

# Copyright

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# INTERNATIONAL UNION

## East Asian Seminar on Copyright

(New Delhi, January 23 to 30, 1967)

### Report of the Debates

1. The East Asian Seminar on Copyright, convened by the United International Bureaux for the Protection of Intellectual Property (BIRPI), met at the kind invitation of the Government of India, in New Delhi, from January 23 to 30, 1967. The following States of East Asia, members of the United Nations, or of one of the UN Specialized Agencies, had designated participants: Afghanistan, Cambodia, Ceylon, India, Indonesia, Iran, Japan, Korea, Laos, Malaysia, Nepal, Philippines, Singapore, Thailand. The USSR had delegated observers.

2. The purpose of the Seminar being merely to provide for an exchange of information and free discussion, the participants expressed their personal views, without binding their respective Governments.

3. The following States, members of the Berne Union, had delegated observers: Congo (Democratic Republic), Israel, Spain, United Kingdom.

4. One international intergovernmental organization, Unesco, and the following international non-governmental organizations were also represented by observers: the Asian Broadcasting Union (ABU), European Broadcasting Union (EBU), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Federation of Variety Artistes (FIAV).

5. The list of participants is reproduced in Annex 1 of this report.

6. Professor G. H. C. Bodenhausen, Director of BIRPI, welcomed the delegates and observers and recalled the purposes of the Seminar. The text of his speech is reproduced in Annex 2 of this report.

7. The Secretary to the Ministry of Education of the Government of India, Mr. Kirpal, then officially inaugurated the Seminar, after delivering a speech, the text of which is reproduced in Annex 3 of this report.

8. The Director of BIRPI, speaking on behalf of the participants, suggested that, as was customary, the Head of the Delegation of the host country, India, in the person of Mr. Krishna Rao, should be elected Chairman of the Seminar. His election was unanimously approved.

9. After thanking the participants for the honour done to his country in electing him Chairman, Mr. Krishna Rao (India) expressed his gratitude to BIRPI for the preparation and organization of the Seminar. He underlined the fact that it was the first time a Seminar on copyright matters had taken place in Asia and that, moreover, the time was particularly

well chosen in view of the forthcoming revision of the Berne Convention in Stockholm. The text of his speech is reproduced in Annex 4 of this report.

10. The following delegates were unanimously elected Vice-Chairmen: Mr. Yukifusa Oyama (Japan), proposed by the Delegate of Indonesia, and Mr. Xeng Ua Chau (Cambodia), proposed by the Delegate of Laos.

11. Mr. C. Masouyé (BIRPI) was nominated Secretary of the Seminar.

12. Professor Melville B. Nimmer of the University of California (United States) and Dr. Vojtěch Strnad, Legal Counsellor of the Ministry of Culture (Czechoslovakia), participated in the debates as expert-consultants of BIRPI.

13. Enumerating the different items on the agenda of the Seminar, the Chairman stressed the need not only of adopting national legislation to protect intellectual creators and stimulate intellectual production, but also of establishing international cooperation by acceding to the multilateral copyright conventions.

14. Mr. Saba (Unesco) conveyed to the Seminar the greetings and best wishes of the Director-General of Unesco. He recalled the long tradition of collaboration between his Organization and BIRPI. He emphasized the opportunity provided by seminars for exchanging views and tackling problems together, so as to ensure the universality of the principles of legal and moral protection governing copyright. He also underlined the considerable difference existing in developing countries between their needs and their national production, a difference which constituted a serious obstacle to the development of education. Mr. Saba thought that, in order to remedy the situation, it was necessary to promote national production. In this connection, he recalled the decisions of the recent General Conference of Unesco regarding the promotion of book production in developing countries and the Agreement of 1950 on the free circulation of books in the world, as well as the principles of the Universal Copyright Convention. Finally, he drew the attention of the participants to the international scheme of book coupons which had been instituted by Unesco to finance the buying of books and had recently been extended to the payment of copyright.

15. Mr. Osman (Indonesia) thanked BIRPI for taking the initiative in organizing the Seminar and stressed the importance for the developing countries of having a model law on copyright.

16. The Seminar then proceeded to discuss the items on the agenda.

I. The Situation in East Asian Countries  
Regarding Copyright  
(Document DA/24/4)

17. After the document concerned had been presented by Mr. Masouyé (BIRPI), some observations and remarks were made.

18. Mr. Chau (Cambodia) stated that, in the absence of a national law on copyright, the Cambodian National Assembly had postponed ratification of the accession of Cambodia to the Universal Copyright Convention, Article X of which stipulates the obligation to adopt, in accordance with the national Constitution, such measures as are necessary to ensure the application of the Convention, and, further, that it had recommended the Government to submit to it a Bill on the subject as soon as possible.

19. Mr. Saba (Unesco) declared, however, that in 1953 Cambodia had deposited its instrument of ratification of the Universal Copyright Convention and that, since then, no reservations had been made in that respect.

20. Mr. Papazian (Iran) made some comments on copyright protection in Iran and added that a Bill was at present being studied.

21. Mr. Dadameah (Malaysia) indicated that a Bill was also being examined at present by his Government, with a view to adopting a national Act of the Federal State permitting accession to the multilateral copyright conventions.

22. Mr. Ho (Singapore) recalled the fact that, as his country had only recently become independent, the question of national legislation on copyright had not yet been carefully studied, and that, in the meantime, the British Copyright Act of 1911, as modified by an Ordinance of 1955, remained applicable.

23. The Chairman thanked the participants for these various particulars, which the Secretariat had duly noted.

II. Draft Model Copyright Law for Developing Countries  
(Documents DA/24/2 and 3)

24. By way of a preliminary, the Director of BIRPI pointed out that it was not the purpose of the Seminar to adopt a final text on this subject but rather to express the various points of view on the general tendencies on the Draft Model Copyright Law submitted to the Seminar.

25. Professor Nimmer (BIRPI) introduced the Draft, stressing the point that it was not a standard law but a draft proposed for the use of legislators. He indicated that the document submitted constituted a compromise between the interests of creators and users, having regard to the need to favour and encourage intellectual creation, on the one hand, and to facilitate a wide dissemination of works, on the other hand, in order to satisfy the requirements of developing countries in the field of culture and education and to take into consideration the economic aspects of the problem.

26. Professor Nimmer commented on the Draft, article by article, and gave the participants some explanations requested on special points.

27. A study of the texts gave rise to a thorough discussion in which took part the Delegates of Cambodia, Ceylon, India, Indonesia, Iran, Japan, Malaysia and Thailand, as well as the observers.

28. Some comments expressed in the course of the discussions are reported on below. The Secretariat took note of these comments, which will have to be carefully studied when the final draft is established.

29. The Seminar expressed the view that, for certain questions which could be settled differently according to the doctrines or according to the situation prevailing in countries, the Draft Model Law should contain alternative proposals, the adoption of any of which would be at the discretion of the countries concerned.

30. Similarly, as regards the protection which might be granted to sound recordings and to broadcasts either by copyright or by neighbouring rights (Rome Convention).

31. The Observer of the EBU noted that the protection of foreign authors entailed considerable economic repercussions for developing countries and that, to begin with, such protection ought to be moderate, subject to a subsequent increase, until such time as the national production of intellectual works had reached a level allowing for a balance between incoming and outgoing foreign currency. The Delegate of Ceylon and the Observers of Israel and FIM-FIAV emphasized that the question of the protection of intellectual property should be on a higher level, and that the economic factors should be separate from the legal principles of copyright protection.

32. The desire was expressed that the list of protected works (Section 1 of the Draft) should not be too complicated but should be limited to the principal categories. As to this subject, it was agreed to concentrate on the general principles subject to a more precise wording to be drafted later.

