

1 WHAT IS COPYRIGHT?

1.1 WHAT THIS SECTION IS ABOUT

Copyright is a complex legal and procedural matter, and it is only intended to discuss in this manual those aspects of the topic which are relevant to the operation of the Bible Societies. We shall begin with a brief description of what copyright is and how it operates, and continue by examining the implications for Bible Societies and by making suggestions on overcoming problems that arise. It should be noted that particular attention will be paid in this manual to law which is potentially less favorable to Bible Society operations. The purpose of this is to alert all Societies to possible problem areas, even if the difficulties do not exist in all countries.

1.2 COPYRIGHT DEFINITION

Copyright is a property right which the "creator", hereinafter called the "originator", of a work has in relation to the work he or she has created. It is generally accepted that ideas, opinions, information and facts are at the disposal of the public, but that the way in which they are expressed is the property of the originator, whether as author, artist, composer or translator, unless these rights have been expressly assigned to others. Copyright legislation exists to protect the property rights of the originator by preventing others from benefitting from the work without permission. In addition, and of particular importance for publishing Bible Societies, copyright legislation also affords protection of the rights of those who issue such work to the public (publishers, film producers, etc.).

1.2.1 WHAT LEGISLATION EXISTS?

Most countries have national copyright laws which protect works originating in their own country, but in order to give wider protection, international agreements are necessary. There are two major international agreements:

1.2.1.1 The Berne Union

The Berne Copyright Union was founded in 1886. Nations which belong to the Union undertake to grant protection to works originating in all other member countries. Protection is automatically provided to the author (or to any individual or organization to whom the author assigns his or her rights); no formalities are required; i.e. it is not necessary for formal registration of copyright to take place in order to ensure adequate protection.

1.2.1.2 Universal Copyright Convention

This convention (known as UCC) was established in 1952 to make it possible for international copyright agreements to extend to a wider group of countries than were ready to sign the Berne Convention.

When a work is published, protection under UCC is only possible if the publication includes a copyright notice consisting of an encircled "c" (@), together with the name of the owner of the copyright and the year of first publication.

1.2.1.3 No International Protection?

There are a number of countries which have signed neither the Berne nor the UCC convention. and although in some of these countries national copyright law exists. there may be no protection available for materials originating elsewhere. "Simultaneous" publication of a work (i.e. within a delay of 30 days) in a country which is a member of the Berne Union or UCC and also in a country which is not a member circumvents this problem as both international conventions afford protection in such cases. In a few countries pirate production of materials copyrighted elsewhere but not protected locally is big business which even receives official encouragement. (See *Section 1.2.15 - Piracy.*)

Appendix A provides lists of the countries which have signed each convention. As the Berne Union provides the more complete cover, dealings between countries which have signed both conventions take place under Berne rather than UCC rules.

Countries which are signatories of either Convention are required to ensure that their own copyright law is within the fairly broad policy guidelines spelt out in the Convention. Within those guidelines. however. national legislation can and does differ in significant aspects. It is important for Bible Societies to be familiar both with the international copyright conventions and with their national legislation: account must be taken of local differences from the international conventions. The national copyright law is that which must be applied in the national situation. It is therefore strongly recommended that each Bible Society obtain a copy both of its own national copyright legislation and of that of any countries where Bible Societies or other publishers publish or distribute significant quantities of Scriptures for which the first Society holds copyright. It is important that this information should be kept up-to-date.

1.2.2 OWNERSHIP OF COPYRIGHT

The basic principle is simple enough. "The author of a work is the first owner of any copyright in it." However. there are exceptions for works made by employees in the course of their employment as is the case with Bible Societies and translators.

For literary, dramatic, musical and artistic works, the author in relation to a work "means the person who creates it." Usually this will be the person whose skill, labor and effort it is that warrants copyright protection in the first place. In the case of sound and video recordings and films, it is "the person by whom the arrangements necessary for the making of the recording or film are undertaken."

