Copyright

Monthly Review of the United International Bureaux for the Protection of Intellectual Property (BIRPI)

1st year - No. 7

July 1965

Contents

INTERNATIONAL UNION — Pages

— State of the International Union on July 1, 1965 146

GENERAL STUDIES

— Considerations on Certain Aspects of the "de facto" Monopoly in the Field of Music Publishing (C. Zini Lamberti) 148

— "The Narrow Gate". Commentary on Article 16, paragraph 1 (a), of the Rome Convention of October 26, 1961 (X. Desjeux) 151

CORRESPONDENCE

— Letter from Argentina (C. Mouchet) 158

NEWS ITEMS

— State of Ratifications and Accessions to the Conventions and Agreements affecting Copyright on July 1, 1965 161

— Zambia. Accession to the Universal Copyright Convention (with effect from June 1, 1965) 163

BOOK REVIEWS

— L'oggetto del diritto di autore (M. Are) 164

— Zum Rom-Abkommen vom 26. Oktober 1961, zugleich ein Beitrag zur Urheberrechtsreform (E. Hirsch-Ballin) 165

— Urheberrechtsreform im Spannungsfeld von Recht - Kultur - Ethik (F. Wundsiedler) 165

— Book List 166

CALENDAR

— Meetings of BIRPI 167

— Meetings of other International Organizations concerned with Intellectual Property 167

STATE OF THE INTERNATIONAL UNION ON JULY 1, 1965

Country [1]	Class chosen [Art. 23 (4)]	Date of Accession (Art. 25)	Date on which the Convention was declared applicable (Art. 26) [2]	Date of Accession to the Rome Text	Date of Accession to the Brussels Text
1. Australia [3]	III	14-IV-1928	5-XII-1887	18-I-1935	—
Nauru, New Guinea, Papua and Northern Territory	—	—	29-VII-1936	29-VII-1936	—
2. Austria	VI	1-X-1920	—	1-VII-1936	14-X-1953
3. Belgium	III	5-XII-1887	—	7-X-1934	1-VIII-1951
4. Brazil	III	9-II-1922	—	1-VI-1933	9-VI-1952
5. Bulgaria	V	5-XII-1921	—	1-VIII-1931	—
6. Cameroon	VI	24-IX-1964 [a]	26-V-1930 [c]	22-XII-1933 [c]	22-V-1952 [c]
7. Canada [4]	II	10-IV-1928	5-XII-1887	1-VIII-1931	—
8. Ceylon	VI	20-VII-1959 [a]	1-X-1931 [c]	1-X-1931 [c]	—
9. Congo (Brazzaville)	VI	8-V-1962 [a]	26-V-1930 [c]	22-XII-1933 [c]	22-V-1952 [c]
10. Congo (Leopoldville)	VI	8-X-1963 [a]	20-XII-1948 [c]	20-XII-1948 [c]	14-II-1952 [c]
11. Cyprus	VI	24-II-1964 [a]	I-X-1931 [c]	1-X-1931 [c]	24-II-1964
12. Czechoslovakia	IV	22-II-1921	—	30-XI-1936	—
13. Dahomey	VI	3-I-1961 [a]	26-V-1930 [c]	22-XII-1933 [c]	22-V-1952 [c]
14. Denmark	IV	1-VII-1903	—	16-IX-1933	19-II-1962
15. Finland	IV	1-IV-1928	—	1-VIII-1931	28-I-1963
16. France	I	5-XII-1887	—	22-XII-1933 [5]	1-VIII-1951
Overseas Departments and Territories	—	—	26-V-1930	22-XII-1933	22-V-1952
17. Gabon	VI	26-III-1962 [b]	26-V-1930 [c]	22-XII-1933 [c]	26-III-1962 [b]
18. Germany	I	5-XII-1887	—	21-X-1933	—
19. Greece	VI	9-XI-1920	—	25-II-1932 [6]	6-I-1957
20. Holy See (Vatican City)	VI	12-IX-1935	—	12-IX-1935	1-VIII-1951
21. Hungary	VI	14-II-1922	—	1-VIII-1931	—
22. Iceland	VI	7-IX-1947	—	7-IX-1947 [7]	—
23. India [8]	IV	1-IV-1928	5-XII-1887	1-VIII-1931	21-X-1958
24. Ireland [9]	IV	5-X-1927	5-XII-1887	11-VI-1935	5-VII-1959
25. Israel [10]	V	24-III-1950	21-III-1924	24-III-1950	1-VIII-1951
26. Italy	I	5-XII-1887	—	1-VIII-1931	12-VII-1953
27. Ivory Coast	VI	1-I-1962 [b]	26-V-1930 [c]	22-XII-1933 [c]	1-I-1962 [b]

1) Among the newly independent countries to which the Berne Convention was applied, by virtue of Article 26, there are only mentioned those which have so far made a declaration of continued adherence or a formal notification of accession to the Swiss Government under Article 25 of the Convention. This list will be amended as and when declarations of continued adherence or notifications of accession are received by the Swiss Government from other countries.

2) I. e. the date from which the notification made by virtue of Article 26 (1) began to take effect for the application of the Convention on the territory of the country concerned. After the latter's accession to independence, the application was confirmed by a declaration of continued adherence or accession.

3) *Australia* belonged to the Union from the outset as a conntry for the international relations of which the United Kingdom was responsible. April 14, 1928, is the date on which Anstralia made a declaration of accession, as a contracting conntry of the Union, in conformity with Article 25.

