

Copyright

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INTERNATIONAL UNION

Meeting of Government Representatives to constitute the Intergovernmental Committee established by Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961)

(Geneva, May 18, 1965)

Report

Purpose of the Meeting

1. By Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome in 1961, an Intergovernmental Committee was established with the following duties:

- (a) to study questions concerning the application and operation of the Convention; and
- (b) to collect proposals and to prepare documentation for possible revision of the Convention.

2. In accordance with Article 25, the Rome Convention was to come into force three months after the date of the sixth instrument of ratification, acceptance or accession. The sixth instrument having been deposited with the Secretary-General of the United Nations on February 17, 1964, the Convention came into force on May 18, 1964.

3. The Intergovernmental Committee, in accordance with Article 32, paragraph 3, of the Rome Convention, was to be constituted twelve months after the coming into force of the Convention. Therefore, the present meeting was convened by the three international Organisations concerned on May 18, 1965, at the International Labour Office in Geneva.

Participants

(see Appendix I)

4. Representatives of the following Contracting States participated in the meeting:

Czechoslovakia
Mexico
Sweden
United Kingdom

5. The representatives of the following Contracting States were unable to attend:

Congo (Brazzaville)
Ecuador
Niger

6. The Government of Denmark was represented by an observer.

Chairmanship

7. Mr. H. A. Majid, Assistant Director-General of the International Labour Office, presided over the meeting.

Proceedings of the Meeting

8. On behalf of the Director-General of Unesco, the Director of BIRPI, and the Director-General of the ILO, Mr. H. A. Majid welcomed the representatives who participated in the meeting and declared open the First Meeting of Government Representatives convened according to the provisions of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted in Rome in 1961. He pointed out that for the first time in the history of international organisations an international instrument adopted under the auspices of three intergovernmental institutions had come into force.

Adoption of Proposed Rules for the Election of the Members of the Intergovernmental Committee

9. The meeting unanimously adopted the Proposed Rules for the Election of the Members of the Intergovernmental Committee, prepared by the Directors of the three Organisations (see Appendix II).

Election of the Members of the Intergovernmental Committee

10. The meeting proceeded with the election by secret ballot of the members of the Intergovernmental Committee established under Article 32 of the Rome Convention (1961).

11. The representative of Czechoslovakia observed that in accordance with the Rome Convention and with Article 3 of the Rules for the Election of the Members, six seats were to be filled but only four Contracting Parties were represented at the meeting. The question was whether Contracting States could be elected in the absence of their representatives.

At the request of the Chairman, the Legal Adviser of the International Labour Office pointed out that there was nothing in the proposed Rules for the Election of the Members of the Intergovernmental Committee to prevent the election of Contracting States absent from the meeting to the seats to be filled. Moreover, Article 32 of the Rome Convention imposed on the representatives of Contracting States the obligation of establishing an Intergovernmental Committee. As a practical matter, the Contracting States, absent from the meeting, which were elected to the seats could subsequently refuse to sit on the Committee. It would be up to the Committee to find a solution to that problem.

The representative of the United Kingdom expressed the opinion that it was necessary to proceed even in their absence with the election of the six Contracting States to the seats to be filled. The Contracting States, not represented at the meeting, could, at a later date, indicate whether or not they would like to occupy their respective seats.

As these views were shared by the government representatives present, the meeting proceeded with the election of the members of the Intergovernmental Committee.

In accordance with Article 32, paragraph 2, of the Rome Convention, the Committee was to be constituted of six members since the number of ratifications deposited with the Secretary-General of the United Nations had not yet exceeded twelve.

12. The elections were carried out on the basis of the Rules adopted by the meeting. Miss Dock (Unesco), Mr. Masouyé (BIRPI), and Miss Fidler (ILO) were designated to act as returning officers.

Result of the Elections

13. As stated in the report of the three returning officers (see Appendix III), the following Contracting States were elected members of the Intergovernmental Committee:

Congo (Brazzaville)
Czechoslovakia
Ecuador
Mexico
Sweden
United Kingdom

APPENDIX I

List of Participants

Government Representatives

Czechoslovakia

Dr. Vojtěch Strnad, Legal Adviser, Ministry of Education and Culture, Prague.

