

No. 909

UNITED STATES OF AMERICA
and
AUSTRALIA

Exchange of notes constituting an agreement relating to the extension, on a reciprocal basis, of the time for compliance with conditions and formalities prescribed by their respective copyright laws. Washington, 29 December 1949

Official text : English.

Registered by the United States of America on 13 September 1950.

ÉTATS-UNIS D'AMÉRIQUE
et
AUSTRALIE

Echange de notes constituant un accord relatif à la prolongation, sous réserve de réciprocité, du délai imparti pour satisfaire aux conditions et remplir les formalités prescrites par leurs lois respectives sur la propriété littéraire et artistique. Washington, 29 décembre 1949

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 13 septembre 1950.

No. 909. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA RELATING TO THE EXTENSION, ON A RECIPROCAL BASIS, OF THE TIME FOR COMPLIANCE WITH CONDITIONS AND FORMALITIES PRESCRIBED BY THEIR RESPECTIVE COPYRIGHT LAWS. WASHINGTON, 29 DECEMBER 1949

I

The Australian Ambassador to the Secretary of State

AUSTRALIAN EMBASSY

WASHINGTON, D. C

29th December, 1949

No. 504/49

Sir,

I have the honour to inform you that the attention of the Australian Government has been invited to paragraph (b), section 9 of Title 17 of the United States Code, codified and enacted into positive law by the act of Congress approved July 30, 1947², which provides for extending, on a reciprocal basis, the time for the fulfilment of the conditions and formalities prescribed by the copyright laws of the United States in the case of authors, copyright owners, or proprietors of works first produced or published abroad who are or may have been temporarily unable to comply with those conditions and formalities because of the disruption or suspension of the facilities essential for their compliance.

My Government has requested me to inform you that, by reason of the conditions arising out of World War II, Australian authors, copyright

¹ Came into force on 29 December 1949, by the exchange of the said notes.

² United States of America : *61 Stat. 652*.

owners, and proprietors have lacked, during several years of the time since the outbreak of war between Australia and Germany on September 3, 1939, the facilities essential to compliance with and to the fulfilment of the conditions and formalities established by the laws of the United States of America relating to copyright.

It is the desire of the Australian Government that, in accordance with the procedure provided in the above-mentioned section 9 of Title 17 of the United States Code, the time for fulfilling the conditions and formalities of the copyright laws of the United States of America be extended for the benefit of citizens of Australia whose works are eligible to copyright in the United States.

With a view to assuring the Government of the United States of America of reciprocal protection for authors, copyright owners, and proprietors of the United States, the Governor-General has made an Order, the text of which is annexed hereto, which will come into effect from the date on which the President of the United States of America shall proclaim, in accordance with the aforesaid Title 17 of the United States Code, that by reason of the disruption or suspension of facilities during several years of the time since September 3, 1939, citizens of Australia who are authors, copyright owners, or proprietors of works first produced or published outside the United States and subject to copyright, ad interim copyright, or renewal of copyright under the laws of the United States, have been temporarily unable to comply with the conditions and formalities prescribed with respect to such works by the copyright laws of the United States.

The Australian Government is prepared, if this proposal is acceptable to the Government of the United States of America, to regard the present note and Your Excellency's reply to the same effect as constituting an agreement between the two Governments, which shall take effect this day.

I have the honour to be, Sir, your most obedient servant,

NORMAN MAKIN
Ambassador

Order-in-Council enclosed.

The Honourable Dean Acheson
Secretary of State for the United States of America
Department of State
Washington, D. C.

AUSTRALIAN EMBASSY

WASHINGTON, D. C.

ORDER

Commonwealth of Australia to wit.
(Signed) W. J. MCKELL
Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by virtue of the *Copyright Act 1912-1935* the Imperial Act known as the Copyright Act, 1911 (in this Order referred to as "the Imperial Copyright Act") extends to the Commonwealth of Australia subject to such modifications and additions relating to procedure or remedies or necessary to adapt the Imperial Copyright Act to the circumstances of the Commonwealth of Australia as are set forth in the *Copyright Act 1912-1935* :

AND WHEREAS by reason of conditions arising out of the wars in which His Majesty is at present engaged difficulties have been experienced by citizens of the United States of America in complying with the requirements of the Imperial Copyright Act as the first publication within the Commonwealth of Australia of their works first published in the United States of America during the present war :

AND WHEREAS the Governor-General has been advised that the Government of the United States of America has undertaken to grant such extension of time as may be deemed appropriate for the fulfilment of the conditions and formalities prescribed by the laws of the United States of America with respect to the works of citizens of Australia first produced or published outside the United States of America and subject to copyright or to renewal of copyright under the laws of the United States including works subject to *ad interim* copyright :