4) Same observation as in note 3), for *Canada*, which acceded with effect from April 10, 1928.

5) Reservation concerning works of applied art: Article 2 (4) of the Rome Text had been replaced by Article 4 of the original Convention of 1886.

6) Articles 8 and 11 of the Rome Text had been replaced by Articles 5 and 9 of the original Convention of 1886; but, as from January 6, 1957, *Greece* renounced these reservations in favour of all countries of the Union.

7) Reservation concerning the right of translation: Article 8 of the Rome Text has been replaced by Article 5 of the original Convention of 1886, in the version of the Additional Act of 1896.

8) Same observation as in note 3), for *India*, which acceded with effect from April 1, 1928.

9) The new free State of *Ireland*, which was constituted by the Treaty signed with Great Britain on December 6, 1921, acceded, as such, with effect from October 5, 1927.

STATE OF THE INTERNATIONAL UNION ON JULY 1, 1965

Country [1]	Class chosen [Art. 23 (4)]	Date of Accession (Art. 25)	Date on which the Convention was declared applicable (Art. 26) [2]	Date of Accession to the Rome Text	Date of Accession to the Brussels Text
28. **Japan**	III	15-VII-1899	—	1-VIII-1931 [7]	—
29. **Lebanon**	VI	1-VIII-1924	—	24-XII-1933	—
30. **Liechtenstein**	VI	30-VII-1931	—	30-VIII-1931	1-VIII-1951
31. **Luxembourg**	VI	20-VI-1888	—	4-II-1932	1-VIII-1951
32. **Mali**	VI	8-V-1962 [a]	26-V-1930 [c]	22-XII-1933 [c]	22-V-1952 [c]
33. **Monaco**	VI	30-V-1889	—	9-VI-1933	1-VIII-1951
34. **Morocco**	VI	16-VI-1917	—	25-XI-1934	22-V-1952
35. **Netherlands**	III	1-XI-1912	—	1-VIII-1931	—
Surinam and Netherlands Antilles	—	—	1-IV-1913	1-VIII-1931	—
36. **New Zealand** [11]	IV	24-IV-1928	5-XII-1887	4-XII-1947	—
37. **Niger**	VI	2-V-1962 [a]	26-V-1930 [c]	22-XII-1933 [c]	22-V-1952 [c]
38. **Norway**	IV	13-IV-1896	—	1-VIII-1931	28-I-1963
39. **Pakistan** [12]	VI	5-VII-1948	5-XII-1887	5-VII-1948	—
40. **Philippines**	VI	1-VIII-1951	—	—	1-VIII-1951
41. **Poland**	V	28-I-1920	—	21-XI-1935	—
42. **Portugal** [13]	III	29-III-1911	—	29-VII-1937	1-VIII-1951
43. **Rumania**	V	1-I-1927	—	6-VIII-1936	—
44. **Senegal**	VI	25-VIII-1962 [b]	26-V-1930 [c]	22-XII-1933 [c]	25-VIII-1962 [b]
45. **South Africa** [14]	IV	3-X-1928	5-XII-1887	27-V-1935	1-VIII-1951
South West Africa [15]	—	28-X-1931	5-XII-1887	—	—
46. **Spain**	II	5-XII-1887	—	23-IV-1933	1-VIII-1951
47. **Sweden**	III	1-VIII-1904	—	1-VIII-1931	1-VII-1961
48. **Switzerland**	III	5-XII-1887	—	1-VIII-1931	2-I-1956
49. **Thailand**	VI	17-VII-1931	—	—	—
50. **Tunisia**	VI	5-XII-1887	—	22-XII-1933 [5]	22-V-1952
51. **Turkey**	VI	1-I-1952	—	—	1-I-1952
52. **United Kingdom** [16]	I	5-XII-1887	—	1-VIII-1931	15-XII-1957
Colonies, Possessions and certain Protectorate Territories	—	—	various dates	various dates	various dates [17]
53. **Upper Volta**	VI	19-VIII-1963 [b]	26-V-1930 [c]	22-XII-1933 [c]	19-VIII-1963 [b]
54. **Yugoslavia**	IV	17-VI-1930	—	1-VIII-1931 [7]	1-VIII-1951 [7]

10) The accession of *Palestine*, as a territory under British mandate, took effect from March 21, 1924. After its accession to independence (May 15, 1948), *Israel* acceded with effect from March 24, 1950.

11) Same observation as in note 3), for *New Zealand*, which acceded with effect from April 24, 1928.

12) When *Pakistan* formed part of India, it belonged *ipso facto* to the Union as from the outset [see note 8)]; subsequently, Pakistan became a separate State from India and, on July 5, 1948, made a declaration of accession to the Berne Convention as revised at Rome in 1928.

13) The former colonies have become "Portuguese Overseas Provinces". The Brussels Text has been applicable to these provinces since August 3, 1956.

14) Same observation as in note 3), for the *Union of South Africa*, which acceded with effect from October 3, 1928.

15) The *Union of South Africa* later made a declaration of accession for *South West Africa*, a territory under mandate, and fixed the date of accession at October 28, 1931.

16) United Kingdom of Great Britain and Northern Ireland.