Mexico

Mr. Manuel Tello Macias, First Secretary of the Mexican Foreign Service, Permanent Delegation of Mexico to the International Organisations, Geneva.

Sweden

Mr. Sven Julin, Secretary of Embassy, Permanent Delegation of Sweden, Geneva.

United Kingdom

Mr. R. Bowen, Principal Examiner, Patent Office and Industrial Property Department, Board of Trade, London.

Denmark *Government Observer*

Mr. Søren Voss, Permanent Mission of Denmark to the European Office of the United Nations, Geneva.

Representatives of Intergovernmental Organisations

International Labour Organisation

Mr. H. A. Majid, Assistant Director-General of the International Labour Office.

Mr. F. Wolf, Legal Adviser, International Labour Office.

Mr. A. A. Evans, Chief of the General Conditions of Work Branch, International Labour Office.

Mr. K. St. Grunberg, Chief of the Non-Manual Workers' Unit, International Labour Office.

Miss A. Fidler, Non-Manual Workers' Unit, International Labour Office.

United Nations Educational, Scientific and Cultural Organization

Miss M. C. Dock, Acting Chief of the Copyright Section.

United International Bureaux for the Protection of Intellectual Property

Prof. G. H. C. Bodenhausen, Director.

Mr. C. Masouyé, Counsellor, Chief of the Copyright Division.

APPENDIX II

Rules for the Election of the Members of the Intergovernmental Committee provided for in Article 32 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

Article 1

1. In application of Article 32, paragraph 3, of the Rome Convention, the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, shall organise an election for the constitution of the Intergovernmental Committee on May 18, 1965.

2. They shall each appoint one official from their Organisation to act as returning officer.

Article 2

1. Every State which is a party to the Rome Convention on the date of the election shall be entitled to send one representative to participate in the election.

2. Each representative shall have one vote.

Article 3

1. The number of seats to be filled at the election shall be six.

2. The Contracting States shall have due regard to the equitable representation of different regions on the Intergovernmental Committee.

Article 4

1. Voting shall be by secret ballot.

2. Each representative shall receive a ballot paper containing a list of all Contracting States and shall be entitled to vote for a number of candidates equal to the number of seats to be filled.

3. One of the returning officers shall read out the list of representatives; each representative shall come forward as

his name is called and place his voting paper in the ballot box.

4. The counting of the votes shall be carried out by the three returning officers.

5. No Contracting State shall be considered to be elected to membership of the Intergovernmental Committee unless it has obtained more than half of the votes cast by the representatives present at the election. If, after the first vote, one or more seats remain to be filled, one or more further votes shall be taken as may be necessary, each representative being entitled to vote for a number of candidates equal to the number of seats which still remain to be filled.

6. On the conclusion of the voting, the returning officers shall announce the result of the election. A report shall be drawn up for formal communication to the Contracting States and shall be signed by the returning officers.

APPENDIX III

Meeting of Government Representatives to constitute the Intergovernmental Committee provided for in Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome 1961)

(Geneva, May 18, 1965)

Report of the Returning Officers

The three undersigned returning officers, appointed in accordance with Article 1, paragraph 2, of the Rules adopted by the representatives of the Contracting States for the election of members of the Intergovernmental Committee provided for in Article 32 of the International Convention on the Protection of Performers, Producers of Phonograms and

Broadcasting Organisations, declare the results of the vote held in application of Article 4 of the said Rules to be as follows:

On the roll call of Contracting States, it was found that representatives of three of the States — Congo (Brazzaville), Ecuador and Niger — were absent.

The count of the votes gave the following result:

Congo (Brazzaville): 3 votes; Ecuador: 3 votes; Mexico: 4 votes; Niger: 2 votes; United Kingdom: 4 votes; Sweden: 4 votes; Czechoslovakia: 4 votes.

