

WIPO



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PATENT COOPERATION TREATY

INTERIM ADVISORY COMMITTEE FOR ADMINISTRATIVE QUESTIONS

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COPYRIGHT IN PCT PUBLICATIONS

Memorandum by the International Bureau

1. The Working Group on Budgetary Questions established by the PCT Interim Advisory Committee for Administrative Questions (hereinafter referred to as "the Interim Committee") in its session held from February 28 to March 4, 1977, asked the International Bureau to survey the copyright situation of the future PCT publications--mainly the pamphlets containing the international applications and the PCT Gazette (hereinafter referred to as "the pamphlets" and "the Gazette," respectively)--particularly in those countries which could be expected to be most interested in such publications, in order to assess the possibilities of preventing the unauthorized reproduction and subsequent distribution of the said publications (see document PCT/WG/BUD/I/6, paragraph 33).

2. International applications are works according to the definition given by copyright laws to the concept of "work" in that they are original writings. Copyright in any international application originally vests in its author, that is, normally the applicant. It is less clear whether, when filing his international application, the applicant transfers the entire copyright in it to WIPO or merely gives an exclusive (or non-exclusive?) license to WIPO for those purposes which are provided for in the PCT (reproduction, abstracting, publication, distribution without charge, sale).

3. Once the pamphlet is made up by WIPO, it contains, in addition to the international application, a title page with various new data, an abstract which will frequently be different from the one written by the applicant, and the international search report. Some of these new elements will not be the work of WIPO and, where they are not, questions arise that are similar to those indicated in the preceding paragraph in connection with the international application stricto sensu.

4. In any case, the pamphlet itself--including in particular its front page (both as to its content and as to its layout)--is what is called in copyright terminology a "compilation," with most of its components derived from the works of others but, in itself and taken as a whole, it is a further work in which the copyright vests in the compiler-author, that is, WIPO. The same is true in respect of the Gazette.

5. Protocol 2 of the Universal Copyright Convention (hereinafter referred to as "the Protocol") stipulates that "The protection provided for in Article II(1) of [Universal Copyright] Convention shall apply to works published for the first time by the United Nations, by the Specialized Agencies in relationship therewith..."

(paragraph 1.(a)), whereas it follows from Article II(1) of the said Convention that the protection to be granted is the same protection as that which any State party to the Convention "accords to works of its nationals first published in its own territory." The World Intellectual Property Organization (WIPO) being a Specialized Agency in relationship with the United Nations, and the pamphlets and the Gazette being works published for the first time by such an Agency, the protection provided for by the Protocol will apply to the said pamphlets and the said Gazette.

6. It seems to be irrelevant in this connection that some of the States party to the Universal Copyright Convention deny, in their national laws, copyright protection to Government publications in general or to some Government publications in particular, and among the latter, to patent applications or patents published by their national Patent Office and to the official Gazette of such an Office. Such denial is usually motivated by the consideration that publications produced "at the expense of the taxpayer" should not be burdened by copyright. Such a consideration is, naturally, valid only where the national Patent Office is totally or heavily subsidized "by the taxpayer." In any case, whatever the reasons of any State may be for denying copyright protection to the publications of its own Government and even if such reasons could be extended by analogy to publications of intergovernmental organizations, they will be overridden by the Protocol, which does not allow any extension, by analogy, of any national régime concerning Government publications to intergovernmental publications but, on the contrary, expressly and clearly obliges all States which have ratified, accepted or acceded to the Protocol to protect the publications of, inter alia, WIPO.

7. The States which, at the present time, are bound by the Protocol are the following 57: Andorra, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Chile, Costa Rica, Cuba, Czechoslovakia, Democratic Kampuchea, Denmark, Ecuador, Finland, France, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Holy See, Hungary, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Senegal, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America, Venezuela, Yugoslavia (list of countries taken from Unesco Copyright bulletin, Volume XI, No. 1, 1977).

8. As can be seen from the above list, practically all States (with the possible exception of Canada) in which the pamphlets and the Gazette published by WIPO under the PCT will be of interest--and in which anyone might be tempted to reproduce and sell them--are bound by the Protocol. Consequently, any use in those countries of the pamphlets and the Gazette protected by the copyright laws of those countries will require the authorization of WIPO.

9. What are such uses? One can confidently say that in all the 57 countries they comprise reproduction, irrespective of the process applied (by setting new type, by photographic means, in the form of paper copies or microfilms, etc.) and the distribution free of charge or the sale of the copies so reproduced. In the majority of States, however, reproduction for personal use is permitted without the authorization of the owner of the copyright and without any payment to him.

10. Would the protection based on the Protocol be dependent on the use of the copyright notice (the symbol © accompanied by the name of the copyright proprietor and the year of first publication) provided for in Article III(1) of the Universal Copyright Convention? With the possible exception of the United States of America and a few Latin American countries, it would not. Prudence would counsel affixing a copyright notice at least on each issue of the Gazette but preferably also on each pamphlet. The Interim Committee may wish to express its view on the desirability of affixing the said notice. Ultimately, the decision on the question should be taken by the PCT Assembly.