

Copyright

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INTERNATIONAL UNION

BULGARIA

Declaration concerning the Protocol Regarding Developing Countries (Stockholm Act of the Berne Convention)

Notification of the Director of BIRPI to the Governments of Union Countries

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the Stockholm Act of the Berne Convention for the Protection of Literary and Artistic Works, has the honor to notify him of the declaration made by Bulgaria on January 11, 1968, at the time of the signature of that Act, and transmitted by the Government of Sweden, the terms of which are as follows:

(Original)

“La République populaire de Bulgarie déclare qu'elle admettra l'application des dispositions du Protocole relatif aux pays en voie de développement par rapport aux œuvres dont elle est le pays d'origine, à l'égard de ces pays en voie de développement, qui, se liant par l'article 5.1)a) ont fait les réserves autorisées par le Protocole.”

(BIRPI translation)

“The People's Republic of Bulgaria declares that it will admit the application of the provisions of the Protocol Regarding Developing Countries to works in respect of

which it is the country of origin in regard to developing countries which, becoming bound by Article 5(1)(a), have made the reservations authorized by the Protocol.”

Pursuant to Article 5(2) of the Protocol Regarding Developing Countries, this declaration became effective from the date it was deposited, that is, on January 11, 1968. It shall be applicable, however, only to those countries members of the Berne Union which make the reservations permitted under the said Protocol.

With reference to his Berne Notification No. 1, dated December 5, 1967, the Director of BIRPI calls attention to the declaration deposited by the Republic of Senegal pursuant to Article 5(1)(a) of the Protocol. This declaration and that of the People's Republic of Bulgaria render the provisions of the Protocol applicable in the relations between those two countries.

Geneva, January 30, 1968.

Berne Notification No. 3*)

*) The Berne Notification No. 1 deals with the declaration deposited by the Republic of Senegal (see *Copyright*, 1968, p. 10). The Berne Notification No. 2 deals with the list of the signatory countries of the texts adopted by the Stockholm Conference (see *ibid.*, 1968, p. 2).

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

Thirteenth Session (Geneva, December 12 to 15, 1967)

I. Report

First Part

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) held its thirteenth ordinary session at Geneva from December 12 to 15, 1967.

The twelve member States of the Permanent Committee were represented, namely: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom. Representatives of the following States, members of the Berne Union or party to the Universal Copyright Convention, attended as observers:

Argentina, Austria, Canada, Congo-Kinshasa, Czechoslovakia, Ecuador, Finland, Ghana, Greece, Guatemala, Holy See, Hungary, Ireland, Israel, Japan, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Niger, Pakistan, Philippines, South Africa, Sweden, Turkey, United States of America, Venezuela. In addition, three intergovernmental organizations and sixteen non-governmental international organizations sent observers. The list of participants is attached as an annex to this report.

The Permanent Committee held some of its meetings jointly with the Intergovernmental Copyright Committee, which was holding its ninth session at the same time and place. This was done in the case of the inaugural and final

meetings and meetings at which matters of common interest were discussed. The report on these meetings has been drawn up separately.

Because of the death of the Chairman, Mr. Henry Puget (France), and the resignation of the Vice-Chairman, Mr. Mascarenhas da Silva (Brazil), the Permanent Committee had to elect a temporary Chairman in conformity with Article 9 (1) of its Rules of Procedure. On the proposal of the Director of BIRPI, Mr. Hans Morf, Head of the Swiss Delegation, was chosen for this office. In that capacity, he opened the thirteenth session of the Permanent Committee.

Following the inaugural meeting, the Permanent Committee elected its Officers in accordance with Article 7 of the Rules of Procedure. On the proposal of the Delegation of France, seconded by the Delegation of India, Ambassador T. A. Cippico, Head of the Delegation of Italy, was unanimously elected Chairman. On the proposal of the Delegation of the United Kingdom, Mr. Jorge Carlos Ribeiro (Brazil) was unanimously elected Vice-Chairman.

In accordance with Article 7 (3) of the Permanent Committee's Rules of Procedure, the International Bureau of the Berne Union was responsible for the secretariat of the debates and Mr. Claude Masouyé, Counsellor, Head of the Copyright Division of BIRPI, was accordingly appointed Secretary of the Permanent Committee.

A drafting committee, chaired by Mr. William Wallace (United Kingdom) and composed of representatives from Brazil, Denmark, France, Germany (Federal Republic), India, Rumania and Spain, prepared the draft resolutions submitted to the Permanent Committee for approval.

The Secretary of the Permanent Committee was requested to draft the present report.

With regard to its composition, the Permanent Committee noted that, as there had been no resignations, the membership remained unchanged.

It then adopted its agenda, which included the following items of concern to the Permanent Committee only.

1. The Stockholm revision of the Berne Convention

The Secretary of the Permanent Committee presented a report (document CP/XIII/2) which simply outlined the new substantive provisions of the Berne Convention as adopted by the Stockholm Conference.

Mr. Gae, speaking in the name of the Delegation of India, called to mind the special needs of the developing countries as regards the education of the masses and the raising of living standards, and stressed how very important it was for those countries to be able to profit as rapidly as possible from the measures included for their benefit in the Berne Convention, particularly in the matter of the translation and reproduction of works. He also reminded the delegates that an understanding of the problems facing the developing countries had enabled the Stockholm Conference to agree unanimously to the establishment of a special Protocol, and he particularly emphasized the need for developing countries to be informed of the developed countries' attitude towards the Protocol. He therefore suggested that an inquiry be undertaken by BIRPI so that the developed countries' inten-

tions regarding the implementation of the provisions of the Protocol could be ascertained within a very short period of time.

Mr. Gae (India) referred, furthermore, to Article 5 of the Protocol which allows the latter to be accepted before the substantive clauses of the Berne Convention have been ratified, and raised the question whether the expression "as from the signature of this Convention" meant the signature by the interested country or the signature of the Stockholm Act as a whole. He pointed out that, if the first interpretation were accepted, then a country which had not signed within the specified time limit could not file a declaration of application of the Protocol.

The Director of BIRPI indicated that, in his opinion, the cited expression should be interpreted as referring to the date of the signature of the Convention, namely, July 14, 1967, at Stockholm. Otherwise, a country which had not signed the Convention would be obliged to accede to the substantive clauses thereof in order to admit the application of the Protocol in respect of that country, and this would be contrary to Article 5 itself, which expressly provides for the possibility of accepting the Protocol "at any time" before becoming bound by the substantive clauses of the Convention. Furthermore, the text drawn up at Stockholm does not say "its" signature but "the" signature of this Convention. The same expression is found in Article 7 (7) of the Convention.

Mr. Ulmer (Federal Republic of Germany), Mr. Wallace (United Kingdom) and Mr. Stanescu (Rumania) expressed their agreement with the interpretation of the Director of BIRPI.

Mr. Kerever (France), analyzing the results of the Stockholm revision, considered that, owing to the circumstances, the revision had not been able to maintain the advance of copyright. It appeared to him that there was no question but that the economic and social conditions of developing countries were scarcely compatible with the level of protection established by the Berne Convention. Nevertheless, the Protocol, which had been drawn up for a transitional period pending recognition of full protection, should permit them to co-exist within the framework of the Berne Union with the other countries. Lastly, in the name of the Delegation of France, he considered that such temporary technical assistance should not exceed the strict minimum required.

A discussion followed concerning the conditions in which the inquiry suggested by the Delegation of India might be undertaken.

Mr. Wallace (United Kingdom) observed that his Government had no present intention of signing the Stockholm Act of the Berne Convention and that, furthermore, his Delegation was not in a position to make any promises whatsoever regarding the implementation of the Protocol by the United Kingdom.

Mr. Ulmer (Federal Republic of Germany) reminded the delegates that, in many countries, the question of accepting the Protocol was within the province of the legislature and that the inquiry to be addressed to the executive would have to be restricted to the intentions of the latter. He felt, however, that it was in the interests of all member States of the

Berne Union to know what turn events were likely to take in this connection.

Mr. Morf (Switzerland), Mr. Weincke (Denmark), Mr. de San (Belgium), and Mr. De Sanctis (Italy) emphasized, in turn, that it was impossible to require States to make a final decision on the matter within a specific period of time; they could, however, be consulted as to their intentions.

Mr. Raya Mario (Spain) voiced the opinion that the inquiry might lead to evasive or indefinite answers, inasmuch as many countries would no doubt reply that the matter was under consideration.

Mr. Stanescu (Rumania) pointed out that, as certain formalities had to be complied with before an international convention could be ratified, it would be difficult to know in advance the dates on which instruments of ratification or accession would be deposited. He suggested that the inquiry should deal with the progress of the procedure under way and that it should call attention to the desire of the developing countries to be informed as soon as possible.

Mr. Strnad (Observer from Czechoslovakia) suggested that the inquiry should be addressed to all States members of the Berne Union and not only to the developed countries.

Mr. Adachi (Japan) was of the opinion that the inquiry should pertain to the conditions in which the matter was being investigated and, moreover, should concern the Stockholm Act as a whole.

Mr. Kerever (France), reminding the delegates that application of the Protocol was subject to certain provisions of domestic legislation which would have to be instituted in the developing countries, hoped that the inquiry would also enable the measures envisaged for that purpose to become known.

At the close of the discussion, the Permanent Committee adopted Resolution No. 1, reproduced in an annex to this report.

2. Action to be taken on the resolution adopted by the Permanent Committee at its extraordinary session in March 1967

The Secretary of the Permanent Committee presented the report of the Director of BIRPI on this matter (document CP/XIII/3). The problems involved were those posed by a possible revision of Article XVII of the Universal Copyright Convention and the Appendix Declaration relating thereto, problems which affected the development and general functioning of the Berne Union.

Mr. De Sanctis (Italy) drew the Committee's attention to the need for waiting a certain number of years before the real position regarding the application of the Protocol could be known. It seemed to him that, in the circumstances, the Permanent Committee could not indefinitely postpone the adoption of a definite position on the subject.

Mr. Ulmer (Federal Republic of Germany) underlined the importance of the safeguard clause for the future of the Berne Union and also indicated that it would be premature to take a decision on its amendment before knowing how the Protocol would be implemented. In view of the fact that other questions had been raised in connection with a possible revision of the Universal Convention, he suggested that all of

the problems should be discussed in general at a joint meeting of the Permanent Committee and the Intergovernmental Committee, in an attempt to arrive at a joint solution.

Mr. Mas (France) thought that the results of the Stockholm Conference should permit the problem to be seen as a whole and that, in view of those results, there was no longer any reason to contemplate a revision of the Universal Convention at this time.

Mr. Raya Mario (Spain) supported the proposal of Mr. Ulmer and expressed the opinion that harmony and agreement should be sought in the joint discussions of the two Committees.

After Mr. Ulmer had pointed out that a joint meeting could only provide a forum for an exchange of views, since the decision remained within the province of each Committee, the Permanent Committee accepted his proposal.

3. Other items

The other items included in the Permanent Committee's agenda were examined in joint meetings with the Intergovernmental Copyright Committee.

Second Part

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Intergovernmental Copyright Committee, meeting at Geneva from December 12 to 15, 1967, for their thirteenth and ninth sessions respectively, opened these sessions at a joint meeting.

Professor G. H. C. Bodenhausen, Director of BIRPI, welcomed the representatives of States and observers and expressed the hope that the meetings would be entirely successful. He paid tribute to the memory of Mr. Henry Puget, Chairman of the two Committees, who had died in 1966. Recalling the spirit of international cooperation and mutual understanding of the interests at stake which had prevailed at the meetings of the Stockholm Conference, he hoped that the work of the two Committees would be inspired by the same sentiments.

Mr. Saba, Assistant Director-General of Unesco for International Standards and Legal Affairs, cordially welcomed the States and observers in the name of Mr. Maheu, Director-General. He observed that the present session of the Intergovernmental Committee was of special importance because it was being held not only after the Stockholm Conference but also after the General Conference of Unesco had raised the question of revising the Universal Copyright Convention. Furthermore, he reminded the delegates that Unesco, which was the United Nations organization responsible for implementing Article 27 of the Universal Declaration of Human Rights defining the right to culture, has the duty to protect intellectual creation and also to promote the dissemination of culture and facilitate access to it. He finally underlined the importance which the various organs of Unesco attached to the suggestions of the Intergovernmental Committee. In concluding, the representative of the Director-General of Unesco again saluted the memory of the Committees' former Chairman, Mr. Henry Puget.