In accordance with Article 4, paragraph 5, of the said Rules, which prescribe that no State can be considered as elected if it has not received more than half the votes cast by the representatives present, and noting that the number of these was four and that accordingly the required majority was three votes, the returning Officers declared the following States elected as members of the Intergovernmental Committee, in conformity with Article 32, paragraph 2, of the Rome Convention:

Congo (Brazzaville)
Ecuador
Mexico
United Kingdom
Sweden
Czechoslovakia

In witness whereof the three returning officers have signed as follows:

International Labour Office	United Nations Educational, Scientific and Cultural Organization	United International Bureaux for the Protection of Intellectual Property
(Signed) Miss A. FIDLER Non-Manual Workers' Unit General Conditions of Work Branch	(Signed) Miss M. C. DOCK Acting Chief of the Copyright Section	(Signed) Mr. C. MASOUYÉ Counsellor Chief of the Copyright Division

NATIONAL LEGISLATION

MALAWI

The Copyright Act, 1965

(No. 38, of 1965) ¹⁾

Arrangement of Sections

Section

1. Short title and commencement.
2. Interpretation.
3. Works eligible for copyright.
4. Copyright by virtue of nationality or residence.
5. Copyright by reference to country of origin.
6. Copyright in works of Government and international bodies.
7. Nature of copyright in literary, musical or artistic works and cinematograph films.
8. Broadcasting of works incorporated in a cinematograph film.
9. Nature of copyright in sound recording.
10. Nature of copyright in broadcasts.
11. First ownership of copyright.
12. Assignments and licences.
13. Infringement.
14. Appointment of competent authority and duties of such authority.
15. Regulations and extensions of application of Act.
16. Application to works made before commencement of Act.
17. Determination of certain contracts.
18. Abrogation of Common Law rights.
19. Repeal of Copyright Act and Copyright Ordinance.

An Act to provide that the Copyright Act, 1911, of the United Kingdom shall cease to have effect in Malawi, to repeal the Copyright Ordinance and to make provision for copyright in literary, musical and artistic works, cinematograph films, sound recordings and broadcasts.

Enacted by the Parliament of Malawi.

Short title and commencement

1. — This Act may be cited as the Copyright Act, 1965, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint ²⁾.

Interpretation

2. — (1) In this Act, unless the context otherwise requires —

“artistic work” means, irrespective of artistic quality, any of the following, or works similar thereto:

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in a cinematograph film;
- (e) works of architecture in the form of buildings or models; and

(f) works of artistic craftsmanship, and also, subject to the provisions of subsection (3) of section 3, includes pictorial woven tissues and articles of applied handicraft and industrial art;

“author”, in the case of a cinematograph film or sound recording, means the person by whom the arrangements for the making of the film or recording were undertaken, or in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making of the transmission from within that country were undertaken;

“broadcast” means a sound or television broadcast of any material and includes a diffusion over wires;

“broadcasting authority” means the Malawi Broadcasting Corporation and any other broadcaster whether licensed under the Malawi Broadcasting Corporation Ordinance, 1963, or any other written law;

“building” includes any structure;

“cinematograph film” means the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction and includes the recording of a soundtrack associated with the cinematograph film;

“communication to the public” includes, in addition to any live performance or delivery, any mode of visual or acoustic presentation;

“copy” means a reproduction in written form, in the form of a recording or cinematograph film, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright under this Act;

“licence” means a lawfully granted licence permitting the doing of an act controlled by copyright;

“literary work” means, irrespective of literary quality, any of the following, or works similar thereto:

- (a) novels, stories and poetical works;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons,

¹⁾ Published in the *Malawi Government Gazette* of May 14, 1965.

²⁾ This Act came into force on May 24, 1965.

but does not include any written law, law report or judicial decision;

“musical work” means any musical work, irrespective of musical quality, and includes works composed for musical accompaniment;

“prescribed” means prescribed by regulations made under section 15;

“rebroadcasting” means simultaneous or subsequent broadcasting by one broadcasting authority of the broadcast of another broadcasting authority and includes diffusion of the broadcast over wires;

“reproduction” means the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording;

“school” shall have the meaning assigned thereto under the provisions of the Education Ordinance;

“sound recording” means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a cinematograph film;

“work” includes translations, adaptations, new versions or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character;

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

(2) For the purposes of this Act the following provisions shall apply with respect to publication—

(a) a work shall be taken to have been published if, but only if, copies have been issued in sufficient quantities to satisfy the reasonable requirements of the public;

(b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;

(c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

Works eligible for copyright

3. — (1) Subject to the provisions of this section the following works shall be eligible for copyright—

(a) literary works;

(b) musical works;

(c) artistic works;

(d) cinematograph films;

(e) sound recordings;

(f) broadcasts.

