

Copyright

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INTERNATIONAL UNION

Extraordinary Session of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

(Geneva, March 14 to 16, 1967)

I. Report

1. The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) met in extraordinary session from March 14 to 16, 1967, in Geneva, at the headquarters of BIRPI. The twelve member States of the Permanent Committee were represented: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom, and Sweden as *ex-officio* member.

2. The following States members of the Berne Union had delegated observers: Austria, Canada, Ceylon, Congo (Democratic Republic), Czechoslovakia, Finland, Ireland, Japan, Morocco, Norway, Pakistan, Poland, Tunisia, Turkey.

3. Two international intergovernmental organizations were present in the capacity of observers: the International Labour Office and Unesco.

4. The list of participants appears in an annex to this report.

5. This extraordinary session was convened at the request of the Director of BIRPI, in pursuance of Rule 6 (1) of the Rules of Procedure of the Permanent Committee.

6. The session was motivated by the urgent necessity for the Director of BIRPI to have the advice of the Committee on the attitude to be adopted towards the problems posed by the possibility of a revision of the Universal Copyright Convention, which would affect in particular the conditions governing the application of Article XVII of that Convention and of the Appendix Declaration relating thereto (the so-called Berne Union safeguard clause), as envisaged in Resolution No. 5122 passed by the General Conference of Unesco at its 14th session (October 25 to November 30, 1966).

7. As these matters concern the development and general functioning of the Berne Union, the Committee is empowered, under Rule 5 of its Rules of Procedure, to advise the Director of BIRPI. Furthermore, as any revision of the Universal Convention requires, in pursuance of Article XI of the Convention, the intervention of the Intergovernmental Copyright Committee, whose meetings may be attended by the Director of BIRPI in an advisory capacity, the Permanent Committee is called upon to assist the latter in forming the opinion which he might wish to express if and when the said Intergovernmental Copyright Committee meets.

8. The Permanent Committee had before it the working documents prepared by BIRPI, which provided the secretariat of the meeting, in conformity with Rule 7 of the Committee's Rules of Procedure.

9. This extraordinary session was opened by the Vice-Chairman of the Permanent Committee, Professor Ildefonso Mascarenhas da Silva, who paid a moving tribute to the late Chairman, Mr. Puget. He took this opportunity to recall the highlights of the career of Mr. Puget and reminded the meeting of his outstanding qualities and the services which he had rendered, particularly in the field of international copyright. The Committee observed a minute's silence in memory of Mr. Puget.

10. The Committee then adopted its agenda and proceeded to examine the report which was presented by the Director of BIRPI (document DA/25/2 *).

11. In the ensuing full discussion, the member States of the Committee and some of the observers expressed in turn their various points of view.

12. It emerged from the declarations made that there was a unanimous desire to give due consideration to the special position of the developing countries and to assist these countries to solve their difficulties of a legal, economic and practical nature in the field of copyright.

13. It was also apparent that the unanimous feeling of the meeting was that, in view of the fact that the official proposals submitted to the forthcoming Revision Conference of the Berne Convention, scheduled for June 1967, included special provisions for the benefit of developing countries, it would be advisable to await the results of that Conference before expressing an opinion on the problems raised.

14. This was the feeling expressed, in particular, by the Delegations of the following countries: Belgium, Denmark, France, Germany (Federal Republic), India, Italy, Spain, Sweden, Switzerland and the United Kingdom, as well as by the Observers of Ceylon, Czechoslovakia, Japan, and Poland.

15. The Observer of Unesco declared that the outcome and conclusions of the Stockholm Conference could be a determining factor, for States which were parties to the Universal Copyright Convention, in the substantive decision to be taken concerning the revision of that Convention.

16. A number of additional considerations were mentioned by certain delegations.

17. The Delegation of Germany (Federal Republic) pointed out that the proposed revision was not intended to facilitate accession to the Universal Copyright Convention but to make it easy for developing countries to denounce the Berne Convention, since Article XVII and the Appendix Declaration

*) The text of this document is reproduced hereinafter.

relating thereto apply only in the case of countries leaving the Berne Union. The Delegation also indicated that the proposals submitted to the Stockholm Conference (Protocol Regarding Developing Countries), on the one hand, and a possible revision of the Universal Convention along the lines envisaged, on the other hand, represented two possible ways of satisfying the requirements of developing countries. It expressed the opinion that it would be advisable to allow these countries to remain members of the Berne Union by facilitating, in certain respects, the exercise of the rights recognized by the Berne Convention.

18. The Delegation of France, after reaffirming the attachment of France to the Berne Union, declared that the problem of the developing countries should be resolved within the Berne Union for countries members of that Union, in order to encourage them to remain members, and that the solution adopted should serve as an example to countries not yet members and be an incitement to them to join the Union. It also expressed the opinion that the settlement of this problem should, for the time being, be worked out within the Berne Union itself, by trying to find solutions which would be acceptable to all. It reminded the meeting that France had participated in the drafting of the resolution adopted by the General Conference of Unesco, but that it had always considered that the problem should first be discussed within the framework of the Berne Convention and that the outcome of the Stockholm Conference would then make it possible to estimate the attitude to be adopted towards the said resolution.