33. As regards sound recordings (Section 1, subparagraph (12)), the Delegation of India suggested that the expression "nature of the material objects" be replaced by a reference to the "objective form" and thus copyright would subsist in sound recordings "including all sound fixations regardless of their objective form".

34. The Delegation of India also suggested that Section 2, paragraph (2) *in fine*, should extend to the entire range of creative effort instead of only to the original material.

35. The Delegation of India noted that Section 3, paragraph (1) (b), would have to envisage two situations when the country adopting the Model Law also acceded to a multilateral convention. The first situation would be when the member State itself reproduced the work in the original language or in translation under Section 7, paragraph (3), or under a negotiated agreement. It was suggested that in such cases the importation of the work from abroad might have to be controlled. The second case was that in which the member State did not reproduce the work itself but imported reproductions from abroad. Reference was made in this connection to the division of markets on a geographical basis by publishers of developed countries. It was suggested that an importing country should be at liberty to import whichever reproduction was more eco-

nomical, without regard to any contracts dividing markets among reproducers. The point was also made as to why a provision should be inserted in a copyright law such as that of Section 26 covering breaches of contract, a provision which should be covered under the Law of Contracts.

36. Some delegates suggested that the provisions of Section 4, paragraph (5), were not necessary since they could be covered by other provisions of that Section. This opinion was contested by the Observers of the ABU and IFPI.

37. As regards folklore (Section 5), it was unanimously agreed that this was a question of great importance to all countries, especially developing countries.

38. The Observer of Israel felt that the best way to know and to appreciate folklore was by means of the record and that, consequently, the solution to the problem was not to insert special provisions in the national law, but rather to have an international rule.

39. The Delegation of India, supporting this view, declared that a study should be made of the question of how the developing countries could benefit from the use of their folklore in other countries.

40. The Seminar entrusted to a small committee the task of making a special study of the question of folklore. This committee was composed of Mr. Krishnamurti (India), Mr. Chau (Cambodia) and Mr. Sher (Israel), assisted by Professor Nimmer and Dr. Strnad, expert-consultants of BIRPI.

41. The committee later submitted to the Seminar the results of its discussions as shown in its report in Annex 5. The Seminar adopted the proposals and it was agreed that a provision might be made in the Draft Model Law to the effect that copyright in folklore might be regarded as belonging to the State or to an appropriate agency to be set up by the State.

42. Following the remarks made by the Observers of Israel and the EBU on the protection of applied arts in the field of folklore, it was agreed that this question needed more detailed study.

43. Mr. Chau (Cambodia) expressed the wish that the provisions of Section 7, paragraph (1) (a), should not be limited exclusively to educational and religious purposes, but should also include entertainment purposes in certain circumstances. He also expressed the wish that the private and personal use mentioned in Section 7, paragraph (1) (b), should be extended to non-commercial associations.

44. Mr. Osman (Indonesia) proposed the addition in Section 7, paragraph (1), of a subparagraph (c) concerning the reproduction of works in Braille for the benefit of the blind, provided the reproduction is done by a non-commercial body.

45. The Observer of the ABU suggested that the end of subparagraph (a) of Section 7, paragraph (1), be drafted as follows: "where the intention of such performances, recitations or communications is educational or religious".

46. The Delegation of India suggested that paragraph (1) of Section 7 should be drafted more generally, without confining it to the two subparagraphs (a) and (b), since existing legislation in India and also in other countries permitted certain limitations not covered by the Draft submitted.

47. The Delegation of India also suggested that, in subparagraph (b) of paragraph (1) of Section 7, the word "made" might be replaced by "destined", on the basis of the Draft African Model Law, in view of the fact that reproduction facilities were restricted and would not be available to individual scholars unless they resorted to commercial organizations. The further amendment suggested by the Observer of the EBU to delete the words "of the maker", at the end, was adopted.

48. Note was taken that, under the Indian Act, Government works enjoyed copyright. The Delegation of India also suggested that provision should be made in Section 7, paragraph (2), for "legislative" uses and for the issue of certified copies or authentic extracts.

49. An exhaustive debate followed on Section 7, paragraph (3).

50. The Observer of Israel suggested that the word "exclusively" be replaced by "primarily". This suggestion was supported by the Delegation of India, by Mr. Osman (Indonesia), by Mr. Ponnambalam (Ceylon), and by the Observer of the Democratic Republic of Congo.

51. Mr. Ponnambalam (Ceylon) noted that, if the purposes were exclusively educational and were recognized as such by the Ministry or the competent authority, it was up to the latter to decide whether or not to grant a fair compensation. He recalled that the question of the right of reproduction was distorted by commercial considerations and that, often, it was the publishers and not the authors who prevented the diffusion of the works at a reasonable cost. He suggested that Section 7, paragraph (3), should comprise a general provision which would not be limited to educational purposes, and that the problem of fees should be left to the decision of the competent authority or a Copyright Tribunal.

52. The Delegation of India presumed that the provisions of Section 7, paragraph (3), covered not only reproductions but also translations. This was confirmed.

53. The Observer of the Democratic Republic of Congo, considering that a ministerial intervention in the payment of royalties might lead to abuses of authority, expressed the wish that the international organizations should intervene so that lower fees could be applicable when the works were used in certain conditions.

54. Some delegates declared that, in any case, the observations submitted were not intended as an objection to the Draft Model Law, but were meant to underline certain aspects of the problems which might arise for the legislators of developing countries.

55. The Observer of Israel wondered whether an international organization, such as Unesco, could find the means to finance the payment of royalties when the works were used in the developing countries in certain conditions and for certain specific purposes.

56. The Seminar finally adopted the proposal of Mr. Ponnambalam (Ceylon) that Section 7, paragraph (3), should be redrafted, as follows: "By regulations issued by the Minister of . . . . (or by the competent authority), the protection of

literary, scientific or artistic works may be restricted if such works are used primarily for educational, scientific or scholastic purposes. However, the authors shall be entitled to receive a fair compensation for other uses, the amount of which, in the absence of an agreement between the parties, shall be fixed by the authority designated pursuant to Section 22 hereof”.

57. The Observer of the EBU suggested drafting the end of the first sentence of Section 11 as follows: “unless reproduction or broadcasting is expressly prohibited”. The Delegation of India suggested the deletion of these words entirely, to prevent such prohibitions becoming the rule rather than the exception. This was not considered feasible since, as the Director of BIRPI explained, the authors might sometimes desire, for legitimate reasons, to restrict the audiences they should reach.

58. On the subject of Section 14 (ephemeral recordings), conflicting views were expressed by various delegates and observers.

59. The Delegation of India suggested that the reference to paragraphs (3) and (4) of Section 4 in paragraph (1) of Section 16 required further examination, in the light of Section 17, since membership in certain authors’ societies might preclude authors from assigning to other parties, even in regard to commissioned works, their public performance rights. The Delegation also felt that even non-exclusive licences should be in writing.

60. As regards the term of copyright (Sections 19 and 20), it was observed that it would be advisable to re-examine the question in the light of the decisions reached by the Stockholm Conference, especially on the Protocol Regarding Developing Countries.

61. Mr. Osman (Indonesia) suggested that a provision should be added in Section 20 concerning the moment from which the term of copyright protection should be calculated if the copyright owner is a corporate body or a foundation.

62. The Delegation of India, noting that difficulties might arise in the application of the term of protection, especially as regards the question of knowing the date of the author’s death, suggested that, as advocated by Professor Nimmer in his article in *Copyright*, the interested international organizations should study the possibility of proposing to member States that they keep a register in which all useful details could be noted. It was added that such work could be done on a national level rather than internationally, to keep expenses down and to avoid additional contributions in foreign currency, without which the international organizations might not be able to meet the cost of maintaining such a register on an international basis. The Director of BIRPI said that this question was already under study. The Delegation of India also suggested the possibility of providing that, in those cases where the date of the death of an author was not ascertainable, it could be assumed that the work was in the public domain if 75 years had elapsed after the date of publication or 100 years after the work came into existence.