1.2.2.1 Joint authorship

This is an important subject to consider. as most of Bible Society-sponsored translations are worked on by a team of translators. (See also *Section 1.2.7* on Translators, Rights).

"Joint" does not necessarily mean equal (although that would normally commend itself on the grounds of simplicity) and the proportionate shares may depend on the quantity and quality of the different contributions. Each author may have separately contributed particular chapters (books of the Bible) in which case the different sections will be distinct copyright works with different individual authors. However, if "The contribution of each author is not distinct", ie. they have worked together on the whole book and one cannot point to specific chapters or sections which are solely the work of one. then it is a work of joint authorship.(See *Appendix J - Dworkin and Taylor*)

Note that there may be a possibility that where one of the joint authors is a citizen of a non-Convention country (see *Section 12.1 - What Legislation Exists?*) such as Singapore, he or she may not be considered as a joint author. and his or her life is not relevant to the duration of the copyright. This is a specific clause to the UK Act, and will need further comparison with the Conventions and legislation in other countries.

1.2.2.2 Employee Authors

The general rule in the concept of authorship is that the author is the first owner. The only exception to this is *work made by an employee in the course of his or her employment* which, subject to any agreement to the contrary, *belongs to the employer*. Therefore, translation work by UBS/Bible Society employed or contracted personnel belongs to UBS/Bible Society. Note that the employer is not entitled to *every* copyright created by an employee, merely those created "in the course of his employment" (See *Appendix J - Dworkin and Taylor*) For example, the copyright in books and articles written by employed teachers and lecturers generally belongs to the teacher or lecturer since they are usually employed to teach and lecture rather than to write.

1.2.2.3 Contractual Variation of First ownership

While the employer's copyright in his or her employee's works is expressly made subject to contrary agreement, in all other cases the author is the first owner. So no other contract can affect first ownership; there must be a *transfer* (albeit immediate) in writing and signed by the author (first owner) to the other party. Bible societies commissioning the work will be well advised to make sure that there is a written agreement signed by the first Author (ie translator), expressed as an assignment of the copyright. (See *Appendix B*)

1.2.2.4 Assignment of Copyright

- i. Copyright can be assigned partially. eg. the owner can assign the hardback publishing rights to one publisher and the paperback rights to another. Further,

the assignment can be limited by time or by geographical area. eg. the publishing rights in the USA for the next 25 years.

- ii. Assignments must be in writing and signed by or on behalf of the owner.
- iii. Assignments may be of copyrights that have not yet come into existence and such assignments are effective to transfer ownership of copyright as soon as the work is created.
- iv. Licenses (which do not transfer any part of the ownership but are merely permissions to do what otherwise would be infringement) are not generally required to be in writing (although it is advisable that they should be, especially in the case of exclusive licenses (see v. below)).

1.2.2.5 Licenses

- i. Licenses may be granted on a *non-exclusive* basis. ie. the same permission to copy or perform can be given to other licensees, or it may be an *exclusive* license, ie. one which permits the licensee alone to copy or perform. An exclusive license even excludes the owner of the copyright from doing whatever the license permits and this puts the licensee in a position almost as if he is the owner.
- ii. Implied licenses. Licenses to do what would otherwise be an infringement of copyright can often be implied from conduct or out of a contracted relationship. For example. The sending of a letter to a newspaper editor will normally imply a license to publish it and where a work is commissioned, there will usually be an implied license for the commissioner to use the work for purposes for which the commission was made.