(2) A literary, musical or artistic work shall not be eligible for copyright unless—

(a) sufficient effort has been expended on making the work to give it an original character; and

(b) the work has been written down, recorded or otherwise reduced to material form.

(3) An artistic work shall not be eligible for copyright if, at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

Copyright by virtue of nationality or residence

4. — (1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a qualified person, that is to say—

(a) an individual who is a citizen of, or is domiciled or resident in, Malawi; or

(b) a body corporate which is incorporated under the laws of Malawi.

(2) The terms of copyright conferred by this section shall be calculated according to the following table—

<i>Type of Work</i>	<i>Date of Expiration of Copyright</i>
1. Literary, musical or artistic work other than photographs.	Twenty-five years after the end of the year in which the author dies.
2. Cinematograph films and photographs.	Twenty-five years after the end of the year in which the work was first made lawfully accessible to the public.
3. Sound recordings.	Twenty years after the end of the year in which the recording was made.
4. Broadcasts.	Twenty years after the end of the year in which the broadcast took place.

(3) In the case of anonymous or pseudonymous literary, musical or artistic works the copyright therein shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published:

Provided that in the event of the identity of the author becoming known the terms of copyright shall be calculated in accordance with the provisions of subsection (2).

(4) In the case of a work of joint authorship, reference in the preceding table to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

Copyright by reference to country of origin

5. — (1) Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which—

(a) being a literary, musical or artistic work or a cinematograph film is first published in Malawi; and

(b) being a sound recording, is made in Malawi,

and which has not been the subject of copyright conferred by section 4.

(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 4 in relation to a similar work.

Copyright in works of Government and international bodies

6. — (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the Government and also such international bodies or other governmental organizations as may be prescribed.

(2) Copyright conferred by this section on a literary, musical or artistic work, other than a photograph, shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published.

(3) Copyright conferred by this section on a film, photograph, sound recording or broadcast shall have the same duration as is provided for by section 4 in relation to a similar work.

(4) Sections 4 and 5 shall not be taken to confer copyright on works to which this section applies.

Nature of copyright in literary, musical or artistic works and cinematograph films

7. — (1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Malawi of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original:

Provided that copyright in any such work shall not include the right to control—

- (a) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, if any public use of the work is accompanied by an acknowledgment of its title and authorship except where the work is incidentally included in a broadcast;
- (b) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
- (c) the reproduction and distribution of copies, or the inclusion in a film or broadcast, of any artistic work situated in a place where it can be viewed by the public;
- (d) the incidental inclusion of an artistic work in a film or broadcast;
- (e) the inclusion in a collection of literary or musical works which includes not more than two short passages from the work in question if the collection is designed for use in any school or university and includes an acknowledgment of the title and authorship of the work;
- (f) the broadcasting of a work if the broadcast is intended to be used for educational purposes;
- (g) any use made of a work enumerated in subsection (1) of section 3 in any school or university for the educational purposes of that school or university:

Provided that if a reproduction be made for the purposes of this paragraph such reproduction shall be destroyed before the end of the period of twelve calendar months immediately following the making of the reproduction;

- (h) the making or importing of a sound recording of a literary or musical work and the reproduction of such sound recording if intended for retail sale in Malawi and provided a fair compensation is paid to the owner of the relevant part of the copyright in the work in accordance with regulations made under section 15;
- (i) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment;
- (j) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;
- (k) the reproduction of a work by or under the direction or control of a broadcasting authority where such reproduction or any copies thereof are intended exclusively for lawful broadcast by that broadcasting authority and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work: any reproduction of a work made under this paragraph may, if it is of an exceptional documentary character, be preserved in the archives of the broadcasting authority, which are hereby designated official archives for the purpose, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;
- (l) the broadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under section 14 is concerned, provided that subject to the provisions of this section the owner of the broadcasting right in the work receives a fair compensation determined, in the absence of agreement, by the competent authority appointed under section 14;
- (m) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction of a building to which that copyright relates in the same style as the original.

Broadcasting of works incorporated in a cinematograph film

8. — (1) Where the owner of the copyright in any literary, musical or artistic work authorizes a person to incorporate the work in a cinematograph film and a broadcasting authority broadcasts the film, such broadcast shall not, in the absence of any agreement to the contrary, infringe such copyright.