19. The Delegation of Spain observed that it seemed undesirable to go too deeply into the question at the moment, in view of the proposals that had been made for the Stockholm revision in order to satisfy the needs of the developing countries within the framework of the Berne Union.

20. The Delegation of Denmark declared that it was not opposed to the idea of a revision of the Universal Convention but that any such revision should be undertaken at a suitable time, that is to say, in the light of the provisions which would be adopted at the Stockholm Conference for the benefit of developing countries.

21. The Delegation of Italy, recalling that the Italian Delegates at the General Conference of Unesco had been among those who had associated themselves with the resolution adopted by that Conference, stressed the need to avoid any conflict between the two international Organizations.

22. The Delegation of the United Kingdom, after observing that common sense required that nothing should be done before the results of the Stockholm Conference were known, pointed out the difficulties which States consulted by Unesco would have in adopting a position by May 1, 1967, and said that, if the United Kingdom Government were obliged to reply immediately, it would have to declare that it was opposed to a revision of the Universal Convention.

23. The Delegation of India hoped that, in view of the Stockholm Conference, Unesco would extend the time limit given to States for making known their opinions. It further declared that India had no desire to leave the Berne Union, which had been performing a very useful task for the last 80 years, and it expressed the hope that the two Conventions

would be able to continue to develop and strive together with a view to interesting countries not yet parties to either Convention in the protection of copyright.

24. The Observer of Unesco, after recalling the reasons which had led the General Conference of his Organization to adopt Resolution No. 5122, defined the scope of the proposed revision. He stated that the date of May 1, 1967, fixed at the time of the consultation of States by Unesco, was not a deadline and that in all probability, after May 1, 1967, States which had not yet replied would be consulted again. He also stated that it was not proposed to put the question of a possible revision of the Universal Convention to the Intergovernmental Copyright Committee before next autumn.

25. The Delegation of Germany (Federal Republic) observed that, as far as procedure was concerned, it seemed preferable to it that Governments should be invited to express their opinions *after* the meeting of the Intergovernmental Committee and it expressed the hope that, as the matter concerned both Conventions, the two Committees (Intergovernmental and Permanent) would have an opportunity to discuss it at joint sessions.

26. The Observer of Tunisia, after affirming the attachment of his country to the Berne Union, expressed the opinion that the multilateral copyright Conventions ought to evolve with a view to reaching solutions aimed at satisfying the needs of developing countries. He also expressed the hope that a universality of copyright would be achieved which would reconcile both the respect for the rights of authors and the special position of certain countries, mainly at the economic level.

27. The Observer of Czechoslovakia noted that it was not possible, in the immediate future, to express an opinion on the inadvisability of a revision of the Universal Convention in the event that the Stockholm Conference would satisfy the requirements of developing countries, because it depended, on the one hand, on the results of that Conference and, on the other hand, on the opinion of the States concerning the scope of these results. As far as procedure was concerned, he agreed with the declarations of the Delegation of Germany (Federal Republic).

28. The Observer of Japan also agreed with the view expressed by the Delegation of Germany (Federal Republic) and hoped that all the States concerned would be informed of the opinion expressed by the Committee.

29. The Delegation of Belgium shared this view.

30. At the close of the general discussion, the Permanent Committee entrusted to a drafting committee, composed of Professor Ulmer (Federal Republic of Germany), Mr. Mas (France), Mr. Krishnamurti (India) and Mr. Wallace (United Kingdom), the task of drafting, with the assistance of the Secretariat, a resolution on the basis of the declarations made and the considerations expressed.

31. As pointed out by its Chairman, Professor Ulmer, the resolution presented by the Drafting Committee confined itself to questions of procedure, without entering into the details of the problems raised.

32. The Committee unanimously adopted the said resolution, couched in the following terms:

“ 1. *Considering*

- (a) that the Universal Copyright Convention contains provisions concerning the consequences of denunciation of the Berne Convention for the Protection of Literary and Artistic Works,
- (b) that the General Conference of UNESCO adopted, in November 1966, a resolution (No. 5122) inviting a study of the possibility of revising the said provisions of the Universal Copyright Convention in relation to developing countries,
- (c) that the Director-General of UNESCO invited, in December 1966, the States parties to the Universal Copyright Convention to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wished a revision Conference of the Universal Copyright Convention to be convened,
- (d) that the Representative of UNESCO has stated that replies arriving after May 1, 1967, will also be taken into consideration,
- (e) that the Berne Convention is going to be revised in July 1967 at the Stockholm Conference and that the results of that revision will have an important bearing on the question of a possible revision of the Universal Copyright Convention, having regard to the fact that the official proposals for that Conference include special provisions relating to developing countries,

the Permanent Committee of the Berne Union, in extraordinary session assembled at Geneva from March 14 to 16, 1967,