1.2.2.6 Transmission on death

"Copyright is transmissible ... by testamentary disposition ... as personal or moveable property." (See *Appendix J* - Dworkin and Taylor)

1.2.3 COPYRIGHT PROTECTION

The owners of copyright exercise control over the following rights in their work:

1. Reproduction in any material form
2. Publication and distribution to the public by sale or by other transfer of ownership
3. Public performance
4. Public display
5. Broadcasting
6. Transmission to subscribers to any kind of distribution service
7. Preparation of works based upon the original copyrighted material, (This section includes translations, revisions, or annotated or study editions and is therefore of particular interest to Bible Societies,)

It is vitally important to ensure adequate copyright protection of Bible Society Scripture translations in which the UBS and its member Societies have invested their valuable resources,

Without copyright protection, the integrity of a translation cannot be maintained properly against inappropriate and unauthorized amendment and revision. Furthermore, copyright protection provides some measure of defense against the distribution of pirated Scripture editions, which can seriously affect Bible Society distribution programs,

1.2.4 ENSURING BIBLE SOCIETY COPYRIGHT

Unless careful steps are taken to ensure that all rights belong to the Bible Society, important rights can be held by outside parties. These can include rights held by translators, illustrators, book designers, composers and printers – and, perhaps even more importantly, by their heirs and successors.

1.2.5 DURATION OF COPYRIGHT PROTECTION

Although copyright is a property right, it does not generally exist in perpetuity and is more in the nature of a long leasehold than a freehold.

Literary, dramatic and musical work

Author's life plus 50 years

Note that copyright always expires on 31 December at midnight thus minimizing disputes about the time of the author's death. Under The Berne Convention works remain in copyright for 50 years after The death of the originator (which can also mean "translator" - see *Section 1.2.7. - Translators, Rights*). Under the UCC the period is 25 years following the originator's death. It should be noted also that UCC rules also provide for expiry of copyright 25 years *after publication date* in countries where the law permits this. In some circumstances copyright can even extend to 75 years following the date of publication. so careful checking is essential in each case.

For member countries of the European Union, it is important to note that copyright now holds for 70 years. In addition, the new directive applies to works in which copyright has already been lost. Creative works (including published editions, illustrations and music) by people who died between 1925 and 1945 return to copyright. Also, copyright will not return to the original owners but will go instead to the publisher who had the license from the author to produce the work when it went out of copyright.

Works of Joint Authorship (see *Section 1.2.2 - Ownership of Copyright*) are measured in relation to the longest to survive. (eg. 50 years beyond The death of the last surviving author.)

Artistic work (photographs)

50 years from first publication

(1956 Copyright Act)

Author's life + 50 years

(1988 Copyright act)

Sound recordings

50 years from release

Published Editions

25 years from the end of the year of the first publication

Note that "Published Edition" usually refers to the typographical arrangement, basically, the way that the printed page is set out. This copyright status is granted in recognition of the investment of the publisher who often will not own the copyright in The work being published. A straight reprint does not acquire a fresh copyright. "Publication" is defined as the "issue of copies to the public" and this is stated to include availability "by means of an electronic retrieval system." (See *Appendix J - Dworkin and Taylor*)

In some countries, copyright must be renewed after 25 years (usually for a further 25 year period). and it is vital to ensure that this is done. Special arrangements may have to be made by the Bible Society to ensure that this renewal is sought - perhaps by carrying forward a reminder from year to year. It is a task which could easily be forgotten if no precautions are taken.

N.B. It is important to check the legislation in each country to confirm this information.

SUGGESTED ACTION:

1 New publications to retain copyright: Some years before copyright ownership of an edition is due to expire, a Society should plan to issue just before that date a revised version or a new annotated edition of the text, in order to ensure copyright protection for a further period.

1.2.6 REGISTRATION

One of the attractions of copyright is that it is acquired automatically as soon as a work is recorded (ie. written. printed. typed. taped, etc).

Unlike patents and registered designs, there are often no registration requirements and so the expense and delay necessarily involved in these other rights are avoided. No Berne Convention country may have a registration requirement in its copyright law and the French system of copyright law does not require registration.

However, in some countries copyright protection can only be claimed if the copyright has been formally registered with a government office appointed for the purpose: it may also be necessary to deposit copies of the work with the national library. Societies in countries where this is the law must ensure that these steps are taken, not only for the first edition, but also for the second and subsequent editions. (This procedure is not normally necessary for reprints, if no changes are made to the text).