17) Application of the Convention to the Isle of Man, Fiji, Gibraltar and Sarawak (see *Le Droit d'Auteur-Copyright*, 1962, p. 32); to Zanzibar, Bermudas and North Borneo (*ibid.*, 1963, p. 8); to Bahamas and Virgin Islands (*ibid.*, 1963, p. 144); to Falkland Islands, Kenya, St. Helena and Seychelles (*ibid.*, 1963, p. 180); to Mauritius (*ibid.*, 1964, p. 192). The Republic of the Philippines, however, reserved its position as regards the application to Sarawak.

a) Date of the despatch of the declaration of continued adherence after the accession of this country to independence.

b) Date of the entry into force of the accession, by virtue of Article 25 (3) of the Convention.

c) As a colony (date of the application resulting from the notice made by the colonising power or the power exercising trusteeship or being responsible for the international relations of a country, by virtue of Article 26 (1) of the Convention).

GENERAL STUDIES

Considerations on Certain Aspects of the « de facto » Monopoly in the field of Music Publishing

Carlo ZINI LAMBERTI
Lawyer

"The Narrow Gate"

Commentary on Article 16, paragraph 1 (a) of the Rome Convention of October 26, 1961

Xavier DESJEUX
Doctor of Laws
Advocate on Probation
at the Paris Court of Appeal

CORRESPONDENCE

Letter from Argentina *)

Carlos MOUCHET
Lawyer

NEWS ITEMS

State of Ratifications and Accessions to the Conventions and Agreements affecting Copyright on July 1, 1965

1. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

(Rome, October 26, 1961)

Contracting States	Deposit of Instrument	Coming into Force	Ratification (R) or Accession (A)
Congo (Brazzaville) [1]	June 29, 1962	May 18, 1964	A
Czechoslovakia [1]	May 13, 1964	August 14, 1964	A
Denmark [1]	March 11, 1965	June 12, 1965	R
Ecuador	December 19, 1963	May 18, 1964	R
Mexico	February 17, 1964	May 18, 1964	R
Niger [1]	April 5, 1963	May 18, 1964	A
Sweden [1]	July 13, 1962	May 18, 1964	R
United Kingdom [1]	October 30, 1963	May 18, 1964	R

[1]) The instruments of ratification or accession deposited with the Secretary-General of the United Nations were accompanied by " declarations ". As to Congo (Brazzaville), see *Le Droit d'Auteur (Copyright)*, 1964, p. 127; as to Czechoslovakia, see *ibid.*, 1964, p. 110; as to Denmark, see *Copyright*, 1965, p. 119; as to Niger, see *Le Droit d'Auteur (Copyright)*, 1963, p. 155; as to Sweden, see *ibid.*, 1962, p. 138; as to United Kingdom, see *ibid.*, 1963, p. 244.

2. Universal Copyright Convention

(Geneva, September 6, 1952)

Contracting States	Deposit of Instrument	Coming into Force	Ratification (R) or Accession (A)	Protocols adopted
Andorra	30 XII 1952 [1] 22 I 1953 [2]	16 IX 1955	R	2, 3 1, 2, 3
Argentina . . .	13 XI 1957	13 II 1958	R	1, 2
Austria	2 IV 1957	2 VII 1957	R	1, 2, 3
Belgium [3] . . .	31 V 1960	31 VIII 1960	R	1, 2, 3
Brazil	13 X 1959	13 I 1960	R	1, 2, 3
Cambodia . . .	3 VIII 1953	16 IX 1955	A	1, 2, 3
Canada	10 V 1962	10 VIII 1962	R	3
Chile	18 I 1955	16 IX 1955	R	2
Costa Rica . . .	7 XII 1954	16 IX 1955	A	1, 2, 3
Cuba	18 III 1957	18 VI 1957	R	1, 2
Czechoslovakia .	6 X 1959	6 I 1960	A	2, 3
Denmark . . .	9 XI 1961	9 II 1962	R	1, 2, 3
Ecuador . . .	5 III 1957	5 VI 1957	A	1, 2
Finland	16 I 1963	16 IV 1963	R	1, 2, 3
France [4] . . .	14 X 1955	14 I 1956	R	1, 2, 3
Germany (Fed. Rep.) [5] .	3 VI 1955	16 IX 1955	R	1, 2, 3
Ghana	22 V 1962	22 VIII 1962	A	1, 2, 3
Greece	24 V 1963	24 VIII 1963	A	1, 2, 3
Guatemala . . .	28 VII 1964	28 X 1964	R	1, 2, 3
Haiti	1 IX 1954	16 IX 1955	R	1, 2, 3
Holy See . . .	5 VII 1955	5 X 1955	R	1, 2, 3
Iceland	18 IX 1956	18 XII 1956	A	
India	21 X 1957	21 I 1958	R	1, 2, 3
Ireland	20 X 1958	20 I 1959	R	1, 2, 3
Israel	6 IV 1955	16 IX 1955	R	1, 2, 3
Italy	24 X 1956	24 I 1957	R	2, 3
Japan	28 I 1956	28 IV 1956	R	1, 2, 3
Laos	19 VIII 1954	16 IX 1955	A	1, 2, 3
Lebanon . . .	17 VII 1959	17 X 1959	A	1, 2, 3
Liberia	27 IV 1956	27 VII 1956	R	1, 2
Liechtenstein . .	22 X 1958	22 I 1959	A	1, 2
Luxembourg . .	15 VII 1955	15 X 1955	R	1, 2, 3
Mexico	12 II 1957	12 V 1957	R	2
Monaco	16 VI 1955	16 IX 1955	R	1, 2
New Zealand . .	11 VI 1964	11 IX 1964	A	1, 2, 3
Nicaragua . . .	16 V 1961	16 VIII 1961	R	1, 2, 3
Nigeria	14 XI 1961	14 II 1962	A	
Norway	23 X 1962	23 I 1963	R	1, 2, 3
Pakistan . . .	28 IV 1954	16 IX 1955	A	1, 2, 3
Panama	17 VII 1962	17 X 1962	A	1, 2, 3
Paraguay . . .	11 XII 1961	11 III 1962	A	1, 2, 3
Peru	16 VII 1963	16 X 1963	R	1, 2, 3
Philippines [6] . .	19 VIII 1955	19 XI 1955	A	1, 2, 3
Portugal . . .	25 IX 1956	25 XII 1956	R	1, 2, 3
Spain [7]	27 X 1954	16 IX 1955	R	1, 2, 3
Sweden	1 IV 1961	1 VII 1961	R	1, 2, 3
Switzerland . .	30 XII 1955	30 III 1956	R	1, 2
United Kingdom [8]	27 VI 1957	27 IX 1957	R	1, 2, 3
United States of America [9] . .	6 XII 1954	16 IX 1955	R	1, 2, 3
Zambia	1 III 1965	1 VI 1965	A	

