

DEVELOPMENT OF COPYRIGHT IN PAPUA NEW GUINEA: THE COPYRIGHT ACT 1978

By Anne Laurent*

I. *Definition*

Copyright is the 'exclusive right of printing or otherwise multiplying copies of *inter alia*, a published literary work; that is, the right of preventing all others from doing so. The infringement of this right is called piracy. Copyright extends to original, artistic, dramatic and musical works, and to recordings, films and broadcasts'.¹ It is concerned only with the copying of the physical material and not with the reproduction of ideas and it does not give a monopoly to any particular form of words or design. It is thus distinguished from rights of patent, trade mark and design. Every man organises his words differently and it is this organisation - 'the fruit of a man's brain'- that is a man's property, and which requires the protection of the law.² Thus the fundamental idea lying behind copyright is that while all ideas are free, author, artists and composers should have property rights over the way in which they express their ideas.³

Copyright is necessary to ensure that authors, like the originators of any other kind of property, should have a reasonable return for their work, and also because it is in the public interest that authors' rights should be protected:

Without copyright protection authors would be reluctant to engage in the exacting work of writing with no reasonable hope of financial reward. Publishers would also find it impossible to disseminate their work if competing editions, carrying none of the financial overheads of the original edition, could appear in competition on the market.⁴

II. *Brief History*

With the introduction of printing in England, the Monarch granted printing privileges to printers. This earliest copyright protection took the form of printers' licences, and restraints were imposed on those without such licences. A number of Licencing Acts, culminating in the *Copyright Act* of 1709, were passed with a view to giving greater protection

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1. P. G. Osborn, *A Concise Law Dictionary* (1964), 89.
 2. E. P. Skone James, *Copinger and Skone James on Copyright* (1971), 3.
 3. Commonwealth Secretariat, *Copyright in the Developing Countries* (1974), 5.
 4. *Ibid*, 6.

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to copyright. In *Donaldson v Beckett* (1774) 4 Burr. 2408, the House of Lords decided that the effect of this statute was to extinguish the common law copyright in published works, though common law copyright in unpublished works remained unaffected. The *Copyright Act* 1911 abolished copyright at common law and an Act passed in 1956 further provided that no copyright existed other than by Statute. The Act provided that there was to be unlimited copyright as regards unpublished works.⁵

Copyright was extended from books to engravings in 1734, to sculpture in 1814, to musical and dramatic performing rights in 1833 and paintings, drawings and photographs in 1826.⁶

Individual countries developed their own copyright laws, but it was felt that since the world did not consist of a 'series of national literary and artistic islands', national copyright laws needed the backing of international agreements,⁷ although no general principle of international law requires the provision of such protection.⁸

The *Berne Copyright Union* (Berne) was founded in 1886 and member countries grant reciprocal and automatic protection to each other's works. The *Universal Copyright Convention* (UCC) was established in 1952 to accommodate those countries whose legislation did not conform to Berne standards or whose system of protection was fundamentally different from Berne. Protection under UCC depends upon the inclusion in the work of a copyright notice consisting of an encircled C, the name of the copyright proprietor, and the year of first publication. Countries must either accept or reject the conventions and must keep their copyright laws in line with the policy of these conventions.⁹

Developing Countries and Copyright

During the 1960s African and Asian countries were moving to independence and were expanding their educational programmes. They found that advanced text books for tertiary education were generally controlled by publishers in developed countries who produced expensive first editions for the needs and purchasing power of the developed countries with inadequate numbers being made available in cheap editions. They argued that it was wrong for educational programmes to be hampered by copyright restrictions. The developed countries however countered that authors should not be deprived of their return just because the work was educational, and that most developing countries needed too few copies to justify a separate edition. These contentions led to two international copyright meetings in Brazzaville in 1963 and Geneva in 1964 where developing countries pressed their claims. This continued

5. Skone James, *op. cit.*, 5-11.

6. *Ibid*, 13-14

7. Commonwealth Secretariat, *op. cit.*, 5

8. Copinger, *op. cit.*, 435

9. See Commonwealth Secretariat, *op. cit.*, 5-6, Skone James, *op. cit.*, 436, 465.

at the 1967 Copyright Conference in Stockholm where the controversial Protocol regarding developing countries was introduced. It sought to give less protection to educational works in developing countries than was afforded other countries of the Berne Union, but was unworkable since most major countries did not accede to it.¹⁰

Further international meeting led to the more successful meeting in Paris in 1971 where final agreement applicable under both conventions laid down terms under which either the state or a private publisher in a developing country could get a compulsory licence to produce a book locally which was used for "teaching, scholarship or research" or "for use in connection with systematic instructional activities." Concessions were made for educational needs and not for private or national profit.¹¹