63. As regards the exercise of copyright, the Observer of the EBU stressed the difficulties which might occur in devel-

oping countries with regard to the creation of local authors’ organizations and their functioning for the collection and distribution of royalties. He suggested the deletion of the word “local”. The Delegation of India, supported by the Observer of the Democratic Republic of the Congo, indicated, on the contrary, that it would prefer to retain the word. Finally, the Seminar suggested that the expression “an organization administering copyright” should be used. The Delegation of India also felt that the words “shall designate” should be replaced by “may designate” so as not to make it compulsory for the State to designate. The Observers of Israel and the EBU declared that in that case Sections 15 and 22 should be re-drafted.

64. The Delegation of Iran suggested including in the Draft Model Law provisions for its retroactive application.

65. The Delegation of India suggested that the Draft Model Law should contain a provision similar to Article 17 of the Brussels text and of the draft Stockholm text of the Berne Convention.

### III. Proposals for Revision of the Berne Convention for the Benefit of Developing Countries

(Document DA/24/5)

66. Dr. Strnad (BIRPI) introduced these proposals and explained the various provisions of the Protocol Regarding Developing Countries, which it is proposed to add to the Berne Convention. He especially explained both alternatives of the reservations, as prepared by the Swedish Government and BIRPI, drew attention to the time limits of these reservations, and compared the system of existing reservations in the Berne Union with the system proposed in the Protocol.

67. Mr. Saba (Unesco) emphasized that efforts should be made to give Asia the tools necessary for the purposes of education, and that a special régime should be provided for the developing countries as regards copyright, without, however, denying protection to creative activity. He recalled the main provisions of the Universal Copyright Convention, some of which can also be found in the proposed Protocol. He also pointed out that a certain delay would doubtless be necessary before the latter came into force. Finally, he referred to the resolution of the last General Conference of Unesco concerning the revision of Article XVII of the Universal Copyright Convention in the interest of developing countries.

68. The Protocol Regarding Developing Countries was the subject of an extensive exchange of views among the participants. The following general considerations emerged from the debates.

69. It was the unanimous wish of the delegates that the provisions adopted in favour of developing countries at the Stockholm Conference should come into force as soon as possible. A discussion started on the subject, and the Director of BIRPI gave the Seminar some explanations concerning the final clauses which are to be submitted to the Stockholm Conference, as well as the conditions under which the Berne Convention applies in relations between member States bound by different texts (“system of the Union”). Under that system,

each country applies the most recent version of the Convention to which it has acceded to the works of any other country of the Union.

70. The Delegation of India, recalling the initiative taken in New Delhi in 1963, in adopting special provisions in favour of the developing countries, emphasized the urgent need for these countries to benefit from special rules in respect of the translation and reproduction of works, as well as the term of protection of such works. It drew attention to the fact that, generally speaking, and more especially in the case of scientific works, it was necessary to be able to translate the works immediately, or at least as soon as possible. This remark was supported by Mr. Osman (Indonesia) and the Observer of the ABU.

71. Mr. Ponnambalam (Ceylon), confirming this opinion, emphasized that it should be possible to translate immediately literary and artistic works which were necessary for educational and cultural purposes, and that, if a royalty had to be paid in certain cases to the authors, it should be at a reasonable rate. He observed that an agreement should be reached on the subject between the developed and the developing countries and that this agreement could be achieved within the proposed Protocol.

72. The Delegation of India expressed the wish that facilities should be given to the press to reproduce not only articles on current affairs but also other works, in their original form, or in translation, in full, or in the form of a serial. This was because in India newspapers and magazines reached a larger section of the population than books and, next to the radio, were a powerful tool for spreading knowledge and culture.

73. The Delegation of India also raised the point whether the words "provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor" occurring in paragraph (a) of Article 1 of the Protocol Regarding Developing Countries would cover cases where such denial on the part of the proprietor was on disagreeing as to the fees payable. The Director of BIRPI said that in such cases it would be a denial, since he had been offered a fee and had declined to accept it. This view was supported by Mr. Saba (Unesco).

74. The Delegation of India also drew the attention of the Seminar to the fact that the length of the periods provided in the Protocol for maintaining the reservations which would be made by the developing countries, as stipulated therein, was inadequate.

75. The Director of BIRPI regretted that the proposals made tended to enlarge the Protocol, implying considerable economic repercussions for authors and publishers, and that no compensation was proposed, such as, for example, the creation of a kind of clearing-house granting facilities for translating and reproducing the works while according remuneration to their authors.

76. The Delegation of India explained that it was not the intention to enlarge the Protocol to the detriment of the

financial interests of the authors or publishers. All that was intended was that a developing country should have the power to authorize local production of translations or reproductions for cultural uses also, but only on payment of fair and equitable remuneration under domestic law, since this was essential to meet the growing needs of a large population.

77. Following the remarks made by the Delegation of India and the Observer of Israel, attention was drawn to the need to foresee that the special provisions concerning the reproduction of works and those relating to the régime of translation rights should not be interpreted as conflicting with each other.

78. On a proposal made by Mr. Ponnambalam (Ceylon), supported by the Delegation of India, the Seminar recommended that in view of the urgent need, in an age of scientific progress, for the developing countries to have access to the most recent knowledge, and in the wider interest of cultural and social development particularly in the fields of science and technology, the Protocol be amended as under.

79. In Article 1, paragraph (a), the period of seven years should be deleted and, further, the publication of the translation to be taken into consideration should be the publication made by the country availing itself of the reservation. In these conditions, the wording would be as follows: "... if, after the expiration of a period, fixed by the domestic legislation, from the date of the first publication of a literary, scientific or artistic work, a translation of such work has not been published in that country . . .", etc.

80. In Article 1, paragraph (a), third subparagraph, the reference to "international standards" would be replaced by a reference to "the standards of the country concerned".

81. Article 1, paragraph (a), could be replaced by provisions similar to those of Article 5 of the Berne Convention (Paris text of 1896), with the amendment of the period "during a term of ten years" to "within a period to be prescribed by domestic legislation", as an alternative proposal.

82. Article 1, paragraph (b), could be replaced by provisions similar to those of Article 7 of the Berne Convention (Rome text of 1928), as an alternative proposal.

83. Article 1, paragraph (e), should be drafted as follows: "(e) reserve the right to restrict the protection of literary and artistic works and, unless it is primarily for educational, scientific or scholastic purposes, on the condition that the author shall be entitled to receive equitable remuneration. Such remuneration shall, in the absence of agreement between the parties, be fixed by the authority designated by domestic legislation".

84. In Article 1, the following paragraph should be added: "(f) reserve the right to authorize the press, including newspapers and magazines, to publish as part of the newspaper or magazine in serial form or abridged version or translation, literary and artistic works, subject to the authors thereof receiving such equitable remuneration as shall be fixed by the authority designated by domestic legislation".

85. Article 2 of the Protocol should be drafted in the following manner, taking over the wording of Article 3 as

proposed for the Stockholm revision: "A country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 shall withdraw such reservation or reservations by notification deposited with the . . .".

86. Article 3 of the Protocol would then be drafted as follows: "A country which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations made under Article 1 above, may continue to maintain any or all of these reservations until it accedes to the Act adopted by the next Revision Conference".

87. The Director of BIRPI underlined the fact that the proposals for revision had been decided officially by the Swedish Government and that, if the Seminar wished to introduce amendments to the Protocol, the proper course to adopt would be to submit them in the replies sent to BIRPI by the member States concerning Document S/1, or as counter-proposals submitted to the Stockholm Conference itself. He added that the same held true as regards the study by that Conference of the problem of the international protection of folklore within the framework of the Berne Convention.