1.2.7 TRANSLATORS' RIGHTS

Article 2 (3) of the Berne Convention states:

"Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work."

This means that unless translators specifically assign their rights as the owners of their "original works" to the Bible Society, they and their heirs will remain owners of the translated text until up to 50 years after their death, or longer in some cases, eg. in the European Union member countries.

In advising one major Bible Society some years ago, their lawyer stated:

"The author of a literary work is not the owner of the copyright if the work is made in the course of the author's employment by another person under a contract of service. It would, therefore, prima facie seem that if the Society employs a translator as a member of its staff and requires him to produce a new translation in a particular language, the copyright would belong to the Society, but we doubt if that would be so. In the first place a contract of service is not the same thing as a contract for services, and we rather feel that any contract the Society may have with a translator is more likely to be a contract for services. In this connection it has been said in one of the cases, "the greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract for service; and similarly, the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service." The question of whether a translator is under a contract of service may not be easy to solve."

In addition, it is uncertain whether or not a "body corporate" such as a Bible Society can be considered as an "author", so unless translators have specifically assigned their rights to the Bible Society (whether or not they are full-time Bible Society employees) they may be considered in law to be owners of the translation.

Historically there are two principal legal approaches to copyright, one or the other of which has influenced the development of most national copyright law.

The first of these approaches reasons that "work for hire" done by full-time employees becomes the property of their employer. However, attractive as this concept may be to Bible Societies, it is unlikely that translators working on Bible Society projects will fall into such a category, even if the Society is paying part or all of their salaries. Most translators are not full-time Bible Society employees working under a contract of service, and unless they have assigned their rights to the Society they could almost certainly succeed in proving ownership of the translations they have prepared.

The second approach, typical of France, and most other countries whose legal systems are based on French law, affords greater protection to the rights of the originator of the work. In these countries, even if an originator is paid for his or her work and signs a contract transferring rights to a publisher, the publisher's rights are only valid for the first 100,000 copies of the book, after which they revert to the originator.

In the case of the German "Gute Nachricht" translation, a detailed agreement was drawn up on legal advice, and signed by the Bible Society and the translators, in which ownership of the text was assigned to the Bible Society. Broadly similar arrangements were made in respect of the French TOB (Traduction Oecumenique de la Bible) translation. (See also *Appendix B*).

From the above examples it can be seen that Bible Societies need to be sensitive to potential problems in the area of translators' rights, although hitherto difficulties have rarely arisen in practice. Arrangements such as those outlined in the previous paragraph are a sensible precaution, however,

1.2.7.1 Tigrinya: A Case Study

Some years ago questions arose concerning copyright of the Tigrinya Bible, published by the BFBS in London in 1956. According to British copyright law, copyright in printed books lasts for 25 years only, so the BFBS edition is now out of copyright.

Copyright in the text itself, however, is valid for 50 years after the death of the author or translator (or 70 years for European Union countries) - and, where a team of translators is involved, after the death of the last living translator.

The chief translators of the Tigrinya Bible were Elsie Windqvist (died 22nd December 1957) and Mikael Homer (date of death not known, but he had already died at the time of Bible publication in 1956). There were however three other translators (all of whom may still be alive) and also other assistants and reviewers.

There is no record held by the BFBS of any agreement signed by the translators, assigning their rights in the Tigrinya translation to the BFBS. A further complication is the fact that Ethiopia has not signed either the Berne or the Universal Copyright Convention.

Tigrinya is no doubt typical of several hundred other translations. In most cases this is probably unimportant, and it would also probably do more harm than good to try to regularize the situation after the event. In practice there are three situations in which it is possible that problems with translators may arise:

1. Commercial

In the case of major world languages or of languages in countries where it can be highly profitable to publish the Bible (e.g. Japan, Scandinavia), commercial publishers might attempt to pirate Bible Society editions or to obtain rights from translators.