IV. *Copyright in Papua New Guinea*

Prior to independence, Papua New Guinea, as a colony of Australia, had copyright protection under Berne and UCC, since Australia had acceded to both. Papua New Guinea did not inherit membership to these conventions as it wanted to decide for itself whether copyright should apply. Following a *National Executive Council* submission in February 1976, Cabinet directed that a committee consisting of copyright users and potential copyright producers from the public and private sectors be set up to investigate whether copyright in Papua New Guinea was a feasible proposition. The Committee was set up on 11 March 1976, and presented its findings to Cabinet by the end of the year.¹² In its report¹³ the Committee recommended the enactment of copyright legislation. Its reasons were, first, to ensure that national writers, composers, etc. receive proper remuneration for their work and proper protection against unauthorised reproduction in countries with copyright laws and, secondly, to prevent Papua New Guinea from becoming a haven for pirates. The Committee felt that Singapore, Taiwan and Hong Kong might begin to clamp down on pirates who would then look to Papua New Guinea as a new base. Their activities here would deprive original producers of remuneration. They would offer a cheaper but inferior product with no guarantee, and would possibly associate with their piracy socially undesirable activities like drug trafficking.

The Committee felt that domestic copyright legislation would afford protection within Papua New Guinea, but, since international protection was necessary, it recommended that Papua New Guinea join the UCC.

The Committee also recommended that Papua New Guinea legislation should be modelled on the Kenya Copyright Act whose provisions were compatible with Papua New Guinea needs, especially its educational institutions. It also felt that any new legislation should require the compulsory deposition of all works with the National Library and the University Library as this would help in building up a core of Papua New Guinea

10. Commonwealth Secretariat, *op. cit.*, 7-8.

11. *Ibid* 8-10.

12. Information gained from legal draftsman.

13. *Report of the Copyright Committee to the Minister for Foreign Affairs and Trade* (1976).

works and would record publication dates.

Despite opposition, especially from pirate producers, Cabinet in 1977 directed that copyright legislation should be drafted, and this done, the draft Bill was circulated to various government departments for comments. In presenting the Bill to Parliament for the second reading, the Foreign Minister said the proposed Act, as defined by the UCC, would foster national artists and would not allow their work to be used by others without permission or compensation.¹⁴

The *Copyright Act* 1978 (No.64 of 1978) has been drawn up but under s.8(4) it cannot come into effect until the proposed *Statutory Deposit Act* is passed. The *Statutory Deposit Act* will make it compulsory for copies of all books and related materials printed or published within Papua New Guinea to be deposited in the National Library. The Act will cover every book, pamphlet, periodical, review, magazine, sheet of letter press, music, map, plan, plate, chart or table, film, and second editions if they contain amendments. It will not affect matter not printed for public distribution. Under this Act, publishers will be required to give, free of charge, one copy of each publication to the National Library; one copy to the library of the University of Papua New Guinea; and one copy to the library of Papua New Guinea University of Technology. All publications obtained in this way will be placed in those libraries' reference sections for public reference but not for removal.¹⁵

The passing of the *Statutory Deposit Act* has been delayed by disagreement among the legal draftsmen, some of whom wanted the Act to apply to foreign as well as to national works. This was found to be unacceptable because the UCC is opposed to any onerous burden being placed on copyright seekers in foreign country. If the Act is passed by Parliament in August 1979 as is expected, then the *Copyright Act* 1978 itself will come into effect for national works.¹⁶

Papua New Guinea would then accede to the universal Copyright Convention according to s.117 of the *Constitution*, and would have to wait for a further three months according to Art. IX of the UCC while each contracting party is notified that Papua New Guinea intends to give to the works of their nationals the same protection as it gives its own nationals (Act 11).

Papua New Guinea Copyright Act 1978

No copyright exists except by virtue of the Act. Sections 2 and 8 give protection to literary, musical and artistic works, cinematograph films, sound recordings, broadcasts and programme carrying signals.

It is significant that folklore is not included in the Act despite attempts by some of the legislative draftsmen to have it included. However, it was decided that giving such statutory protection to traditional culture was compatible neither with copyright nor with custom. Some things are not capable of copyright and if for example

14. N. E. Olewale, *Copyright Bill* 1978, Second Reading Speech.

15. *Post-Courier*, 30 October, 1978, p. 8.

16. Information gained from legal draftsman.

the Asaro mudmen were given exclusive right to their dance, it would mean that they would be able to sell that tradition to other people, a notion which is completely alien to customary norms and which would undermine the cultural traditions of the people of Papua New Guinea. In Kenya, an attempt was made to protect folklore in this way but the effort never materialised and it is doubtful that it ever will.

To qualify for copyright under s. 8(2) a literary or artistic work must be original and must be written, recorded or otherwise produced in some material form. Such work shall not be ineligible for copyright by reason only that it infringed in some way copyright in some other work (s. 8(3)).