88. As for the contents of the recommendations adopted by the Seminar, the Director of BIRPI again observed that they departed considerably from the official proposals for the Stockholm Conference and would require very heavy sacrifices on the part of the authors and their representatives, without paying any attention to the possibility of adopting another procedure, such as the creation, by the international organization concerned, of facilities for reproduction and translation. He said that he understood that countries interested in the Protocol wished to be in a position to negotiate at the Stockholm Conference, but he expressed the fear that proposals that were too radical might create a feeling of hostility which, in the end, would not serve the purposes of these countries. On the other hand, after a discussion aimed at introducing into the Protocol the possibility of entering into special agreements, in derogation of Article 20 of the Berne Convention, the Director of BIRPI drew attention to the fact that the insertion of a clause of that nature was not only superfluous but might create great difficulties at the Stockholm Conference for the adoption of special rules in favour of the developing countries.

Mr. Ponnambalam (Ceylon) then agreed to withdraw this proposal and submitted the attached resolution, embodying a redrafted Protocol for developing countries in place of the Protocol of Document S/1. This resolution was approved by the Seminar (see Annex 6 of this report).

#### IV. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

(Document DA/24/6)

89. Dr. Strnad (BIRPI) introduced the document relating to this question and gave the participants all the appropriate explanations concerning the provisions of the Rome Conven-

tion, especially as to what is to be understood by the term "protection of neighbouring rights", what are the legislative measures adopted in the various countries on this point, and how the problem has been solved in the Rome Convention.

90. The Observer of the EBU pointed out that the developing countries, most of which do not have any national phonographic industry, run the risk, if they accede to the Rome Convention, of spending large amounts of foreign currency on the payments to be made to foreign producers of phonograms for the use of records. He stressed, moreover, that, before contemplating such accession, it would be necessary, according to Article 26 of the Convention, to have a domestic law, which implied that a choice would have to be made between the various options provided for in the Convention in respect of the protection of producers of phonograms and performers; decisions would also have to be taken regarding the reservations permitted by the Convention. He suggested that the competent international organizations should draft a model law on neighbouring rights, taking into account the various possibilities.

91. The Observer of FIM-FIAV emphasized, on the contrary, that it was in the special interest of the developing countries to protect the rights of performers. Such protection had been made necessary by the development of broadcasting and of the mechanical reproduction of sounds and by the lack of opportunities of employment resulting for performers from this situation. Recalling the agreements signed between his Federation and the phonographic industry, he indicated that, even for countries which imported most of the commercial phonograms used, the fees paid for such use could serve to encourage the national professions of musicians. He expressed the hope that the Rome Convention would be applied rapidly in as many countries as possible and without restrictions as to Article 12 on secondary uses.

92. The Observer of IFPI noted that the problem of foreign currency did not enter into the question and that the producers of phonograms should have a right whose legal nature was similar to that of the right granted to makers of cinematograph films or to photographers. He considered that it would amount to a kind of expropriation if the broadcasting organizations refused to pay royalties for the use of records.

93. The Observer of the ABU drew attention to the advantages of the publicity which resulted for producers of phonograms from the broadcasting of records by radio. The Observer of IFPI replied that excessive broadcasting of records adversely affected the sale of these records, except in the case of new talents, according to the result of enquiries made on the subject.

94. The problems raised by the operation and application of the Rome Convention gave rise to an extensive exchange of views, during which the observers of the beneficiaries concerned gave various explanations to the Seminar.

95. The Delegation of India recalled that India had not acceded to the Rome Convention although it had participated in its drafting. Before acceding, it would be necessary to modify the Indian Act. But, as regards the three categories

protected, two, namely the record manufacturer and the broadcaster, were already protected under the Indian Act. The record manufacturer was already protected against reproduction used directly for public performance or broadcasting. Article 12 of the Rome Convention was therefore already in operation in India. The protection offered also covered foreign records published in Berne Union countries. But, as India had not acceded to the Rome Convention, Indian records could not enjoy protection in the Rome Convention countries. Here was a case of a developing country offering full protection to others but not receiving any protection outside owing to a technicality, namely the absence of formal accession to the Rome Convention. The other countries in the region which adopted the Draft Model Law would have provision against direct copying of records. As regards public performance and broadcasting rights, even if these countries did not accede to the Rome Convention, they could be considered as having reserved, under Article 16 of the Rome Convention, the application of Article 12. As regards performers, unauthorized fixations of unfixed performances in developing countries of performers of developed countries would be non-existent or rare, partly because of the copyright consciousness of the performers and mainly because of lack of facilities and the state of knowledge in the fields of science and technology. For these very reasons, a developed country would be in a better position to exploit the works of developing countries. Here again, therefore, it was the developing countries that needed protection from developed countries. It was suggested therefore that BIRPI, Unesco and the ILO might consider providing that developed countries which acceded to the Rome Convention should treat it as a unilateral accession to the Convention, as in the case of the Unesco Convention for the Protection of Cultural Property in the Event of Armed Conflict, and extend protection to other countries irrespective of whether the latter had acceded or not to the Convention. As regards broadcasts, India had had a fairly long period of broadcasting and had maintained a high standard of integrity as a Government department. Despite the fact that India was not a party to the Rome Convention, All India Radio already offered protection at the level contemplated by the Rome Convention. The development of inter-continental satellites would make the situation so complex that developing States might not have the expertise or the necessary financial means to set in motion the complex machinery for administering the finer points of copyright laws. The Delegation of India felt that perhaps the time had arrived to review the whole position and possibly provide that countries broadcasting works would arrange for payments locally, taking into account the area of communication and thus avoiding separate collections from outside States or individuals or organizations receiving the broadcasts.

96. Mr. Saba (Unesco) pointed out that all accessions to Conventions were unilateral, and that except in the most important cases, such as the Charter on Human Rights, it might not be possible to provide that States becoming party to a Convention should extend the protection and advantages to countries not becoming party thereto. He was also doubtful whether the Convention for the Protection of Cultural Property was as interpreted by the Delegation of India.

97. Mr. Ponnambalam (Ceylon) appreciated the remarks made by the Observer of the EBU on the economic repercussions which might result for certain developing countries from an enforcement of the neighbouring rights system.

98. Dr. Strnad (BIRPI) recalled that, in order to become a party to the Rome Convention, the State concerned should be a party to the Berne Convention or the Universal Copyright Convention.

99. The Delegation of India also desired the organizations concerned to consider whether the Rome Convention could not be regarded as consisting, or reconstituted in order to consist, of three distinct parts covering: (1) performers, (2) makers of phonograms, and (3) broadcasters, it being possible for States to accede separately to one or two or all of the parts, at the same time or at different times.

100. It emerged from the debate of the Seminar on the Rome Convention that the protection of neighbouring rights in the developing countries could depend on local conditions, either on the legal plane or on the economic plane, and that, in any case, it was advisable for these countries to be well informed on this matter, *inter alia* by the drafting of a model law.

#### V. Conclusion

101. At the close of its work, the Seminar adopted unanimously this report of the debates.

102. The Delegation of India voiced its satisfaction that almost all the East Asian countries had taken part in the Seminar, as well as a large number of observers. It expressed the hope that other meetings of this kind would be held on other occasions.

103. Mr. Naraghi (Iran), Mr. Ponnambalam (Ceylon) and Mr. Tiwari (Nepal) thanked in turn the Government of India and BIRPI for the organization of this important Seminar, which had provided an opportunity for a profitable exchange of views and some useful indications for the solution of copyright problems in East Asia. The Seminar unanimously endorsed these remarks.

104. The Observers of Unesco and of the international non-governmental organizations also joined in these expressions of thanks.

