

# INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS

The Berne Convention and Beyond

SECOND EDITION

SAM RICKETSON AND JANE C GINSBURG

VOLUME I

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## FOREWORD

The first edition of Sam Ricketson's history of the Berne Convention for the Protection of Literary and Artistic Works was written for the centenary of that Convention. It was a work of very considerable scholarship and it rapidly established itself as a major source for information and analysis of the Convention's content. With Jane Ginsburg joining Sam for this second edition, the two authors have produced what is well-nigh a new book, given the range of developments that have affected authors' copyright at the international level in the intervening eighteen years. It shows the same careful attention to the sources reviewed and the same sensible appreciation of the political pressures which have been at work in those developments. In rather greater measure than before, it seeks also to predict the future of the rights involved—rights that are now enveloped in swirls of ideological and practical uncertainty.

1986 is difficult accurately to recall, for it was an analogue age ago. The centenary of Berne did not fall at a time of much hope for copyright's future, threatened as it then was by copying technologies now almost forgotten and subject to considerable suspicion from developing countries. The Convention had last been revised in 1967 in Stockholm under the magisterial guidance of Professor Eugen Ulmer. But even that New Deal required four years before the concerns of newly emergent nations could be met in the Paris arrangements. That was just a beginning of friction. By the 1980s it was doubtful whether further revision could even be contemplated, and indeed so it has proved to be in a direct sense.

What was still scarcely foreseeable in 1986 was the allure of freer global trading under a revised GATT. It proved strong enough for the round of negotiations that would create the WTO and require its member states, developing as well as developed, to accept the TRIPs Agreement as part of the parcel. So it was that 'Berne-plus' conditions became obligations across most of the world—obligations backed by dispute-settlement mechanisms between governments and ultimately the deployment of retaliatory trade measures. Before that Berne may have been little more than a code of polite behaviour. Suddenly it acquired the voice of positive command. That this should have happened exactly in time with the greatest revolution in information and entertainment since the invention of printing is perhaps no coincidence, though the legal developments designed to impose copyright order on an anarchic Internet came only

## *Foreword*

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afterwards—with the self-advertising ‘WIPO’ Treaties and then a spate of regional and national enactments under grandiloquent titles.

The technologies of information and the commerce they breed have become so much more complex that their legal organization appears to have acquired a wholly new dimension. The new media hold a vital place in spreading access around the world to knowledge, entertainment, and many perquisites of the good life and the bad. The international dimension of copyright is accordingly of far greater significance than seemed to be the case even in 1986. Accordingly this new edition could not be more timely. It will be seized upon by all who take the subject seriously, whether their background is in a civil law or a common law system. The authors will be not allowed to keep their silence for the next eighteen years before providing a third edition.

William R Cornish  
Faculty of Law  
University of Cambridge  
April 2005

## PREFACE TO THE NEW EDITION

It is almost eighteen years since the first edition of this work appeared, and it seems that a revolution, both technological and legal, has occurred in this time.

The technological revolution comes first, and is usefully illustrated by the experiences of the authors in writing this work. When Sam Ricketson began research on the first edition in 1984, it was still a hard-copy world: electronic typewriters were still commonly used and the most significant office advance was the dedicated word processor that allowed draft manuscripts to be more readily corrected and manipulated. The personal computer was only becoming an everyday reality towards the end of 1986, at least in the UK where the bulk of this work was done, and footnoting capabilities really only became user-friendly in the following year. When Sam returned to Australia at the end of 1986, he was fortunate enough to have electronic files of all the draft chapters that he had completed, but there was no ready means of transmitting these files back to publishers on the other side of the world. The most helpful technology available at the time was the facsimile machine, then still in its infancy, and the transmission of hundreds of pages of hard-copy text was a time consuming and daunting process (although relatively instantaneous in comparison to airmail, still the most common form of swift communication at that time, the latter in itself being a vast improvement over the sending of packages by ship and overland carrier).