To qualify for copyright, a person must be a citizen of Papua New Guinea or domiciled or resident in the country, or a body corporate incorporated under the laws of Papua New Guinea (s. 1(1)).

To be considered as published, a work must have been issued in sufficient quantities to satisfy the reasonable requirements of the public. Where only a part of the work has been published, it will be treated as a separate work and a publication in any country will be considered a first publication if an earlier publication elsewhere took place not more than 3 days before (s. 1(2)(a)(b)).

Copyright controls the reproduction in any material form, the communication to the public and the broadcasting of the whole or the substantial part of a work either in its original form or in any form recognisably derived from the original (s.3(1)). If reproduction is made for example for the purposes of scientific research, private use, criticism or review or reporting of current events, if it is situated where it can be viewed by the public or if it consists of not more than two short passages for educational purposes and the work is acknowledged, there is no copyright control (s.3(2)). Section 9(2) details the expiration date of copyright according to the type of work. For literary, musical or artistic works copyright expires 25 years after the end of the year in which the author dies. For sound recordings, it expires 20 years after the end of the year in which the recording was made.

In case of joint authorship 'death' refers to the author who dies last whether or not he was a qualified person (s. 9(5)).

Literary, musical or artistic work first published in Papua New Guinea, or a sound recording made in Papua New Guinea, or a programme carrying signals emitted to a satellite from a place in Papua New Guinea is eligible for copyright for a duration specified under s. 9(2). Work done under the direction or control of the State or such international bodies or governmental organization as may be prescribed may get copyright rights under s. 11.

Copyright rests initially in the author except where it is transferred to persons who commissioned the work or to the author's employer, subject to agreement between the parties (s. 12). Section 13 provides that copyright shall be transmissible by assignment, by testamentary disposition or by operation of law as movable property, and *inter alia* provides that any assignment or exclusive licence shall be in writing signed by or on behalf of the assignor or licensor. A non-exclusive licence, written or oral, may be revoked at any time, though a licence granted by contract may not be revoked except as provided by the contract. An assignment, licence or testamentary disposition may be granted in respect of future works.

Copyright owners who suffer infringement of their rights have the same protection as those with other proprietary rights (s. 14), and may bring an action before the National Court (s. 15(6)(b)). Section 15 provides for penalties ranging from K100 to K4000 or imprisonment for 6 months for various infringements of copyright, but no prosecution can be instituted after three years immediately following the date of the offence alleged (s. 15(6)(a)).

Evidence of ownership of copyright is to be in accordance with s. 16.

Under s. 17, where a licencing body unreasonably refuses to grant licences in respect of copyright or imposes unreasonable terms or conditions on their granting, a competent authority of three persons appointed by the Minister may grant such licences once the required fees are paid.

Section 18 provides for Regulations to be drawn up by the Head of State acting on advice, in respect of works eligible for copyright under s. 8(1). These Regulations may extend to individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of a country which is a party to a treaty providing for copyright to which Papua New Guinea is a party (that is, the UCC). Works, other than sound recordings, first published in such country or sound recordings made there or programme carrying signals emitted to a satellite from such country could be subject to the Regulations.

The Act aims at enhancing the cultural development of the people of Papua New Guinea, and through its protection of foreign as well as national works, recognizes that Papua New Guinea is not a cultural island and that its rich cultural heritage can blossom and improve by fair interaction with the rest of the world. The Act seems a response to the hope expressed by the President of the Republic of Tunisia in his address to the experts preparing a model law on copyright for developing countries 'that the enactment of national copyright will have a multiplier effect on the number of national authors and will propagate knowledge in all our respective countries'.¹⁷

Pirates are not happy about the legislation but individual authors and bodies like the National Broadcasting Commission stand to gain much. Though the National Broadcasting Commission will have to pay royalties for the works it uses, the increasing amount of work it produces itself will be protected.

On the other hand criticism has been levelled against introduction of the Act on the ground that the legislation was framed to meet the requirements of the international convention which itself was first established to serve the developed countries. The Act, it is argued, has not been drawn up in the context of the country and does not adequately serve its needs. If passed, the Act would make a great burden on schools and especially universities which compile texts often comprising lengthy extracts from various works in their efforts to produce relevant materials at low cost to students. No single textbook is adequate, the cost of each text is rising, and educational

17. *Copyright Bulletin*, Vol. X no. 2 (1976), 9.

institutions have also been relying on cyclostyled materials which they distribute to students. Since most of the copied material is foreign and would be subject to copyright it would pose great administrative and financial problems trying to get permission from each source and to get licences. Moreover, it would cause a great drain on foreign reserves as royalties are paid out to foreign copyright owners.

The *Copyright Act* , it is claimed, is not really essential for protecting Papua New Guinea works from pirates since this could be effectively done under the *National Investment and Development Act* 1974 (No. 77 of 1974).