(2) Where a broadcasting authority broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority:

Provided that in the absence of an agreement the amount of such compensation shall be determined by the competent authority appointed under section 14.

Nature of copyright in sound recording

9. — Copyright in a sound recording shall be the exclusive right to control in Malawi the direct or indirect reproduction of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original:

Provided that the provisions of paragraphs (a), (g), (j), (k) and (m) of the proviso to subsection (1) of section 7 shall apply *mutatis mutandis* to the copyright in a sound recording.

Nature of copyright in broadcasts

10. — Copyright in a broadcast shall be the exclusive right to control the doing in Malawi of any of the following acts, namely, the recording and the rebroadcasting of the whole or a substantial part of the broadcast and the communication to the public in places where an admission fee is charged of the whole or a substantial part of a television broadcast either in its original form or in any form recognizably derived from the original:

Provided that —

- (a) the provisions of paragraphs (a), (g), (j) and (m) of the proviso to subsection (1) of section 7 shall apply *mutatis mutandis* to the copyright in a broadcast;
- (b) the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

First ownership of copyright

11. — (1) Copyright conferred by sections 4 and 5 shall vest initially in the author:

Provided that notwithstanding the provisions of subsection (6) of section 12, where a work other than a broadcast —

- (a) is commissioned by a person who is not the author's employer under a contract of service; or
- (b) not having been so commissioned, is made in the course of the author's employment,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.

(2) Copyright conferred by section 6 shall vest initially in the Government or such international bodies or other gov-

ernmental organizations as may be prescribed, and not in the author.

Assignments and licences

12. — (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as personal or movable property.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control; or to a part only of the period of the copyright; or to a specified country or other geographical area.

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing signed by or on behalf of the assignor, or by or on behalf of the licensor, as the case may be.

(4) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time:

Provided that a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(5) An assignment or licence granted by one copyright owner shall have effect as if granted by his co-owners also, and, subject to any contract between them, fees received by the grantor shall be divided equitably between all the co-owners. For the purposes of this subsection persons shall be deemed to be co-owners —

- (a) if they share a joint interest in the whole or any part of a copyright; or
- (b) if they have interests in the various copyrights in a composite production, that is to say, a production consisting of two or more works.

(6) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible by operation of law as personal or movable property.

(7) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of contrary indication, be taken to include the disposition of any copyright or prospective copyright in the work which is vested in the deceased.

Infringement

13. — (1) Copyright shall be infringed by any person who does, or causes any other person to do, an act the doing of which is controlled by the copyright without the licence of the owner of the copyright.

(2) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement

all such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(3) Where in an action for infringement of copyright it is proved or admitted —

- (a) that an infringement was committed, but
- (b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates,

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(4) Where in an action under this section an infringement of copyright is proved or admitted, and the court, having regard (in addition to all other material considerations) to —

- (a) the flagrancy of the infringement; and
- (b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(5) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(6) In this section —

“action” includes a counter-claim, and references to the plaintiff and to the defendant in an action shall be construed accordingly;

“court” means the High Court;

“owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

Appointment of competent authority and duties of such authority

14. — (1) In any case where it appears to the competent authority that a licensing body —

- (a) is unreasonably refusing to grant licences in respect of copyright; or
- (b) is imposing unreasonable terms or conditions on the granting of such licences,

the competent authority may direct that, as respects the doing of any act relating to a work with which the licensing body is concerned, a licence shall be deemed to have been granted by the licensing body at the time the act is done provided the appropriate fees fixed by such competent authority are paid or tendered before the expiration of such period or periods as the competent authority may determine.

(2) In this section —

“competent authority” means an authority of not more than three persons appointed by the Minister for the purpose of exercising jurisdiction under the provisions of this Act whenever any matter requires to be determined by such authority;

“licensing body” means an organization which has as its main object, or one of its main objects, the negotiation or granting of licences in respect of copyright works.

(3) No person shall be appointed under the provisions of this section, nor shall any person so appointed act, as a competent authority, if he, his partner, his employer or any body (whether statutory or not) of which he is a member has any pecuniary interest in any matter which requires to be determined by such authority.