105. Mr. C. Masonyé, on behalf of the Director of BIRPI, renewed the thanks of his Organization to the Government of India for its generous hospitality. He expressed the hope that the special needs of the developing countries, as shown by the Seminar, would command the attention of the forthcoming Stockholm Conference. He congratulated the Chairman on the masterly fashion in which he had conducted the debates, and the delegates and observers on the active part which they had played in the discussion.

106. After thanking all the participants, the Chairman emphasized once more that the Seminar had provided an opportunity for an exchange of ideas and a comparison of views, and a chance to benefit mutually from the experience of the other experts. He was of the opinion that in this respect the Seminar had been a complete success. After congratulating the BIRPI Secretariat for the excellent work accomplished, he declared the Seminar closed.

ANNEX 1**List of participants****I. States of East Asia***Afghanistan*

Mr. Atiqullah Pazhwak  
Director, Franklin Book Programs and Education Press, Kahul.

*Cambodia*

M. Xeng Ua Chau  
Inspecteur général du Travail et des Affaires sociales, Ministère du Travail et des Affaires sociales, Premier Vice-Président de l'Association des Ecrivains khmers, Phnom-Penh.

*Ceylon*

Mr. J. F. Ponnambalam  
Registrar of Companies, Department of the Registrar of Companies, Colombo.

*India*

Dr. K. Krishna Rao  
Joint Secretary and Legal Adviser, Ministry of External Affairs, New Delhi.

Shri T. S. Krishnamurti  
Deputy Secretary to the Government of India, Registrar of Copyrights, Ministry of Education, New Delhi.

Shri P. H. Ramchandani  
Deputy Legal Adviser, Ministry of Law, New Delhi.

Shri K. S. Mullick  
Deputy Director-General, All India Radio, New Delhi.

Shri Sadanand Bhatkal  
President, Federation of Publishers and Booksellers Associations of India, Bombay.

Shri S. C. Shukla  
Deputy Registrar of Copyrights, Ministry of Education, New Delhi.

*Indonesia*

Mr. Alwi Sutan Osman  
Senior Officer, Department of Justice, Djakarta.

*Iran*

Mr. Mehdi Naraghi  
Director, Department of Registration of Companies and Industrial Property, Teheran.

Dr. Yervant Papazian  
Attorney at Law, Teheran.

*Japan*

Mr. Yukifusa Oyama  
Secretary, Copyright Section, Cultural Affairs Bureau, Ministry of Education, Tokyo.

*Korea*

Mr. Yun Kyu Chung  
Chief, Publication Section, Ministry of Education, Seoul.

Mr. Yung Bin Min  
Executive Director, Publishers Association, Seoul.

*Laos*

M. Bouaphanh Thephsouvanh  
Directeur de l'Institut royal de Droit et d'Administration, Vientiane.

*Malaysia*

Mr. Noor Naim Dadameah  
Registrar of Trade Marks, Ministry of Commerce and Industry, Kuala Lumpur.

*Nepal*

Mr. Bhima Nidhi Tiwari  
Deputy Director, Ministry of Education, Kathmandu.

*Philippines*

Mr. Primitivo Cahuñag  
Chief of the Copyright Office, The National Library, Manila.

*Singapore*

Mr. Kian Ping Ho  
State Counsel and Deputy Public Prosecutor, Attorney-General's Department, Singapore.

*Thailand*

Mr. Thawat Ratanapichart  
Chief of Translation and Compilation Section, Fine Arts Department, Bangkok.

**II. Observers****1. Member States of the Berne Union***Democratic Republic of the Congo*

M. Cosma Phoba  
Conseiller juridique au Cabinet du Haut-Commissariat à la Culture et au Tourisme, Kinshasa.

M. Jean-Baptiste Mhila  
Chef de bureau principal, Ministère des Affaires étrangères, Kinshasa.

*Israel*

Mr. Ze'ev Sher  
Registrar of Patents, Designs and Trade Marks, Ministry of Justice, Jerusalem.

*Spain*

Don Eleuterio González-Zapatero  
Director General de Archivos y Bibliotecas, Madrid.

Don José Raya Mario  
Secretario General de la Dirección General de Archivos y Bibliotecas, Madrid.

*United Kingdom*

Mr. Guy Simmons, M. V. O.  
Commercial Counsellor, British High Commission, New Delhi.

Mr. Gordon Feast  
First Secretary (Commercial), British High Commission, New Delhi.

**2. Non-Member State of the Berne Union***Union of Soviet Socialist Republics*

Mr. A. I. Fialkovsky  
Press Attaché, USSR Embassy, New Delhi.

Mr. A. S. Sidorov  
Assistant of the Trade Representative, Trade Representation of the USSR, USSR Embassy, New Delhi.

**3. International Intergovernmental Organization***UNESCO*

Dr. Hanna Saba  
Legal Adviser.

Miss Marie-Claude Dock  
Acting Head, Copyright Division.

**4. International Non-Governmental Organizations***Asian Broadcasting Union (ABU)*

Sir Charles Moses, Secretary-General.

Mr. Yoshio Nomura, Nippon Hoso Kyokai.

*European Broadcasting Union (EBU)*

Dr. Georges Straschnov, Director of the Department of Legal Affairs.

*International Federation of Musicians (FIM)*

Mr. Rudolf Leuzinger, Secretary-General.

*International Federation of the Phonographic Industry (IFPI)*

Mr. Premendra Kumar Sen.

*International Federation of Variety Artistes (FIAV)*

Mr. Rudolf Leuzinger, Secretary-General of FIM.

**III. BIRPI**

Professor G. H. C. Bodenhausen, Director.

Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.

*Expert-Consultants:*

Professor Melville B. Nimmer.

Dr. Vojtěch Strnad.

**IV. Officers of the Seminar**

Chairman: Dr. K. Krishna Rao (India).

Vice-Chairmen: M. Xeng Ua Chau (Cambodia).

Mr. Yukifusa Oyama (Japan).

**ANNEX 2****Opening Address**by Professor G. H. C. Bodenhausen,  
Director of BIRPI

Ladies and Gentlemen,

This East Asian Seminar on Copyright has been convened by our Bureaux, commonly called BIRPI, at the invitation of the Government of India. The Seminar has before it an ambitious programme of work so that it would not be wise to take much of its time by a long opening speech. I shall therefore limit myself to the expression of a few words of thanks and appreciation, and to a brief reminder of the purpose of the Seminar.

Our very sincere thanks are due in the first place to the Government of India for its invitation, its participation in the organization and its generous hospitality, which enable us to meet here today. The interest taken by India both nationally and internationally in matters of copyright and related subjects is well known. On the national level India, after thorough preparation, adopted in 1957 a new Copyright Act which appears to the neutral observer to be a model of enlightened legislation; internationally, India has been a party of the Berne Convention for many years; it has acceded to the last text of this Convention as revised in Brussels in 1948; it has also acceded to the Universal Copyright Convention, and in 1961 it participated in the Rome Conference which established the Convention on what are commonly called "neighbouring rights". In view of these activities it is understandable that India is interested in exchanging views, experiences and information concerning copyright and related subjects with other countries, in particular with countries of that vast region of the world, East Asia, where ideas and interests can be assumed to follow a more or less parallel course. However, not every interest is always translated into action and we must be grateful that in taking the initiative for this Seminar, the Government of India has enabled us to participate in an important exchange of views.

I wish to express my thanks also to the Governments of the other countries of East Asia, which have delegated experts to this Seminar. Of the nineteen East Asian States invited to do so only four declined the invitation and all the others are represented. This evidence of the interest taken in the Seminar is most welcome.

I thank also the member States of the Berne Union which have delegated observers to this meeting and, no less warmly, our colleagues from Unesco as well as the observers from several international non-governmental organizations for their participation. Observers are, by definition, supposed to observe rather than to speak, but I have no doubt that the Chair will permit them to contribute to the debate whenever their experience in the field can be helpful.