After examining separately the questions within their own jurisdiction, the Committees considered in joint meetings the following items on their agenda.

1. Photographic reproduction of copyrighted works by or for libraries, documentation centres and scientific institutions

The Secretariats had submitted a report (document CP/XIII/4-IGC/IX/4) to which were attached two studies of existing practices in this field, one dealing with the Federal Republic of Germany and the other with the United Kingdom.

A number of delegations, in turn, congratulated the consultants on the work accomplished.

Mr. Kaminstein (United States of America), stressing the importance of the problems posed by the use of electronic computers and the new technical processes of reproduction, expressed the hope that the Secretariats would collect information on the subject and declared his willingness to furnish information on existing practices in the United States of America.

Mr. Ulmer (Federal Republic of Germany) considered that it was premature to provide for solutions at the international level and hoped that further studies would be made on the subject, including the question of computers.

Mr. Rohmer (France), Mr. Wallace (United Kingdom), Mr. Weincke (Denmark), Mr. Strnad (Czechoslovakia), Mr. De Sanctis (Italy), and Mr. Raya Mario (Spain), also considered it advisable to continue the studies in the matter, in an attempt to discover the principles on which international policy in this field could be based.

At the close of the discussion, each of the Committees adopted Resolution No. 2 attached to this report.

2. Development of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

The Secretariats informed the Committees of the number of ratifications and accessions in respect of this Convention, and of the forthcoming session of the Intergovernmental Committee provided for by Article 32 of the Convention (document CP/XIII/5-IGC/IX/5). The Committees took note of this information.

3. Assistance to States in developing their national copyright legislation

The Secretariats reported on the outcome of the following meetings: Hispano-American Legal Seminar on Copyright (Madrid, May 30-June 5, 1966), organized at the Hispanic Cultural Institute under the auspices and with the cooperation of BIRPI; Inter-American Meeting of Copyright Experts (Rio de Janeiro, July 4-9, 1966), convened by Unesco with the cooperation of the International Confederation of Societies of Authors and Composers; East-Asian Seminar on Copyright (New Delhi, January 23-30, 1967), convened by BIRPI. The Committees took note of the information communicated to them on those meetings (document CP/XIII/6-IGC/IX/6).

With regard to the fellowships awarded in the field of copyright to competent officials in developing countries, the Secretariat of the Intergovernmental Copyright Committee informed the Committees that under the ordinary programme a fellowship had been awarded to an official of the Republic of China (Taiwan) and that, under the Programme of Participation in the Activities of Member States, the Director-General had decided to allocate fellowships to one national of Morocco, two nationals of the Malagasy Republic, and one national of the Philippines. The Director-General of Unesco had further granted the assistance of an expert to the Republic of the Congo-Brazzaville in order to help that State to draft its domestic legislation on copyright.

The Secretary of the Permanent Committee pointed out that, owing to the preparations for the Stockholm Conference, the procedure for the granting of fellowships in the field of copyright had suffered some delay. However, BIRPI had provided assistance to a number of African States (Morocco, Senegal, Tunisia) in drafting their domestic legislation on copyright.

4. Possible revision of the Universal Copyright Convention

Mr. Saba (Unesco) explained that the Committees had to deal with two distinct questions: on the one hand, the information given by the Secretariat of Unesco on Resolution 5.122 of the General Conference of Unesco concerning the possible revision of Article XVII of the Universal Copyright Convention and, on the other hand, the proposal of the Government of India to instruct a working group to submit a report on the revisions that might be necessary in the Universal Convention.

Mr. Gae (India) was of the opinion that the safeguard clause in respect of the Berne Union, contained in Article XVII of the Universal Copyright Convention, was no longer necessary. He said, furthermore, that if the developed countries did not accept the application of the Protocol adopted at Stockholm, developing countries might be obliged to leave the Berne Union, and also denounce the Universal Copyright Convention, should Article XVII be maintained. Consequently, India supported Resolution 5.122 of the General Conference of Unesco. He also expressed the opinion that a revision of other articles of the Universal Convention might be necessary and proposed, to that end, that a working group be set up, in which developing countries would be adequately represented, in order to study the question.

Mr. Kaminstein (United States of America), after reminding the meeting of the current revision of the American copyright legislation tending towards a *rapprochement* with the Berne Union, pointed out that the new provisions inserted at Stockholm in the Berne Convention in the form of the Protocol Regarding Developing Countries made accession to that Convention by the United States impossible in the foreseeable future. He stated that revisions of the Universal Convention aimed at raising the level of protection while at the same time taking account of the legitimate needs of developing countries could well be considered. He further intimated that the United States of America was not in favor of deleting the

safeguard clause. He considered that application of the Protocol would result in a weakening of copyright without satisfying the needs of the developing countries in the field of education. He expressed the opinion that an international system should be established to meet the requirements of developing countries while maintaining the protection of copyright. He recalled in this connection the recommendation of the Stockholm Conference concerning the creation of an international fund. It seemed to him that a joint study programme should be worked out before going any further, in order to avoid the erosion of international copyright, to consider the possibilities of revising the Berne Convention and the Universal Copyright Convention or any other solution, and to draw up an international programme which would satisfy the needs of developing countries and, at the same time, safeguard the fundamental principles of copyright. He suggested that a working group should be set up as rapidly as possible, to analyse the position of international copyright in the light of the Stockholm results and to formulate appropriate recommendations.

Mr. Ulmer (Federal Republic of Germany) stressed the importance of the development of international copyright at the present time and expressed the need to study all aspects of the question together, that is to say, the relations with developing countries, on the one hand, and the relations between the two existing Conventions (Berne and Universal Copyright), on the other hand. Considering that the satisfactory method was to set up a joint study group of the two Committees, he supported the suggestion submitted by the Delegation of the United States but observed that any action undertaken in this field should be conducted with prudence. He expressed the view that any antagonism between the two Conventions should be avoided in the relations with developing countries, as that would be contrary to their purpose and their mission. As far as the possible revision of the safeguard clause was concerned, he declared that, because of the adoption of the Protocol at Stockholm, he was opposed to any amendment of that provision.

Mr. Coward (Kenya) and Mr. Kumih (Ghana) supported the proposals put forward by the Delegations of India and the United States of America.

Mr. Adachi (Japan), Mr. Morf (Switzerland), and Mr. De Sanctis (Italy) approved the principle of setting up a study group.

Mr. Wallace (United Kingdom) pointed out his neutral position as regards the possible revision of the safeguard clause.

Mr. Mas (France) considered that the disappearance of the safeguard clause was no longer justified after the adoption of the Stockholm Protocol. He felt that, since the Permanent Committee had entrusted to BIRPI the task of instituting an inquiry into the application of that Protocol, the results of that inquiry should be awaited before undertaking any study.

Mr. Laurelli (Argentina) thought that, in order to ensure that governments would be prepared to adopt a definite and permanent attitude, it was essential to avoid mistakes by approaching the situation cautiously and refusing to allow psy-

chological or political considerations to compel them to take hasty steps whose unfortunate consequences would be revealed only with the passing of time. He therefore approved the proposal to set up, in accordance with the established procedure, a study group, which would have to be precisely informed of its purposes and terms of reference. He pointed out that, in accordance with Article XI of the Universal Convention, the report should be communicated to the Intergovernmental Committee, which alone was competent to convene and make preparation for a conference for the revision of the Convention.

Mr. Ulmer (Federal Republic of Germany), Mr. De Sanctis (Italy), and Mr. de San (Belgium) agreed with the suggestion of the Delegate of France, considering it advisable for the study group to await the results of the inquiries undertaken by the Director-General of Unesco, on the one hand, as regards the proposal for a revision of Article XVII of the Universal Convention, and by the Director of BIRPI, on the other hand, on the subject of the application of the Protocol to the Berne Convention.

Mr. Strnad (Czechoslovakia) and Mr. Ribeiro (Brazil) declared themselves in favor of a revision of Article XVII of the Universal Copyright Convention along the lines proposed in Resolution 5.122 of the General Conference of Unesco.

Mr. Gae (India), supporting this view, added that, if ten countries wanted a revision conference, it would have to be convened under Article XII of the Universal Copyright Convention, and that it would be appropriate to try to utilize the occasion for amending any clause also. For this purpose, he suggested the setting up of a study group in which developing countries should be duly represented.

Mr. De Sanctis (Italy) stated that his Government was in favor of a revision of the Universal Copyright Convention, to the extent that the revision was limited to Article XVII.

Mr. Strnad (Czechoslovakia) drew the meeting's attention to the fact that developing countries, by virtue of their sovereignty, are entirely free to cut off all legal relations in the field of international copyright. Noting the case of developing countries which had acceded to neither of the two Conventions, he considered that maintenance of Article XVII of the Universal Convention could constitute an obstacle to their accession to one of the international instruments existing in that field. He expressed the wish that the level of protection would be appreciably the same in countries which were at similar social and economic levels. In conclusion he expressed the view that, since the preparation of a large-scale revision of the Universal Copyright Convention would require several years, it would be advisable to prepare as soon as possible a revision of that instrument restricted to Articles XI and XVII thereof.

Mr. Straschnov (Monaco) emphasized that the United States proposal implied a study on a large scale with a view to achieving a more or less uniform system. As far as Article XVII of the Universal Convention was concerned, he recalled that its institution in 1952 had been perfectly logical but that to maintain such a provision at the present time was no longer necessary as regards the developing countries. He considered

that, if some of the larger countries did not accept the application of the Stockholm Protocol, the developing countries might leave the Berne Union even if Article XVII of the Universal Convention were maintained. He felt, consequently, that revision of that Article was not the main problem. Comparing the provisions of the Stockholm Protocol and those of the Universal Convention, he noted that the only essential difference concerned the right of translation, and that revision of the Universal Convention should be directed to that particular question. Supporting the remark by Mr. Ulmer (Federal Republic of Germany), he felt, like him, that any such revision should deal at the same time with other provisions of the Convention, such as the definition of the concept of publication. He finally declared himself in favor of setting up a study group whose terms of reference should be limited to revision of the Universal Convention, having regard to the needs of developing countries.

Mr. El Bassiouni (Observer of URTNA), stressing the urgent needs of the developing countries, drew the attention of the Committees to the necessity for setting up as rapidly as possible a study group to examine the problems of those countries.

Mr. Gae (India) again emphasized that the problems arising concerned, on the one hand, the revision of Article XVII of the Universal Convention and, on the other hand, the revision of the substantive clauses.

In this connection, Mr. Saba (Unesco) stated that, once the inquiry in progress concerning the advisability of revising Article XVII of the Universal Convention had been completed, an extraordinary session of the Intergovernmental Committee could be convened with a view to preparing, in conformity with Article XII of the Universal Convention, a revision conference. The need for such an extraordinary session could not be affected in any way by the decisions which the Committees might make in connection with the work of the proposed study group.

The Director of BIRPI asked what majority of member States would be required for revision of Article XVII of the Universal Convention: Would it require a unanimous vote, a qualified majority, or a simple majority, and what, in the latter cases, would be the legal position of States which had not voted for the revision? Would they nevertheless be bound by the revision? He drew the meeting's attention to the fact that, if the reply to the last of those questions was in the negative, any revision voted by some only of the States — for example, States which had already expressed themselves in favor of such a revision — would not solve the problem but would in fact lead to a rather chaotic situation.

Mr. Saba (Unesco) replied that the revision of the Universal Convention was not subject to any unanimity and that the revision conference could decide on the majority required. He added that, in view of the present tendency of international jurisprudence, it was probable that different legal relations would be established among States parties to the Convention, according to their having or not ratified the revised text.

At the close of their deliberations, the Committees expressed themselves in favor of the principle of setting up a

joint study group, which should not begin its work, however, until the results of the inquiries mentioned above were known, and whose terms of reference would be determined later in the light of those results.

The Committees each adopted, respectively, Resolution No. 3 attached to this report.

After the adoption of the resolution, some delegations wished to make their attitude quite clear.

Mr. Gae (India) pointed out that, if ten States requested a revision conference to deal with Articles XI and XVII of the Universal Copyright Convention, the resolution in question could not prevent the convening of such a conference.

Mr. Ulmer (Federal Republic of Germany) stressed that it was obviously the task of the Intergovernmental Committee to prepare the revision if such a revision were requested by ten States; however, in view of the fact that Article XVII of the Universal Copyright Convention dealt with relations with the Berne Convention, it would be advisable that the two Committees should hold a joint meeting to consider the problem together.