Total: 50 States

[1]) Date upon which an instrument of ratification of the Convention and of Protocols 2 and 3 was deposited on behalf of the Bishop of Urgel, co-Prince of Andorra.

[2]) Date upon which an instrument of ratification of the Convention and of Protocols 1, 2 and 3 was deposited on behalf of the President of the French Republic, co-Prince of Andorra.

[3]) The Director-General of Unesco received from the Belgian Government a notification of application of the Convention and Protocols 1, 2 and 3 to the Trust Territory of Ruanda-Urundi, effective from April 24, 1961.

[4]) On November 16, 1955, France notified the Director-General of Unesco that the Convention and the three Protocols apply, as from the date of their entry into force in respect of France, to Metropolitan France and to the Departments of Algeria, Guadeloupe, Martinique, Guiana and Réunion.

[5]) Following the deposit of the instrument of ratification, a statement was made on June 3, 1955, on behalf of the Federal Republic of Germany: "The Government of the Federal Republic of Germany reserves the right, after complying with the preliminary formalities, to make a statement regarding the implementation of the Universal Copyright Convention and the additional Protocols 1, 2 and 3 so far as the *Land* of Berlin is concerned". On September 12, 1955, the Director-General of Unesco received the following declaration made on behalf of the Federal Republic of Germany on September 8, 1955: "The Universal Copyright Convention and Protocols 1, 2 and 3 annexed shall likewise be applied in *Land* Berlin as soon as the Convention and the annexed Protocols come into force in respect of the Federal Republic of Germany".

[6]) On November 14, 1955, the following communication was addressed to the Director-General of Unesco on behalf of the Republic of the Philippines: "... His Excellency the President of the Republic of the Philippines has directed the withdrawal of the instrument of accession of the Republic of the Philippines to the Universal Copyright Convention prior to the date of November 19, 1955, at which the Convention would become effective in respect of the Philippines". This communication was received on November 16, 1955. By circular letter of January 11, 1956, the Director-General of Unesco transmitted it to the Contracting States of the Convention as well as to the Signatory States. Observations received from Governments were communicated to the Republic of the Philippines and to other States concerned by circular letter of April 16, 1957.

[7]) The instrument of ratification deposited on behalf of Spain on October 27, 1954, related to the Convention and the three Protocols. Since Protocols 1 and 3 had not been signed on behalf of Spain, the Director-General of Unesco, by letter of November 12, 1954, drew the attention of the Government of Spain to this fact. In reply, the following communication was addressed to the Director-General of Unesco on January 27, 1955: "I am ... instructed by the Minister of Foreign Affairs to inform you that the Spanish ratification of the Universal Copyright Convention applies solely to the documents in fact signed, viz., the Convention and Protocol N° 2...". The States concerned were informed of this communication by circular letter of March 25, 1955.

[8]) The Director-General of Unesco received notifications from the Government of the United Kingdom concerning the application of the Convention to the Isle of Man, Fiji Islands, Gibraltar and Sarawak (coming into force on March 1, 1962), to Zanzibar, to the Bermudas and North Borneo (coming into force on May 4, 1963), to the Bahamas and the Virgin Islands (coming into force on July 24, 1963), to the Falkland Islands, Kenya, St. Helena and Seychelles (coming into force on January 29, 1964), to Mauritius (coming into force on January 6, 1965).

[9]) On December 6, 1954, the United States of America notified the Director-General of Unesco that the Convention shall apply, in addition to continental United States, to Alaska, Hawaii, the Panama Canal Zone, Puerto Rico and the Virgin Islands. On May 14, 1957, the United States of America further notified the Director-General of Unesco that the Convention shall apply to Guam. Notification was received on May 17, 1957.

By letter of November 21, 1957, the Government of Panama contested the right of the Government of the United States of America to extend the application of the Convention to the Panama Canal Zone. By letter of January 31, 1958, the Government of the United States of America asserted that such extension of the Convention was proper under Article 3 of its 1903 treaty with Panama. Copies of the two letters have been communicated by the Director-General to all States concerned.