And, last but not least, I wish to thank for their presence here the two experts of international reputation who have agreed to assist us in

explaining the subjects of the Seminar: Professor Nimmer of the United States of America and Dr. Strnad of Czechoslovakia.

The purpose and subjects of the Seminar are well known to you. We do not underestimate the difficulties of discussing the subjects indicated in the working papers. These difficulties stem mainly from the various and sometimes conflicting interests involved and also from the differing degrees of development of copyright in the countries concerned. We believe, however, that an exchange of views and information will be extremely useful and that all delegates will finally share the conclusion that adequate protection, nationally and internationally, of copyright and related rights is not only a matter of justice to the creative mind but also a prerequisite for the sound development of activities in the field of publishing, gramophone, film and other industries, as well as for orderly conduct of operations such as broadcasting and, wherever available, television.

What we may hope of this Seminar is that it will express its views on the subjects on the agenda in order to give Governments and international organizations, like BIRPI, guide-lines for further study and activities. Your comments and suggestions, given in a personal capacity, without binding your Governments in any way, will be recorded in the report of the meeting which will be submitted to its last session.

I now have the honour to invite the honourable Secretary of the Ministry of Education of India, Mr. Kirpal, to officially open this Seminar.

**ANNEX 3****Inaugural Address**by Shri Prem Kirpal,  
Secretary and Educational Adviser to the Government  
of India, Ministry of EducationProfessor Bodenhausen,  
Distinguished Delegates and Observers,  
and Friends,

At the very outset let me convey to you the greetings of the Ministry of Education and wish you all a useful period of work at the Seminar, and to those of you who have come from abroad a pleasant stay in our country.

I should also thank the United International Bureaux for the Protection of Intellectual Property for having chosen India as the venue for this Seminar and for having afforded me an opportunity, brief though it may be this time, to associate myself with the deliberations on an important subject.

It is a matter of great pleasure to us in India that the very first Seminar on Copyright in this part of the world is being held here. The Seminar is also well-timed in that your deliberations here may be of help to the various Governments who will come together in Stockholm in June 1967 to consider the revision of the Berne Convention on Copyright.

Although the subject may be insufficiently known in Asian countries, outside the limited group of specialists, the subject is one of vital importance to the general public and particularly to educators.

In most of the countries of the region, there is a vital need to promote education, technology and science. Our greatest problem is to develop adequate means of educating a large number of people. This naturally indicates increased production and consumption of intellectual works of various kinds.

I hope, therefore, that, when you consider these copyright problems during this week, you will consider not only the rights which an intellectual creator ought rightly to have over his works in the interest of society but also the interests which the society may have in using his works.

Speaking for a large country like India where, for the last few years after independence, we have been trying hard to promote educational facilities and to introduce Indian languages as the medium of instruction in school and post-school levels of education, we have come to feel the urgent need for facilities for bringing out translations in Indian languages without much loss of time.

We have also felt the need for reproductions in the original language of some foreign works which are required here for education and other purposes.

While there is no doubt that the intellectual creators of these works must retain their economic interests in their works, you will appreciate, however, that the interests of the society should be safeguarded at the same time. This is not merely in the interests of the society but also, perhaps, in the interest of the intellectual creators themselves. For, where a society grows fast intellectually and thus becomes to a greater and greater extent a consumer of intellectual works, it provides further incentives and openings for the intellectual creators to come forward with their works.

Although I cannot lay any claim to be an expert on copyright matters, yet as an educationist I cannot help feeling that national and international provisions in the field of copyright should provide for reasonable exploitation of intellectual works with or without notice by Governments or their authorized agencies, subject to the economic interests of the intellectual creators not being neglected. I understand that the general objection to this proposition is that it goes against the individual liberties of the intellectual creators. Considering, however, that copyright is a right created by statute and that certain restrictions on individuals are imposed in fields other than copyright, also in the national or international interests, there should be no objection to any reasonable restrictions in the field of copyright, provided, as I have said, that adequate safeguards are also built in to see that the economic interests of the intellectual creators are not unduly affected. The principle of eminent domain must be as applicable in this field as in other fields.

I notice that the approach of the two international Conventions is slightly different in this matter. The Berne Convention which has been longer in the field states as its objects "the desire to protect in as effective and uniform a manner as possible the rights of authors over their literary and artistic works". The Universal Copyright Convention states in its preamble that it is based on the conviction "that a system of copyright protection appropriate to all nations of the world and expressed in a Universal Convention, additional to and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts" and is persuaded "that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding".

Not being an expert, I should hesitate to express an opinion between the objectives of the two Conventions. But, speaking as a layman, would it not be that the objectives of the Universal Copyright Convention are nearer to meeting the needs of society as a whole irrespective of whether the society is advanced or not so advanced?

Over the last twenty years, Unesco, with which I have been connected closely in various capacities, has done yeoman work in promoting cultural understanding between the countries and what was said twenty years ago still holds good that it is only really good friendly understanding that can truly establish peace in a world shrinking rapidly owing to scientific and technological advances and being threatened every moment by our neglect to develop human understanding in as equal measure as society in various parts of the world has developed its scientific research to produce weapons of destruction. Such cultural understanding can only develop through free and unrestricted exchange of cultural ideas and materials and anything that stands as a barrier to such cross-currents of cultural thought should be removed.

The Indian Copyright Office has brought out two publications, one, a handbook on International Copyright Conventions and the other, a Symposium in print on the needs of developing countries in the field of international copyright. I have pleasure in presenting them to Professor Bodenhausen and to you all here.

As I said at the outset, I lay no claim to be a copyright expert, and I had better not stand any longer between you and your deliberations. Let me again wish you success in your labours and also tell you that large tracts of the world representing developing countries will be looking forward to the results of your deliberations in the hope that they will soon be in a position, thanks to your labours, to satisfy their long-felt hunger for intellectual and cultural advancement.

## ANNEX 4

### Statement

by Dr. K. Krishna Rao,  
Chairman of the Seminar

Distinguished delegates,

I must in the first place express my deep appreciation of the fact that you have elected me as Chairman of the Seminar. I consider this not so much a tribute to me in my individual capacity, but rather a tribute through me to the country I have the honour to belong to.

I am conscious of the heavy responsibilities which go with the office of Chairman and will endeavour to the best of my abilities to fulfil them as efficiently and impartially as possible. I am sure that I can rely on the unstinted cooperation not only of the distinguished delegates who are participating in the Seminar but also on the cooperation of the Secretariat.

It is now my pleasant duty to welcome you all here to New Delhi. The very fact that a Seminar of this character is being held in Asia is indicative of the importance which we in Asia attach to the progressive development of the law relating to copyright. I can assure you all that India is honoured in having been able to act as the host country for the Seminar. It is our hope that all of you assembled here will carry back the most pleasant memories of your visit to this country. I trust that, amidst your preoccupations and responsibilities, you will be able to spare some time to see some aspects of contemporary life in India.

At this juncture I cannot but refer also to the valuable efforts of BIRPI, which have led to the Seminar. While I have heard of other such seminars on copyright being held in other parts of the world, e. g., Africa and South America, this is the first time ever that such a seminar is being held in Asia. It is through the results of the studies of such seminars that a really good and all-embracing world convention can emerge or can keep itself in tune with the needs of specific areas and countries. I am sure that all delegates here will share my sense of appreciation of BIRPI's efforts in organizing this Seminar.

It is no doubt true that the modern law of copyright has its origins in Europe. However, in modern times, no region can claim to have an exclusive or dominant role in shaping what must necessarily be the universal law. From this point of view it is not only desirable but essential that the recently independent countries should play a more active role, in cooperation with others, in deciding on the specific content of this law. The fact that this Asian Seminar is being held at this juncture, shortly before the forthcoming Stockholm Revision of the Berne Convention, is of significance, from this point of view.