Mr. Saba (Unesco) pointed out that the resolution under consideration could in no way delay the convening of an extraordinary session of the Intergovernmental Committee, which alone was competent to make preparation for a conference for the revision of the Convention if ten States so requested. He stated that only the Intergovernmental Committee was competent to take a decision concerning the convening of a conference for revision, and that, from the legal standpoint, it would not be correct to refer to a joint meeting of the two Committees, as some speakers had done.

The Director of BIRPI expressed the opinion that, in making preparation for the conference that might be requested for the revision of the Universal Copyright Convention, the Intergovernmental Committee could enlarge the programme of the conference. Suggestions had already been made along those lines, for example, in connection with Article XI. He recalled that, in March 1967, the Permanent Committee had thought it necessary to await the results of the Stockholm Conference. Those results existed, to be sure, in the form of texts, but not yet in the field of application. The programme of revision might be prepared in such a way as to take account of those results and their actual application.

Mr. De Sanctis (Italy) stressed the fact that certain delegations, while adopting the proposed resolution, considered that it should not have the effect of preventing the convening of a conference for the revision of the Universal Convention, even if the revision were limited to certain articles of the Convention.

Mr. Strnad (Czechoslovakia) supported that statement.

Mr. Mas (France) thought that excessive haste was to be avoided, and that it might be advisable first of all to outline a universal copyright policy.

Mr. Wallace (United Kingdom) emphasized that, in the opinion of some delegations, the fact that ten countries requested the revision of Article XVII of the Universal Convention did not exclude the possibility of revising other provisions.

5. Decisions adopted by international organizations in the field of copyright or which may affect copyright

The Committees took note of the information furnished on this subject by the Secretariats (document CP/XIII/7-IGC/IX/7).

6. Date and place of the next regular sessions

The Committees each left it to the Secretariats to fix the date and place of their next regular sessions which, in the absence of a formal invitation from a member State, will be held in the autumn of 1969 at Unesco Headquarters in Paris.

7. Closing of the sessions

Mr. Kaminstein (United States of America) congratulated the two Secretariats on their co-operation and hoped it would become even closer. He said that the results of the present session might be regarded as the beginning of a constructive period for the future of international copyright. He emphasized that the Berne Convention and the Universal Convention were closely connected, and that any change made in the one might affect the other. On behalf of the delegations, he expressed his keen appreciation of the patience and dignity which the Chairman had shown in directing the discussions.

Mr. Gae (India) and Mr. Raya Mario (Spain) joined in the congratulations expressed to the Chairman.

The Chairman of the Committees thanked the participants for the work they had accomplished and the Secretariats for preparing and organizing the meetings. He expressed his gratitude to the Committees for the confidence they had placed in him.

II. Resolutions

RESOLUTION No 1

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union),

Noting the revision of the substantive provisions of the Berne Convention concluded at Stockholm,

Having debated the proposal of the Indian Delegation to find out the intentions of the member States of the Berne Union on the bringing into force of the Protocol Regarding Developing Countries,

Considering that it is in the interests of all the member countries of the Berne Union to be fully informed of each other's intentions on this point,

Requests BIRPI to conduct an inquiry among all States which, having recalled this general interest and underlined the desire made known by some developing countries to be able to benefit as soon as possible from the provisions inserted in their favor in the Protocol to the Berne Convention, would cover the following points:

1. In respect of developed countries:

- (a) the procedure, Parliamentary or otherwise, for the acceptance of the application of the Protocol to works of which they are the country of origin;
- (b) the present state of the procedure for acceptance of the Protocol in accordance with Article 5, ratification or accession to the Protocol or the steps envisaged for this purpose;

2. In respect of developing countries:

- (a) on what points and to what extent they propose to make use of the reservations provided for in the Protocol;

- (b) the provisions which they expect to introduce to this effect in their national legislation, and in particular as to the remuneration of authors and the conditions on which the licenses envisaged by the Protocol will be granted;

Considers that a reasonable time limit should be allowed to reply to this inquiry and that thereafter BIRPI should inform member States.

RESOLUTION No 2

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) sitting with the Intergovernmental Copyright Committee,

Having noted with interest the report presented by the Secretariats on the existing practices in the Federal Republic of Germany and in the United Kingdom in the matter of reproduction by photographic processes or by processes analogous to photography of works protected by copyright, either by or for libraries, documentation centres and scientific institutions, or by or for commercial enterprises or for commercial purposes,

Congratulates the consultants who assisted the Secretariats in the preparation of this report;

Recommends that the Secretariats pursue their studies on this subject;

Has noted that, in implementation of the resolutions adopted by the Permanent Committee and the Intergovernmental Copyright Committee in their preceding sessions, a Committee of Experts chosen in consultation with the Governments concerned, charged with examining the problems posed and formulating suggestions for possible solutions, will be convened jointly by the Director-General of Unesco and the Director of the United International Bureaux for the Protection of Intellectual Property during 1968;

Requests the Secretariats to assemble information on the problems arising from the utilization of electronic computers and other technological equipment.

RESOLUTION No 3

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) sitting with the Intergovernmental Copyright Committee,

Considering the increasing complexity of international copyright problems associated with the various multilateral copyright conventions and the need for analysis and clarification of their effects and interrelationships,

Considering the continuing and urgent needs of developing countries for the use of literary and artistic works, essential to their educational, scientific and cultural development,

Considering the importance of adequate and effective copyright protection, which is necessary for the continuing creation and dissemination of such works,

Considering the proposals for changes in the provisions of the Universal Copyright Convention with respect to its relationship to the Berne Convention and for examining the possibility of revision of the substantive provisions of the Universal Copyright Convention,

Expresses the wish that, as soon as possible after the replies requested by the Director-General of Unesco to his circular letter dated December 30, 1966, on the question of revising Article XVII of the Universal Copyright Convention, and after the replies requested by the Director of BIRPI to the inquiry concerning the attitude of member States of the Berne Union towards the Protocol Regarding Developing Countries are received, a joint group for the study of matters referred to in the Preamble to this Resolution be established;

Suggests that it might be appropriate that the composition and terms of reference of such a study group should be considered at an extraordinary joint session of the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union.

III. List of Participants

I. Member States of the Permanent Committee

Belgium

Mr. Gérard L. de San, Director-General and Legal Counsellor,
Ministry of National Education and Culture.

Brazil

Mr. Jorge Carlos Ribeiro, Secretary of Embassy, Permanent
Delegation of Brazil, Geneva.

Denmark

Mr. Willi Weincke, Head of Department, Ministry of Cultural Affairs.
Mr. Torben Lund, Professor, University of Aarhus.

France

Mr. Yves Mas, Counsellor of Embassy, Ministry of Foreign Affairs.
Mr. André Kerever, Maître des requêtes, Council of State, Cabinet of
the Minister of State for Cultural Affairs.
Mr. Charles Rohmer, Head of the Copyright Office, Ministry of State
for Cultural Affairs.

Germany (Fed. Rep.)

Mr. Eugen Ulmer, Professor, University of Munich.
Mr. H. J. Mangold, Minister Counsellor, Permanent Delegation of the
Federal Republic, of Germany, Geneva.
Mr. Peter Schönfeld, First Secretary, Permanent Delegation of the
Federal Republic of Germany, Geneva.
Mrs. Elsa von Kotzebue, First Secretary, Permanent Delegation of the
Federal Republic of Germany, Geneva.

India

Mr. R. S. Gae, Secretary to the Government of India, Ministry of Law.
Mr. T. S. Krishnamurti, Deputy Secretary to the Government of India,
Registrar of Copyrights, Ministry of Education.

Italy

H. E. Tristram Alvis Cippico, Ambassador; Delegate for Intellectual
Property Treaties, Ministry of Foreign Affairs.
Mr. Gino Galtieri, Head of the Literary and Artistic Property Office,
Presidency of the Council of Ministers.
Mr. Giuseppe Trotta, Legal Counsellor, Italian Delegation for
Intellectual Property Treaties, Ministry of Foreign Affairs.
Mr. Valerio De Sanctis, Attorney-at-Law.

Portugal

Mr. José de Oliveira Ascensão, Professor, Faculty of Law, University
of Lisbon.

Rumania

H. E. Constantin Stanescu, Ambassador, Ministry of Foreign Affairs.
Mr. Marcel Popesco, Second Secretary, Permanent Mission of
Rumania, Geneva.

Spain

Mr. José Raya Mario, Secretary-General of Archives and Libraries.

Switzerland

Mr. Hans Morf, Former Director, Federal Bureau of Intellectual
Property.
Mr. Joseph Voyame, Director, Federal Bureau of Intellectual
Property.

United Kingdom

Mr. William Wallace, C. M. G., Assistant Comptroller, Industrial
Property and Copyright Department, Board of Trade.
Mr. Ronald Bowen, Principal Examiner, Industrial Property and
Copyright Department, Board of Trade.

2. Observers

a) States not Members of the Permanent Committee

Argentina

Mr. Luis Maria Laurelli, Third Secretary, Permanent Mission of
Argentina, Geneva.

Austria

Mr. Helmuth Tades, Sektionsrat, Federal Ministry of Justice.

Canada

Mr. F. W. Simons, Assistant Commissioner of Patents, Patent Office.
Mr. Richard McKinnon, First Secretary, Permanent Mission of
Canada, Geneva.
Mr. Jacques Corbeil, Third Secretary, Permanent Mission of Canada,
Geneva.

Congo-Kinshasa

Mr. Edmond Witahnkenge, Director, Head of the Literary Property
Section, Ministry of Culture and Tourism.

Czechoslovakia

Mr. Vojtěch Strnad, Legal Counsellor, Ministry of Culture and
Information.

Ecuador

Mr. José Nájera, Counsellor, Deputy Permanent Delegate, Permanent
Mission of Ecuador, Geneva.

Finland

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

Ghana

Mr. E. Y. Kumih, Assistant Secretary, Ministry of Information.
Mr. N. K. Adzakey, Editor.

Greece

Mr. Georges Pilavachi, Legal Adviser, Permanent Delegation of
Greece, Geneva.
Mr. Tassos Ioannou, Attorney-at-Law, Supreme Court.

Guatemala

H. E. Eduardo Palomo, Ambassador, Permanent Delegate of
Guatemala, Geneva.

Holy See

Rev. Henri de Riedmatten, O. P., Permanent Observer to the United
Nations, Geneva.

Hungary

Mr. Jenó Nagy, Chargé d'Affaires, Permanent Mission of Hungary,
Geneva.

Ireland

Mr. M. J. Quinn, Controller of Patents, Industrial and Commercial
Property Registration Office.

Israel

Mr. Ze'ev Sber, Registrar of Patents, Designs and Trade Marks,
Ministry of Justice.
Mr. Joël Alon, Second Secretary, Permanent Mission of Israel,
Geneva.

Japan

Mr. Kenji Adachi, Director, Cultural Affairs Bureau, Ministry of
Education.
Mr. Kichimasa Soda, Deputy Permanent Delegate of Japan to Unesco,
Paris.

Kenya

Mr. David J. Coward, Registrar General.

Lebanon

Mrs. Rubi Homsy, First Secretary, Permanent Mission of Lebanon, Geneva.

Luxembourg

Mr. Eugène Emringer, Governmental Counsellor, Ministry of National Economy.

Mexico

Mr. Héctor Cárdenas Rodríguez, Third Secretary, Permanent Delegation of Mexico, Geneva.

Monaco

Mr. Georges Straschnov, Director of Legal Affairs, European Broadcasting Union, Geneva.

Morocco

Mr. Abderrahim H'ssaine, Director-General, Copyright Office.

Netherlands

Mr. J. A. W. Schwan, Division of Legislation on Private Law, Ministry of Justice.
Mr. Diedrich Wechgelaer, Senior Official, Legal Section, Ministry of Cultural Affairs.

Niger

Mr. Mohamadou Seydou, First Secretary, Embassy of Niger, Paris.

Pakistan

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

Philippines

Mr. Venancio L. Yaneza, Technical Assistant, Office of the President of the Philippines.
Mr. Maxie S. Aguillon, Attaché, Permanent Mission of the Philippines, Geneva.

South Africa

Mr. Heinrich Heese, Third Secretary, Permanent Mission of South Africa, Geneva.
Mr. A. J. W. Roodt, Third Secretary (Economic), Permanent Mission of South Africa, Geneva.