- 2. *Expresses the opinion* that it would be premature to take a final position, by May 1, 1967, on the question of a possible revision of the provisions of the Universal Copyright Convention dealing with the Berne Convention;
- 3. *Decides* to re-examine the question, after the Stockholm Conference, in its next ordinary session scheduled for December 12 to 15, 1967;
- 4. *Invites* the Director of BIRPI to make a detailed report to that session and to draw the attention of all those member States of the Berne Union which are not members of the Permanent Committee to the desirability of being represented by observers;
- 5. *Invites* the Director of BIRPI to propose to the Chairman of the Intergovernmental Copyright Committee that, subject to the competence of that Committee, the matter also be discussed in its next joint meetings with the Permanent Committee;
- 6. *Suggests* to the Governments of the member States of the Berne Union that they consider the advisability of expressing their views on the question of a possible revision of the provisions in the Universal Copyright Convention dealing with the Berne Convention only after the December 1967 session of the Permanent Committee.”

33. In the course of the deliberations of the Committee which preceded the adoption of this resolution, a number of observations were made.

34. The Observer of Unesco remarked that item (d) of the preamble should be taken to mean that May 1, 1967, was not a deadline. As regards item (e) of the preamble, he stressed, while recognizing the bearing which the results of the Stockholm Conference might have on the question, that the effect to be given to the resolution of the General Conference of Unesco was not necessarily subject to that event. With regard to paragraph 5 of the resolution adopted by the Permanent Committee, he expressed certain reservations, for constitutional reasons, and drew attention to the need to respect the competence of the Intergovernmental Copyright Committee in the fulfilment of the role expressly entrusted to it by the Universal Convention. He pointed out that, in his opinion, there could only be an exchange of views on the occasion of joint meetings.

35. The Observer of Czechoslovakia, in this last connection, recalled that it was only the deliberations of the two Committees (Intergovernmental and Permanent) that were joint, for certain matters of common interest, but that the decisions were made separately.

36. The Delegation of Italy stressed that the bearing on the question mentioned in item (e) of the resolution concerned more especially the attitude of States members of the Berne Union which were also parties to the Universal Convention. It further endorsed the opinions of the Delegation of Germany (Federal Republic) on questions of procedure.

37. The Delegation of Germany (Federal Republic) observed that the question was of interest to all States members of the Berne Union, whether or not they were parties to the Universal Convention.

* * *

38. The Delegation of the United Kingdom, noting the convocation in Geneva, at the headquarters of the ILO, from April 10 to 12, 1967, of the Intergovernmental Committee set up by the Rome Convention on neighbouring rights, asked whether, in conformity with Article 32, paragraph (6), of that Convention, the States members of the said Committee had been consulted on the advisability of such a meeting. It also recalled that the Permanent Committee had expressed the wish, at its 12th session in Paris, in 1965, that for convenience sake, the possibility should be studied of convening on the same date and at the same place the said Intergovernmental Committee and the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee.

39. The Director of BIRPI declared that, for its part, BIRPI had asked that prior consultation be undertaken.

40. Adopting the views of the Delegation of the United Kingdom, supported by the Delegation of Germany (Federal Republic) and the Observer of Czechoslovakia, the Permanent Committee asked the Director of BIRPI to get in touch immediately with the Directors General of the ILO and Unesco, with a view to studying the possibility of postponing the holding of the meeting of the Intergovernmental Committee of the Rome Convention until December 1967 in Geneva, at the time of the sessions of the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union.

* * *

41. At the close of its deliberations, the Committee heard a declaration by the Observer of Tunisia, who had some general remarks to make on the subject of the Stockholm Conference. He first recalled that the discussion of the official proposals for revision of the Berne Convention would doubtless permit jurists and diplomats to work out solutions by a method of synthesis. He pointed out, however, that the main problem would be the establishment of the Protocol Regarding Developing Countries, including provisions capable of satisfying these countries to a considerable extent. Such countries relied on the universal humanism and the spirit of synthesis which, at all times, had prevailed at international assemblies. He reaffirmed that those who considered developing countries to be opposed to the protection of copyright showed in fact a complete ignorance of the economic, social and cultural aspects of the problem. In conclusion, he urged the delegates present at the session of the Committee to defend a noble cause, the improvement of the human lot within the framework of a normal development of the texts governing copyright.

42. The Committee unanimously adopted this report.

43. The Delegation of France congratulated the Chairman, Professor Mascarenhas da Silva, for the brilliant and distinguished manner in which he had conducted the proceedings and had permitted the Committee to bring its work to a successful conclusion. These congratulations were unanimously endorsed by the Committee.

44. The Chairman of the Committee thanked the representatives of the States members of the Committee and the observers for their contribution to the debates. He expressed his gratitude to the Secretariat for the quality of the preparatory documentation and the excellence of the work accomplished. In the name of the Delegation of Brazil, he recalled his country's concern for the protection of copyright, a concern which was borne out by the fact that Brazil was the only country which had acceded to all the multilateral Conventions on the subject. Stressing the Berne Convention's role of pioneer, he expressed the hope that its application would extend throughout the world, ensuring an ever-increasing protection of authors' works, on a universal scale. He then declared the extraordinary session of the Permanent Committee closed.

