

Copyright

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INTERNATIONAL UNION

NEW ZEALAND

Application to the Cook and Tokelau Islands of the Berne Convention for the Protection of Literary and Artistic Works, revised at Rome on June 2, 1928

(with effect from March 18, 1965)

Notification of the Swiss Government to the Governments of Unionist Countries

Carrying out the instructions issued by the Federal Political Department on February 18, 1965, the Embassy of Switzerland has the honour to inform the Ministry of Foreign Affairs as follows:

On November 19, 1964, the Embassy of the United Kingdom of Great Britain and Northern Ireland in Switzerland has transmitted to the Federal Political Department a letter of November 2, 1964, by which the New Zealand High Com-

missioner at London, on behalf of the Government of New Zealand, has notified the Political Department of the application of the Berne Convention for the Protection of Literary and Artistic Works revised at Rome on June 2, 1928, to the Cook Islands (including Niue) and to the Tokelau Islands. This declaration refers to Article 26, paragraph (1), of the said Convention.

According to paragraph (3) of its Article 25, the declaration of New Zealand will take effect on March 18, 1965.

The present notification has been made in application of Article 26, paragraph (3), of the above-mentioned Convention.

INTERNATIONAL CONVENTIONS

Protocol to the European Agreement on the Protection of Television Broadcasts ¹⁾

The member States of the Council of Europe, signatory hereto,

Considering the desirability of amending the European Agreement on the Protection of Television Broadcasts, signed at Strasbourg on 22nd June, 1960, hereinafter referred to as "the Agreement";

Considering that the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, signed in Rome on 26th October, 1961, entered into force on 18th May, 1964,

Have agreed as follows:

Article 1

1. — Paragraph 1 of Article 2 of the Agreement shall be amended as follows:

"Subject to paragraph 2 of Article 1, and Articles 13 and 14, the protection provided for in paragraph 1 of Article 1

shall last not less than a period of twenty years from the end of the year in which the broadcast took place."

2. — Paragraph 2 of Article 2 of the Agreement shall be deleted.

Article 2

1. — Sub-paragraph 1 (a) of Article 3 of the Agreement shall be amended as follows:

"(a) withhold the protection provided for in sub-paragraph 1 (b) of Article 1 as regards broadcasting organisations constituted in their territory or transmitting from such territory, and restrict the exercise of such protection, as regards broadcasts by broadcasting organisations constituted in the territory of another Party to this Agreement or transmitting from such territory, to a percentage of the transmissions by

¹⁾ See *Le Droit d'Auteur*, 1960, p. 201.

such organisations, which shall not be less than 50 % of the average weekly duration of the broadcasts of each of these organisations.”

2. — Sub-paragraph 1 (e) of Article 3 of the Agreement shall be amended as follows:

“(e) without prejudice to sub-paragraph 1 (a) of this Article, withhold all protection provided for in this Agreement from television broadcasts by broadcasting organisations constituted in their territory and under their laws or transmitting from such territory, where such broadcasts enjoy protection under their domestic law.”

3. — Paragraph 3 of Article 3 of the Agreement shall be amended as follows:

“3. The aforesaid Parties may, in respect of their own territory, provide for a body with jurisdiction over cases where the right of diffusion to the public by wire referred to in sub-paragraph 1 (b) of Article 1, or the right of communication to the public referred to in sub-paragraph 1 (c) of Article 1, has been unreasonably refused or granted on unreasonable terms by the broadcasting organisation in which the said right vests.”

4. — Any State which in accordance with Article 10 of the Agreement has, before the entry into force of this Protocol, availed itself of the option in sub-paragraph 1 (a) of Article 3 of the Agreement may, notwithstanding anything in paragraph 1 of the present Article, maintain the application of such option.

Article 3

Article 13 of the Agreement shall be deleted and replaced by the following:

“1. This Agreement shall remain in force indefinitely.

2. Nevertheless, as from 1st January, 1975, no State may remain or become a Party to this Agreement unless it is also a Party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations signed in Rome on 26th October, 1961.”

Article 4

1. — The Governments signatory to the Agreement and the Governments having acceded thereto may become Parties to this Protocol by the procedure laid down in Article 7 or

Article 9 of the Agreement, according to whether they are member States of the Council of Europe or not.

2. — This Protocol shall enter into force one month after the date on which all the Parties to the Agreement have signed this Protocol without reservation in respect of ratification, or deposited their instrument of ratification or accession in accordance with the provisions of the preceding paragraph.