Sweden

Mr. Torwald Hesser, Justice of the Supreme Court.

Turkey

Mr. Vahdi Hatay, Cultural Attaché, Embassy of Turkey, Berne.

United States of America

Mr. Abraham L. Kaminstein, Register of Copyrights, Library of Congress.
Mr. Harvey J. Winter, Assistant Chief, Business Practices Division, Bureau of Economic Affairs, State Department.
Miss Barbara A. Ringer, Assistant Register of Copyrights, Library of Congress.

Venezuela

Mr. José Cordero Ceballos, First Secretary, Permanent Delegation of Venezuela, Geneva.

b) Intergovernmental Organizations**International Labour Office (ILO)**

Miss Anna Fidler, Non-Manual Workers' Section.

United Nations Educational, Scientific and Cultural Organization (Unesco)

Mr. H. Saha, Assistant Director-General for International Standards and Legal Affairs.
Mr. S. Tucker, Head, Copyright Division.
Miss M.-C. Dock, Copyright Division.

International Institute for the Unification of Private Law (UNIDROIT)

Mr. Pierre Lalive, Professor, Dean of the Faculty of Law, University of Geneva.

Organization of American States (OAS)

Mr. Joseph S. Dubin, Pan American Union, General Secretariat of OAS.

c) International Non-Governmental Organizations**European Broadcasting Union (EBU)**

Mrs. Madeleine Larrue, Assistant to the Director of Legal Affairs.

International Alliance for Diffusion by Wire (AID)

Mr. Willem H. Metz, President.

International Confederation of Societies of Authors and Composers (CISAC)

Mr. Léon Malaplate, Secretary-General.
Mr. Jean-Alexis Ziegler, Deputy Secretary-General.

International Federation of Actors (IFA)**International Federation of Musicians (FIM)****International Federation of Variety Artistes (IFVA)**

Mr. Rudolf Leuzinger, Secretary-General of FIM.

International Federation of Film Distributors' Associations (FIAD)

Mr. Gontrand Schwaller, Secretary-General.

International Federation of Film Producers' Associations (IFFPA)

Mr. Massimo Ferrara Santamaria, Attorney-at-Law.

International Federation of the Phonographic Industry (IFPI)

Mr. S. M. Stewart, Director-General.
Mr. H. H. von Rauscher auf Weeg, Legal Adviser.

International Federation of Translators (IFT)

Mr. Pierre Malinverni, Chairman of the Copyright Committee.
Mrs. Henriette Malinverni.

Internationale Gesellschaft für Urheberrecht (INTERGU)

Mr. Walter Jost, Delegate for France.

International Literary and Artistic Association (ALAI)

Mr. Henri Desbois, Professor at the Faculty of Law, University of Paris, Permanent Secretary.

International Publishers Association (IPA)

Mr. Hjalmar Pehrsson, Secretary-General.
Mr. André Géranton, Head, Legal Section, French Publishers Association.

International Union of Cinematograph Exhibitors (UIEC)

Mr. Josef Handl, Legad Adviser.

International Writers Guild (IWG)

Mr. Roger Fernay, President, International Copyright Commission.

Union of National Radio and Television Organizations of Africa (URTNA)

Mr. Mohammed El Bassiouini, Secretary-General.
Mr. Germain Tanoh, Radiodiffusion Télévision Ivoirienne.
Mr. B. Zerrouki, Deputy Director-General, Radiodiffusion Télévision Algérienne.

*d) National Organizations**American Book Publishers Council**American Educational Textbook Institute*

Mr. Leo N. Albert, President, Prentice Hall International, Inc.

American Educational Publishers Institute

Mrs. Bella L. Linden, Attorney.

Authors League of America (U. S. A.)

Mr. Irwin Karp, Counsel.

Canadian Copyright Institute

Mr. Roy C. Sharp, Executive Director.

3. BIRPI

Professor G. H. C. Bodenhausen, Director.

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

Mr. Mihailo Stojanović, Legal Assistant, Copyright Division.

4. Officers of the Permanent Committee (1967-1969)

Chairman: Mr. Tristram Alvis Cippico (Italy)

Vice-Chairman: Mr. Jorge Carlos Ribeiro (Brazil)

Secretary: Mr. Claude Masouyé (BIRPI)

**Intergovernmental Committee established under Article 32 of the International Convention
for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
adopted in Rome on October 26, 1961**

First Session

(Geneva, December 18-19, 1967)

Report**Agenda and attendance of the meeting**

1. The first session of the Intergovernmental Committee established under Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961) was held at the International Labour Office in Geneva on December 18 and 19, 1967.

2. The agenda of the first session was as follows:

- (a) Adoption of the Rules of Procedure of the Committee.
- (b) Election of Officers.
- (c) Approval of the list of intergovernmental and non-governmental organizations to be invited to be represented by observers at the sessions of the Committee.
- (d) Consideration of the draft list of points concerning the application of the Rome Convention by member States.
- (e) Communication from the Government of Norway.
- (f) Other business.

3. The following Governments, members of the Committee, were represented: Czechoslovakia, Mexico, Sweden and United Kingdom. From among the Contracting States, the Government of Denmark was represented by an observer. The Governments of the following States non-parties to the Convention were also represented by observers: Canada, France, Ghana, Italy and the United States of America.

4. The intergovernmental and non-governmental organizations attending the session were as follows: League of Arab States, European Broadcasting Union, International Alliance for Diffusion by Wire, International Confederation of Societies of Authors and Composers, International Copyright Society (INTERGU), International Federation of Actors, Inter-

national Federation of Musicians, International Federation of the Phonographic Industry, International Federation of Variety Artistes, International Literary and Artistic Association, International Secretariat of Entertainment Trade Unions, International Writers Guild.

5. The International Labour Office was represented by Mr. H. A. Majid, Assistant Director-General, Mr. B. Knapp, Office of the Legal Adviser, Mr. E. Thompson, Chief of the Non-Manual Workers' Section, and Miss A. Fidler, Non-Manual Workers' Section. The United Nations Educational, Scientific and Cultural Organization was represented by Mr. H. Saba, Assistant Director-General for International Standards and Legal Affairs, Mr. S. Tucker, Head, Copyright Division, and Miss M.-C. Dock, Copyright Division. The United International Bureaux for the Protection of Intellectual Property was represented by Mr. C. Masouyé, Counsellor, Head of the Copyright Division, and Mr. M. Stojanović, Copyright Division.

6. For the list of participants, see Appendix I.

7. On behalf of the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the United International Bureaux for the Protection of Intellectual Property, Mr. H. A. Majid welcomed the representatives of the Governments, members of the Committee and observers of both Contracting and non-Contracting States and declared opened the first session of the Intergovernmental Committee.

**Adoption of the Rules of Procedure of the Intergovernmental
Committee**

8. Amendments were submitted to Articles 1, 2, 3, 6, 7, 9, 10 and 13.

9. Regarding Article 7(1), it was also made clear that its provisions applied to the admission of the general public alone.

10. It was understood in respect of Article 16 that efforts would be made by the three Organizations — the ILO, Unesco and BIRPI — to convene a meeting of the Contracting States for the purpose of elections on the occasion of a meeting of States members of one of the three Organizations.

11. The Rules of Procedure, as amended, were adopted by the Committee. They are appended to this report (see Appendix II).

Election of Officers of the Committee

12. The Committee elected the following officers: Chairman: Mr. W. Wallace (United Kingdom), Vice-Chairman: Mr. T. Hesser (Sweden).

Approval of the list of intergovernmental and non-governmental organizations to be invited to be represented by observers at the sessions of the Intergovernmental Committee

13. The Committee decided to add to the above list the International Federation of Associations of Film Distributors. The list of the organizations is appended to this report (see Appendix III).

14. The Committee also agreed that adoption of this list should not be interpreted as excluding the possibility of inviting any other organizations that might wish to be represented at future sessions of the Committee.

Consideration of the draft list of points concerning the application of the Rome Convention by member States

15. An amendment was submitted to Point 1 of the List of Points. The List of Points, as amended, was adopted by the Committee and is appended to this report (see Appendix IV). It was agreed that it would be transmitted to the Governments of the Contracting States.

16. The Committee also agreed that a communication should be sent to the Governments of States members of the Universal Copyright Convention and of the Berne Convention which had not yet adhered to the Rome Convention, for the purpose of ascertaining their views as to the possibility of their adhering to that Convention.

17. The Committee noted that the replies of Governments would be submitted to it in due course.

Communication from the Government of Norway

18. The Committee had before it a communication from the Government of Norway requesting the Committee to consider whether, in view of the arrangement existing under the Norwegian Act of December 14, 1956, it would be possible for that Government to adhere to the Convention without reservations concerning Article 12, or whether, in accordance with Article 16 of the Convention, such reservations would have to be made.

19. The Committee felt that, as a body, it could not consider itself as competent to give any sort of firm ruling

on such matters which concerned essentially the interpretation of the Convention and of a national law. It was agreed, however, that it could be useful to record the views of the members of the Committee.

20. The Czechoslovak representative felt that in the circumstances it would appear not to be possible for the Norwegian Government to adhere to the Convention, without making reservations as regards Article 12, in accordance with Article 16 of the Convention. There seemed to be a certain contradiction between the terms of the Convention, which referred to a remuneration payable to the performers, or the producers, or to both, and those of the Act of December 14, 1956, which spoke of a tax imposed on the users. The taxes were, in addition, payable to public funds, not to private persons, and as such did not meet the provisions of Article 12. Furthermore, the Norwegian Act appeared to be in conflict with Article 7, paragraph 2, subparagraph (3), of the Convention, read in conjunction with Article 12, as it provided that the part of the fund to be paid was to be decided by public authority, whilst the reference in the Convention to domestic law was intended solely as a subsidiary measure in the absence of agreement between the parties concerned. In his opinion, consequently, in order to adhere to the Convention, the Government of Norway should either replace the concept of a tax by that of remuneration, or make reservations as provided for in Article 16, unless however it were to be demonstrated that the Law of 1956 gave a direct entitlement to the performers and producers to receive a remuneration.

21. The Swedish representative emphasized that Article 12 of the Convention provided for remuneration to be paid by the user either to the performers, or to the producers of the phonograms, or to both. While it clearly did not meet the requirement of that Article as regards the remuneration payable to the performers since such payment was limited to Norwegian performers, the Norwegian Act, which provided for payment to producers of phonograms without distinction, seemingly complied with that particular requirement. Article 5 of the Norwegian law provided that public authority would fix the fee; failing that, producers could, in all probability, go to court. Moreover, there was nothing in Article 12 of the Convention regarding the manner in which remuneration should be fixed. On balance, in his opinion, the Norwegian Government could ratify the Convention without reservations.

22. The Chairman, speaking as the United Kingdom representative, also considered that Article 12 of the Convention was designed to cover international as distinct from national situations. Article 12 of the Convention provided for a single equitable remuneration to be paid by the user to the performers, or to the producers of the phonograms, or to both. It also said that domestic law might, in the absence of agreement between those parties, lay down the conditions as to the sharing of such remuneration. The Norwegian Act not only provided that a certain part of the taxes paid each year into the fund was to be paid compulsorily to producers of phonograms but also did not specify that — contrary to the provision concerning the performers — such producers should

be of Norwegian nationality. In his opinion, as one of the alternative requirements of Article 12 appeared to be met, it would probably not be necessary for a ratification of the Convention by the Norwegian Government to be accompanied by reservations. He also said that whether one spoke of a "tax" or a "fund", the money was in fact provided by those who used records for broadcasting or public performance.

23. The Danish Government observer pointed out that the concept in the Norwegian Law was rather that of a fee than of a tax.

24. The observer of the International Federation of Musicians referred to the action of the ILO which since 1926 had pursued the policy of protecting performers as workers, and emphasized that the Federation had always brought out the importance of social aspects as against the copyright aspects. It should not be overlooked that when the substance of Article 12 of the Convention had first been proposed, its main purpose had been to protect performers collectively from the adverse effects of loss of employment through recordings. The Federation was happy to note that the Norwegian legislation took those aspects into consideration and that at the same time it appeared to meet the requirements of the phonographic industry.