The present edition, by contrast, has been done with all the advantages of modern computing and Internet communications, and between two authors, Sam Ricketson and Jane Ginsburg, who, for the most part, have been situated on two different continents with a publisher located on a third. Such has been the blessing of new technology that it has almost seemed that we have been sitting in adjoining offices, or at least just down the passage from each other!

The technological revolution has had another dimension with respect to the carrying out of research and the gathering of materials. When Sam began his research in 1984, access to many of the original documents meant trips to the WIPO library in Geneva or the Max Planck Institute library in Munich. Holdings in London were dispersed and often difficult to track down; photocopying of original documents was often impossible because of conservation concerns and long hours of tedious transcription were often required. Since 1984, access

to many of these materials has become much easier, beginning with the publication by WIPO in 1986 of most of the original Berne Conference documents in its centenary celebration volume. Since the mid-1990s, WIPO documentation has become available online and research into current developments in the international conventions can be done at the click of a mouse (with the necessary Internet access). These developments have certainly made the writing of the second edition easier, but with some regrets for the rigours (and delights) of earlier times when dusty volumes and documents had to be tracked down and studied in places far from the normal comforts and conveniences of one's desk and office (one should not overstate here the difficulties involved in being 'required' to spend time in such places as Geneva and Munich in the pursuit of scholarship!).

The technological revolution feeds into the legal revolution that has also occurred in this area. In 1986, in its centenary year, Berne appeared to be a static institution; to be sure, it had an interesting and illuminating past, but its future prospects were less than exciting. It was a good time to write a history of this important convention, with a reasonable expectation that updating would not really be necessary, at least for a long time. But fact is always stranger than fiction, and, almost as the first edition was published, a series of events began that have made this second edition almost indecently overdue. These events are discussed at some length in Chapter 4, but three, in particular (and not in any order of importance) can be given here: first, the beginning of the Uruguay Round of GATT and the implementation of the negotiations on trade-related intellectual property rights based on the standards of Berne gave the latter a much greater prominence than had hitherto been the case; secondly, the entry of the United States into Berne in 1989, followed soon thereafter by China and the Russian Federation, gave the membership of Berne a universality that it had previously lacked; and thirdly, the technological and communications revolutions discussed above gave the impetus to the creation of new international instruments related to Berne. While all these developments—and a number of others—took place outside Berne in the strict sense, they took Berne as their starting or reference point. Hence, the second edition is concerned as much with these 'beyond Berne' developments as it is with a reappraisal of the ancient texts in the light of these new developments.

In terms of substance, some of the original text, particularly that dealing with the history of the Convention (Chapters 1–3), has been retained, but much of the original text has also been reworked or repositioned, with a fresh arrangement of topics and chapters (from Chapters 4–13). Some material, such as that in Chapters 14 (developing countries) and 18 (the Universal Copyright Convention) no longer retains the currency of interest that it had in 1987, but has been retained as containing useful insights into matters that have been of

particular importance in the development of the present Berne Convention. Considerable amendments were required to the material dealing with the administrative, financial, and final clauses of the Berne Convention (Chapters 16 and 17), although this may be of only limited interest to some readers. Treatment of new international obligations with respect to technological protection measures and copyright management information is given in Chapter 15; there is an enlarged discussion of related rights in Chapter 19 (taking particular account of the adoption of the WPPT in 1996); and private international law issues are dealt with in Chapter 20. Finally, throughout the text, we have sought to deal sequentially, first, with Berne and, then 'beyond Berne', the latter heading encompassing the relevant requirements of the TRIPs Agreement and the WCT/WPPT. In this way, we hope that the historical emphasis of the first edition is blended appropriately with our discussion of the present texts and possible future developments.

It is trite, perhaps, to remark again that the world has changed greatly since 1986, the year of Berne's centenary. But while Berne itself has remained unrevised (apart from some minor administrative amendments), its stature and importance have changed beyond recognition. In 1986, it was still a Eurocentric instrument, with a number of hangers-on (including Australia). In 2005, it is now a truly universal instrument that, in reach and effect, must far outstrip the expectations of those early pioneers of the *Association Littéraire et Artistique Internationale* (ALAI) who set about drafting a modest instrument for multilateral adoption in 1883, beginning with an informal lunch meeting in a Roman trattoria at the Rome Congress of ALAI in 1882 (see Chapter 2). Other challenges, of course, remain, but it is still worth celebrating the centrepiece position that Berne now occupies as the foundation stone of the contemporary international copyright system.