ANNEX

List of Participants

I. States members of the Permanent Committee

Belgium

Mr. G. L. de San
Director-General, Legal Adviser, Ministry of National Education,
Brussels.

Brazil

Mr. Ildefonso Mascarenhas da Silva
Professor at the University of Brazil, Rio de Janeiro.
Mr. Jorge Carlos Ribeiro
Secretary of Embassy, Permanent Mission of Brazil, Geneva.
Mr. Sergio Caldas Mercador Abi-Sad
Secretary of Embassy, Ministry of Foreign Affairs, Rio de Janeiro.

Denmark

Mr. Willy Weincke
Head of Division, Ministry for Cultural Affairs, Copenhagen.

Mr. Edvard Jeppesen
Assistant Head of Section, Ministry for Cultural Affairs, Copenhagen.

France

Mr. Yves Mas
Counsellor of Embassy, Ministry of Foreign Affairs, Paris.
Mr. Charles Rohmer
Head, Copyright Office, Ministry of Cultural Affairs, Paris.
Mr. André Kerever
Maître des Requêtes at the Council of State, Paris.
Mr. Bernard de Menthon
Ambassador, Paris (Observer).

Germany (Federal Republic)

Dr. Eugen Ulmer
Professor at the University of Munich.
Mr. Peter Schönfeld, First Secretary, Permanent Delegation of the
Federal Republic of Germany, Geneva.

India

Mr. B. N. Lokur
Special Secretary and Member, Law Commission, Chairman, Copyright
Board, New Delhi.
Dr. K. Krishna Rao
Joint Secretary and Legal Adviser, Ministry of External Affairs,
New Delhi.
Mr. T. S. Krishnamurti
Deputy Secretary and Registrar of Copyrights, Ministry of Education,
New Delhi.

Italy

Mr. T. A. Cippico
Ambassador, Italian Delegate to the Agreements concerning Intellectual
Property, Ministry of Foreign Affairs, Rome.
Mr. Giuseppe Trotta, Legal Adviser, Ministry of Foreign Affairs, Rome.
Mr. Valerio De Sanctis
Lawyer, Rome.
Mr. Antonio De Rosa
Director, Office of Literary, Artistic and Scientific Property, Rome.
Mr. Vincenzo Gallinari
Office of Literary, Artistic and Scientific Property, Rome.

Portugal

Dr. José De Oliveira Ascensao
Professor at the Faculty of Law, Lisbon.

Rumania

Mr. Costel Mitran
Second Secretary, Permanent Mission of the Socialist Republic of
Rumania.

Spain

Mr. Fernando Benito Mestre
Assistant Permanent Delegate of Spain, Geneva.

Switzerland

Mr. Hans Morf
Former Director of the Federal Office of Intellectual Property, Berne.
Mr. Jean-Louis Marro
Head of the Copyright Section, Federal Office of Intellectual Property,
Berne.

United Kingdom

Mr. William Wallace, C. M. G.
Assistant Comptroller, Industrial Property Department, Patent Office,
London.

*Ex officio:**Sweden*

Mr. Ulf K. Nordenson
Head of Division, Ministry of Justice, Stockholm.
Mr. Svante Bergström
Professor at the University of Uppsala.

II. Observers**I. Member States of the Berne Union***Austria*

Mr. Peter Angst
Federal Ministry of Justice, Vienna.

Canada

Mr. Jacques Corbeil
Secretary and Vice-Consul, Permanent Mission of Canada, Geneva.

Ceylon

Mr. Rex C. S. Koelmeyer
Permanent Representative of Ceylon, Geneva.
Mr. W. Perera
Permanent Mission of Ceylon, Geneva.

Congo (Democratic Republic)

Mr. Gustave Mulenda
First Secretary, Permanent Mission of the Republic of the Congo,
Berne.

Czechoslovakia

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

Finland

Mr. Ragnar Meinander
Head of Section, Ministry of Education, Helsinki.

Ireland

Dr. J. J. Lennon
Controller of Patents, Designs and Trade Marks, Dublin.

Japan

Mr. Kenji Adachi
Deputy Director, Cultural Affairs Bureau, Ministry of Education,
Tokyo.

Morocco

Mr. Abdelaziz Cherrat
Director at the Cabinet of the Minister of Information, Rabat.
Mr. Abderrahim H'ssaïne
Director, Copyright Office of Morocco, Rabat.

Norway

Mr. Leif Chr. Hartsang
First Secretary, Ministry of Foreign Affairs, Oslo.

Pakistan

Mr. S. A. D. Bukhari
Counsellor, Permanent Mission of Pakistan, Geneva.

Poland

Mr. Slawomir Dabrowa
Second Secretary, Permanent Delegation of the Polish People's
Republic, Geneva.

