

1947
NEW ZEALAND

EXCHANGE OF NOTES

BETWEEN THE GOVERNMENTS OF NEW
ZEALAND AND THE UNITED STATES OF
AMERICA CONSTITUTING AN AGREEMENT
RELATING TO COPYRIGHT

Washington, 24 April, 1947

Presented to both Houses of the General Assembly by Leave

EXCHANGE OF NOTES BETWEEN THE GOVERNMENTS
OF NEW ZEALAND AND THE UNITED STATES
OF AMERICA CONSTITUTING AN AGREEMENT
RELATING TO COPYRIGHT

New Zealand Legation, Washington 8, D.C.,
April 24, 1947.

EXCELLENCY,—

The attention of the New Zealand Government has been invited to the Act of Congress of the United States of America approved September 25, 1941, 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, New Zealand authors, copyright owners, and proprietors have lacked during several years of the time since the outbreak of war between New Zealand 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 relating to copyright.

It is the desire of the New Zealand Government that, in accordance with the procedure provided in the said Act of September 25, 1941, the time for fulfilling the conditions and formalities of the copyright laws of the United States be extended for the benefit of citizens of New Zealand 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 in Council, the text of which is annexed hereto*, which comes into effect to-day, on which date it is understood that the President of the United States of America shall proclaim, in accordance with the said Act of September 25, 1941, that by reason of the disruption or suspension of facilities during several years of the time since September 3, 1939, citizens of New Zealand 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 New Zealand 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

* See Annex A.

as constituting an agreement between the two Governments, which shall take effect this day.

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

(Signed) C. A. BERENDSEN,

The Secretary of State, New Zealand Minister.
Department of State, Washington.

Department of State, Washington,

April 24, 1947.

SIR,—

I have the honour to acknowledge the receipt of your note of to-day's date in which you refer to the Act of Congress approved September 25, 1941, 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 New Zealand have lacked during several years of the time since the outbreak of war between New Zealand and Germany on September 3, 1939, the facilities essential to compliance with and to the fulfilment of the conditions and formalities established by laws of the United States of America relating to copyright.

You express the desire of the New Zealand Government that, in accordance with the procedure provided in the Act of September 25, 1941, 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 New Zealand 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 comes into effect to-day, on which date it is understood that the President of the United States of America shall proclaim, in accordance with the Act of September 25, 1941, that by reason of the disruption or suspension of facilities during several years of the time since September 3, 1939, citizens of New Zealand 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 New Zealand 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 honour to inform you that, with a view to giving effect to the commitment proposed in the note under acknowledgment, the President has issued to-day a proclamation, a copy of which is annexed hereto*, declaring and proclaiming, pursuant to the provisions of the aforesaid Act of September 25, 1941, 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 New Zealand 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 New Zealand 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 said Act of September 25, 1941; and that accordingly the time within which compliance with such conditions and formalities may take place is extended in respect of such works until the day on which the President of the United States of America shall, in accordance with the said Act, terminate or suspend that declaration and 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 Act of September 25, 1941, that no liability shall attach under the Copyright Act 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 to-day's date.

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

(Sgd) DEAN ACHESON,

Acting Secretary of State.

The Honourable Sir Carl Berendsen, K.C.M.G.,

Minister of New Zealand.

* See Annex B.

ANNEX A

THE COPYRIGHT (UNITED STATES OF AMERICA) ORDER 1946

MICHAEL MYERS,
Administrator of the Government

ORDER IN COUNCIL

At the Government House at Wellington, this 5th day of June, 1946

Present :