3. — As from the date on which this Protocol enters into force, no State may become a Party to the Agreement without becoming also a Party to this Protocol.

Article 5

The Secretary-General of the Council of Europe shall notify member States of the Council, other States Parties to the Agreement, and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of any signature of this Protocol, together with any reservations as to ratification, and of the deposit of any instrument of ratification of the Protocol or of accession to it, and of the date referred to in paragraph 2 of Article 4 of this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of January, 1965, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

NOTE. — The Protocol to the European Agreement on the Protection of Television Broadcasts was signed at Strasbourg on January 22, 1965, by the Delegates of the Governments of the following countries: Denmark, France, Germany (Fed. Rep.), Luxembourg, Sweden. It was then signed by Belgium on February 2, 1965, and by the United Kingdom on February 23, 1965.

Denmark, France, Sweden and United Kingdom, which had previously ratified the Agreement¹⁾, signed the Protocol without reservation in respect of ratification.

In accordance with its Article 4, paragraph 2, the Protocol will enter into force on March 24, 1965.

¹⁾ See *Copyright*, 1965, p. 27.

GENERAL STUDIES

Copyright: A General Structural Survey

Dr. Živan RADOJKOVIĆ
Legal Adviser
of the Society of Authors and Music
Composers (ZAMP) of Yugoslavia



CORRESPONDENCE

Letter from Great Britain

(First Part)

Dr. Paul ABEL
Consultant on International
and Comparative Law
London

INTERNATIONAL ACTIVITIES

Thirteenth Session of the General Conference of Unesco

(Paris, October 20 to November 20, 1964)

The thirteenth session of the General Conference of the United Nations Educational, Scientific and Cultural Organisation (Unesco) was held in Paris at the headquarters of the Organisation, from October 20 to November 20, 1964.

The delegates of 117 Member States of Unesco took part, as well as observers from the United Nations and its specialised agencies and from various intergovernmental organisations including BIRPI (represented at certain of the Programme Commission's meetings by Mr. C. Masouyé, Counsellor, Head of the Copyright Division). Non-governmental organisations enjoying consultative status with Unesco were also represented.

The General Conference elected Professor N. M. Sissakian (USSR) as its President and Mr. S. J. Cooke (Nigeria) and H. E. Mr. B. Tuncel (Turkey), respectively, as Chairmen of its Programme Commission and Administrative Commission. It approved the Organisation's programme for 1965-1966 which will be financed out of a budget of 48,857,000 dollars, i. e. an increase of approximately 10 million dollars over the previous year.

At the close of the deliberations, the General Conference adopted a number of resolutions, including Resolution 3,336 concerning copyright and neighbouring rights, which is reproduced below:

"In order to encourage and improve both nationally and internationally the protection of the rights of authors and/or persons performing, recording or broadcasting the works of authors,

I

Member States are invited, if they have not already done so, to become parties by ratification, acceptance or accession,

- (a) to the Universal Copyright Convention, and
- (b) to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

II

The Director-General is authorized:

- (a) to maintain the services necessary for the implementation of the Universal Copyright Convention and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, in particular, by collecting and disseminating information through the *Unesco Copyright Bulletin* and other publications;
- (b) to assist Member States to develop national copyright legislation by such means as convening meetings and granting fellowships;
- (c) to give African Member States the support necessary to assist them in drawing up their national copyright legislation and in forming copyright societies;
- (d) to give consideration, when preparing the Draft Programme and Budget for 1967-1968, to the question of assisting African Member States in developing national copyright legislation."

JURISPRUDENCE

FRANCE

I

Industrial and commercial property. Designs. Unlawful reproduction. Notion. Originality. Identical designs in conformity with contemporary taste. Influence of a general tendency. Lack of originality. Invalid deposit. Absence of protection. Application in respect of furniture.

(*Cour d'appel de Lyon, 4^e Ch. corr.*, February 21, 1964. — M. P. and Société Durand v. Séguin)

If it is established that the same designer has devised for all his furniture manufacturing clients identical designs in conformity with contemporary taste, granting that in the modern age the industry is of necessity influenced by a general tendency demanded by purchasers as a body and facilitated by the use of machinery, a tendency comparable to that of fashion, it is exclusive of any originality of such a nature as to be recognisable in a given design.