Regulations and extensions of application of Act

15. — The Minister may make regulations prescribing anything to be prescribed or which may be prescribed under this Act and, in particular, shall make regulations extending the application of this Act in respect of any or all of the works referred to in subsection (1) of section 3 —

- (a) to individuals or bodies corporate who are citizens of or domiciled or resident in or incorporated under the laws of;
- (b) to works, other than sound recordings, first published in;
- (c) to sound recordings made in,

a country which is a party to a treaty to which Malawi is also a party and which provides for copyright in works to which the application of this Act extends.

Application to works made before commencement of Act

16. — This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter.

Determination of certain contracts

17. — Immediately upon the coming into operation of this Act, every contract entered into substantially for the licensing of the doing of any act in respect of copyright which is not controlled by copyright under the provisions of this Act shall be determined and of no further effect.

Abrogation of Common Law rights

18. — No copyright, or right in the nature of copyright, shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

Repeal of Copyright Act and Copyright Ordinance

19. — The Copyright Act, 1911, of the United Kingdom and the Order in Council set out in Appendix 35 of the Laws of Malawi shall cease to have effect in Malawi and the Copyright Ordinance is repealed.

*GENERAL STUDIES***A Few Notes on the Malawi Copyright Act**

G. STRASCHNOV

**The Quest for International Uniformity
in the Law of Designs and its Relation to the Law of Copyright**

J. W. MILES
Wellington, New Zealand

*CORRESPONDENCE***Letter from Spain**

Francisco PÉREZ PASTOR
Lawyer

INTERNATIONAL ACTIVITIES

17th Congress of the International Publishers Association

(Washington, May 30 to June 5, 1965)

The International Publishers Association (IPA) held its 17th Congress in Washington, from May 30 to June 5, 1965. The representatives of the national publishers' organizations or publishing firms of the following countries took part: Afghanistan, Argentina, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, India, Indonesia, Iran, Iraq, Israel, Italy, Japan, Korea, Lebanon, Malaysia, Mexico, Netherlands, Nigeria, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, United Arab Republic, United Kingdom, as well as a very important delegation of publishers from the United States of America. BIRPI had been invited to attend as observer. The working plan of the Congress was divided into five groups: A (Copyright), B (Book Publishing), C (Translations), D (Music), E (Miscellaneous). After discussion of the reports within the relevant groups, the Congress adopted in plenary session a number of resolutions, including some concerned directly with copyright, which are reproduced below.

The agenda included the following items:

Report of the Secretary-General (Mr. H. Pehrsson, Sweden);
Relationship with Broadcasting and Television Organizations (Delimitation of Repertoires);
Emerging Publishing: the Established Publisher's Contribution and Responsibility;
The Relation of Book Publishing to New Media in Education; Obstacles to the Free Flow of Books;
Translation Rights;
Subsidiary Rights in Book Publishing;
The Freedom to Publish and the Problems of Censorship;
The Contracts of Sub-editing in Musical Publishing;
The Revision of the U. S. Copyright Act;
The Proposals for the Revision of the Berne Convention.

The opening session of the Congress was held in the presence of the Honourable Harlan Cleveland, Assistant Secretary of State for International Organization Affairs, and the closing session in the presence of the Honourable Dean Rusk, Secretary of State. The Congress, which was chaired by Mr. Storer B. Lunt (United States), was also the occasion for a number of fringe events and receptions.

The next Congress of the International Publishers Association is scheduled to take place in Amsterdam in 1968.

RESOLUTIONS

1. Berne Convention

Universal Copyright Convention U. S. Copyright Act

The 17th Congress of the International Publishers Association, whose members are the national publishers organizations from 28 nations in 4 continents, has studied in detail the problem of a future international

adaptation of the existing copyright laws, especially with regard to the Revised Berne Convention, the Universal Copyright Convention and the U. S. Copyright Act. The Congress welcomes the efforts that will be made for another revision of the Berne Convention during the forthcoming Stockholm Conference of 1967, as well as the propositions formulated in the Reform Bill of 1965 concerning the U. S. Copyright Act; it therefore pleads that the Universal Copyright Convention be revised accordingly. With the object of achieving protection of the Copyright laws which would as far as possible be internationally uniform, the Congress considers the following reforms as indispensable:

1. that the field of application of the Revised Berne Convention be extended also to publications that have appeared in a non-signatory country but of which the author is a citizen of a signatory country;
2. that the right of reproduction be stipulated in the Revised Berne Convention while leaving it to the national legislations to define the restrictions to this right, but establishing a number of uniform directions, and especially describing the terms of non-professional authorized usage such as "personal use", "fair use", or "fair dealing";
3. that the rights of reproducing excerpts and quotations be generally regularized in the Revised Berne Convention, including unconditional protection of articles taken from newspapers and periodicals and dealing with current questions of economic, political and religious nature;
4. that the terms of copyright as stipulated in the Universal Copyright Convention and in the U. S. Copyright Act, be adjusted to the stipulations of the Revised Berne Convention and be laid down in the Universal Copyright Convention as a minimum right;
5. that any provision in the Universal Copyright Convention and in the U. S. Copyright Act be abolished when it stipulates the execution of formalities as a condition for the protection of Copyright as far as these formalities pass beyond the generally accepted Copyright notice © with the mention of the proprietor's name. This includes the elimination of any possibility of restricting protection of the copyright for publications in certain languages, as practiced through the "Manufacturing Clause" in the U. S. Copyright Act;
6. that the possibility of limiting translation rights provided in the Universal Copyright Convention be gradually abolished;
7. that the inherent right of the author be taken into consideration by the Universal Copyright Convention and the U. S. Copyright Act, as, for instance, the right of the author to publish his work, to obtain recognition of his property, to protest against falsifying modifications of his work, even if the rights of exploitation have already been transferred.

2. International Copyright

The 17th Congress of the International Publishers Association recommends to all nations adherence to the Berne Convention or the Universal Copyright Convention, and suggests further the desirability of working as rapidly as possible toward modifications in these two major copyright conventions to make possible uniform balance in international copyright.

3. Revision of the U. S. Copyright Act

The 17th Congress of the International Publishers Association, taking into consideration that Section 110 of the Bill H. S. 4347 introduces in the forthcoming U. S. Copyright Act the right for the radio and television

companies to reproduce a protected work without authorization from the holder of the copyright, by means of a copy or a phonic reproduction (phonorecord), intended for the own requirements of these companies, and to use such a reproduction for their transmissions during a term of 6 months following the first transmission,

that this faculty, called "ephemeral recording" has been authorized in 1948, as a reservation, to the national laws of the countries signatories to the Berne Convention under Article 11^{bis} of this Convention, but in principle it only had the purpose of permitting the radio and television companies to make free recordings of a work when there was a technical or timing necessity so that a transmission of a work might be sent in a moment different from that of its being carried out by artistes,

that by permitting the use of the recording of a work during a term of 6 months, without limiting the number of its transmissions during this long term, the exemption conferred to the radio and television companies from an authorization and therefore from the payment of a fee for the right of mechanical reproduction would entail, particularly when it is a question of music novelties, that the authors be deprived of the legitimate

compensation for their creations with the sole aim of saving expenses to the radio and television companies,

puts forward the wish:

1. that the transmissions of a work which has been subject to an ephemeral recording be limited to 3 during the term of thirty days to be counted from the date of the carrying out of the ephemeral recording, and that the latter can never again be undertaken by the same company and of the same work,
2. that the use of a recording qualified as "ephemeral" during a publicity transmission be considered as a violation of the copyright of the reproduced work.

4. Manufacturing Conditions

The 17th Congress of the International Publishers Association condemns any legislation which restricts copyright protection to works of indigenous manufacture and urges any Government administering such a restriction to repeal it in the interest of the full freedom of works of the mind.

NEWS ITEMS

NORWAY

Signature with Reservation in Respect of Ratification of the European Agreement on the Protection of Television Broadcasts

In a letter dated July 6, 1965, the Secretary-General of the Council of Europe informed BIRPI that on June 29, 1965, Mr. Ole Algard, Permanent Delegate of Norway to the Council of Europe, had signed, with

reservation in respect of ratification or acceptance, the *European Agreement on the Protection of Television Broadcasts*, which was opened to signature by the Member States on June 22, 1960, and the *Protocol* to the said Agreement, opened to signature by Member States on January 22, 1965.

At the time of signing the European Agreement on the Protection of Television Broadcasts, the Permanent Delegate declared that his Government intended to avail itself of the reservations provided for under paragraph (1) (b) and (c) of Article 3 of the Agreement.