AND WHEREAS by reason of the said undertaking by the Government of the United States of America the Governor-General is satisfied that the said Government has made, or has undertaken to make, such provision as it is expedient to require for the protection of works first made or published, during the period commencing on the third day of September, One thousand nine hundred and thirty-nine, and ending one year after the termination of all the wars in which His Majesty is engaged at the commencement of this Order, within the Commonwealth of Australia and entitled to copyright under Part I. of the Imperial Copyright Act :

AND WHEREAS by the Imperial Copyright Act authority is conferred upon the Governor-General, acting with the advice of the Federal Executive Council, to extend, by Order, the application of the Imperial Copyright Act to certain classes of foreign works within the Commonwealth of Australia :

AND WHEREAS it is desirable to provide protection within the Commonwealth of Australia for literary or artistic works first published in the United States of America during the period commencing on the third day of September, One thousand nine hundred and thirty-nine, and ending one year after the termination of all wars in which His Majesty is engaged at the commencement of this Order which have failed to accomplish the formalities prescribed by the Imperial Copyright Act by reason of conditions arising out of the wars in which His Majesty is engaged at the commencement of this Order :

NOW THEREFORE I, William John McKell, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby order as follows :—

1. The Imperial Copyright Act shall, subject to the provisions of that Act and of this order, apply to works first published in the United States of America during a period commencing on the third day of September, One thousand nine hundred and thirty-nine, and ending one year after the termination of all the wars in which His Majesty is engaged at the commencement of this Order which have not been re-published in the Commonwealth of Australia within fourteen days after the publication in the United States of America, in like manner as if they had first been published within the Commonwealth of Australia.

2. The enjoyment by any such work of the rights conferred by the Imperial Copyright Act shall be conditional upon publication of the work within the Commonwealth of Australia not later than one year after the date of termination of all the wars in which His Majesty is engaged at the commencement of this Order and shall commence from and after that publication, which shall not be colourable only but shall be intended to satisfy the reasonable requirements of the public.

3. The provisions of section forty of the *Copyright Act 1912-1935* as to delivery of books to the Librarian of the Parliament shall apply to works to which this Order relates upon their publication in the Commonwealth of Australia.

4. Nothing in this Order shall be construed so as to deprive any work of any rights which have been lawfully acquired under the provisions of the Imperial Copyright Act or any Order thereunder.

5. Where any person has, before the commencement of this Order, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when that reproduction or performance would, but for the making of this Order, have been lawful, nothing in this Order shall diminish or prejudice any rights or interest arising through or in connexion with that action which were subsisting and valuable before the commencement of this Order, unless a person who, by virtue of this Order, becomes entitled to restrain that reproduction or performance agrees to pay such compensation as, failing agreement, is determined by arbitration.

6. In this Order, "the commencement of this Order" means the date on which this Order is published in the *Commonwealth of Australia Gazette*.

GIVEN under my Hand and the Seal of the Commonwealth, this ninth day of September, in the year of our Lord One Thousand nine hundred and forty-seven and in the eleventh year of His Majesty's reign.

[L. S.]

By His Excellency's Command,

(Signed) H. V. EVATT
Attorney-General

II

The Secretary of State to the Australian Ambassador

DEPARTMENT OF STATE

WASHINGTON

Dec. 29, 1949

Excellency :

I have the honor to acknowledge the receipt of your note of today's date in which you refer to paragraph (b), section 9 of Title 17 of the United States Code, codified and enacted into positive law by the Act of Congress approved July 30, 1947, which authorizes the President to extend by proclamation the time for compliance with the conditions and formalities prescribed by the copyright laws of the United States of America with respect to works first produced or published outside the United States of America and subject to copyright under the laws of the United States of America when the authors, copyright owners, or proprietors of such works are or may have been temporarily unable to comply with those conditions and formalities because of the disruption or suspension of the facilities essential to such compliance.

You state that by reason of conditions arising out of World War II authors, copyright owners, and proprietors who are citizens of Australia have lacked during several years of the time since the outbreak of war between Australia and Germany on September 3, 1939, the facilities essential to compliance with and to the fulfillment of the conditions and formalities established by the laws of the United States of America relating to copyright.

You express the desire of the Australian Government that, in accordance with the procedure provided in the above-mentioned section 9 of Title 17 of the United States Code, the time for fulfilling the conditions and formalities of the copyright laws of the United States of America be extended for the benefit of citizens of Australia whose works are eligible to copyright in the United States of America. You add that with a view to assuring the Government of the United States of America reciprocal protection for authors, copyright owners, and proprietors of the United States of America, the Governor-General has made an Order in Council, the text of which accompanies your note under acknowledgment, which will come into effect from the date on which the President of the United States of America shall proclaim, in accordance with the aforesaid Title 17 of the United States Code, that by reason of the disruption or suspension of facilities during several years of the time since September 3, 1939 citizens of Australia who are authors, copyright owners, or proprietors of works first produced or published outside the United States of America and subject to copyright, *ad interim* copyright, or renewal of copyright under the laws of the United States of America have been temporarily unable to comply with the conditions and formalities prescribed with respect to such works by the copyright laws of the United States of America.