3. European Agreement concerning Programme Exchanges by Means of Television Films

(Paris, December 15, 1958)

Contracting States	Deposit of Instrumeof	Coming into Force	Signature without Reservation in respect of Ratification (S) or Ratification (R)
Belgium	March 9, 1962	April 8, 1962	R
Denmark	October 26, 1961	November 25, 1961	R
France	December 15, 1958	July 1, 1961	S
Greece	January 10, 1962	February 9, 1962	R
Ireland	March 5, 1965	April 4, 1965	S
Luxembourg	October 1, 1963	October 31, 1963	R
Norway	February 13, 1963	March 15, 1963	R
Sweden	May 31, 1961	July 1, 1961	R
Turkey	February 27, 1964	March 28, 1964	R
United Kingdom	December 15, 1958	July 1, 1961	S

4. European Agreement on the Protection of Television Broadcasts

(Strasbourg, June 22, 1960)

Contracting States	Deposit of Instrument	Coming into Force	Signature without Reservation in respect of Ratification (S) or Ratification (R)
Denmark [1])	October 26, 1961	November 27, 1961	R
France	June 22, 1960	July 1, 1961	S
Sweden	May 31, 1961	July 1, 1961	R
United Kingdom [1])	March 9, 1961	July 1, 1961	R

[1]) The instruments of ratification were accompanied by "options" in accordance with Article 3, paragraph 1, of the Agreement. As to Denmark, see *Le Droit d'Auteur*, 1961, p. 360; as to United Kingdom, see *ibid.*, 1961, p. 152.

Protocol to the said Agreement

(Strasbourg, January 22, 1965)

Contracting States	Deposit of Instrument	Coming into Force	Signature without Réservation in respect of Ratification (S) or Ratification (R)
Denmark	January 22, 1965	March 24, 1965	S
France	January 22, 1965	March 24, 1965	S
Sweden	January 22, 1965	March 24, 1965	S
United Kingdom	February 23, 1965	March 24, 1965	S

ZAMBIA

Accession to the Universal Copyright Convention (with effect from June 1, 1965)

In a letter dated May 28, 1965, the Director-General of Unesco informed us that, on March 1, 1965, Zambia deposited with Unesco its instrument of accession to the Universal Copyright Convention.

In conformity with the provisions of Article IX, paragraph 2, of the Convention, the latter came into force, in respect of Zambia, three months after the deposit of its instrument of accession, i. e, on June 1, 1965.

BOOK REVIEWS

L'oggetto del diritto di autore [The subject of copyright], by *Mario Are*. One volume of 503 pages, 17 × 25 cm. A. Giuffrè, Milan, 1963.

Professor Are begins his searching study by determining the field of application of copyright. He defines the scope of the protected work, rather than its nature, and the elements which must either be reserved to the author or freely used by other persons.

The writer submits solutions to a great number of legal problems, under three headings: the intellectual work in general (Part I, pages 7-213); the intellectual work as the subject of rights (Part II, pages 217-306); the different categories of protected works (Part III, pages 309-503).

The principal characteristic of works protected by copyright — Professor Are observes — is their aesthetic function. The intellectual work, which is the subject of copyright, maintains its objective attitude for the direct satisfaction of purely intellectual requirements; the attribution of an economic value only intervenes indirectly when the amount of the remuneration is to be determined, remuneration whose purpose is to provide the necessary material means to satisfy intellectual requirements.

The aesthetic function assumes concrete significance only in relation to a form of intellectual production and the means of exteriorization by which it is expressed. It is possible to distinguish between the formal and the substantial elements of the intellectual work. Such works may be protected as objective entities when they constitute a noteworthy contribution, the requisite qualities of which are novelty and originality. "Creativity" and "originality" are corresponding but not identical concepts. They are concerned with two different viewpoints of the unitarian phenomenon constituted by the work of art and its creation. Creativity may be identified with the specific qualification of "objective novelty", that is, with the existence of a new contribution distinguished by a minimum amount of the value required for the enjoyment of protection. Originality, on the other hand, is the quality in a work which distinguishes it from other works by reason of the elements of which it is composed. It is an effect which is distinct from the cause — the creative character — from which it originates. The writer confers an objective significance on these terms. He comes out against the prevailing view which regards "personality" as a requisite condition. For a number of reasons, protection cannot be confined to the relatively rare examples of works which present specific characteristics making it possible to individualize the author.

After examining the different ways of distinguishing between the subject of expression and expression itself, the writer concludes that expression must be considered in the widest sense of the term and not just as a mere external representation. It must be regarded as the result of the particular constitution and perception of the subject with a view to making it known and communicating it to other persons. The border-line between subject and expression coincides with that existing between non-creative and creative elements. It is therefore useful to make a distinction between subject and expression.

The form of expression is protected when it is exteriorized by the author in such a manner that it can be apprehended and determined by other persons. It must be incorporated in a material support capable of enabling perception by the senses. Nevertheless, the intellectual work, particularly the literary work, has an internal form which cannot be grasped without understanding the entire thought of the author, the significance of the whole of which the words are merely the instrument. There is a distinction between the internal and the external forms of the work.

The internal form is the result of a coordinating activity of the mind; it is different from the content.

In the writer's view, composition, considered as internal form, constitutes an element of expression which cannot admit of the opposition made by French doctrine between the two concepts. An examination of form as elaborated by Anglo-Saxon doctrine and case law brings the writer to the conclusion that, in practice, apart from the order of the words, or the arrangement of the lines, colours, and notes, constituting the external form of the work, the choice and the coordination of the pre-existing elements are also protected. Thus, protection is extended to the internal form.