Authorial responsibility for the whole edition is both joint and several, but primary responsibility for individual chapters has been as follows: Sam Ricketson—Chapters 1–5, 13–14, and 16–19; Jane Ginsburg—Chapters 6–12, 15, and 20.

## ACKNOWLEDGEMENTS

In the first edition, many people were thanked whose contributions added greatly to the achievement of the final work. These thanks must be expressed again because the intellectual debt owed continues: particular mention must be made here of Adi Dietz, Jim Lahore, Bill Cornish, the late Stephen Stewart, and Mihaly Ficsor.

Work on the new edition began nearly a decade ago when Sam Ricketson posed the idea to Jane Ginsburg and was delighted that she was happy to undertake the task. Since this time, the project has been pursued fitfully by both of us, as other responsibilities have intervened and drawn our attention elsewhere. Nonetheless, the work has always been resumed with enthusiasm, involving virtual and actual meetings in and across most parts of the globe, from New York to Melbourne and even in an orchard in a monastery outside Montreal.

Many students and colleagues have provided advice and research support over the years of the writing of the new edition. We thank in particular, at the University of Melbourne, Associate Professor Richard Garnett, Dr David Brennan, David Lindsay, and Kim Weatherall; at the University of Cambridge, Professors William R Cornish and Lionel Bently; and at Columbia University School of Law, June Besek, Executive Director of the Kernochan Center for Law, Media and the Arts. Columbia Law School students enrolled in the Seminar on International and Comparative Intellectual Property Law offered research assistance and thoughtful criticism; in particular we thank Toby Headon, Florian Schuhmacher, Yu Cao, Sébastien Evrard, and Maria Gonzalez Ordoñez, all LL M Class of 2003. Emma Barrett Prete and Tom Paskowitz, both Columbia JD Class of 2005, and Vigdis Bronder, Columbia JD Class of 2007, supplied much appreciated help with cite-checking.

Many thanks as well for administrative support to Gabriel Soto, of Columbia Law School, and to Sarah Ross, of the University of Cambridge Law Faculty, for assistance in assembling the final manuscript.

Sam Ricketson dedicates the book to his wife Rosemary Ayton, and to his children Philip, Jon, and Elizabeth, and notes with pleasure the way in which the culinary and cultural experiences of the Ricketson family have been immeasurably enhanced by the regular visitations of his co-author to this sunny land! With gratitude for the quality-of-life compliments, and acknowledging



### *Acknowledgements*

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her co-author's climatic advantages, Jane Ginsburg observes that the gastronomic and intellectual esteem are amply returned. She dedicates the book to her husband George Spera, and to her children Paul, and especially to Clara, who will no longer be able to justify her own tardy completion of tasks by reference to her mother's.

Sam Ricketson  
Melbourne  
Jane Ginsburg  
Cambridge  
19 April 2005

## NOTE ON SOURCES

A note on sources used for the book is also relevant at this stage. Throughout its lifetime, the Berne Convention has generated an ever-increasing body of records, both from its periodic conferences of revision and from its continuing administration. Although there is little problem for most readers to gain access to the records of the last thirty years, those of earlier years are more difficult to locate, particularly outside continental Europe. Yet these records, from the original conferences of 1884–6 onwards, throw important light on the background and meaning of many of the articles of the present Convention, and provide at least partial explanations for the compromises and concessions that lie behind them. Such records are by no means complete accounts of these matters, but they nonetheless constitute an indispensable first tool for any comprehensive study of the Convention. We have therefore sought to deal with them as fully as possible throughout the book, in the hope that this will be of assistance to readers who lack the time and the resources to locate and read the originals.