25. The observer of the European Broadcasting Union recalled that the idea of "collective rights," mooted in early discussions preceding the adoption of the Rome Convention, had subsequently been dropped from the Convention in favour of the embodiment of the individual entitlements of either the performers, or the producers of phonograms, or both, to a remuneration from the users. The requirements of Article 12 would be met if the Norwegian Law made provision for such individual entitlements in favour of either of them. However, in his view, it did not do so. Obviously under the Act the performers did not have any such entitlement. In addition, as regards the producers, their entitlement was not against the users but a part of the fund was allocated to them by the competent authority. That view was supported by the text of Article 3 of the Norwegian Act which stated that performing artists or producers could not claim special remuneration. It would therefore, in his view, be difficult for the Government of Norway to ratify the Convention without consenting to the corresponding reservation, or to a change in Norway's domestic law.

26. The observer of the International Federation of the Phonographic Industry pointed out that in Article 1 of the Norwegian Act a distinction was made between artists and producers of phonograms, in that the Article referred specifically to Norwegian artists but mentioned producers without any qualification. The Act included, consequently, all producers without distinction and therefore Article 12 of the Convention was observed. In addition, it might well be said that the Norwegian Act made due provision for the principle that individual entitlements were given in favour of the producers though the quantity of the remuneration had to be fixed annually.

27. The Committee agreed that this report be communicated to the Government of Norway for information.

Other business

28. The observer of the International Federation of Actors, speaking on behalf of the three federations of performing artists, recalled that as far back as 40 years ago the ILO had considered it necessary to protect the performing artists, and emphasized the importance of the first session of the Intergovernmental Committee established under Article 32 of the Rome Convention. Whilst noteworthy progress had been made in the ratification of the Convention, further progress in its implementation was needed. It was hoped that the ILO would continue to be closely associated with the procedure for application of the Convention. It was also to be hoped that the Committee would examine the possibility of extending the scope of the Convention so as to provide protection for performers, including variety artists, as regards the visual and audiovisual fixation of their performances and to eliminate the right of States to make reservations at any time.

Adoption of the Report

29. The Report and its Appendices, with slight amendments, were unanimously adopted by the Committee.

APPENDIX I

List of Participants

Representatives of Governments Members of the Committee

Czechoslovakia

Mr. Vojtěch Strnad, Legal Counsellor, Ministry of Culture and Information.

Mr. Jiří Kordač, Head, Legal Department, Ministry of Culture and Information.

Mexico

Mr. Héctor Cárdeas Rodríguez, Third Secretary, Permanent Delegation of Mexico, Geneva.

Sweden

Mr. Torwald Hesser, Justice of the Supreme Court.

United Kingdom

Mr. William Wallace, C. M. G., Assistant Comptroller of the Industrial Property and Copyright Department, Board of Trade.

Observers of States Parties to the Convention

Denmark

Mr. Willi Weincke, Head of Division, Ministry of Cultural Affairs.

Observers of States Non-Parties to the Convention

Canada

Mr. Roy C. Sharp, Director, Canadian Copyright Institute.

Mr. Jacques Corbeil, Third Secretary, Permanent Mission of Canada, Geneva.

France

Mr. Paul Nollet, Inspector-General, Ministry of Industry.

Ghana

Mr. E. Y. Kumih, Assistant Secretary, Ministry of Information.

Italy

Mr. G. C. Giglioli, Counsellor, Presidency of the Council of Ministers.

United States of America

Mr. Abraham L. Kaminstein, Register of Copyrights, Library of Congress.
Miss Barbara A. Ringer, Assistant Register of Copyrights, Library of Congress.

Observers of Intergovernmental Organizations*League of Arab States*

Mr. M. A. Hetata, Third Secretary.

Observers of Non-Governmental Organizations*European Broadcasting Union (EBU)*

Mr. G. Straschnov, Director of Legal Affairs.
Mrs. M. Larrue, Assistant to the Director of Legal Affairs.

International Alliance for Diffusion by Wire (AID)

Mr. W. H. Metz, President.

International Confederation of Societies of Authors and Composers (CISAC)

Mr. J. A. Ziegler, Deputy Secretary-General.

International Federation of Actors (IFA)

Mr. P. Chesnais, Secretary-General.

International Federation of Musicians (FIM)

Mr. R. Lenzinger, Secretary-General.

International Federation of the Phonographic Industry (IFPI)

Mr. S. M. Stewart, Director-General.
Mr. J. A. L. Sterling, Deputy Director-General.
Mr. M. Lenoble, Delegate for France.

International Federation of Variety Artistes (IFVA)

Mr. P. Chesnais, Secretary-General of IFA.

Internationale Gesellschaft für Urheberrecht (INTERGU)

Mr. W. Jost, Delegate for France.

International Literary and Artistic Association (ALAI)

M^e Renée Blaustein, Administrative Secretary.

International Secretariat of Entertainment Trade Unions

Mr. T. L. Littlewood, President.
Mr. A. J. Forrest, Director.

International Writers Guild (IWG)

Mr. R. Fernay, President, International Copyright Commission.

Secretariat*International Labour Organisation (ILO)*

Mr. H. A. Majid, Assistant Director-General.
Mr. B. Knapp, Legal Adviser.
Mr. E. Thompson, Chief of the Non-Manual Workers' Section.
Miss A. Fidler, Non-Manual Workers' Section.

United Nations Educational, Scientific and Cultural Organization (Unesco)

Mr. H. Saba, Assistant Director-General for International Standards and Legal Affairs.
Mr. S. Tucker, Head, Copyright Division.
Miss M.-C. Dock, Copyright Division.

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

Mr. C. Masouyé, Counsellor, Head, Copyright Division.
Mr. M. Stojanović, Legal Assistant, Copyright Division.

APPENDIX II**Rules of Procedure
of the Intergovernmental Committee**

established under Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted in Rome on October 26, 1961

SECTION I

Operation of the Committee

Article 1

Composition

(1) Each member State of the Intergovernmental Committee (hereinafter called "the Committee") established under Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter called "the Convention") shall appoint a representative and may also appoint a substitute to take part in the work of the said Committee.

(2) The representative and substitute of each member State of the Committee may be accompanied by technical advisers.

(3) Each member State of the Committee shall transmit the names of the representative, substitute and technical advisers it appoints to the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization or the Director of the United International Bureaux for the Protection of Intellectual Property.

Article 2

Sessions

(1) The Committee normally shall hold a session every two years as decided by the Chairman after consulting with the members of the Committee and if considered expedient by the majority of the members.

(2) The Chairman shall also convene an extraordinary session if requested to do so by a majority of the members of the Committee or by a majority of the States parties to the Convention.

(3) The date of each session shall be fixed by the Chairman of the Committee after consulting the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization, and the Director of the United International Bureaux for the Protection of Intellectual Property.

(4) The sessions shall be held in turn at the headquarters of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization, and the United International Bureaux for the Protection of Intellectual Property.

(5) As far as possible, sessions shall be held in the same city as, and immediately before or after, those of the Intergovernmental Committee of the Universal Copyright Convention or the Permanent Committee of the Berne Union.

Article 3

Officers of the Committee

(1) The Committee shall elect from among its members a Chairman and a Vice-Chairman.

(2) The Chairman and the Vice-Chairman shall remain in office until their respective successors are elected at the beginning of the following session. They shall not be immediately re-eligible to the same office.

Article 4

Agenda

(1) The Chairman of the Committee, after consulting the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization, and the Director of the United International Bureaux for the Protection of Intellectual Property, shall prepare a provisional agenda for each session taking into account the suggestions made by the Contracting States.

(2) The said agenda shall be distributed at least three months before the date fixed for the session.

(3) The documents necessary for the consideration of the various items on the provisional agenda shall be distributed with the latter or circulated in good time.

Article 5

(1) The Committee shall establish the definitive agenda of the session at the first sitting of that session.

(2) During a session the Committee may change the order of the items on the agenda or add new items if they are of an urgent nature.

Article 6

Duties of the Chairman

(1) The Chairman's duties are to open and close sittings, to bring before the Committee any communications which may concern it, to direct its deliberations, to maintain order, to ensure that the provisions of these Rules are observed, to grant or withdraw the right to speak, to rule on points of order and, as necessary, to put proposals to the vote and announce the results.

(2) The Chairman may take part in debates and votes, except when his seat on the Committee is occupied by a substitute. He shall not have a casting vote.

(3) The Vice-Chairman shall preside over sittings or parts thereof over which the Chairman is unable to preside.

(4) The Vice-Chairman shall have the same rights and duties as the Chairman when performing his functions.

Article 7

Participation in the proceedings

(1) In the absence of a decision to the contrary, the sittings of the Committee shall be private.

(2) In addition to the members of the Committee and their substitutes and technical advisers, the following may attend sittings and take part in the discussions without,

however, enjoying the right to vote: representatives of international intergovernmental organizations and observers from international non-governmental organizations invited by decision of the Committee to be represented either permanently or at specific sessions.

(3) The following shall also be admitted to the sittings:

- (a) persons appointed as observers by Contracting States which are not members of the Committee;
- (b) persons appointed as observers by States invited to the Diplomatic Conference held in Rome in 1961 or by States members of the United Nations;
- (c) any consultant the Committee may wish to hear.

Article 8

Voting

(1) Each member of the Committee shall have one vote.

(2) Voting shall normally be by show of hands.

(3) A record vote shall be taken when requested by at least one-third of the members.

(4) In the event of a record vote, the names of the voters shall be listed in the report of the sitting, which shall also indicate the abstentions.

(5) A vote shall be taken by secret ballot whenever requested by at least one-third of the members.

Article 9

Quorum

(1) The Committee shall not do business unless at least half of its members are present at the beginning of the session.

(2) The Committee shall take its decisions by a simple majority.

(3) When there is doubt as to the result of a vote by show of hands, the Chairman may immediately take a record vote.

Article 10

Motions and amendments

(1) Motions as to procedure may be moved verbally and without previous notice. They may be raised at any time except after the Chairman has called upon a speaker and before the speaker has completed his statement.

(2) Motions as to procedure include the following:

- (a) motions to refer the matter back;
- (b) motions to postpone consideration of the question;
- (c) motions to adjourn the sitting;
- (d) motions to adjourn the discussion of a particular question;
- (e) motions to pass on to the next item on the agenda of the sitting;
- (f) motions to ask for the opinion of the Chairman or Secretariat;
- (g) motions for the closure of the discussion.

(3) Amendments must be submitted in writing in one of the official languages.

(4) (a) Amendments must be put to the vote before the proposals to which they refer.

(b) If there are several amendments to a proposal, the chairman shall determine the order in which they are to be discussed and put to the vote. The decisions of the Chairman may be appealed against to the Committee.

(c) If a proposal is amended as the result of a vote, the amended proposal shall be submitted to the Committee for a final vote.

(5) (a) An amendment may be withdrawn by the person who submitted it, unless an amendment to that amendment is under discussion or has been adopted.

(b) An amendment thus withdrawn may be moved without previous notice by another member of the Committee.

Article 11

Secretariat

(1) The Secretariat of the Committee shall be composed of officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization, and the United International Bureaux for the Protection of Intellectual Property, appointed respectively by the Directors-General and the Director of those three institutions.

(2) Representatives of those three institutions may address the Committee if authorized by the Chairman to do so.

Article 12

Languages

(1) All documents of the Committee shall be written and distributed in English, French and Spanish unless unanimously decided otherwise.

(2) The languages used in the discussions of the Committee shall be English, French and Spanish. Statements in one of those languages shall be translated into the other two unless unanimously decided otherwise.

Article 13

Report

A report of each session shall be drawn up by the Secretariat and submitted to the Committee for approval at the last sitting of the session. They shall subsequently be transmitted to all the participants and to the governments of all the Contracting States.

Article 14

Application of these Rules to Subcommittees and Working Parties

(1) Unless the Committee decides otherwise, the provisions of these Rules shall apply, *mutatis mutandis*, to all subcommittees, working parties and drafting committees established by the Committee.

(2) The Committee may add technical experts, without power to vote, to any subcommittees, working parties and drafting committees which it establishes.

SECTION II

Term of Office of the Members of the Committee and Provisions for the Re-election of the Committee

Article 15

Term of office of the members of the Committee

(1) The term of office of the members of the Committee elected on May 18, 1965, shall expire at the conclusion of the second ordinary session of the Committee. However, in accordance with Article 3, paragraph 2, of the Rules, the Chairman and Vice-Chairman shall remain in office until the ensuing elections.

(2) If the number of thirteen Contracting States is reached before the expiry of the period mentioned in paragraph 1 above, the three new members to be nominated under Article 32, paragraph 2, of the Convention shall be co-opted by the members in office.

