by Unesco), emphasized the need to analyse the complex international copyright problems associated with the various multilateral copyright conventions. The two committees expressed the wish that a joint group (i.e. a group common to the systems of the two conventions) be established for the study of the entire situation.

9. In February 1969, in Paris, the same committees met in extraordinary session and, by a joint resolution, established "a group for the study of the entire situation of international relations in the field of copyright, to be called the International Copyright Joint Study Group."

10. This body, composed of the representatives of 26 States and of some observers, whose mandate was established by the resolution passed in Paris, met in Washington from September 29

to October 3, 1969. With reference to the revision of the Berne Convention, as well as that of the Universal Copyright Convention, it adopted a recommendation, called "The Washington Recommendation," the text of which is reproduced for information as an annex to this document (Annex A).

11. In Paris in December 1969 the Permanent Committee of the Berne Union held its fourteenth ordinary session, at which it took note of the result of the Washington discussions. With reference to the revision of the Berne Convention, it adopted a resolution the text of which is also reproduced for information as an annex to this document (Annex B).

IV. The present stage of preparation for the Conference for the Revision of the Berne Convention

12. The resolution of December 1969 established a timetable for the preparation for the Conference for the Revision of the Berne Convention.

13. The Permanent Committee of the Berne Union expressed the general view that "the preparation for the revision of the Berne Convention should be made in accordance with the considerations stated in the Preamble to the Washington Recommendation and the specific provisions contained therein."

14. It hoped that the revision conference would be held no later than May-June 1971, at the same place and time as the Conference for the revision of the Universal Copyright Convention.

15. In accordance with the wish expressed by the Permanent Committee of the Berne Union, the Director of BIRPI invited the states members of the Union and all interested international non-governmental organizations to present, by March 15, 1970, draft texts or comments with respect to the proposed revision of the Berne Convention.

16. By the resolution mentioned above, the Permanent Committee of the Berne Union established an Ad Hoc Preparatory Committee to prepare a draft text of the proposals for the revision of the Berne Convention. The Preparatory Committee met in Geneva from May 19 to 21, 1970; it suggested certain modifications of the Stockholm Act and established a draft text.

17. The results of the work of the said Preparatory Committee were communicated at the beginning of June by the Director of BIRPI to the member States of the Berne Union and to the interested organizations, with an invitation to submit their comments by August 1, 1970.

18. In addition, BIRPI established and sent at the beginning of June 1970 draft Rules of Procedure for the Diplomatic Revision Conference.

19. Finally, the Permanent Committee of the Berne Union will meet in extraordinary session from September 14 to 18, 1970, in Geneva, to consider the results of the meeting of the Ad Hoc Preparatory Committee, the draft Rules of Procedure for the Revision Conference, and any other matters relating to it. Given that the extraordinary session will be held in the week immediately preceding the meetings of the Assembly and the Conference of Representatives of the Berne Union, information upon the results of the said extraordinary session will be given to them during their sessions.

20. Notwithstanding the fact that these results cannot yet be known, it may be useful to give in this document some indications about the preliminary version of proposals for revision of the Berne Convention which was prepared from May 19 to 21, 1970, by the Ad Hoc Preparatory Committee.

21. The said Preparatory Committee proposed that the special provisions in favor of developing countries be contained in an Additional Act, forming an integral part of the Berne Convention. The Protocol annexed to the Stockholm Act would be detached from it and replaced, in the revised Act, by this Additional Act. Consequently, references to the Protocol would be replaced, in all articles in which they are to be found in the Stockholm Act, by references to the Additional Act.

22. This Additional Act would contain five articles. The first would deal with the system of reservations, the second with the conditions in which a system of non-exclusive and non-transferable licenses, granted by the competent authority, could be substituted for the exclusive right of translation, the third with the conditions in which such a system could be substituted for the exclusive right of reproduction, the fourth with the provisions, common to both reservations, governing the grant of such licenses. The fifth article (repeating Article 5 of the Stockholm Protocol) would permit the early application of the Additional Act, before ratification of the new Act of the revised Berne Convention or accession to it.

23. It is not part of the purpose of this document to explain in detail the reservations which would thus be permitted for developing countries; certain provisions are still at this stage subject to alternatives between which a choice will have to be made later, and definitively, by the Diplomatic Revision Conference. However, it may be useful to add that the Preparatory Committee proposed that the reservations should be accepted without material reciprocity. In other words, the fact that reservations have been notified would not permit another country of the Union to give less protection to works of which the country of origin is the country availing itself of the reservations than that provided for in the substantive provisions of the Convention (Article 1 - 20).