Tunisia

Mr. Mustapha Fersi
President Director-General of SATPEC, Tunis.

Turkey

Mr. Erten Kayalibay
Second Secretary, Permanent Delegation of Turkey, Geneva.

2. International Intergovernmental Organizations*International Labour Office*

Mr. Edward Thompson
Chief, Non-Manual Workers' Section.

UNESCO

Mr. Hanna Saba
Legal Adviser.
Miss Marie-Claude Dock
Acting Head, Copyright Division.

III. BIRPI

Professor G. H. C. Bodenhausen, Director.
Mr. Charles-L. Magnin, Deputy Director.
Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.
Mr. Mihailo Stojanović, Legal Assistant, Copyright Division.

**II. Report by the Director of BIRPI
to the Permanent Committee***Background*

1. There are two multilateral copyright treaties which are open for accession by any country of the world: the Berne Convention for the Protection of Literary and Artistic Works of 1886, and the Universal Copyright Convention of 1952.

2. One of the questions most carefully considered during the preparatory work and at the Geneva Conference of 1952, establishing the Universal Copyright Convention, was the question of the possible impact of that Convention on the Berne Union. The result of these deliberations was Article XVII of the Universal Convention, together with the Appendix Declaration relating to that Article, and the association of the Director of BIRPI, in an advisory capacity, in the work of the Intergovernmental Copyright Committee (Article XI of the Universal Convention). The preparation of any revision of the Universal Convention is one of the tasks of that Committee (Article XI 1. (b) of the Universal Convention).

3. The General Conference of Unesco, in its 14th session (October 25-November 30, 1966), adopted a resolution which contemplates the possibility of revising Article XVII of the Universal Convention and the Appendix Declaration relating thereto, provisions which directly concern the Berne Convention.

4. Consequently, the matter is of concern both to the Permanent Committee of the Berne Union which "shall advise the International Bureau [BIRPI] on problems concerning the development and general operation of the [Berne] Union" (Rule 5 of the Rules of Procedure of the Permanent Committee) and to the Director of BIRPI, in case the Intergovernmental Copyright Committee — whose meetings he attends in an advisory capacity — is convened in order to consider the advisability of revising some of the provisions of the Universal Convention which deal with the Berne Convention.

5. Thus, the reason for which the Permanent Committee of the Berne Union has been convened in extraordinary session, from March 14 to 17, 1967, is to examine the significance of the resolution of the General Conference of Unesco for the

development and general functioning of the Berne Union, and to assist the Director of BIRPI in formulating the advice which he might be called upon to furnish, if and when the Intergovernmental Copyright Committee meets.

The Unesco Resolution

6. The full text of Resolution 5.122 of the 14th session of the General Conference of Unesco is reproduced in Annex I to this document. It expresses the opinion that "Article XVII of the Universal Convention and the Appendix Declaration relating thereto have consequences which are prejudicial to the interests of the States acceding to that Convention" and invites the Director-General of Unesco "to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution". These lines do not seem to be made explicit in the resolution. However, a circular dated December 30, 1966, from the Acting Director-General of Unesco contains an interpretation. The circular states that "the purpose of this resolution is to suspend, in the case of works which have as their country of origin a developing State, the sanctions provided for in sub-paragraph (a) of the Appendix Declaration relating to Article XVII of the said [Universal Copyright] Convention in the event of the accession thereto by a State which has withdrawn from the Berne Union". The circular of the Secretariat of Unesco also states the aim which the contemplated revision would try to achieve. It states that aim in the following terms: "The proposed change is intended to enable developing countries to enjoy unrestrictedly the protection guaranteed by the Universal Convention which ensures minimum rights for authors, while permitting a wide dissemination of culture". The circular ends by inviting the States parties to the Universal Convention to let the Secretariat of Unesco know, if possible by May 1, 1967, whether they wish a revision conference of the Universal Convention to be convened. It is to be noted in this connection that a revision conference may be convened either at the request of ten Contracting States or by decision of the Intergovernmental Copyright Committee (Article XII of the Universal Convention).

The significance for the Berne Convention of Article XVII and the Appendix Declaration of the Universal Convention

7. Turning now to the question of the significance — for international cooperation in the field of copyright in general and the Berne Convention in particular — of Article XVII of the Universal Convention and the Appendix Declaration relating thereto, it might be useful to recall some of the basic features and objectives of the two Conventions.

8. Both the Berne and the Universal Conventions prescribe that each contracting country has to grant the same protection to literary and artistic works originating in the other contracting countries as it does to works of which it is the country of origin ("national treatment" or "assimilation" principle). It is obvious that such a provision, in itself, contains no assurances that foreign authors will be entitled to a meaningful protection because, if the protection given to

domestic authors is very limited, the national treatment (or assimilation) principle will result in equally limited protection for foreign authors.

9. Recognizing this truth, both Conventions contain provisions which, in effect, limit the otherwise complete freedom of each contracting country to provide for as little or as much protection as it desires.