(3) In like manner, if the number of nineteen Contracting States is reached before the expiry of the period mentioned in paragraph 1 above, the three additional members also to be nominated under Article 32, paragraph 2, of the Convention shall also be co-opted by the members in office.

(4) The term of office of the members nominated in accordance with paragraphs 2 and 3 above shall expire at the end of the second ordinary session of the Committee.

Article 16

Re-election of the Committee

(1) New elections shall be held after the second ordinary session of the Committee with the participation of all States that are parties to the Convention at the time of the elections. Each State shall be entitled to appoint a representative to take part in the elections and each representative thus appointed shall have one vote. The number of members to be elected shall depend on the number of States parties to the Convention at the time of the elections, as provided for in Article 32, paragraph 2, of the Convention.

(2) First, two-thirds of the members shall be elected from among all the Contracting States. The remaining third shall be elected from among the Contracting States that are not outgoing members, in so far as these States are sufficiently numerous for the purpose.

Article 17

Election procedure

(1) The elections shall be organized, taking account of the provisions of the foregoing Article, by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization, and the Director of the United International Bureaux for the Protection of Intellectual Property, each of whom shall appoint an official of his Organization to act as teller.

(2) Voting shall be by secret ballot.

(3) Each representative shall receive a ballot paper with a list of all the Contracting States and shall be entitled to

vote for as many candidates as there are vacant seats. One of the tellers shall call the roll of representatives, each of whom shall answer his name and place his ballot paper in the box. The tabulation of the vote shall be done by three tellers.

(4) No Contracting State shall be considered elected unless it obtains more than half the votes cast by the representatives present. If one or more seats are still vacant after the first ballot, there shall be one or more subsequent ballots with each representative still having the right to vote for as many candidates as there are vacant seats.

(5) After completion of the voting, the tellers shall announce the results. A report shall be drawn up for official transmission to the Contracting States. It shall be signed by the three tellers.

(6) The above procedure shall be repeated after each second ordinary session of the Committee, the term of office of each member always covering two consecutive ordinary sessions.

(7) If the increases in the number of Contracting States mentioned in Article 15, paragraphs 2 and 3, occur during the interval between elections, the procedure set forth in the said paragraphs 2 and 3 shall be followed and the terms of office of the members thus appointed shall run until the next elections.

(8) If a State representative on the Committee ceases to be a party to the Convention, as provided in Article 28, paragraph 2 or 4, of the Convention, its seat shall be declared vacant and another member shall be co-opted by the members in office for the remainder of the term in question.

SECTION III

Amendment of the Rules of Procedure

Article 18

The Committee may amend the present Rules of Procedure as it deems fit on condition that the proposed amendments are previously included in the provisional agenda.

APPENDIX III

List of International Organizations

invited to be represented by observers at the sessions of the Intergovernmental Committee established under Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted in Rome on October 26, 1961

Intergovernmental Organizations

United Nations
International Institute for the Unification of Private Law
Council of Europe
League of Arab States
Organization of African Unity
Organization of American States

Non-Governmental Organizations

Asian Broadcasting Union (ABU)
European Broadcasting Union (EBU)

Inter-American Association of Broadcasters (IAAB)
International Alliance for Diffusion by Wire (AID)
International Bureau for Mechanical Reproduction (BIEM)
International Confederation of Professional and Intellectual Workers (CITI)
International Confederation of Societies of Authors and Composers (CISAC)
International Copyright Society (INTERGU)
International Federation of Actors (IFA)
International Federation of Film Distributors' Associations (FIAD)
International Federation of Film Producers' Associations (FIAPF)
International Federation of Musicians (FIM)
International Federation of the Phonographic Industry (IFPI)
International Federation of Variety Artistes (IFVA)
International Law Association (ILA)
International Literary and Artistic Association (ALAI)
International Music Council (IMC)
International Radio and Television Organization (OIRT)
International Secretariat of Entertainment Trade Unions (ISETU)
International Theatre Institute (ITI)
International Union of Cinematograph Exhibitors (UIEC)
International Union of National Associations of Hotel, Restaurant and Café Keepers (HoReCa)
International Writers Guild (IWG)
Union of National Radio and Television Organizations of Africa (URTNA)

APPENDIX IV

List of points concerning the application and operation of the Convention

1. What are the national laws or regulations which ensure the application of the Convention in accordance with Article 26 or otherwise relate to matters included in the Convention. Please supply copies of such laws and regulations.

2. For the period under review please indicate whether, and in what matter, the Convention or laws or regulations giving effect thereto have been invoked in cases arising in your country or in representations made to the Government of your country.

3. If such cases have arisen or such representations have been made, please indicate their substance and the outcome or present status of such cases or representations.

4. Please indicate, either with reference to your reply to points 1 and 2 above, or independently thereof, what, if any, problems have been encountered concerning the application and operation of the Convention.

5. Are there any other matters which you wish to raise or observations which you wish to make in connection with the application and operation of the Convention or in respect of the substantive content of its provisions?

NATIONAL LEGISLATION

TANZANIA

The Copyright Act, 1966

(Of December 14, 1966)¹⁾

An Act to disapply the Copyright Act, 1911 of the United Kingdom hereto in force in Tanganyika and to make provision for Copyright in Literary, Musical and Artistic Works, Cinematograph Films, Sound Recordings and Broadcasts

Enacted by the Parliament of the United Republic of Tanzania

Short title and commencement

1. — This Act may be cited as the Copyright Act, 1966, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint²⁾.

Interpretation

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

“artistic work” means a work, irrespective of its artistic quality, of any of the following descriptions: —

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in a cinematograph film;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship, and also, subject to the provisions of section 3 (3), includes pictorial woven tissues and articles of applied handicraft and industrial art;

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

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

“broadcasting authority” means the ministry or department responsible for the operation of the broadcasting service known as Radio Tanzania or any other broadcaster authorized by or under any written law;

“building” includes any structure;

“cinematograph film” means the first fixation on a film or on any other medium of a sequence of visual images or electronic impulses capable of being seen as a moving picture and of being the subject of reproduction, and includes the recording of a soundtrack associated with the cinematograph film;

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

“copy” means a reproduction in written form, in the form of a recording or cinematograph film, or in any other material form:

Provided that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright under this Act;

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

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

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

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

“Minister” means the Minister for the time being responsible for legal affairs;

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

“qualified person” means a person who is a citizen of or domiciled or ordinarily resident in the United Republic or, in the case of a corporation, which is incorporated under or in accordance with any written law;

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

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

¹⁾ Published in the *Gazette of the United Republic of Tanzania*, No. 61 of 1966.

²⁾ This Act came into force on October 1, 1967.

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

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

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

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

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

- (a) a work shall be taken to have been published only where copies have been issued in sufficient quantities to satisfy the reasonable requirements of the public;
- (b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

Works eligible for copyright

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

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts.

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

- (a) sufficient effort has been expended on making the work to give it an original character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

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

Copyright by virtue of nationality or residence and duration of copyright

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

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

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

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

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

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

(5) For the purposes of this section a publication of a work under two or more names shall not be deemed to be pseudonymous unless all those names are pseudonyms.

Copyright by reference to country of origin

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

- (a) being a literary, musical or artistic work or a cinematograph film is first published in Tanganyika; or
- (b) being a sound recording, is made in Tanganyika, and which has not been the subject of copyright conferred by section 4 of this Act.

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

Copyright in works of Government and international bodies

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

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

(3) Copyright conferred by this section on a cinematograph film, photograph, sound recording or broadcast shall

have the same duration as is provided for by section 4 of this Act in relation to a similar work.

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

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

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

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

- (i) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, if any public use of the work is accompanied by an acknowledgment of its title and authorship except where the work is incidentally included in a broadcast;
 - (ii) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
 - (iii) the reproduction and distribution of copies, or the inclusion in a film or broadcast, of any artistic work situated in a place where it can be viewed by the public;
 - (iv) the incidental inclusion of an artistic work in a film or broadcast;
 - (v) the inclusion in a collection of literary or musical works which includes not more than two short passages from the work in question if the collection is designed for use in any school registered in accordance with the provisions of the Education Ordinance or university and includes an acknowledgment of the title and authorship of the work;
 - (vi) the broadcasting of a work if the broadcast is intended to be used for educational purposes;
 - (vii) any use made of a work enumerated in section 3 (1) of this Act in any school registered in accordance with the provisions of the Education Ordinance or any university for the educational purposes of that school or university:
- Provided that every reproduction made for the purposes of this paragraph shall be endorsed with the date on which it is made and shall be destroyed before the expiration of twelve calendar months immediately following such date;
- (viii) the use of any such work in any performance or exhibition arranged by a school registered under the Education Ordinance or university where admittance to such performance or exhibition is free of charge and restricted to persons directly connected with the activities of the school or university;
 - (ix) the making or importing of a sound recording of a literary or musical work and the reproduction of such sound recording if intended for retail sale in Tanganyika and provided that a fair compensation is paid to

the owner of the relevant part of the copyright in the work in accordance with regulations made under section 15 of this Act;

- (x) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment;
- (xi) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific or educational institutions as the Minister may, by order published in the *Gazette*, prescribe, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;
- (xii) the reproduction of a work by or under the direction or control of a broadcasting authority where such reproduction or any copies thereof are intended exclusively for lawful broadcast by that broadcasting authority and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work; any reproduction of a work made under this paragraph may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcasting authority, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;
- (xiii) the broadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under section 14 of this Act is concerned, provided that subject to the provisions of this section the owner of the broadcasting right in the work receives fair compensation determined, in the absence of agreement, by the Minister;
- (xiv) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding;
- (xv) the reproduction of the headnotes or sidenotes of any law report.

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

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

Broadcasting of works incorporated in cinematograph films

8. — (1) Where the owner of the copyright in any literary, musical or artistic work authorizes a person to incorporate the work in a cinematograph film and a broadcasting authority broadcasts the film, it shall, in the absence of any express agreement to the contrary, be deemed that the owner of the copyright authorized such broadcast.

(2) Notwithstanding the provisions of subsection (1) where a broadcasting authority broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority:

Provided that in the absence of an agreement the amount of such compensation shall be determined by the Minister.

Nature of copyright in sound recordings

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

Provided that the provisions of paragraphs (i), (vii), (viii), (xi), (xii) and (xiv) of the proviso to subsection (1) of section 7 shall apply *mutatis mutandis* to the copyright in a sound recording.

Nature of copyright in broadcasts

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

Provided that —

- (i) the provisions of paragraphs (i), (vii), (viii), (xi) and (xiv) of the proviso to subsection (1) of section 7 shall apply *mutatis mutandis* to the copyright in a broadcast;
- (ii) the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

First ownership of copyright

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

Provided that where a work —

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

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

(2) Copyright conferred by section 6 of this Act shall vest initially in the Government or such international bodies or other organizations as may be prescribed, and not in the author.

Assignments and licences

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

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to

control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

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

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

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

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

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

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

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

Infringement

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

(2) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

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

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

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement,

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

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

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

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

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

(6) In this section —

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

“court” means the High Court;

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

Minister's power where author refuses to grant licence or imposes unreasonable terms

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

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

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

(2) In this section —

“licensing body” means an organization which has as its main object, or one of its main objects, the negotiation or granting of licences in respect of copyright works or, where there is no such organization, the owner of the copyright.

Regulations

15. — The Minister may make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may prescribe anything to be prescribed or which may be prescribed under this Act except where the thing to be prescribed is required to be prescribed by an order.

Extension

16. — The Minister may, subject to such modification as he considers appropriate, extend, by order published in the *Gazette*, the application of this Act in respect of any or all of the works referred to in section 3 (1) of this Act —

- (a) to individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of; or
- (b) to works, other than sound recordings, first published in; or
- (c) to sound recordings made in, a country which is a party to a treaty to which the United Republic is also a party and which provides for copyright in works to which the application of this Act extends.

Application to works made before commencement of Act

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

Abrogation of common law rights

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

Disapplication and repeal

19. — (1) The Copyright Act, 1911 of the United Kingdom in so far as it forms part of the laws of Tanganyika shall cease to apply or have effect in Tanganyika.

(2) The Copyright Ordinance is hereby repealed.