In saying all this I do not by any means wish to minimize the contributions and indeed the valuable initiative taken by certain western countries in this field. Equally, we cannot ignore the several historic decisions of national courts in developing the basic ideas underlying the law on copyright. While several of these decisions were largely confined to purely domestic issues, the ideas expounded in them have been incorporated in much of the bilateral and multilateral treaties on international copyright. One may refer to the historic decisions of Judge Story in *Gray v. Russell* (1839) and in *Emerson v. Davies* (1845), and of Judge Hand in the famous *Letty Lynton* case (1936). Judge Hand has explained, in a striking passage, one of the central issues underlying the concept of copyright, i. e., the notion of "originality". To quote: "Borrowed the work must indeed not be, for a plagiarist is not himself *pro tanto* an 'author'; but if by some magic a man who had never known it were to compose anew Keats's *Ode on a Grecian Urn*, he would be an 'author' and, if he copyrighted it, others might not copy that poem, though they might of course copy Keats's... But though a copyright is for this reason less vulnerable than a patent, the owner's protection is more limited, for just as he is no less an 'author' because others have preceded him, so another who follows him is not a tortfeasor unless he pirates his work..."

In so far as the international protection of copyright is concerned, I would like to mention the initiative taken by France, which was the first country to confer rights on an author regardless of nationality and thereby paved the way for the development of an international conception of copyright. Shortly thereafter, the United Kingdom followed the exemplary lead given by France with the "International Copyright Act" of 1838. This Act, as you all are aware, enabled her Majesty-in-Council

to confer on foreign authors the exclusive right to publish their books in the British dominions for the period then allowed to British authors. Also worthy of mention in this context is the Convention of 1851 between England and France which provided for the reciprocal protection of authors in each country. Consequent upon this came numerous bilateral conventions and ultimately the multilateral Berne Convention of 1886 which has justly been called a red-letter day in literary history. It is from this modest beginning that we have developed a complex system of law including the Universal Copyright Convention, dealing with the universal application of copyright.

It is true that, as in many other fields, the evolution of the law has not been fully commensurate with the needs of the times. What might have been adequate in 1851 or 1886 could hardly be considered to be adequate in 1967. The growth of the law of copyright protection is closely inter-related with the development of the means and media of reproduction, performance, exhibition, presentation and representation. Thus the law relating to literary copyright arose to meet the needs arising out of the invention of printing by movable type. Artistic copyright has emanated from the increased use of engravings and lithographs and, in recent years, the developments of photography, sound recordings, motion pictures, radio and television have all had their impact on the concept of copyright. Another important factor which must be mentioned is the economic and social milieu of our times. The inter-dependence of the world and the changing social values, which involve the concept of international cooperation for mutual benefit, must also be borne in mind. The developing countries stand in a special position in this respect. It is, I think, generally recognized that prosperity, like peace, is indivisible, and that this world of ours cannot subsist for long if it were to remain divided into rich and poor. To adapt the phrase used by the late Professor Harold Laski, such a world would rest on foundations of sand. In this connection the application of copyright laws has a definite bearing on the development problems of the newly independent countries. One of the aspects of United Nations work in the field of aid to developing countries is that of facilitating the transfer of knowledge and technology. One of the requirements of the developing countries is that of obtaining text-books and other educational facilities at a comparatively low cost, not only in the original languages in which such works are published, but also, in several cases, in the form of translations in the local languages. I may mention here as an example the activities of the United Nations in the field of assistance in the teaching, study, dissemination and wider appreciation of international law. Under the programme of United Nations assistance in this field, efforts have been made to obtain legal text-books and translations thereof for supply to the developing countries at a low cost. In the same vein, I would like to refer to Resolution 1155 (XLI) on Science and Technology, adopted by the Economic and Social Council at its 1444<sup>th</sup> plenary meeting on August 5, 1966. Operative paragraph 2 (b) of this Resolution sets forth as one of the objectives of the "World Plan of Action for the Application of Science and Technology" to develop the promotion of, and I quote: "the more effective application of existing scientific knowledge and technology to the development of the less developed countries and, with that in view, to improve the arrangements for the transfer and adoption of knowledge and technology already available in more developed countries . . ."

In saying all this my only intention is to draw your attention to a very real problem which exists in this field, the solution of which would require mutual cooperation and goodwill. It is certainly not my intention to minimize, in any way, the legitimate rights of copyright holders. The present system of international copyright law has been built up after painstaking endeavours. What I would like to suggest is only this: that any future revision of the Berne Convention, or indeed of the international régime of copyright laws, should take into account at the same time the legitimate requirements of the developing countries.

## ANNEX 5

### **Report**

submitted by the Folklore Committee

1. Folklore by its very nature represents the creative efforts of a number of unidentified authors indigenous to a given national area. It follows then that these works are both "anonymous works" within the

meaning of Article 7, paragraph (4), of the Berne Convention (Brussels text) and "joint works" since they are almost all unfixed and constantly undergo modification due to the changes made by the authors and performers thereof, such modifications being inseparable from the pre-existing work.

2. As anonymous works, they must be protected for not less than fifty years calculated from the date of publication. It is to be noted that a work is "published" within the meaning of the Berne Convention only if copies of that work have been "issued and made available in sufficient quantities to the public" (Article 4, paragraph (4)), so that a work is not published merely by the fact of its public performance or by reason of its having been reduced to written or recorded form. It is believed that most folklore in developing countries is either unpublished or, if published, not yet fifty years old. It follows, therefore, that these works are eligible for protection.

3. The Stockholm revision envisages a modification of the duration of the protection granted to anonymous works, fixing it at fifty years "after the work has been lawfully made available to the public" (Article 7, paragraph (3)). This would make these works fall into the public domain since they have been performed in public for perhaps more than fifty years. Secondly, it should be noted that, according to the proposed Article 7, paragraph (3), anonymous works may fall into the public domain if "it is reasonable to presume that their author has been dead for fifty years". But, as these works are constantly undergoing modification and as the individual contributions of each are indistinguishable in content and in time, this clause may not apply.

4. For these reasons, the Stockholm revision must be somewhat modified in order to preserve the protection of folklore. This can be done by retaining, for works of folklore, the existing Brussels text (Article 7, paragraph (4)), while adopting the Stockholm text for other anonymous works.

5. Article 15, paragraph (2), of the Brussels text provides that the publisher whose name appears on an anonymous work shall, in the absence of proof to the contrary, be regarded as representing the author. This would lead to arbitrary results. It is recommended that Article 15, paragraph (2), be revised in order to enable the domestic legislation to determine who may act in place of the anonymous authors of these works, and to make such determination binding on the other members of the Union.

6. Under the Indian Act of 1957, "publication" does not include, in the case of a literary, dramatic or musical work, the publication of any records recording such work. A different definition exists in Article 4, paragraph (4), of the Brussels text and in the proposed Article 4, paragraph (5), of the Stockholm text. The amendment of this definition on the lines of the Indian Act could help the dissemination of folklore by the issue of records without considering them as "published".

7. It has been suggested that a provision be inserted in the Draft Model Law according to which copyright in folklore could be considered as belonging to the State or to an appropriate agency appointed by the State.