10. However, these minimal requirements of protection — commonly called "minima" — written into the two Conventions are very different, as they were intended to satisfy very different needs in very different circumstances.

11. The Universal Convention was negotiated just after the Second World War with the principal aim in mind to establish treaty links between the Berne Union countries and most countries of the Western hemisphere. (At that time, out of the present 39 African countries — to which the Unesco Resolution seems to be addressed principally — only five were independent and the very concept of "developing countries" was unknown.) The reason for which it was found desirable to establish a convention distinct from the Berne Convention was not that the American countries did not have laws generally compatible with the Berne Convention. They did as far as the definition of the works protected and the exclusive rights to be granted are concerned, since this definition generally coincided with or even exceeded the requirements of the Berne Convention. This is the reason why — subject only to three exceptions — the drafters of the Universal Convention did not find it necessary to write, and did not write, minima into that Convention. The three exceptions were the following. One was the question of duration, which was given a solution solely to satisfy the requirements of the law of the United States. The second was the question of formalities, which resulted in a compromise provision acceptable to the United States. The third was the question of the right of translation, where a solution was found mainly to accommodate the wishes of Argentina, Mexico, and other Latin American countries not members of the Berne Union.

12. Thus, if considered in its historical context, the Universal Convention satisfied a need which existed — and still exists — with respect to certain countries at a certain point in the development of their copyright laws.

13. On the other hand, the Berne Convention, in its long history of more than eighty years, is so constructed that the adequacy of the national laws should not only be a fact, not guaranteed because independent of the Convention, but should be a legal requirement, inherent in the Convention. Naturally, views on what is adequate, and on what should be required, are subject to constant change. The minima prescribed in the Berne Convention grew both in number and scope until the revision Conference of Brussels in 1948. At that Conference, they continued to grow on certain points but on others (e.g., the new provision on ephemeral recordings) more flexibility was provided for national laws. The proposals of the Government of Sweden — which will constitute the basis for discussions at the Stockholm Conference next summer — continue the trend started at Brussels: on certain points, they provide for new minima; on others, they allow exceptions from exist-

ing minima. The proposed protocol regarding developing countries would, in effect, allow such countries to depart to the extent defined in the protocol from the minima otherwise prescribed for the duration of protection and for the rights of reproduction, translation and broadcasting. The protocol would also allow developing countries to restrict any kinds of rights otherwise guaranteed, if the use of the works is for exclusively educational, scientific, or scholastic, purposes.

14. Notwithstanding these proposed exceptions devised for the benefit of African and any other developing countries, the Berne Convention continues to differ from the Universal Convention in that it (the Berne Convention) specifically *requires* the protection of the usual types of works and the usual types of rights — and not only of the right of translation — as minima. Thereby, the Berne Convention fulfils its historic role of fostering a significant degree of *similarity* among national legislations so that each country acceding to it be assured that, in exchange for giving protection to foreign works, it will receive a comparable, meaningful protection in the other countries for the works of its own nationals. This, by the way, is of course true for all countries, whether developed or developing.

15. The countries of the Berne Union which participated in the establishment of the Universal Convention had in mind — as evidenced by the declarations their delegations made at the Geneva Conference of 1952 (see Annex II to this document) — this role of the Berne Convention when they made their acceptance of the Universal Convention conditional upon the incorporation, in the Universal Convention, of the provisions of Article XVII and the Appendix Declaration.

16. The reason underlying these provisions was a strong belief that countries which, through their membership in the Berne Union, were the architects and guardians of a certain level of meaningful international protection should continue, together, the task of evolving such protection. That such evolution may, for certain countries or in certain circumstances, result in reducing the requirements of minimum protection — as evidenced by the Brussels revision and some of the proposals for the Stockholm revision — shows that the members of the Berne Union are not unmindful of the changing needs resulting from changing circumstances and that, on the contrary, the Berne Convention is flexible in its requirements and thus continued adherence puts no unreasonable burden on the countries parties to it.

17. It is in the light of these considerations that the question of maintaining Article XVII of the Universal Convention and the Appendix Declaration relating thereto should, it is suggested, be considered.

ANNEX I

Resolution 5.122 of the 14th Session of the General Conference of Unesco

“The General Conference,

Referring to the recommendation adopted by the African Study Meeting on Copyright, held at Brazzaville (5-10 August 1963) under the joint auspices of UNESCO and BIRPI, to the effect that the utilization of the works of the mind is an essential factor in the human fulfilment

of the peoples of the developing countries and in their effective contribution to the establishment of mutual understanding among nations,

Recalling the spirit of Article 27 of the Universal Declaration of Human Rights,

Considering that the conventions at present governing international relations in the matter of copyright should be partially revised to take account of the economic, social and cultural conditions obtaining in the developing countries, which are essentially importers of works of the mind, while ensuring that authors enjoy a legitimate minimum degree of protection calculated to meet with the broadest and most general approval,

Considering that this would facilitate the free flow of ideas and the adherence of all countries to an adequate and universal system of protection,

Considering that every possible effort should be made to ensure the universality of copyright,