A further vital source for a study of the Convention is to be found in the monthly record of its operations which was published, from its inception, by the International Office of the Convention which is now administered by the World Intellectual Property Organization ("WIPO") in Geneva. This record, *Le Droit d'Auteur/Copyright*, which was only discontinued in 1998, contains all the official information relating to the Convention (accessions, ratifications, denunciations, and the like), as well as reports of national legislation and jurisprudence relevant to the Convention, and accounts of the activities of national and international bodies concerned with copyright matters. It has also carried, from its first year, scholarly commentaries on the Convention, and these form a most important corpus of learning on its interpretation and scope. As with the early records of the Convention, the early volumes of *Le Droit d'Auteur* are not easy to obtain, but WIPO has recently made them available in microfiche. There is, of course, a wide range of other, modern periodical literature dealing with various aspects of the Convention, but this is all readily available to any investigator (for further details, see the Bibliography).

It should also be stressed, at the outset, that the first edition of the present book was by no means the first study of the Berne Convention; nor was it the first in the English language. At each stage of its existence, the Convention has

attracted a considerable body of sustained, critical writing. As with the early records and issues of *Le Droit d'Auteur*, some of these commentaries are no longer readily available, but it is worthwhile making brief mention here of the more important of them.

A number of short commentaries were written during and immediately after the original Berne Conferences of 1884–6, including those of the French scholars Clunet<sup>1</sup> and Rivière,<sup>2</sup> and the Swiss writers Soldan<sup>3</sup> and Droz.<sup>4</sup> However, the first major work dealing with the background and events leading up to the foundation of the Convention was that of Darras which was published just as the Convention was coming into force.<sup>5</sup> Another excellent study was published by Bastide in 1890,<sup>6</sup> and in 1906 the first account in English by Briggs<sup>7</sup> was published. This was followed in the next year by an extremely thorough commentary in German by Ernst Röthlisberger<sup>8</sup> who later became Director of the International Office of the Berne Union. After the revision of the Convention in Berlin in 1908, several shorter studies were published by the Belgian writer Wauwermans<sup>9</sup> and the French writer Potu.<sup>10</sup> Following the revision in Rome in 1928, further important commentaries were written by Raestad (a Norwegian),<sup>11</sup> Ruffini (an Italian),<sup>12</sup> and Hoffmann (a German).<sup>13</sup> However, the most significant work was that written by the distinguished American lawyer,

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<sup>1</sup> E Clunet, *Étude sur la Convention d'Union internationale pour la protection des oeuvres littéraires et artistiques* (1887).

<sup>2</sup> L Rivière, *La Protection Internationale des Oeuvres Littéraires et Artistiques: Étude de législation comparée* (1897).

<sup>3</sup> C Soldan, *L'Union internationale pour la protection des oeuvres littéraires et artistiques: Commentaire de la Convention de Berne du 9 Septembre 1886* (1888).

<sup>4</sup> N Droz, articles in *Journal du droit international privé et de la jurisprudence comparée* (Clunet), (1884) vol 11, 441, (1885) vol 12, 163 and 481.

<sup>5</sup> A Darras, *Du Droit des auteurs et des artistes dans les rapports internationaux* (1887).

<sup>6</sup> L Bastide, *L'Union de Berne de 1886, et la Protection internationale des droits des auteurs et des artistes* (1890).

<sup>7</sup> W Briggs, *The Law of International Copyright* (1906).

<sup>8</sup> E Röthlisberger, *Die Berner-Uebereinkunft zum Schutze von Werken der Literatur und Kunst und die Zusatzabkommen: Geschichtlich und rechtlich beleuchtet und kommentiert* (1906).

<sup>9</sup> P Wauwermans, *La Convention de Berne (Révisée à Berlin) pour la Protection des Oeuvres Littéraires* (1910).

<sup>10</sup> E Potu, *La Convention de Berne pour la protection des oeuvres littéraires et artistiques* . . . (1914). This appears to have been prepared on the basis of studies which had earlier appeared in *Le Droit d'Auteur*. See also A Petit, *Étude sur la Conférence de Berlin* . . . (1911).

<sup>11</sup> A Raestad, *La Convention de Berne révisée à Rome* . . . (1931).