Thus, if the articles of furniture produced by a manufacturer are commonly produced by various undertakings of a similar nature, they do not present the characteristics of creative works in the commercial field. Having fallen into the public domain, such designs cannot be validly deposited nor can they obtain legal protection for those who produce them.

II

Designs. Toys. Unlawful reproduction.

(*Cour d'appel de Paris, 4^e Ch.*, October 15, 1964. — Walt Disney v. M., importers, and S., trader)

Although in the field of artistic creation the "anthropomorphisation" of animals dates back to the most ancient times, the designer who makes a statnette patterned on the duck (whose features it distorts) and on man (whose stature it borrows) creates, within the meaning of the Act of March 11, 1957, a new and original work whose reproduction is prohibited without the consent of its author.

The reproduction need not be a slavish copy to be considered illegal, so long as the object alleged to have been unlawfully reproduced has the same essential features of creative imagination as those which characterise the original work.

In particular, the maker of an unlawful reproduction would be ill-advised to claim that the "expression" described by him as "psychological", of the imaginary figure he has devised on the pattern of the original work differs from that of the original work, when, on the one

hand, the original design represents an animated humorous figure, which is therefore capable of different expressions, and when, on the other hand, the original model and the alleged unlawful reproduction are so closely related that, even if a buyer had both of them under his very eyes at the same time, he could easily confuse them, however attentive he might be.

The manufacturer who has infringed the designer's rights by making objects, in the form of toys, reproducing the original design shall be sentenced to repair the damage thus caused to the author of the design, and it follows that, in order to ensure a fuller and more effective protection of the works which have been unlawfully reproduced, the judgment condemning the said unlawful reproductions shall be published at the expense of the maker of the same.

III

Literary and artistic property. Protected works. Applied arts. Utilitarian objects. Minor differences of form and material not excluding unlawful reproduction. Anticipation of all parts required for destruction of novelty.

Presumption of bad faith. Assessment criteria for damages.

(*Cour d'appel de Paris, 4^e Ch.*, October 8, 1964. — Cristalleries de Saint-Louis v. Dupont-Desfontaines et Fils and Verreries et Gobeletteries Doyen)

Imitation takes place when the infringing work confines itself to introducing into the protected work minor differences having no noticeable effect on its configuration or its external appearance and leaving the risk of confusion undiminished.

Drinking glasses are strictly utilitarian objects, but they may include variations as to form and ornamentation which, without altering the ordinary commercial result, make them genuine intellectual works within the meaning of Article 1 of the Act of March 11, 1957.

Failing anticipation of all the elements as a whole, anticipation of individual parts is not sufficient to destroy novelty.

The difference in the material, far from eliminating unlawful reproduction, aggravates it to the extent that when manufactured in inferior materials it can only lower the value of the protected work.

The Act of 1957 on literary and artistic property enacts a presumption of bad faith.

Sentence for unfair competition requires other prejudice apart from unlawful reproduction.

Moral prejudice, trade interference, inconvenience, waste of time and expenses arising from legal proceedings are all criteria for assessing the amount of the damages.

OBITUARY

Louis Vaunois

Once again, at the end of last year, death struck the ranks of the defenders of intellectual rights in France: Maître Louis Vaunois, Barrister at the Court of Paris, passed away on December 24, 1964. He had been his country's correspondent to our review and readers have been able to appreciate the "Letters from France" which he sent us at regular intervals. He had taken over the job in 1943 from his father, Albert Vaunois, who had first started to write for *Le Droit d'Auteur* in 1912, thus carrying on a family tradition of intelligent and esteemed collaboration for more than half a century.

In his periodical reviews of legislative developments and jurisprudential decisions in France in the field of literary and artistic property, Louis Vaunois brought into play his qualities as an eminent jurist, a remarkable annalist, a meticulous observer and a polished writer. He was skilled in sifting out from doctrinal controversies or court judgments the essentials which, with the passing of time, must prevail over private quarrels. He had full command of the subjects and cases he dealt with and, when summing them up with his usual care and precision, he sometimes ventured to submit suggestions or criticisms prompted by his own legal convictions. Supported by personal reflections and written in a pleasing style, his "Letters" have enriched legal literature and they leave us with a feeling of moved gratitude towards the writer who has now laid down his pen for ever.

