

## **House Report of the Berne Convention Implementation Act of 1988, H.R. REP. NO. 100-609 (1988)**

The original Convention was intended to promote five objectives: (1) the development of copyright laws in favor of authors in all civilized countries; (2) the elimination over time of basing rights upon reciprocity; (3) the end of discrimination in rights between domestic and foreign authors in all countries; (4) the abolition of formalities for the recognition and protection of copyright in foreign works; and, (5) ultimately, the promotion of uniform international legislation for the protection of literary and artistic works.

The first Berne Convention was a simple document in which two cardinal principles were established, both of continuing vitality today:

a. *The Union*: the states adhering to the Convention organized themselves into a Union for the protection of the rights of authors in their literary and artistic works. In forming the Union, the original members contemplated an essentially political as well as legal undertaking: that adherents to the Convention would function as a cooperative unit which would continue in existence regardless of future accessions or withdrawals from the Convention itself.

b. *The Rule of National Treatment*: one of the cornerstones of international copyright is the rule, first recognized for copyright in the Berne Convention, that authors should enjoy in other countries the same protection for their works as those countries accord their own authors.

During the century of its existence, the Convention has been revised five times to meet changed conditions and technological development affecting authors' rights. Successive texts have generally improved and extended rights accorded authors and copyright proprietors; and, in 1967, the Berne Union confronted the special challenges to copyright policy posed by the emergence of numerous developing countries on the world scene.

### **2. Successive Revisions of the Berne Convention**

a. *1908 Berlin Act*. The principal achievement of the Berlin Revision Conference was the prohibition of formalities as a condition of the enjoyment and exercise of rights under the Convention. The minimum duration of protection was set at the life of the author and fifty years post mortem, but made subject to exceptions for each country so as to make it less than a mandatory rule. The Convention further expanded the minimum subject matter of copyright under the Convention, including photographs. Moreover, the Berlin Revision recognized the exclusive rights of composers of musical works to authorize the adaptation of these works and gave explicit protection to the authors of cinematographic works.

b. *1928 Rome Act*. This revision was the first to recognize expressly the "moral rights" of authors: the right to claim authorship of a work and the right to object to modifications of the work which prejudiced the honor or reputation of the author. The Rome revision specifically recognized the right to authorize broadcasting of works, leaving details to be elaborated by national legislation.

c. *1948 Brussels Act*. This revision established the term of protection of life of the author and fifty years post mortem as mandatory. It added improvements in copyright protection including recognition of the right of public recitation; rules governing mutual recognition of optional "resale royalty" laws (so-called "droit de suite"); extension of the broadcasting article to secondary transmissions, including by wire; and, express recognition of cinematographic works and works produced by processes analogous to cinematography as distinct subjects of copyright protection.

d. *1967 Stockholm Act*. For the first time, the implicit right of reproduction was expressly established in the Convention and special rules governing exceptions to that right were also included. Significant new rules relating to reconciling different national rules of authorship and ownership of

motion pictures, defining the “nationality” of films for Convention purposes, were added at this revision. Protection was extended to include authors having habitual residence in a Union country, regardless of their citizenship. Finally, this revision established a “Protocol Regarding Developing Countries,” which would have allowed developing countries broadly to limit rights of translation and reproduction. The 1967 Stockholm Act has not and will not come into force. It has effectively been superseded by the 1971 Paris Act.

e. *1971 Paris Act.* The 1971 Paris Act of Berne—the only Act now open to accession—Is essentially the 1967 Stockholm Act with significant revisions made to the Protocol Regarding Developing Countries. The thrust of these revisions will be discussed in the context of relations with developing countries.