BOOK REVIEWS

Istituzioni di diritto privato [Private Law Institutions], by Professor **Mario Rotondi**, University of Milan. One volume, 730 pages, 16 × 24 cm. Milan, Libreria Aurelio Parainfo, 1962.

In this seventh edition of his work Professor Rotondi has harmonised the fundamental concepts of civil law and commercial law with existing Italian legislation. As the author points out in his foreword to the third edition, this book derives from the University, having been intended primarily for his students. This is why the chapters are called "Lessons". However, the jurist will find a clear and full survey of Italian private law, as well as certain observations that go beyond the strictly University framework to give the reader a valuable treatise on the principles involved.

This applies in particular to Lesson XX, which deals with "property in movable goods and immaterial goods". In sections 143-145 of this part the author defines the legal nature of artistic, scientific and industrial property as compared to the other rights derived from artistic creation or industrial invention. He examines the dominant theories regarding the nature of the right of property in immaterial goods and concludes that this is a real right, although not a perpetual one, since it is subject to limitation in time when it is created, as a result of the rules of positive law. It is therefore a case of normal extinction of rights owing to the fact that the goods cease to exist.

The object of copyright is the idea on which the creation and the original character of the work are based, irrespective of its artistic value.

Rights in inventions, as the author observes, are based on similar principles. Invention consists of the solution of a technical problem which can constitute the immaterial object of the right of property.
G. R.

* * *

Il diritto di autore nella giurisprudenza [Copyright in Jurisprudence], by Professor **Mario Fabiani**, University of Rome. One volume, 205 pages, 17 × 25 cm. Padua, Ed. CEDAM, 1963.

This book by Professor Fabiani is part of a collection under the general direction of Professor Mario Rotondi containing decisions by Italian courts on interesting subjects in the field of private law.

This volume is not merely a compilation of decisions and orders issued for the most part by the Italian Court of Cassation but also a systematic survey in which the whole body of jurisprudence, or at least the most noteworthy part, is broken down into chapters corresponding to the various copyright questions, grouped under precise headings. Each chapter and each decision is preceded by a statement of the legal principles and regulations applying, together with references to basic law and expert opinion.

The reader is helped by a subject index and an analytical alphabetical index.

The whole work constitutes a model in which theory and practice are brought together to serve the jurist who wishes to study the state of past and recent findings on questions of copyright.
G. R.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 28 to October 1, 1965 Geneva	Interunion Coordination Committee (3 rd 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 (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
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	<i>Ad hoc</i> Conference of the Directors of National Industrial Property Offices	Adaptation of the Regulations of the Madrid Agreement, Nice Text (Trade-marks)	All Member States of the Madrid Agreement (Trade-marks)	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

INVITATION FOR APPLICATIONS FOR A POST IN BIRPI

BIRPI announces a vacancy for the following post:

Legal Assistant in the Copyright Division

Qualifications required:

University degree in law or equivalent professional qualification; excellent knowledge of one of the official languages (English and French) and at least good knowledge of the other.

Principal duties:

Assist in the preparation of working documents, memoranda, studies in comparative law, minutes or reports of meetings on copyright matters; research work on given questions on copyright.

Nationality:

Candidates must be nationals of one of the member States of the Berne or Paris Unions. Preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

Conditions of employment:

Appointment will be in grade P. 2 or P. 3, according to qualifications and experience. Probationary period of two years; permanent

appointment after satisfactory completion of the probationary period.

Starting salaries per annum: 26,482 (P. 2) or 32,227 (P. 3) Swiss francs, subject to deduction of approximately 8.5 % in respect of pension fund contributions.

Annual post adjustment: 4,770 Swiss francs (with dependants) or 3,180 Swiss francs (without dependants) for grade P. 2 and, respectively, 5,806 or 3,670 Swiss francs for grade P. 3.

Family allowance annual: 1,728 Swiss francs for spouse and 1,296 Swiss francs per child.

Conditions also include annual salary increases, home leave, full benefits of pension fund if under 35 and medical benefit scheme. Salary, post adjustment and family allowances are tax free.

An upper age limit of 50 will apply.

Compulsory medical examination.

Applications:

Candidates should apply to Head of personnel, BIRPI, 32, chemin des Colombettes, Geneva, Switzerland, for application forms. These forms duly completed must reach BIRPI before November 1, 1965.