You further state that the Australian Government is prepared, if this proposal should be accepted by the Government of the United States of America, to regard the note under acknowledgment and this Government's reply thereto to that effect as constituting an agreement between the two Governments, which shall take effect this day.

I have the honor to inform you that, with a view to giving effect to the commitment proposed in the note under acknowledgment, the President has issued today a proclamation, a copy of which is annexed hereto, declaring and proclaiming, pursuant to the provisions of section 9 of the aforesaid Title 17 on the basis of the assurances set forth in your note and the Order in Council, annexed thereto, that as regards (1) works of citizens of Australia which were first produced or published outside the United States of America on or after September 3, 1939 and subject to copyright under the laws of the United States of America, including works subject to *ad interim* copyright, and (2) works of citizens of Australia subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, there has existed during several years of the time since September 3, 1939 such disruption or suspension of facilities essential to compliance with the conditions and formalities prescribed with respect to such works by the copyright laws of the United States of America as to bring such works within the terms of the aforesaid Title 17, and that accordingly the time within which compliance with such conditions and

formalities may take place is extended with respect to such works for one year after the date of the proclamation. The proclamation provides that it shall be understood that the term of copyright in any case is not and cannot be altered or affected by the President's action and that the extension is subject to the proviso of the said Title 17 that no liability shall attach thereunder for lawful uses made or acts done prior to the effective date of that proclamation in connection with the works to which it relates, or in respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation, or performance of any such work.

The Government of the United States of America accordingly considers the agreement in regard to such extension of time to be in effect as of today's date.

Accept, Excellency, the renewed assurances of my highest consideration.

Dean ACHESON

Enclosure :

Copy of Proclamation.

His Excellency
The Honorable Norman J. O. Makin
Ambassador of Australia

COPYRIGHT EXTENSION : AUSTRALIA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A P R O C L A M A T I O N

WHEREAS the President is authorized, in accordance with the conditions prescribed in section 9 of Title 17 of the United States Code, which includes the provisions of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended by the act of September 25, 1941, 55 Stat. 732, to grant an extension of time for fulfillment of the conditions and formalities prescribed by the copyright laws of the United States of America, with respect to works first produced or published outside the United States of America and subject to copyright or to renewal of

copyright under the laws of the United States of America, including works subject to *ad interim* copyright, by nationals of countries which accord substantially equal treatment to citizens of the United States of America; and

WHEREAS the Governor-General of Australia has made an order, effective from this day, by the terms of which treatment substantially equal to that authorized by the aforesaid section 9 of Title 17 is accorded in Australia to literary and artistic works first produced or published in the United States of America during the period commencing on September 3, 1939, and ending one year after the termination of all the wars in which the Commonwealth of Australia is engaged at the commencement of this order; and

WHEREAS the aforesaid order is annexed to and is part of an agreement embodied in notes exchanged this day between the Government of the United States of America and the Government of Australia; and

WHEREAS, by virtue of a proclamation by the President of the United States of America dated April 9, 1910 (36 Stat. 2685), citizens of Australia are, and since July 1, 1909, have been, entitled to the benefits of the aforementioned act of March 4, 1909, other than the benefits of section 1 (c) of that act; and

WHEREAS, by virtue of a proclamation by the President of the United States of America, dated April 3, 1918 (40 Stat. 1764), the citizens of Australia are, and since March 15, 1918, have been, entitled to the benefits of section 1 (c) of the aforementioned act of March 4, 1909 :

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, under and by virtue of the authority vested in me by the aforesaid Title 17, do declare and proclaim :

That with respect to (1) works of citizens of Australia which were first produced or published outside the United States of America on or after September 3, 1939, and subject to copyright under the laws of the United States of America, including works subject to *ad interim* copyright, and (2) works of citizens of Australia subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, there has existed during several years of the time since September 3, 1939, such disruption or suspension of facilities essential to compliance with the conditions and formalities prescribed with respect to such works by the copyright laws of the United States of America as to bring such works within the terms of the aforesaid Title 17, and that, accordingly, the time within which compliance with such conditions and formalities may take place is hereby extended with respect to such works for one year after the date of this proclamation.

It shall be understood that the term of copyright in any case is not and cannot be altered or affected by this proclamation, and that, as provided by the aforesaid Title 17, no liability shall attach under the said Title for lawful uses made or acts

done prior to the effective date of this proclamation in connection with above-described works, or in respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully entered into prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation, or performance of any such work.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 29th day of Dec. in the year of our Lord nineteen hundred and forty-nine and of the Independence of the United States of America the one hundred and seventy-fourth.

[SEAL]

Harry S. TRUMAN

By the President :

Dean ACHESON
Secretary of State