His constant and unfailing cooperation with *Le Droit d'Auteur*, however, was only one of the aspects of the tireless activity of Louis Vaunois. Born in Paris on September 14, 1892, he was called to the Bar of that city in 1920, where his intellectual distinction and his attractive style of pleading in Court immediately commanded attention. His career as an

advocate was brilliant and some of his cases at the Seine Assizes, for example, excited universal interest. Thanks to his gifts as a speaker, he was a very fine lecturer, particularly admired by the Paris audiences of the *Université des Annales*.

But his favourite pursuit, and a constant influence on his tastes, was poetry. Apart from a play in verse performed at the *Comédie Française* under the title *L'adieu*, he published many volumes of poetry (including *L'indifférent*) as well as an anthology entitled *Les poètes de la vie* grouping more than 110 poets and containing only original and unpublished works, a venture which had not been attempted since the *Contemporary Parnassus*. To sing the poetry of life, but also to make the past live again: these were the aims of Louis Vaunois, the writer. Thus, he was the author of some remarkable historical works, including *Le roman de Louis XIII* and *La vie de Louis XIII*, awarded a prize by the *Académie Française*, as well as several novels on contemporary life. President of the *Revue des Etudes historiques*, he was the moving spirit behind the *Société Racinienne* and was in charge of the publication of the *Cahiers Raciniens*, offering scholars valuable documentation on the great dramatist, Jean Racine.

His death leaves a great blank which his friends in the profession find it difficult to bear. His intelligence, his refinement, his courtesy and his charm will remain in our recollection of Louis Vaunois, who, it will be remembered, was the descendant of Marie Racine, the only sister of Jean Racine.

"Dans quel repos, ô ciel, les avez-vous coulés!"

(Britannicus)

Claude MASOUYÉ
Counsellor

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
March 11 and 12, 1965 Geneva	Advisory Group of the International Committee of Novelty-Examining Patent Offices	Industrial property statistics; index of parallel patents	Austria, Canada, France, Germany (Fed. Rep.), Japan, Poland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America	International Patent Institute, Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)
March 15 to 19, 1965 Geneva (Headquarters of ILO)	Committee of Experts on Inventors' Certificates	To study the problem of inventors' certificates in relation to the Paris Convention	All Member States of the Paris Union	Union of Soviet Socialist Republics, United Nations, Council of Europe, International Patent Institute, Organization of American States, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents
March 22 to April 2, 1965 Geneva (Headquarters of ILO)	Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property	To study a draft Convention on administrative structure	All Member States of the Paris and Berne Unions	Union of Soviet Socialist Republics, United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Council of Europe, International Patent Institute, Organization of American States, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Bureau for Mechanical Reproduction, International Chamber of Commerce, International Confederation of Societies of Authors and Composers, International Federation of Patent Agents, International Literary and Artistic Association
May 4 to 7, 1965 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	
May 18, 1965 Geneva (Headquarters of ILO)	Constitution of the Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly with ILO and Unesco	Application of Article 32 (1), (2) and (3) of the Rome Convention	Czechoslovakia, Congo (Brazzaville), Ecuador, Mexico, Niger, Sweden, United Kingdom of Great Britain and Northern Ireland	
July 5 to 14, 1965 Geneva	Committee of Governmental Experts preparatory to the Revision Conference of Stockholm (Copyright)	Examination of the amendments proposed by the Swedish/BIRPI Study Group for the revision of the Berne Convention	All Member States of the Berne Union	Certain Non-Member States of the Berne Union, Interested international intergovernmental and non-governmental organizations
September 28 to October 1, 1965 Geneva	Interunion Coordination Committee (3rd Session)	Program and budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union; United Nations

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 29 to October 1, 1965 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (1 st Session)	Program and activities of the International Bureau of the Paris Union	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
Paris	March 1 to 6, 1965	International Confederation of Societies of Authors and Composers (CISAC)	Federal Bnreaux, Legislative Committee and Confederal Council
Strasbourg	April 5 to 9, 1965	Council of Europe	Committee of Experts on Patents
Caracas	May 4 to 6, 1965	Inter-American Association of Industrial Property (ASIPI)	Administrative Council
Namur	May 23 to 27, 1965	International League Against Unfair Competition	Congress
Stockholm	August 23 to 28, 1965	International Literary and Artistic Association (ALAI)	Congress
London	August 31 to September 10, 1965	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	Fifth Annual Meeting
Tokyo	April 11 to 16, 1966	International Association for the Protection of Industrial Property (IAPIP)	Congress