UNITED STATES OF AMERICA

Public Law 90-141 (90th Congress, S. J. Res. 114)

(Of November 16, 1967)

Joint Resolution extending the duration of copyright protection in certain cases

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which the renewal term of copyright subsisting in any work on the date of approval of this resolution, or the term thereof as extended by Public Law 87-668, or by Public

Law 89-142 (or by either or both of said laws), would expire prior to December 31, 1968, such term is hereby continued until December 31, 1968.

Approved November 16, 1967.

CORRESPONDENCE

Letter from Brazil

Hermano DUVAL
Barrister, Rio de Janeiro

INTERNATIONAL ACTIVITIES

Intergovernmental Copyright Committee (Unesco)

Ninth Session (Geneva, December 12 to 15, 1967)

I. Report

The Intergovernmental Copyright Committee, established by Article XI of the Universal Copyright Convention, held its ninth ordinary session at Geneva, at the Headquarters of the International Telecommunication Union, from December 12 to 15, 1967.

The twelve member States of the Intergovernmental Copyright Committee (Argentina, Brazil, France, Federal Republic of Germany, India, Italy, Japan, Mexico, Spain, Switzerland, United Kingdom, United States of America) were represented at the ninth session.

The following States, parties to the Universal Copyright Convention or members of the United Nations or of the United Nations Educational, Scientific and Cultural Organization, were represented by observers: Austria, Belgium, Canada, Congo (Kinshasa), Czechoslovakia, Denmark, Ecuador, Finland, Ghana, Greece, Guatemala, Holy See, Hungary, Ireland, Israel, Kenya, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, Niger, Pakistan, Philippines, Portugal, Republic of South Africa, Rumania, Sweden, Turkey, Venezuela.

The representatives of four intergovernmental organizations and sixteen non-governmental international organizations, and five non-governmental national organizations at-

tended the meeting as observers. The list of participants is given as an annex to this report¹).

The Intergovernmental Committee held some of its meetings jointly with the Permanent Committee of the International Union for the Protection of Literary and Artistic Works, which was holding its thirteenth session. This was the case in the inaugural and final meetings and the meetings at which matters of common interest were discussed. The report on these meetings has been drawn up separately²).

I. Opening of the ninth ordinary session

In opening the ninth ordinary session of the Intergovernmental Copyright Committee, Mr. Morf (Switzerland), temporary Chairman of the Committee, paid tribute to the memory of Mr. Henry Puget, Chairman of the Committee from 1956 to 1957 and since 1965. He reminded the delegates of Mr. Puget's eminent rôle on the international level as delegate of France to all meetings concerned with intellectual property. The Intergovernmental Committee observed a moment of silence in memory of Mr. Henry Puget.

¹) See above, p. 30, the list of participants of the Permanent Committee of the Berne Union. The persons mentioned in this list are the same as the participants of the Intergovernmental Copyright Committee, subject, as regards the States concerned, to the membership of both Committees.

²) See above, p. 25, the second part of the Report of the Permanent Committee of the Berne Union.

2. Election of officers

The Intergovernmental Committee elected its officers. On the proposal of the delegation of France, Ambassador T. A. Cippico, Head of the delegation of Italy, was unanimously elected Chairman. On the proposal of the delegation of the United States of America, Mr. J. C. Ribeiro (Brazil) was unanimously elected Vice-Chairman.

A drafting committee, chaired by Mr. William Wallace (United Kingdom) and composed of representatives from Argentina, France, India, Japan, and the United States of America, prepared the draft resolutions for submission to the Intergovernmental Committee.

The drafting of this report was entrusted to the Secretariat of the Committee, which, in accordance with Article 17 of the Rules of Procedure, is provided by the United Nations Educational, Scientific and Cultural Organization.

3. Adoption of the definitive agenda

At the request of Mr. Ulmer (Federal Republic of Germany), seconded by Mr. Kaminstein (United States of America), the Committee decided to examine, at the meetings held jointly with the Permanent Committee of the International Union for the Protection of Literary and Artistic Works, item 6 of the provisional agenda concerning the proposal forwarded by the Government of India to form a working group, in which the developing countries would be adequately represented, to present, before the next General Conference of Unesco, a report on the revisions which might have to be made in the Universal Copyright Convention.

The Intergovernmental Committee consequently adopted the following agenda:

- (a) application of the Universal Copyright Convention;
- (b) amendment of the Rules of Procedure with respect to the renewal of the Committee;
- (c) partial renewal of the Committee.

4. Application of the Universal Copyright Convention

The Secretariat of the Committee submitted the report on this matter (document IGC/IX/2) and gave an account of the new accessions between the eighth and ninth sessions of the Committee. Four new States (Kenya, Netherlands, Venezuela, Yugoslavia) deposited with the Director-General of Unesco their instruments of ratification of the Convention and its annexed Protocols 1, 2 and 3, or their instruments of accession thereto, and one State (Italy), party to the Convention and to Protocols 2 and 3, deposited its instrument of ratification of annexed Protocol 1. The countries which have deposited instruments of ratification or of accession now number 55. The Committee took note of the report.

5. Amendment of the Rules of Procedure with respect to the renewal of the Committee

At the eighth session of the Committee, held at Paris from November 15 to 18, 1965, the delegation of the United Kingdom had put forward a proposal to the effect that Articles 2 and 29 of the Rules of Procedure should be amended so as to ensure that membership in the Committee would

be rotated among the States parties to the Universal Copyright Convention.

As a result of the ensuing debates on the matter, the Intergovernmental Committee had recognized the necessity of amending certain of the rules concerning renewal of the Committee and had decided to postpone the study of this question until the next session. The Committee furthermore requested the Secretariat of the Committee to consult with the States party to the Universal Convention and to submit a report on the matter to the Committee at its next session.

On implementation of these decisions, the Secretariat of the Committee in a letter dated January 20, 1967, consulted each State party to the Universal Convention on the amendments that should be made to the Rules of Procedure in order to improve the renewal of the Committee's members.

The Secretariat of the Committee communicated the results of this inquiry, to which the following 20 States sent replies: Argentina, Austria, Belgium, Denmark, Finland, Federal Republic of Germany, Guatemala, Ireland, Israel, Japan, Kenya, Liberia, Nicaragua, Nigeria, Panama, Sweden, Switzerland, United States of America, Venezuela, and Zambia.

From the replies that came to the Secretariat (documents IGC/IX/3, 3 Add. 1 and 3 Add. 2), it appeared that the States considered it necessary to restrict the number of States that could be immediately re-elected, and that various procedures could be envisaged for the election or re-election to vacant seats.

Mr. Laurelli (Argentina) pointed out that the proposals of Argentina contained in document IGX/IX/3 corresponded to the practice generally followed by international organizations.

Mr. Saba (Unesco) requested that any proposals made by the delegations be submitted as amendments in writing.

Mr. Ulmer (Federal Republic of Germany) observed that the matter under discussion was very complex. According to the proposal of the United Kingdom, only three of the four outgoing States could be re-elected. But the procedure remained to be determined.

Mr. Laurelli (Argentina) asked whether it would not be possible before proceeding to vote on the amendments to the Rules of Procedure, for the Drafting Committee to submit an amended text based on the proposal made by the United Kingdom.

Mr. Rohmer (France) seconded the statements made by the delegate of the German Federal Republic. The matter is too complex for a direct vote to be taken on the amendments to be made to the Rules of Procedure. The desired objective is to ensure, in the membership of the Intergovernmental Committee, an equitable geographic distribution among the States parties to the Universal Copyright Convention. Several systems have been suggested in order to achieve that objective: that of the United Kingdom, that of Argentina which consisted in drawing lots to determine which country's mandate would not be immediately renewable, and that of Israel which envisaged the possibility of increasing the number of States that are members of the Committee.

Mr. Saba (Unesco) remarked that it would be desirable to increase the number of the Committee's members, but that

this could be envisaged only within the framework of a conference of revision of the Universal Copyright Convention, since the number of the Committee's members is specified in Article XI.

Mr. Raya Mario (Spain) asked whether the amendments to the Rules of Procedure adopted by the present session of the Committee, in a letter dated January 20, 1967, consulted would be possible for the delegates first to consult their respective governments.

Mr. Saba (Unesco) answered that the amendments to the Rules of Procedure would take immediate effect. He reminded the delegates that the previous session of the Intergovernmental Committee had postponed examination of the matter until the present session so as to enable the representatives of the States to consult their governments.

Mr. Raya Mario (Spain) remarked that the governments had been consulted only on the proposals of the United Kingdom and not on the consequences of applying those proposals.

Mr. Morf (Switzerland) wished to raise a point of procedure. He felt that a formal presentation by each delegation of its proposals was too complicated a procedure.

Mr. Saba (Unesco) said that each delegation had to formulate the amendments it wanted to submit.

Mr. Ulmer (Federal Republic of Germany) noted that there were in fact only two proposals, namely that of the United Kingdom according to which only three States would again be eligible and that of Switzerland according to which only two States would again be eligible.

The Committee could make its decision on this basis and then discuss the procedure for re-election.

Mr. Morf (Switzerland) pointed out that Austria had also suggested that re-election should be possible for only two States.

Mr. Tades (Austria) reminded the delegates that his Government felt that the possibility of immediately renewing the mandate of an outgoing State should be restricted, but that there should be no question of entirely suppressing this possibility so that Member States carrying particular weight will be able to have a permanent seat. Moreover, the Austrian Government had suggested that in the event of a revision of the Universal Copyright Convention, the number of States on the Committee should be increased.

The Chairman considered that the Committee should first decide on the number of countries that can be re-elected and then on the manner of election or re-election. He observed that there were two proposals before the Committee: that of the United Kingdom and that of Switzerland.

Mr. Adachi (Japan) stated that he approved the idea behind the United Kingdom proposal, which was to facilitate rotation of Committee membership among the States. He noted, however, that from the practical point of view the United Kingdom proposal raised complex questions, especially as concerns determining which State cannot be re-elected. Japan felt that the solution would be to increase the number of the Committee's members, and therefore to amend Article XI of the Universal Copyright Convention. Such a revision would require a certain amount of time, but the situation has

changed considerably since the fourteenth session of the General Conference of Unesco and the Stockholm Conference, and no one now considers a revision of the Universal Copyright Convention premature. During the transitional period, the establishment of associate membership might be envisaged. He suggested that there could be two associate members and that these members should be African States. The associate members would not have the right to vote, but their opinions would receive great respect. The term of their mandate would be the same as that of the Committee members' mandate. Lastly, this associate membership would be abolished once membership of the Committee was increased.

Mr. Kaminstein (United States of America) pointed out that the United States of America had always been in favour of increasing the membership of the Committee. The United States supported the proposal of the United Kingdom; should that proposal not be accepted, the United States would also support the Japanese proposal, the principle of which had already been put forward by the United States at the seventh session of the Intergovernmental Committee.

Mr. Strnad (Czechoslovakia) remarked that the renewal of the Committee was a matter also of interest to observer States. He reminded the delegates that the membership of the Committee had to represent an equitable geographic distribution, and pointed out that the composition of the Committee no longer corresponded to actualities. Czechoslovakia approved the Swiss proposal, which was the most democratic.

Mr. Kumih (Ghana) declared that the United Kingdom proposal was viewed with favour by Ghana. He voiced the opinion that the projected amendment should have a wider scope so as to ensure a more equitable geographic distribution. The Asian countries should have two seats, and the African countries should also have two seats. Ghana supported the Japanese proposal with a view to increasing the number of State members of the Committee.

Mr. Simons (Canada) said that he was in favour of the general principle on which the British proposal was based. He felt, however, that only two States should again be eligible, and that an equitable geographic distribution and a rotation among the States of the same continent should be assured. He recommended that the amendments to be made to the Rules of Procedure should be respected from the present session onward. Moreover, Canada supported Israel's proposal that the representation in the Committee of the States party to the Convention should be in a ratio of 1 to 4.

Mr. De Sanctis (Italy) concurred in the United Kingdom proposal.

Mr. Rohmer (France) recalled that at the seventh session of the Intergovernmental Committee the idea had come up of adding an unofficial committee to the official Committee. Despite the difficulties of a legal nature that this proposal might involve, France felt that it was an admissible temporary solution from a pragmatic and practical point of view. The United Kingdom had later proposed a solution which, legally, was more coherent and France had approved it. The question might arise, however, whether it would not be possible to attach the Japanese solution to the United Kingdom solu-

tion; the former could complete the English proposal for want of something better.

Mr. Coward (Kenya) supported the United Kingdom proposal, which was the first step toward a more equitable geographic distribution.