Any relationship, link, or element of form which is not perceptible by the senses but demands a higher activity of the intellect constitutes an integral component of the internal form. When these elements are new, they concern the organic originality of the intellectual work.

The method, the system, and the scheme, establish relations with the basis of the expression but they can adapt themselves to any subject: they constitute rules. The subject of protection is the expression and the organic construction which are the application of these rules protected indirectly; and this is very important for scientific works. The writer arrives at similar conclusions with regard to style and manner, even if these elements bear the imprint of the author who first adopts them.

The external form is that which is immediately perceptible by the organs of sight and hearing; it cannot always be identified with the form of the medium of expression, as in literary works where the external form is not the writing but the meaning. The working out of the medium of expression and of the original copy of the work of figurative art is identified with the creation of the external form and, as such, is a moment of expression, and its result is therefore worthy of protection. The making of a copy of a work of figurative art belonging to another person, no matter how perfect, is not expression, for it is devoid of creative character and cannot be protected.

The intellectual work is therefore composed as a whole of an external and an internal form, one presupposing the other, but capable of being created by different authors. Furthermore, several external forms may correspond to one internal form. The change in the external form may have determining effects when it includes a change of internal form making it so different from the original work that the latter is merely an element of inspiration.

One of the most interesting aspects of this book is the section devoted to the evaluation of the creative contribution (Chapter 3 of Part I). Professor Are departs from the classical theories envisaging the "protection of intellectual works independent of their merit or their purpose". The reason for the opposition to evaluation — the writer observes — lies in the confusion which has been made between evaluation in general and aesthetic appreciation. The work, according to the recent theories of German jurists, should have a "*Schaffenshöhe*" (level of creation) analogous to the "*Erfindungshöhe*" (level of discovery) of inventions. The subject of protection should not be the mere communication of thought but the perfected representation, abstracted from the normal framework of every-day life. Judgment should be based on "the depth of the creative performance" and not on the difference between "creation" and "performance", or on the medium and content of the work, or on the aesthetic effect, or on the quantity of work done.

Professor Are considers that such a judgment should be based directly on the attitude of the formal expression, to satisfy purely intellectual requirements. He enumerates evaluation criteria which, being founded on an objective basis, permit a certain latitude of application. Judgment is left to the prudent estimation of the interpreter. And, finally, it rests with case law to determine whether the work should in reality be classified among productions protected by copyright. Reference is made here to an actual judgment (Italian Supreme Court, April 27, 1961).

The intellectual work as the subject of copyright gives rise to several problems which are examined and provided with solutions by Professor Are. Among them mention should be made of the problem posed by the nature of such works. The intellectual work constitutes a

real entity even in its intangible aspect, a "vital property" before an "economic property" or a "legal property". Human thought circulates freely until it is given specific application in a work which constitutes an entity complete with objective individuality and, as such, protected in its relationship to a given subject.

The intellectual work is both an economic and a legal property, but this situation — the writer observes — does not flow from a right of monopoly. In the present system, the exploitation of intellectual works or inventions is in general lawful, like any other commercial activity, and its only limits are the preclusion of acts which affect the legal sphere of other persons. Professor Are criticises the theory of copyright as a personality right. The term "intellectual property" must be understood as the right of the individual over what he has created, without however equating the discipline of copyright with that of property in tangible objects. The term "property" is used to strenghten or to defend copyright, in order to include therein, apart from the purely economic factors, all the prerogatives concerning the interests of the personality of the author as an individual, as well as his freedom of creation and of expression. The writer examines all the different theories based on unwritten law, the law of labour, the law of remuneration, and other laws.

Once it is realized — the author states — that the intellectual work constitutes an objective property and that property rights have an economic character and are distinct from the prerogatives which, while concerned with the creation and the existence of the work, are designed for the defence of the author's personality, the author's economic right can be defined as "a real right over intangible property".

Copyright is absolute and unitarian, although it has sufficient specific characteristics to place it in an autonomous category. The writer considers, therefore, that the real right constitutes the "*genus*" and property in general is a "species" containing the two sub-species of rights in tangible property and rights in intangible property.

The different categories of intellectual works (Part III) are divided by the writer into works whose form is communicated by symbols — literary works — and works without symbolic means of expression, i. e. musical works and figurative works. A third category of works has a mixed character because the symbolism of the word and the corresponding substantial meaning are associated with purely figurative and musical elements: these are cinematographic works.

Figurative works include works of an artistic character and those of a scientific character (anatomical tables, illustrations of phenomena, geographical maps, etc.).

Among the legal problems concerning certain works of art, the writer examines the difference between the work of art applied to industry and ornamental designs and models, in view of their practical importance in relation to the divergence between the extent of protection.

As regards the objective distinction between the different works of figurative art and the various systems of protection, the writer considers that the criterion of divisibility may satisfactorily solve this problem. Dissociability must not be understood in the material sense as the possibility of separating physically the copy of an intellectual work from the tangible whole constituting the product. In such cases, it is not a question of a work of art applied to industry but of a work of pure art incorporated in an industrial product. Divisibility must be understood in the abstract sense as dissociability of the various attitudes of the same form imprinted upon matter. Article 2 of the Italian Copyright Law speaks of the divisibility not of the "work" but of the "artistic value" of the product with which it is associated. Evaluation, in the writer's view, should be concerned more with the autonomy of the aesthetic function of the work than with its artistic quality.