Considering that Africa, as an integral part of the world community, should be able to benefit from existing conventions by calling for their revision through constructive and sustained action,

Referring to the recommendation of the Committee of African Experts on the study of a Draft Model Copyright Law (Geneva, 30 November-4 December 1964), addressed to the African States which have acceded to the Universal Convention, that they should request modification of Article XI and the relevant resolution, so as to enable Africans to become members of the Intergovernmental Copyright Committee,

Considering that, in order to continue to assist African Member States, at their request, in the matter of copyright, Unesco should, as authorized by the General Conference at its thirteenth session, facilitate the accession of those States to the Universal Copyright Convention, so as to guarantee a minimum degree of protection to authors of works of the mind while allowing a broad dissemination of culture,

Being of the opinion that Article XVII of the Universal Convention and the Appendix Declaration relating thereto have consequences that are prejudicial to the interests of the States acceding to that Convention, since it is stipulated therein that works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union,

Having noted the proposals concerning the application of the Appendix Declaration relating to Article XVII of the Universal Convention to works originating in a developing country, as defined by the Economic and Social Council (Resolution 2029 (XX) of the United Nations General Assembly *),

Invites the Director-General to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution.”

ANNEX II

Extracts from the Records of the Intergovernmental Copyright Conference

(Geneva, August 18 to September 6, 1952)

Report of the Rapporteur-General

“The chief delegate of Italy opened the general discussion... He was most happy at the prospect of a universal convention, provided that such a convention in no way threatened or impaired the Berne Union, that is to say, provided that Article XV and Protocol of the programme text were, in substance, adopted” (p. 72).

“When the Main Commission discussed the Article relating to the Berne Convention (XV of the programme text and XVII finally) and the associated Protocol, many delegations of leading countries of the Berne

*) *Note:* In application of the criterion contained in this Resolution 2029 (XX), out of the 55 member States of the Berne Union the following 24 States should be considered as “developing countries”: Brazil, Cameroon, Ceylon, Congo (Brazzaville), Congo (Kinshasa), Cyprus, Dahomey, Gabon, India, Israel, Ivory Coast, Lebanon, Madagascar, Mali, Morocco, Niger, Pakistan, Philippines, Senegal, Thailand, Tunisia, Turkey, Upper Volta, Yugoslavia.

Union declared that this provision to the effect that the Berne Convention must prevail for countries of the Union was in their view essential, and several made it clear that they could neither sign nor ratify the Convention if the Protocol were omitted" (p. 90).

Minutes: Plenary Sessions

Mr. Thomas (UNESCO Secretariat): "It would be erroneous to believe that the protection, lesser on certain points, provided in the preliminary draft of the Universal Convention, could endanger the conquests achieved in the field of copyright and especially those achieved by the Berne Convention. Article XV of the draft provides for and ensures the integral maintenance of the results of the Berne Convention" (p. 119).

Mr. Pennetta (Italy): "... there is one thing I should like to say at the outset: the Italian Government is very glad to see that there is a provision, in Article XV of the draft Convention, safeguarding the Berne Union. I have to make a very plain statement, as I have received very clear instructions. I could not, on behalf of the Italian Government, accept anything prejudicial to the Berne Union or even anything likely to become so ... The Italian delegation declares that it attaches importance to the retention of this provision in the Convention that we hope to sign" (p. 119).

Sir John Blake (United Kingdom): "... With those two things, that is, the abandonment of formalities and the safeguarding of the Berne Union by means of Article XV and the Protocol, a very great advance in the general international law of copyright will have been made" (p. 124).

Mr. Vassiliou (Greece): "... the Greek Government continues to attach great importance to the standards laid down in the Berne Convention and particularly to Article XV and the relevant protocol" (p. 124).

Mr. Evans (United States of America): "... Certainly, as far as I know, no one has ever had any intention of injuring the Berne system of copyright and it seems to me that the safeguards which Berne has put in the draft Convention are adequate to prevent such unintended results" (p. 125).

Mr. Morf (Switzerland): "... A compromise must and can be reached without detriment to the results so far achieved by the Berne Union. In this connection, it [the Swiss delegation] heartily subscribes to the statements already made by several delegates, notably by the distinguished Head of the Italian delegation" (p. 126).

Mr. Plaisant (France): "... we shall take a stand extremely favourable to the idea of a universal convention, provided that this in no way weakens the principles underlying the Berne Convention. I am glad that, in saying this, I am echoing the opinions already expressed by the honourable delegates of Italy and the United States of America, the Director of the Berne Bureau and the delegate of the United Kingdom, all of whom hold the view that any text that we may adopt must in no way weaken the previous achievements of international law. I therefore wish to state,

on behalf of my Government, that we are willing to approve Article XV of the preliminary draft, on the understanding that the Protocol forms an integral part of it ..." (p. 126).

Mr. Lokur (India): "... Since the present draft Convention was an attempt to reconcile two conflicting systems of copyright protection, it could not claim to be a comprehensive document dwelling upon all aspects of copyright; hence it was impossible to scrap international instruments which had evolved over a long period of years and covered the ground in great detail" (p. 178).