<sup>12</sup> F Ruffini, *De la protection internationale des droits sur les oeuvres littéraires et artistiques* (1927).

<sup>13</sup> W Hoffmann, *Die Berner Uebereinkunft zum Schutze von Werken der Literatur und Kunst vom 9. September 1886 revidiert in Berlin am 13 November 1908 und in rom am 2 June 1928* (1935). See also W Goldbaum, *Berner Übereinkunft zum Schutze von Werken der Literatur und Kunst, vom 2 juni 1928* (1928); B Marwitz, *Die Berner Uebereinkunft und die Römische Konferenz* (1928).

Stephen P Ladas in 1938.<sup>14</sup> In its account of the origins and development of the Convention up to this time, this last work was previously the most comprehensive text, but as it was printed in a relatively limited edition, it is now very difficult to obtain. Another useful book, which appeared several years before that of Ladas was a concise and well-written memoir of the first half-century of the Convention published by the International Office,<sup>15</sup> and this was supplemented fifty years later by the WIPO publication of a collection of commentary and primary documents on the centenary of the Convention.<sup>16</sup> Several other commentaries (in German) were published following the Brussels Revision Conference,<sup>17</sup> and the decade preceding the publication of the first edition of this book saw the appearance of three authoritative works. The first, published by WIPO, was written by the late Claude Masouyé;<sup>18</sup> the others were a study in French by Desbois, Françon, and Kéréver,<sup>19</sup> and another in German by Nordemann, Vinck, and Hertin.<sup>20</sup> These last two books also dealt with the other multilateral conventions concerning copyright and neighbouring rights. With respect to the important new international instruments that have emerged in the 'beyond Berne' period since the first publication of this book in 1986, there are now a number of English-language commentaries. While it may be invidious to single out only a few of the most significant of these commentaries, mention should be made of the work of Daniel Gervais;<sup>21</sup> Jörg Reinbothe and Silke von Lewinski;<sup>22</sup> and Mihály Ficsor.<sup>23</sup>

The above list only takes account of the major works written in the French, English, and German languages; there have, of course, been further studies written in these and other languages. Furthermore, the vast majority of texts on

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<sup>14</sup> S P Ladas, *The International Protection of Literary and Artistic Property* (1938).

<sup>15</sup> *L'Union internationale pour la protection des oeuvres littéraires et artistiques: Sa fondation et son développement, 1886–1936, Mémoire*.

<sup>16</sup> WIPO, *1886–Berne Convention Centenary–1986* (1986).

<sup>17</sup> A Baum, *The Brussels Conference for the Revision of the Berne Convention* (1949) (translated by the US Copyright Office, published originally in [1949] *GRUR* 1); W Bappert and E Wagner, *Internationales Urheberrecht: Kommentar* (1956); W Goldbaum, *Verfall und Auflösung der sogenannten Berner Union und Uebereinkunft zum Schutz von Werken der Literatur und Kunst* (1959).

<sup>18</sup> C Masouyé, *Guide to the Berne Convention for the Protection of Literary and Artistic Works* (1978) (also published in French and Spanish).

<sup>19</sup> H Desbois, A Françon, and A Kéréver, *Les Conventions internationales du droit d'auteur et des droits voisins* (1976).

<sup>20</sup> W Nordemann, K Vinck, and P W Hertin, *Internationales Urheberrecht und Leistungsschutzrecht der deutschsprachigen Länder unter Berücksichtigung auch der Staaten der Europäischen Gemeinschaft, Kommentar*, Werner, Düsseldorf (1977). Also published in French under the title of *Droit d'auteur international et droits voisins: Commentaire* (1983) and in English in 1990.

<sup>21</sup> D Gervais, *The TRIPS Agreement: Drafting History and Analysis*, 2nd edn (2004).

<sup>22</sup> J Reinbothe and S von Lewinski, *The WIPO Treaties 1996* (2002).