This has been an attempt to summarize the most important arguments advanced by Professor Are in his highly significant contribution to the study of the subject of copyright, in which no legal or other aspect of the problem has been omitted from his penetrating and exhaustive analysis. G. R.

* * *

Zum Rom-Abkommen vom 26. Oktober 1961, zugleich ein Beitrag zur Urheberrechtsreform [Reflections on the Rome Convention of October 26, 1961, and a contribution to the German copyright revision], by Professor *Ernst Hirsch-Ballin*. "*Schriftenreihe der internationalen Gesellschaft für Urheberrecht*", Volume 35, 28 pages. Published by Verlag Franz Vahlen GmbH., Berlin and Frankfurt/Main, 1964. Price: DM 5.—.

The author starts with a criticism of the solution adopted in Article 33 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which provides that the texts of the Convention drawn up in English, French and Spanish shall be equally authentic. He compares this clause with Article 31 of the Berne Convention (Brussels text), where provision is made for equivalent authoritative texts in several languages, one of which, however — in this case, French — "shall always prevail". In the author's view, this is the only acceptable solution.

After a critical examination of some of the Articles of the Rome Convention, Professor Hirsch-Ballin comes out strongly against the tendency to treat the performer, who is a creative artist, in the same way as producers of phonograms and broadcasting organizations. He puts up a spirited defence of the thesis that the new German Copyright Act, now being studied, should not deal with the question of neighbouring rights. R. W.

* * *

Urheberrechtsreform im Spannungsfeld von Recht - Kultur - Ethik [Copyright reform in relation to law, culture and ethics], by *Fried Wunsiedler*, Doctor of Theology. "*Schriftenreihe der internationalen Gesellschaft*", Volume 34, 112 pages, 23 cm. Published by Verlag Franz Vahlen GmbH., Berlin and Frankfurt/Main, 1964. Price: DM 12.50.

Significant studies have already been published, from the Catholic viewpoint, on the problems involved in the revision of the German Copyright Act. Dr. Fried Wunsiedler has now undertaken to put forward the views of a protestant theologian on the various questions which the present revision is designed to settle. The author points out in his introduction that the ideas expressed in his work do not reflect the official opinion of the German Evangelical Church and are his own personal views based on considerations of a social and cultural order.

His opinion on the current copyright reform may be summed up under the following four headings:

1. The Copyright Act should be made primarily for authors, with a view to the protection of their rights and their works.

2. The complex of copyright is composed essentially of three components which are closely bound up with each other: law, culture and ethics.

3. The task of substantive law in the field of copyright is to discover the requirements of these three components and to balance them so that each is given due weight.

4. In drafting rules for copyright, the legislator cannot allow himself to be guided exclusively — or even mainly — by considerations of legal formalism, legislative technique or opportunism; and still less by the desire to satisfy the interests of individual groups. He must give careful consideration both to the genuine demands of culture and to the legal and ethical principles of justice and equality. R. W.

* * *

Book List

From January 1 to June 30, 1965, the BIRPI Library has entered the following works in its catalogues:

BIOLLEY (Gérard). *Droit de réponse en matière de presse (Le).* Paris, R. Picbon and R. Durand-Auzias, 1963. - 183 p. — Pref. André Tunc. Bibliothèque de droit privé, t. L.

BOGSCH (Arpad). *Law of Copyright under the Universal Convention (The).* Leyden/New York, A. W. Sijthoff/R. R. Bowker, 1964. - XXIX-591 p.

COTTINET (Marie). *Conventions de Berne et de Genève dans leurs rapports avec le droit international public (Les). Protection de la propriété artistique et littéraire.* Paris, Faculté de droit, 1960. - 242 p. Tbesis.

ERMECKE (Gustav). *Soziale Bedeutung des geistigen Eigentums (Die) - Social Significance of Intellectual Property (The) - Signification sociale de la propriété intellectuelle (La) - Importancia social de la propiedad intelectual (La).* Berlin/Frankfurt, F. Vablen, 1963. - 116 p. — Internationale Gesellscbaft für Urheberrecht E. V. Schriftenreihe, Vol. 30.

FAUCHÈRE (Jacqueline). *Adaptation cinématographique des œuvres littéraires (L').* Paris, Faculté de droit, 1962. - 330 p. — Thesis.

FISHER (Arthur). *Studies on Copyright. Arthur Fisher Memorial Edition.* South Hackensack/Indianapolis, F. B. Rothman/Bobbs-Merrill Co., Inc., 1963. - 2 Vol. (XXV-1731 p.). — Pref. Tbe Copyright Society of tbe U. S. A., Abraham L. Kaminstein, Alan Latman, Joseph C. O'Mahoney.

HIRSCH-BALLIN (Ernst D.). *Zum Rom-Abkommen vom 26. Oktober 1961, zugleich ein Beitrag zur Urheberrechtsreform.* Berlin/Frankfurt, F. Vahlen, 1964. - 28 p. — Internationale Gesellschaft für Urheberrecbt, E. V. Schriftenreibe, Vol. 35.

KOKTVEDGAARD (Mogens). *Konkurrencepraegede Immaterialretspositioner* [Relations between Intangible Rights and Unfair Competition]. Copenbagen, Juristforbundets Forlag, 1965. - XXXV-464 p.

LACOSTE LAREYMONDIE (Philippe de). *Protection des œuvres littéraires et artistiques étrangères aux Etats-Unis dans le cadre de la Convention universelle.* Paris, Faculté de droit, 1962. - 224 p. Roneo. Thesis.