ANNEX III

Extracts of the Universal Copyright Convention

Article XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a Declaration has been annexed to the present article. This Declaration is an integral part of this Convention for the States bound by the Berne Convention on January 1, 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said Declaration, and ratification, acceptance or accession by such States shall include the Declaration as well as the Convention.

Appendix Declaration relating to Article XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works, and which are signatories to the Universal Copyright Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Convention of Berne and the Universal Convention,

Have, by common agreement, accepted the terms of the following declaration:

(a) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(b) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union insofar as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention.

NATIONAL LEGISLATION

SPAIN

Decree determining the percentages and remuneration to be paid to the authors of a cinematographic work

(Of February 10, 1967)¹⁾

Article 1. — The total percentage obtained by adding partial percentages to be paid to the authors concerned by persons showing cinematographic works in public, referred to in Article 4 (1) of the Law of May 31, 1966²⁾, shall be 1.55 per cent of the real incomings of film projecting companies, calculated with the help of the control of box-office returns, set up by the Ordinance of December 22, 1964, in pursuance of the Decree of July 6 of the same year, after deduction of any taxes specifically applying to such showings. The percentage shall

be paid as from June 22, 1966, the date of coming into effect of the Law, of which this provision is a complement.

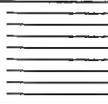
Article 2. — The compensation referred to in the Second transitional provision of the Law shall consist of a transitional surtax amounting to 50 per cent of the net amount resulting from the application of the percentage mentioned in the preceding Article, during the period between January 1, 1967, and June 30, 1968. As regards cinemas situated in localities having less than 3,000 inhabitants, as well as those opened after the effective date of the Law, the exhibitors shall be exempt from the surtax; proportionate reductions shall be allowed regarding cinemas opened during the period covered by the compensation.

¹⁾ Published in the *Boletín Oficial del Estado*, No. 49, of February 27, 1967. — BIRPI translation.

²⁾ See *Copyright*, 1966, p. 216.



GENERAL STUDIES



The Tunisian Law on Copyright

G. STRASCHNOV

CORRESPONDENCE

Letter from Great Britain

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

*(Second and Last Part) **

Dr. Paul ABEL
Consultant on International
and Comparative Law
London

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
April 18 to 21, 1967 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	—
June 12 to July 14, 1967 Stockholm	Intellectual Property Conference of Stockholm, 1967	<p>(a) General Revision of the Berne Convention (Copyright)</p> <p>(b) Revision of the Paris Convention (Industrial Property) on the question of inventors' certificates</p> <p>(c) Revision of the administrative and final clauses of the Berne and Paris Conventions and of the Special Agreements concluded under the latter</p> <p>(d) Establishment of a new Organization</p>	<p>For (a), (b) and (c): Member States of the various Unions</p> <p>For (d): States Members of the United Nations or any of the UN Specialized Agencies</p>	<p>States: States not members of the Unions [for (a), (b) and (c)]</p> <p>Intergovernmental Organizations: United Nations; International Labour Organization; World Health Organization; United Nations Educational, Scientific and Cultural Organization; General Agreement on Tariffs and Trade; United Nations Conference on Trade and Development; United Nations Industrial Development Organization; International Institute for the Unification of Private Law; International Patent Institute; International Vine and Wine Office; International Olive Oil Council; Organization of American States; Council of Europe; European Economic Community; European Free Trade Association; Latin-American Free Trade Association; African and Malagasy Industrial Property Office</p> <p>Interested International Non-Governmental Organizations</p>
October 2 to 10, 1967 Geneva	Committee of Experts on a Patent Cooperation Treaty (PCT)	Examination of the proposed BIRPI plan for facilitating the filing and examination of applications for the protection of the same invention in a number of countries	To be announced later	To be announced later
December 12 to 15, 1967 Geneva	Permanent Committee of the Berne Union (13 th Session)	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 18-19 1967 Geneva (Headquarters of ILO)	Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly by BIRPI, ILO and UNESCO (First Session)	Adoption of the rules of procedure; election of officers; various questions	Congo (Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom of Great Britain and Northern Ireland	All other States parties to the Rome Convention (1961)
to 21, 1967 December 18 Geneva	Interunion Coordination Committee (5 th Session)	Program and Budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Mexico, Morocco, Netherlands, Nigeria, Portugal, Rumania, 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 or of the Berne Union
December 18 to 21, 1967 Geneva	Conference of Representatives of the International Union for the Protection of Industrial Property (2 nd Session)	Program and Budget for the next three-year period	All Member States of the Paris Union	—

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 (3rd 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 (2nd 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)	21st Congress
Guatemala	May 25 to 28, 1967	Inter-American Association of Industrial Property (ASIPI)	Executive Committee
Stockholm	July 12 and 13, 1967	International Patent Institute (IPI)	92nd Session of the Administrative Council
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)	7th Annual Meeting