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT
IN COUNCIL

WHEREAS, by reason of conditions arising out of the present war, difficulties have been experienced by citizens of the United States of America in complying with the requirements of the Copyright Act, 1913, as to the first publication within New Zealand of their works first published in the United States of America during the present war: And whereas the Administrator of the Government is 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 with respect to the works of citizens of New Zealand first produced or published outside the United States 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 of the Government of the United States of America the Administrator of the Government 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 in New Zealand during the period commencing on the 3rd day of September, 1939, and ending one year after the termination of the present war and entitled to copyright under Part I of the Copyright Act, 1913: And whereas by the Copyright Act, 1913, authority is conferred to extend, by Order in Council, the protection of the said Act to certain classes of foreign works within New Zealand: And whereas by reason of these premises it is desirable to provide protection within New Zealand for literary or artistic works first published in the United States of America during the period commencing on the 3rd day of September, 1939, and ending one year after the termination of the present war which have failed to accomplish the formalities prescribed by the Copyright Act, 1913, by reason of conditions arising out of the war:

Now, therefore, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council of the Dominion of New Zealand, and in pursuance and exercise of the power and authority conferred by the Copyright Act, 1913, doth hereby direct as follows:—

1. This Order may be cited as the Copyright (United States of America) Order 1946.

2. This Order shall come into force on the date of the notification in the *Gazette* of the making thereof.

3. The Copyright Act, 1913, shall, subject to the provisions of the said Act and of this Order, apply to works first published in the United States of America during the period commencing on the 3rd day of September, 1939, and ending one year after the termination of the present war, which have not been republished in New Zealand within fourteen days of the publication in the United States of America, in like manner as if they had been first published within New Zealand:

Provided that the enjoyment by any such work of the rights conferred by the Copyright Act, 1913, shall be conditional upon publication of the work within New Zealand not later than one year after the termination of the present war, and shall commence from and after such publication, which shall not be colourable only, but shall be intended to satisfy the reasonable requirements of the public.

4. The provisions of section 52 of the Copyright Act, 1913, as to the delivery of books to the General Assembly Library, shall apply to works to which this Order relates upon their publication in New Zealand.

5. Nothing in this Order shall be construed as depriving any work of any rights which have been lawfully acquired under the provisions of the Copyright Act, 1913, or any Order in Council thereunder.

6. Where any person has, before the commencement of this Order, taken any action whereby he has incurred any expenditure or liability in connection 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 such 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 from or in connection with such action which were subsisting and valuable at the said date, unless the person who by virtue of this Order becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

W. O. HARVEY,
Acting Clerk of the Executive Council.

ANNEX B

COPYRIGHT EXTENSION: NEW ZEALAND

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS by the Act of Congress approved September 25, 1941 (55 Stat. 732), the President is authorized, on the conditions prescribed in that act, to grant an extension of time for the fulfilment 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 New Zealand has issued an Order in Council, effective from this day, by the terms of which treatment substantially equal to that authorized by the aforesaid act of September 25, 1941, is accorded in New Zealand to literary and artistic works first produced or published in the United States of America; and

WHEREAS the aforesaid Order in Council 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 New Zealand; 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 New Zealand are, and since July 1, 1909, have been, entitled to the benefits of the Act of Congress approved March 4, 1909 (35 Stat. 1075), relating to copyright, other than the benefits of section 1 (e) of that act; and

WHEREAS by virtue of a proclamation by the President of the United States of America dated February 9, 1917 (39 Stat. 1915), the citizens of New Zealand are, and since December 1, 1916, have been, entitled to the benefits of section 1 (e) of the aforesaid 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 act of September 25, 1941, do declare and proclaim :

That with respect to (1) works of citizens of New Zealand 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 New Zealand 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 act of September 25, 1941 ; and that accordingly the time within which compliance with such conditions and formalities may take place is hereby extended with respect to such works until the day on which the President of the United States of America shall, in accordance with that act, terminate or suspend the present declaration and 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 act of September 25, 1941, no liability shall attach under the Copyright Act for lawful uses made or acts done prior to the effective date of this proclamation in connection with the above-described works, 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.

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 twenty-fourth day of April, in the year of our Lord nineteen hundred and forty-seven, and of the Independence of the United States of America and one hundred and seventy-first.

HARRY S. TRUMAN.

(Seal)

By the President :

DEAN ACHESON
Acting Secretary of State.

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