LESOURD (Guy). *Droit moral après la mort de l'auteur (Le).* Paris, Université de Paris, 1962. - 197 p. — Thesis.

LINDEY (Alexander). *Entertainment Publishing and the Arts. Agreements and the Law. Books, Magazines, Newspapers, Plays, Motion Pictures, Radio and Television, Music, Phonograph Records, Art Work, Photographs, Advertising and Publicity, and Commercial Exploitation.* New York, C. Boardman, 1963. - XLIX-1248 p.

LOS ANGELES COPYRIGHT SOCIETY & UCLA SCHOOL OF LAW. *Copyright and Related Topics. A choice of articles.* Berkeley/Los Angeles, University of California Press, 1964. - XVI-609 p.

LUTZ (Martin J.). *Schranken des Urheberrechts nach schweizerischcm Recht unter vergleichender Berücksichtigung der europäischen Urheberrechtsgesetze und der deutschen Entwürfe (Die).* Zurich, Schulthess, 1964. - XXVII-262 p. — Zürcher Beiträge zur Rechtswissenschaft, Heft 246.

NIZSALOVSZKY (E.). *Protection des artistes exécutants (La).* Budapest, Acta Juridica, 1964. - 33 p. — Extr. Acta Juridica Academiae Scientiarum Hungaricae, t. VI, fasc. 3-4, pp. 301-333.

RIEPENHAUSEN (Bernbard). *Arbeitsrecht der Bühne (Das). Systematische Darstellung der Rechtsprechung des Bühnenoberschiedsgerichts.* Berlin, W. de Gruyter, 1965. - XV-235 p.

SCHNEIDER (Franz). *Presse- und Meinungsfreiheit nach dem Grundgesetz.* Munich, C. H. Beck, 1962. - XV-158 p. — Pref. Theodor Maunz.

SCHULZE (Ericb). *Bevorstehende Revisionskonferenz in Stockholm 1967 (Die) - Forthcoming Stockholm Revision Conference 1967 (The) - Prochaine Conférence de revision à Stockholm 1967 (La).* Berlin/Frankfurt, F. Vahlen, 1964. - 299 p. — Internationale Gesellschaft f. Urbeherrecht, Scbriftenreibe, Vol. 36.

STRÖMHOLM (Stig). *Europeisk Upphovsrätt. En översikt över lagstiftningen i Frankrike, Tyskland och England* [European Copyright. A Survey of Legislation in France, Germany and England]. Stockholm, P. A. Norstedt, 1964. - 245 p.

TROLLER (Alois). *Zwiespältiges und mannigfaltiges Immaterialgüterrecht.* Basle, Helbing & Lichtenhahn, 1964. - 24 p. — Extr. Festschrift berausgegeben vom Schweizerischen Juristenverein zur Schweizerischen Landesausstellung. Lausanne, 1964, pp. 257-280.

— *Mehrseitigen völkerrechtlichen Verträge im internationalen gewerblichen Rechtsschutz und Urheberrecht (Die).* Basle, Verlag für Recht und Gesellschaft, 1965. - XX-226 p. — Studien zum Immaterialgüterrecht, Vol. 6.

UNITED STATES. Committee on tbe Judiciary. *Copyright Law Revision.* Wasbington, U. S. Government Printing Office. - Part 4 (Decemher 1964; X-477 p.): Further Discussions and Comments on Preliminary Draft for Revised U. S. Copyright Law. - Part 6 (May 1965; XXVI-338 p.): Supplementary Report of tbe Register of Copyrights on tbe General Revision of the U. S. Copyright Law. - 1965 Revision Bill.

WEILLER (Danièle). *Abus du droit et propriété littéraire et artistique. Etude de droit français et comparé.* Strasbourg, Université de Strasbourg, s. d. - 241-IV p. — Tbesis.

WUNDSIEDLER (Fried). *Urheberrechtsreform im Spannungsfeld von Recht - Kultur - Ethik.* Berlin/Frankfurt, F. Vahlen, 1964. - 113 p. — Pref. Hans Liermann. Internationale Gesellschaft für Urheberrecht, E. V. Schriftenreihe, Vol. 34.

ZWEIGERT (Konrad). *Private Werkvervielfältigung durch Magnettongeräte und verfassungsrechtliche Eigentumsgarantie.* Cologne, W. Kohlhammer, 1963. - 51 p.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
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
September 29 to October 1, 1965 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (1st 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
November 15 to 19, 1965 Paris	Twelfth Ordinary Session of the Permanent Committee of the Berne Union	Consideration of various questions concerning Copyright	Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland	All other Member States of the Berne Union; interested international intergovernmental and non-governmental organizations
December 13 to 18, 1965 Geneva	*Ad hoc* Conference of the Directors of National Industrial Property Offices	Adaptation of the Regulations of the Madrid Agreement, Nice Text (Trademarks)	All Member States of the Madrid Agreement (Trademarks)	All other Member States of the Paris Union

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
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
Paris	October 25 to 30, 1965	International Confederation of Societies of Authors and Composers (CISAC)	Federal Bureaux, Legislative Committee and Confederal Council
Buenos Aires	November 6 to 11, 1965	Inter-American Association of Industrial Property (ASIPI)	Congress
Tokyo	April 11 to 16, 1966	International Association for the Protection of Industrial Property (IAPIP)	Congress
Prague	June 13 to 18, 1966	International Confederation of Societies of Authors and Composers (CISAC)	Congress