## ANNEX 6

### **Resolution**

submitted by the Delegate of Ceylon,  
concerning the  
Protocol Regarding Developing Countries

In view of the urgent need, in this age of rapid scientific progress, for developing countries to have available to them the most up-to-date knowledge and in the wider interests of culture and social development, particularly regarding developments in science and technology, it is resolved to recommend that the Protocol Regarding Developing Countries contained in Annex II of BIRPI Document S/1 be redrafted as follows:

#### *Article 1*

Any developing country which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situa-

tion and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the . . . ., at the time of ratification or accession, comprising Article 20<sup>bis</sup> of the Act, declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) substitute for Article 8 of this Convention the following provisions: if, after the expiration of a period, fixed by domestic legislation, from the date of the first publication of a literary, scientific or artistic work, a translation of such work into the national language or languages of that country has not been published in that country, by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive licence from the competent authority to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to standards of that country, to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such

copies in a country of the Union shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

The licence shall not be granted when the author has withdrawn from circulation all copies of the work;

(Alternative: Adopt Article 5 of the Paris text to be substituted for above, with the amendment of the period "during a term of ten years" to "within a period to be prescribed by domestic legislation".)

(b) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;

(Alternative: Adopt Article 7 of the Rome text for above.)

(c) reserve the right to apply the provisions of paragraph (2) of Article 9 of the Convention as revised at Brussels in 1948;

(d) substitute for paragraphs (1) and (2) of Article 11<sup>bis</sup> of this Convention the provisions of Article 11<sup>bis</sup> of the Convention as revised at Rome in 1928;

(e) reserve the right to restrict the protection of literary and artistic works and, unless it is primarily for educational, scientific or scholastic purposes, on the condition that the authors shall be entitled to receive equitable remuneration. Such remuneration shall, in the absence of any agreement between the parties, be fixed by the authority designated by domestic legislation;

(f) reserve the right to authorize the press, including journals and magazines, to publish as part of the journal or magazine, in serial form or abridgement or translation, literary and artistic works, subject to the authors thereof receiving such equitable remuneration as shall be fixed by the authority designated by domestic legislation.

#### Article 2

A country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 shall withdraw such reservation or reservations by notification deposited with the . . . .

#### Article 3

A country, which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under Article 1 above, may continue to maintain any or all the reservations until it accedes to the Act adopted by the next Revision Conference.

## NATIONAL LEGISLATION

GERMANY (Federal Republic)

### Regulation on the Register of Authors

(Of December 18, 1965)<sup>1</sup>

By virtue of Article 138, paragraph (5), of the Copyright Act of September 9, 1965 (*Bundesgesetzblatt*, I, p. 1273)<sup>2</sup>, it is hereby enacted:

<sup>1</sup> *Verordnung über die Urheberrolle vom 18. Dezember 1965*, published in *Bundesgesetzblatt*, I, p. 2105, No. 72, of December 24, 1965.

<sup>2</sup> See *Copyright*, 1965, p. 267.

#### Form of request

Article 1. — (1) The application for entry in the Register of Authors under Article 66, paragraph (2), No. 2, of the Act shall be made in writing to the Patent Office.

(2) The application shall state:

- (i) the name of the author, the day and the place of his birth and, when the author is dead, the year of his death; if the work has been disseminated under a pseudonym, the pseudonym shall also be given;
- (ii) the title under which the work has been disseminated or, when the work has been disseminated without title, another designation of the work; if the work has been published, the name of the publisher shall also be given;
- (iii) the time and the form of the first dissemination of the work.

*Content of the entry*

*Art. 2.* — The serial number of the entry, the day on which the application has been filed with the Patent Office, as well as the data specified in Article 1, paragraph (2), shall be entered into the Register of Authors.

*Alphabetical index*

*Art. 3.* — Along with the Register of Authors, an alphabetical index is kept both of the entered names of authors, including the pseudonyms, and of the entered titles and other designations of works.

*Certificate of entry*

*Art. 4.* — A certificate on the entry shall be issued to the applicant at his request.

*Charges*

*Art. 5.* — (1) A fee of twenty DM shall be charged for the entry.

(2) The Regulation on Administrative Costs charged by the German Patent Office, of May 9, 1961 (*Bundesgesetzblatt*, I, p. 589), shall accordingly be applied to the collection of fees for the issuing of a certificate of entry and to the issuing of other extracts and their certification. The same is valid for the procedure when the fee under paragraph (1) is collected.

*Application in Land Berlin*

*Art. 6.* — Pursuant to Article 14 of the Third Transitional Act of January 4, 1952 (*Bundesgesetzblatt*, I, p. 1), in conjunction with Article 142 of the Copyright Act, this Regulation shall also apply to *Land Berlin*.

*Coming into force*

*Art. 7.* — This Regulation becomes effective on January 1, 1966.

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*CORRESPONDENCE*

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**Letter from Great Britain**

dealing with copyright and related matters which occurred in Great Britain in 1966

*(First Part)*















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Dr. Paul ABEL  
 Consultant on International  
 and Comparative Law  
 London

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## OBITUARY

### Zoltán Kodály

Zoltán Kodály, the world-renowned composer, passed away suddenly in Budapest at the age of 84. The entire Hungarian nation is in mourning. Hungarians of all social levels feel this terrible loss to lovers of fine music.

For over six decades, Zoltán Kodály was outstandingly active in the many varied areas of music. From the days of his early youth, he devoted himself wholeheartedly to its scientific and educational aspects, as well as to his remarkable compositions.

Along with Béla Bartók, he collected melodies of old Hungarian folk songs. A few volumes of this collection have already appeared, and a number of further volumes are being prepared for publication under the direction of the Musical Division of the Hungarian Academy of Sciences. He was convinced that the treasures of Hungarian folk music should be preserved so that they could be used in modern Hungarian musical works.

He was only a very young man when he became a professor at the Conservatory of Music in Budapest, and some of the best musicians of the nation were taught by him. The pupils of Zoltán Kodály are now prominent throughout the world and are spreading the ideas on art and music which he advocated.

As an educator, he rendered great service to the cause of Hungarian music by advising the introduction of musical education into the lower grades of Hungarian primary schools, and this education has shown an amazingly successful development. Thanks to his efforts, many young people in Hungary today are devoting themselves with verve and love to both vocal and instrumental music. Another outcome of his relentless activity is that the appreciation of serious music has grown

incredibly within a short period of time. He wanted all of Hungary to sing, and he succeeded in achieving this goal.

Zoltán Kodály's tireless activity in promoting the interests of music in all fields did not prevent him from composing exquisite works that are appreciated all over the world. His theatrical works (*Székelyfőnök, Hány János*) are being performed constantly not only in Hungarian theaters but in foreign theaters as well, and his concert works have won him universal recognition.

His authoritative voice in support of authors' rights has been heard everywhere. The rights of writers and composers were his constant concern, and his personal efforts on their behalf always brought about the desired results. Because he was a spokesman for the cause of composers and writers, he was also made an honorary member of the International Copyright Society (*Internationale Gesellschaft für Urheberrecht - INTERGU*).

As a man, Zoltán Kodály was quite an extraordinary person. In addition to music, he was interested in all other creative art, be it literature, painting or sculpture. He was willing to go to any trouble to broaden the interest of the Hungarian people in all these aspects of culture. And what is known to only a few is that he was always willing to give to a worthy cause. He supported talented pupils and artists in every possible way. He was a kind-hearted, generous man in the truest sense of the words.

Both the great and the humble are mourning him in the towns and villages of Hungary.

A great man, a great artist, a great champion of copyright has left us.

Robert PALÁGYI



Date and Place	Title	Object	Invitations to Participate	Observers Invited
December 18 to 21, 1967 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (3 <sup>rd</sup> Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union
December 18 to 21, 1967 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (2 <sup>nd</sup> Session)	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union

### Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
Montreal	May 13 to 20, 1967	International Chamber of Commerce (ICC)	21 <sup>st</sup> Congress
Guatemala	May 25 to 28, 1967	Inter-American Association of Industrial Property (ASIPI)	Executive Committee
Helsinki	August 28 to September 1, 1967	International Association for the Protection of Industrial Property (IAPIP)	Executive Committee
Stockholm	September 18 to 29, 1967	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	7 <sup>th</sup> Annual Meeting