<sup>23</sup> M Ficsor, *The Law of Copyright and the Internet* (2001).

national copyright laws deal inevitably, at lesser or greater length, with the Berne Convention and related copyright and neighbouring rights agreements, at least insofar as they affect these laws. The problem, then, for any student of this area is not the paucity of material, but the sheer bulk of it. Our hope therefore is that this book, being concerned solely with the conventions themselves, will draw this material together and present it in a coherent way.

## NOTE ON TERMINOLOGY

A problem of terminology arises before we begin, namely is copyright the correct name by which to describe the rights covered by the Convention? In its literal sense, which was that accorded it in the early cases under the first British copyright statute, it is far more limited than the equivalent expression 'author's right' which is used in France, Germany, Italy, and Spain ('*droit d'auteur*', '*Urheberrecht*', '*diritto di autore*', and '*derecho de autor*'). Nonetheless, in its general legal usage in English-speaking countries today, 'copyright' comprehends all those rights (apart, perhaps, from moral rights) included within the continental concept of 'author's rights'. Indeed, in some respects, it goes further than this, being used to describe legal rights conferred on corporate persons, which are usually only covered in European jurisdictions under the rubric of 'neighbouring rights' ('*droits voisins*', '*Leistungsschutzrecht*', etc).

Although the latter are not at the centre of the present study (they do receive separate treatment in Chapter 19), there can be nothing misleading in using the word 'copyright' as an equivalent for the expression 'author's rights' as long as this usage is clearly understood. While the term 'literary and artistic property' might be more appropriate to describe these rights, its use was rejected in the present context at the very beginning of the Convention's existence.<sup>1</sup> From this time on, 'copyright', '*droit d'auteur*', and '*Urheberrecht*' have been used interchangeably as the terms denoting the subject matter dealt with by the Berne Convention.

Another terminological problem concerns the use of the term 'performing right' or 'performance' in relation to dramatic and musical works. In French, the word '*représentation*' is usually adopted in relation to the first (including dramatico-musical works), while the word '*exécution*' is used in relation to musical works. While these terms can be directly, and appositely, translated into 'representation' and 'execution' in English, for the sake of brevity it seems easier to use the term 'performance' to cover both kinds of act. This is in accordance with long-established English practice, and imports no difference from the sense in which the words 'representation' and 'execution' are used in French.

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<sup>1</sup> *Actes* 1885, 20 (mainly due to objections from the German delegation).

A further point of explanation, mainly for English-speaking readers, concerns the word 'Act' which is used throughout the book to refer to the different texts of the Convention which have been adopted by successive conferences of revision. Thus, the expression 'Berne Act' is used to refer to the text adopted by the original conferences held at Berne in 1884–6, 'Berlin Act' to refer to the text settled at the revision conference held at Berlin in 1908, and so on.<sup>2</sup> To English-speaking lawyers, this usage may appear unusual, as the term 'Act' generally refers to the highest form of instrument enacted by a sovereign legislative body. In French, however, the term '*acte*' has a broader meaning, referring to any kind of formal deed or instrument, and it has been used in this sense to refer to the final text which has been agreed to by the member nations of the Berne Union at each successive conference at which the Convention has been revised. We have therefore followed this usage in the present text, substituting the English word 'Act' for '*acte*'. It should also be noted that there is another sense in which *acte* is used, and this is to refer to records of proceedings. We have therefore adopted the abbreviation '*Actes* 1884–6' to refer to the records of the 1884 to 1886 Conferences at Berne, '*Actes* 1908' to refer to the records of the Berlin Revision Conference of 1908, and so on. Where later conferences' proceedings were published in English, they are referred to as '*Records*'.

Another terminological problem is how to refer to the different kinds of legal systems that are to be found in the various countries of the Berne Union. Broad descriptive labels, though useful as a form of shorthand, are often inaccurate and misleading unless their meaning and scope are made clear in advance. Where appropriate, we have used geographical or regional adjectives to designate particular groups of countries, for instance 'Western European', 'Eastern European', 'Asian', 'African', and so on. In a more general sense, we have used the expressions 'civil law' and 'common law' to refer to the main categories of legal system that are found in most countries of the world. The first term is very loose, and covers all countries of continental Europe, with the exception of the UK and Ireland, and those countries whose legal systems are derived from those of continental Europe, such as Japan, the South American states and African