2. Christian organizations and missions

If other Christian organizations wished to compete directly with the Bible Society or were unwilling to co-operate (perhaps for theological or economic reasons) they might try to obtain rights from translators.

3. Initiatives by translators or their heirs

While it is highly unlikely that translators would themselves take such a step, it is quite possible that their heirs or successors might wish to negotiate the sale of their rights to other publishers in order to derive profit from the work undertaken by the translators.

Societies are urged to take steps to protect their rights in cases where such situations could arise. The commitment of translators to the Bible cause, as amply demonstrated in their own work, would be unlikely to permit them to fall prey to commercial pressures, but this attitude may not necessarily be shared by their heirs and successors.

(If this seems an unlikely possibility, consider one modern example -i.e. the case of the valuable estate of the famous poet W.H. Auden. Auden left his entire estate to his friend Chester Kallman, who died soon after leaving everything to his 6th. a dentist. He then died, and, within two or three years of Auden's own death, this dentist's second wife became the sole beneficiary of the entire literary estate of the poet)

SUGGESTED ACTION:

2 Existing Publications: Societies should identify "vulnerable languages" in which they have published editions and, in consultation with UBS regional staff where necessary, take steps to ensure Bible Society ownership of important existing translations. To do this may mean that a Bible Society has to ask translators to formally give their rights over to it.

Our advice is to approach this with extreme care and always contact the UBS Regional Service Center first..

3 Current translation projects: Societies should periodically carry out a review of all existing translation projects in order to decide whether any action is necessary in order to protect copyright.

N.B. Although action to secure the Society's future interest is recommended in cases where it is felt that this could be jeopardied by failure to act now, the need for tact and sensitivity in the negotiations must be stressed. Difficult (and in some cases quite unnecessary) problems might arise if a Society tries to re-negotiate with translators perhaps several years after the project has commenced, unless there are understandable and acceptable reasons for doing so.

A distinction must also be made in practice between projects where the Bible Society is paying the translators, and those (much more frequent where the translators are paid in full or in large part by the Churches. It will normally prove easier for the Bible Society to secure copyright in cases where the translators have been paid by the Society - though it should also be possible to reach agreement with the Churches that the Society should hold copyright.

In cases where the Society decides that it must secure copyright, it will be necessary for each translator to sign an agreement assigning all rights in the text (first and subsequent editions and printings) to the Bible Society. The same procedure should apply to the preparation of introductions and readers' helps.

N.B. A license from the translators giving the Bible Society permission to use the materials is insufficient.

See Appendix B for a draft agreement with translators; this text will usually require modification in order to meet legal requirements in each country, and the advice of a lawyer should normally be sought. The UBS Translation Consultant should also be involved in the negotiations.

4 *New Translations:* it is strongly recommended that Bible Societies obtain copyright ownership of the text of all new or recently commenced translation projects and not only of translations which are expected to have commercial value. For all new translations therefore, it is recommended that as standard procedure an agreement be drawn up with the translators, in which they assign their rights to the Bible Society. (See Appendix B for draft agreement.)

1.2.8 MORAL RIGHTS

Moral rights protect not only the author's economic rights in a copyright work, but also their personal interest in the work.

Bible societies need to take the implications of Moral Rights into account and there needs to be a wider discussion within the fellowship on this. There is little doubt that the history of Bible translation and publishing shows the assumption, albeit by default, that the translators (or "authors") willingly gave their "work" to be published freely and exclusively by the Bible Society. And that in those casual arrangements, there have been no significant occasions when the arrangement has back-fired. For example, no translators have yet claimed that their rights have been infringed, or independently sold the *rights* in the translation to another Bible publisher, or claimed royalties, or demanded that no revisions or corrections be made. Let's thank God for this, and the commitment of good-hearted people to the Bible cause.

This section identifies issues that Bible Societies should be aware of in dealing with "Moral Rights".