24. In addition, taking the Washington Recommendation into account, the Preparatory Committee proposed that the entry into force of the revised Act of the Berne Convention should not occur before the revision of the Universal Copyright Convention had been accepted by France, Spain, the United Kingdom and the United States.

25. The Preparatory Committee also proposed that, after the entry into force of the new Act, it should no longer be permissible to ratify or accede to earlier Acts, nor to make declarations concerning the application of the Stockholm Protocol.

26. As was indicated in paragraph 19 above, the Permanent Committee of the Berne Union will take note of the proposals made by the Preparatory Committee. It is possible, if not probable, that some new elements will be introduced in relation to the revision of the Berne Convention.

27. Pursuant to Article 24(7)(a) of the Stockholm Act, the International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26 (administrative provisions). The proposed revision of the Berne Convention is concerned with precisely such provisions, that is to say the insertion in the substantive provisions of special rules for the benefit of developing countries, and consequential amendments of the final clauses.

28. In order to permit the International Bureau to continue with the preparations for the Conference for the Revision of the Berne Convention, the Assembly of the Berne Union is invited to give directions and the Conference of Representatives of the Berne Union is invited to make comments on this matter.

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Annex A

Washington Recommendation

1. The International Copyright Joint Study Group,
2. Having met in its First Session in Washington from September 29 to October 3, 1969,
3. On the basis of an extensive and thorough exchange of views in the matter of "The Study of the Entire Situation of International Relations in the Field of Copyright" (see Resolutions of February 7, 1969),
4. Recalling that the Protocol Regarding Developing Countries included in the Stockholm Act of the Berne Convention has been accepted only by a small number of countries and that there are no indications from the major developed countries that they intend to accept the said Protocol,
5. Recalling once more the most urgent need of developing countries to find satisfactory solutions in the field of copyright in respect of their requirements for education, science and promotion of culture,
6. Recognizing the need for avoiding a situation in which countries long associated with the Berne Union could virtually be compelled to leave the said Union for the purpose of availing themselves of the concessions to be accorded to developing countries,
7. Recognizing also the fact that when any developing country party to the Berne Convention becomes a developed country it should have no difficulty in reviving its rights and obligations under the said Convention,
8. Recommends, as a matter of first priority, that the Universal Copyright Convention and the Berne Convention be simultaneously revised in revision conferences to be held at the same time and place so as to achieve the following:

I. IN THE UNIVERSAL COPYRIGHT CONVENTION:

- (1) Suspension of Article XVII and the Appendix Declaration for the benefit of developing countries;
- (2) Inclusion of author's basic rights of reproduction, of broadcasting, and of public performance;
- (3) Inclusion of rules permitting relaxation of those rights, as well as the right of translation, for the benefit of developing countries, without material reciprocity.

II. IN THE BERNE CONVENTION:

- (1) Revision of Article 21 of the Stockholm Act to separate the Protocol Regarding Developing Countries from that Act;
- (2) Provision under which the revision of Article 21 can become effective only upon ratification of the revised Universal Copyright Convention by France, Spain, the United Kingdom and the United States of America;
- (3) Provision to allow developing countries members of the Berne Union to apply in their relations with other countries members of that Union the revised text of the Universal Copyright Convention;
- (4) Suspension of the obligation of paying contributions to the Berne Union by developing countries having chosen Class VI or VII for the purposes of contributions.

ANNEX B

Resolution of the Permanent  
Committee of the Berne Union (December, 1969)

Resolution No. 1: Revision of the Berne Convention

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union),

1. Recalling the resolutions adopted by it at its thirteenth ordinary session in December 1967 (Resolution No. 3) and its extraordinary session in February 1969 (Resolution No. 1),
2. Taking account of the results of the first session of the International Copyright Joint Study Group, held from September 29 to October 3, 1969, and the Washington Recommendation formulated by that Study Group, which was set up in pursuance of the above-mentioned resolutions,
3. Recognizing the need for careful preparations to follow up the Washington Recommendation, particularly the need for close coordination between the revision of the Berne Convention and that of the Universal Copyright Convention,
4. Expresses the wish that the Intergovernmental Copyright Committee take into account the recommendations for revision of the Universal Copyright Convention contained in the Washington Recommendation;
5. Expresses the view that the preparation for the revision of the Berne Convention should be made in accordance with the considerations stated in the Preamble to the Washington Recommendation and the specific recommendations contained therein, including, in particular, the recommendation that the Berne Convention and the Universal Copyright Convention be revised in revision conferences to be held at the same time and place;
6. Hopes that the Conference for the revision of the Berne Convention will be held no later than May-June 1971 at the same place and time as the Conference for the revision of the Universal Copyright Convention;