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<sup>2</sup> The full list of expressions used are as follows: Berne Act—text adopted by Berne Conference 1886; Paris Additional Act—text adopted by Paris Conference 1896; Berlin Act—text adopted by Berlin Conference 1908; Rome Act—text adopted by Rome Conference 1928; Brussels Act—text adopted by Brussels Conference 1948; Stockholm Act—text adopted by Stockholm Conference 1967; Stockholm Protocol—Protocol adopted by Stockholm Conference; Paris Act—text adopted by Paris Conference 1971; Paris Appendix—Appendix adopted by Paris Conference 1971; Stockholm, Paris Acts—this composite phrase refers to the substantive articles (arts 1–20) of both the Stockholm and Paris Acts, which are identical. Note, however, that as the Paris Act is an entirely separate Act, it would be wrong to refer to the two Acts as the Stockholm–Paris Act. See further para 14.37 below.

states that were formerly French colonies. The expression 'common law', on the other hand, refers to those countries whose legal systems are derived from British law, including the United States of America. The adjective 'Anglo-Saxon' is used by some authors for this purpose, but this hardly seems appropriate in view of the fact that most of the peoples of these countries are not Anglo-Saxon in origin; indeed, the UK itself has component parts that are Celtic in origin rather than Anglo-Saxon. Similar objections could be made to the use of the term 'Anglo-American', while the adjective 'Commonwealth' would leave out the USA as well as several other important Berne member countries that are no longer part of the British Commonwealth. 'Common law' therefore seems the most appropriate description to cover all these diverse nations whose legal systems ultimately derive from that of the UK. A third category, no longer relevant for this edition, was that of 'socialist countries', which was used in the first edition to refer to the USSR and the socialist regimes of Eastern Europe. A final category which cuts across each of those already mentioned is that of 'developing countries'. This term involves some difficulties of interpretation, and these are discussed further in Chapter 14 (para 14.51ff).

The last matter of terminology concerns the use of the expression 'International Office' to refer to the body which undertook the administrative tasks of the Berne Union prior to the Stockholm Act. This is in accordance with the usage adopted by WIPO in its English translations of the earlier Acts of the Convention. In these, the French title '*Bureau de l'Union internationale pour la protection des oeuvres littéraires et artistiques*' was rendered as 'Office of the International Union for the Protection of Literary and Artistic Works', and the abbreviated titles 'Bureau international' and 'International Office' were used. However, these were not 'official' translations of the authentic French text,<sup>3</sup> and, in new translations published by WIPO as part of the centenary celebrations of the Berne Convention in September 1986,<sup>4</sup> the expression 'Bureau' is used instead of 'Office'. As these texts are not binding, we have maintained the earlier translation, and therefore refer only to the 'International Office' when discussing the body that administered the Berne Union prior to the Stockholm Act.<sup>5</sup> This has the slight advantage that it serves to distinguish this body more clearly from the 'International Bureau' of WIPO which now administers the

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<sup>3</sup> In this regard, however, it should be noted that in art 31 of the Brussels Act, English was established for the first time as an 'equivalent text', and this was done by a committee of English-speaking delegates who adopted the word 'Office': *Documents de la Conférence réunie à Bruxelles du 5 au 26 juin 1948*, 89, 531.

<sup>4</sup> WIPO, *The Berne Convention for the Protection of Literary and Artistic Works from 1886 to 1986* (1986), 228–36.

<sup>5</sup> The terms 'Berne Office', 'Berne Bureau', 'Office of Union' and the 'Secretariat' are also to be found in various writings.



Union. In this regard, it should also be noted that, from its inception, the International Office was combined with the 'International Bureau for the Union for the Protection of Industrial Property', and these were later known, unofficially, as the '*Bureaux Internationaux Reunie pour la Protection de la Propriete Intellectuelle*' or 'BIRPI'.<sup>6</sup> As for the terms 'Berne Union' and 'Union', the meaning of these is discussed in detail in Chapter 5.

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<sup>6</sup> See further Chapter 16 below.