7. Recommends that the following measures be taken in preparation for this revision of the Berne Convention:

- (a) the Director of BIRPI shall invite States members of the Berne Union and all interested international non-governmental organizations to present draft texts or comments with respect to the proposed revision of the Berne Convention no later than March 15, 1970;
- (b) an Ad Hoc Preparatory Committee, composed of representatives of States members of the Berne Union, is established and shall meet in Geneva from May 19 to 21, 1970, to consider, on the basis of the documentation supplied by BIRPI, these draft texts and comments and to prepare a draft text of the proposals for revision of the Berne Convention. The composition of the Preparatory Committee shall be as follows:
  - (i) the States represented shall be: France, Germany (Federal Republic), India, Italy, Mexico, Tunisia, United Kingdom, Yugoslavia;
  - (ii) the Chairman of the Permanent Committee of the Berne Union is ex officio member of the Preparatory Committee;
  - (iii) two States parties to the Universal Convention may be represented as observers on the Preparatory Committee. These States shall be Kenya and the United States of America;
  - (iv) the Director-General of Unesco or his representatives may attend the meetings of the Preparatory Committee in an advisory capacity;
  - (v) before April 1, 1970, the Director of BIRPI shall convene a one-day information meeting of the interested international non-governmental organizations and shall invite those organizations to appoint a total of seven persons to attend the meetings of the Preparatory Committee as non-participating observers. For this purpose, the organizations representing authors shall be invited to appoint two persons, the organizations representing publishers shall be invited to appoint one person, the organizations representing legal circles working for copyright protection shall be invited to appoint one person and the organizations representing users of copyrighted works shall be invited to appoint three persons.

The Ad Hoc Preparatory Committee shall appoint its officers and establish its Rules of Procedure at its first session. Its meetings shall be open to any State member of the Berne Union or party to the Universal Copyright Convention, other than the States listed above, as a non-participating observer, but shall otherwise be closed;

- (c) the Director of BIRPI shall communicate the results of the meeting of the Ad Hoc Preparatory Committee to all States members of the Berne Union and interested international non-governmental organizations as soon as possible following the conclusion of the work of the Ad Hoc Preparatory Committee. He shall invite comments on the draft text adopted by the Ad Hoc Preparatory Committee to be submitted to BIRPI before August 1, 1970;
- (d) BIRPI is requested to prepare and to distribute to all States members of the Berne Union and interested international non-governmental organizations, before June 1, 1970, draft Rules of Procedure to govern the work of the Conference for revision of the Berne Convention;
- (e) the Chairman of the Permanent Committee of the Berne Union is requested and is hereby authorized to convene an extraordinary session of the Permanent Committee in September 1970 to consider the draft Rules of Procedure for the Revision Conference, prepared by BIRPI, the results of the meeting of the Ad Hoc Preparatory Committee and such other matters relating to the Revision Conference as it may deem appropriate. The Permanent Committee shall give BIRPI its opinion on the preparation of the program for the Revision Conference of the Berne Convention and the final arrangements relating thereto.

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The Ad Hoc Preparatory Committee shall appoint its officers and establish the Rules of Procedure at the first session. Its meetings shall be open to any State member of the Bureau Union and invited non-governmental organizations, other than the States listed above, as a non-participating observer. The Rules shall otherwise be closed.

(c) The Director of BIRSI shall communicate the results of the meeting of the Ad Hoc Preparatory Committee to all States members of the Bureau Union and interested international non-governmental organizations as soon as possible following the conclusion of the work of the Ad Hoc Preparatory Committee. He shall invite comments on the draft text adopted by the Ad Hoc Preparatory Committee to be submitted to BIRSI before August 1, 1970.

(d) BIRSI is requested to prepare and to distribute to all States members of the Bureau Union and interested international non-governmental organizations, before January 1, 1970, draft Rules of Procedure to govern the work of the Conference for revision of the Bureau Convention.

(e) The Chairman of the Permanent Committee of the Bureau Union is requested and is hereby authorized to convene an extraordinary session of the Permanent Committee in September 1970 to consider the draft Rules of Procedure for the Revision Conference, prepared by BIRSI, the results of the meeting of the Ad Hoc Preparatory Committee and such other matters relating to the Revision Conference as it may deem appropriate. The Permanent Committee shall give BIRSI its opinion on the preparation of the program for the Revision Conference of the Bureau Convention and the final arrangements relating thereto.

Annex B  
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