The Chairman raised the question of the amount of time that might be required for a revision of Article XI of the Universal Copyright Convention.

Mr. Saba (Unesco) pointed out that, although a revision might be estimated in terms of months, the entry into force of the revised texts would require several years. He therefore felt that a temporary solution was necessary. He went on to say that the notion of associate members, as presented by the delegation from Japan, was not included in the Convention, but that its acceptance would not be incompatible with the text of the Convention. Nevertheless, Mr. Saba thought that the difference in status between associate members and observers, who have the right to make written or oral statements, would be rather slight, and that this temporary solution should not become a substitute for the United Kingdom proposal. He felt that the time had come to ask the Committee whether the principle was accepted that not all outgoing States should be immediately eligible. The Committee could then decide on the number of States (one or two) which would not be again eligible. He read a proposal formulated by the Swiss delegation. According to the proposal, not more than two of the States whose mandates have terminated would be immediately eligible for a further six-year period, at the end of which they could no longer be re-elected; States whose mandates were not renewed would again be eligible only after an interruption of six years.

Mr. El Bassiouni (observer from URTNA) said that the discussion of this item of the agenda had been most interesting, especially in regard to the idea of associate members. He pointed out that observers and associate members had participated in the work of the last URTNA General Assembly and that the question of the difference in status between the observers and the associate members had come up. He concurred with the statements made on the subject by the representative of the Director-General of Unesco. He felt, moreover, that the most appropriate solution would be a revision of Article XI.

Mr. Kaminstein (United States of America) observed that the Swiss proposal deviated very little from the United Kingdom proposal, except on one point; namely, that six years must elapse before the State or States not immediately eligible can again be elected. This solution seemed somewhat irrational to Mr. Kaminstein, who hoped that the period of non-eligibility would be reduced to a single period between elections.

The Chairman noted that a unanimous opinion seemed to be emerging that there was an urgent need to change the rhythm of renewals of States that are members of the Intergovernmental Committee. He observed that several proposals had been submitted: that of the United Kingdom, that of Switzerland, that of Japan, and that consisting in the revision of Article XI of the Convention. He felt that the proposal of

the United Kingdom constituted the first step and suggested that a vote be taken.

Mr. Kaminstein (United States of America) asked the Swiss delegation whether it insisted on the six-year period or whether it would accept an amendment to that period.

Mr. Voyame (Switzerland) thought that this question should not yet be put to a vote but that the Committee should vote only on the number of States that could be re-elected.

Mr. Wallace (United Kingdom) believed that it was the procedure provided for in Article 35 (2) of the Rules of Procedure that was applicable, so that the proposal could be adopted by six votes in favour.

Mr. Ulmer (Federal Republic of Germany) suggested that a vote should first be taken on the Swiss proposal, which deviated the most from the provisions of the Rules of Procedure.

Mr. Saba (Unesco) pointed out that, since the vote was not on amendments, the order did not matter, but that the proposal of the representative of the Federal Republic of Germany was a good one and that it would be fitting first to vote on the proposal most deviating from the Rules of Procedure.

Mr. Kumih (Ghana) wanted to know, before the question was put to a vote, the list of States that are members of the Intergovernmental Committee.

The Secretariat of the Committee read the list of States that are members of the Committee.

The Chairman consecutively put to vote the proposals of Switzerland and the United Kingdom.

The United Kingdom proposal was adopted by nine votes.

Mr. Saba (Unesco) noted that the period during which the States would not be eligible still remained to be discussed.

Mr. Voyame (Switzerland), recalling that the idea behind the amendments to the Rules of Procedure is to ensure rotation among the States, felt that an interruption of six years was of great importance in view of the results of the voting which had just taken place.

Mr. De Sanctis (Italy) concurred in the proposal of the United Kingdom and United States of America which allows States to re-elect outgoing States after an interruption of two years.

Mr. Strnad (Czechoslovakia), for his part, felt that the freedom of the States should be restricted and that the Convention should be applied to the letter.

Mr. Ulmer (Federal Republic of Germany) noted that there were two proposals at hand: one coming from Switzerland and providing a period of six years before a State can be re-elected; the other coming from the United States of America and providing that an outgoing State cannot be immediately re-elected, which means that a period of two years must elapse before its re-election.

Mr. Rohmer (France) declared that the French delegation joined in the basic principles of the British proposal. He left open the question of the way to adopt until after further discussions.

Mr. Kaminstein (United States of America) pointed out that it is not necessary to specify the approach of the United

States because it results automatically from the fact that the outgoing State will be re-eligible at the next session.

Mr. Ascensão (Portugal) seconded the statements made by the representatives of Switzerland and Czechoslovakia. He was of the opinion that the only effective way of allocating vacant seats to States which have not yet been members of the Committee is to provide a period of six years before an outgoing State can be re-elected.

The Chairman put the proposal of Switzerland to a vote.

The Swiss proposal was rejected by a vote of seven to one. The representatives of France and the United Kingdom abstained.

Mr. Wallace (United Kingdom) asked whether it could be surmised from the votes that had taken place that the United Kingdom proposal was accepted as a whole.

Mr. Rohmer (France) thought that the votes showed that the United Kingdom proposal was accepted as a whole, including the provision for a secret vote.

Mr. De Sanctis (Italy) pointed out that Italy, in voting for the United Kingdom proposal, did not believe that the voting procedure was included. He felt that the non-eligible State should be designated by drawing lots.

Mr. Laurelli (Argentina) asked for further details as to the consequences of the United Kingdom proposal as regards geographic distribution.

Mr. Kaminstein (United States of America) supported the United Kingdom in its entirety.

Mr. Laurelli (Argentina) thought that the procedure by which the non-eligible State would be designated and the question of geographic distribution were closely linked together.

Mr. Wallace (United Kingdom) explained that his delegation's proposal was intended to permit all outgoing States and all States party to the Convention to be elected members of the Committee. Considering that, for psychological reasons, it would be difficult to have an open ballot on the re-election or non-re-election of a given State, the United Kingdom delegation was in favour of a secret ballot.

Mr. Adachi (Japan) seconded the United Kingdom's proposal concerning the secret ballot.

Mr. Strnad (Czechoslovakia) wondered how, under the system proposed by the United Kingdom, the non-eligible State would be designated if votes were divided.

Mr. Ulmer (Federal Republic of Germany) shared the concern of the observer from Czechoslovakia. He said that the Committee was faced with two proposals: that of the United Kingdom providing for secret ballot, and that of Italy in favour of drawing lots. Mr. Ulmer seconded in principle the proposal of a secret ballot which he proposed to complete by drawing lots in case of tie vote.

Mr. Laurelli (Argentina) wanted again to raise the question of which geographical area would lose membership in the Committee in order to enable a representative of an African State to come in.

Mr. Kaminstein (United States of America) felt that the Committee should proceed in stages and determine first of all the procedure to be followed in designating the non-

eligible State. A working group could then shape up the amendments to be made to the Rules of Procedure.

Mr. Rohmer (France) said that the working group should know on what to base its discussion. It seemed to him that the possibility of an open vote was eliminated, thus leaving the possibilities of secret ballot or drawing lots. In either case, further problems would present themselves, which the working group would have to solve.

Mr. Ulmer (Federal Republic of Germany) supported the United Kingdom delegation. The Committee would have to decide on secret ballot or drawing lots. The working group could then take up its work.

Mr. Laurelli (Argentina) shared the views of the United Kingdom's delegate.

The principle of drawing lots was adopted by six votes (with France abstaining).

Mr. Kumih (Ghana) thought that the question of geographic distribution should not be entrusted to a working group but discussed at a plenary meeting.

Mr. Saba (Unesco) said that it was essential to have a working group to formulate the text of amendments to be made to the Rules of Procedure. He pointed out that, in general, the principle of equitable distribution was implicit, without being formally stipulated. He thought that being short of time this question should be left up to the conscience of the Committee which should not exclude the possibility of submitting formal and precise proposals at the next session.

Mr. Winter (United States of America) supported the statements of Mr. Saba.

It was decided to set up a working group, composed of representatives from Argentina, Federal Republic of Germany, India, Spain, United Kingdom, and United States of America, entrusted with drawing up the amendments to the Committee's Rules of Procedure. The working group met under the Chairmanship of Mr. Ulmer (Federal Republic of Germany).

As a result of the amendments proposed by the working group and adopted by the Committee, the text of Rules 2, 3(a) and 29 of the Rules of Procedure has been amended to read as follows:

Rule 2. For the final sentence substitute the following:

"Not more than three of the four retiring States may be re-elected. If necessary, the State which is not eligible for re-election shall be determined by drawing lots."

Rule 3. Paragraph 1, sub-paragraph (a) should be revised to read as follows:

"(a) In the course of the regular session at the end of which the term of office of a State expires by virtue of Rule 2 or Rule 37, the Committee, subject to the preceding provisions, shall, unless it renews the term of office of such State, designate another Contracting State as a member of the Committee."

Rule 29. Add a paragraph as follows:

"2. Nevertheless, when, in accordance with Rules 2 and 3, voting is necessary to decide which States shall be elected or re-elected to fill vacancies on the Committee, the Secretariat will prepare a list of the States Parties to the Convention who are eligible for election. It will give one copy of the list to each delegation. Each delegation shall mark on its copy the names of as many States as there are vacancies to be filled. The States which receive the greatest number of votes are elected."

In case of a tie vote, a new vote will, if necessary, be taken, limited to the States receiving the same number of votes. In case of a second tie vote, lots will be drawn. The Chairman will announce the names of the States elected. The votes of the individual States will not be recorded."

In addition, to take into account the observations made by a number of delegations on the subject of the geographic distribution of the States that are members of the Committee, the Committee adopted Resolution No. 57 (IX), which is given as an annex to this report.

Mr. Laurelli (Argentina), seconded by Mr. Ribeiro (Brazil), again expressed his fear that the geographic equilibrium would be jeopardized in 1969 and 1971. He insisted that a solution should be found to the problem at the present session of the Committee and recalled the terms of his Government's reply to the letter from the Director-General of Unesco, namely that a European country designated by drawing lots should not be re-elected in 1967, the same compromise being applicable in 1969 to an American State.

Mr. Adachi (Japan) stated that he did not understand the import of the intervention by the delegate of Brazil.

The Chairman proceeded to draw lots to designate the State whose mandate could not be immediately renewed. The State drawn was Argentina.

The Committee, having then taken a vote on the seats to be filled, France was re-elected by eleven votes, Italy and the United Kingdom by nine votes each, and Kenya elected by eight votes.

As a result of this vote, Mr. Laurelli (Argentina) asked that the following statement appear in the report, the inclusion of which the Committee unanimously approved:

"It has been established that Resolution No. 57 (IX) has been approved, as a matter of exception, and that, in the election of 1969, the Intergovernmental Committee will not apply the letter of the new wording of Rule 2 of the Rules of Procedure and will proceed to elect a country from the same geographical region as the outgoing State. Moreover, so as to respect the principles laid down in paragraph 2 of Article XI of the Universal Copyright Convention as regards geographic distribution, and inasmuch as the membership of the Committee cannot be increased by 1971, a European country should give up its seat to assure the said equitable geographic distribution."

6. Other questions

The other questions on the agenda of the Intergovernmental Copyright Committee were considered at joint meetings with the Permanent Committee of the Berne Union.

II. Resolutions

Resolution 57 (IX)

The Intergovernmental Copyright Committee

Recalling that, according to Article XI, paragraph 2 of the Universal Copyright Convention, the members of the Committee should be selected with due consideration to fair geographical representation,

Desiring to assure the full application of this provision and to achieve a balanced participation, in the composition of the Committee, of all continents,

Hopes that an African State will be elected as a member of the Committee during the present session.

*Resolutions 58 (IX) and 59 (IX)*³⁾

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³⁾ See above, p. 29, the text of Resolutions Nos. 2 and 3.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
1968				
March 12 to 14 Geneva	Working Group - Stockholm Recommendation No. III (Copyright)	Study of ways and means for giving effect to the Recommendation	United Nations Educational, Scientific and Cultural Organization; Council of Europe; International Confederation of Societies of Authors and Composers; Internationale Gesellschaft für Urheberrecht; International Literary and Artistic Association; International Publishers Association; International Writers Guild; individual consultants	Persons invited individually
March 25 to 29 Geneva	Working Group — Patent Cooperation Treaty (PCT)	Questions concerning Searching, etc.	<i>Countries in which over 5000 patent applications were filed in a year according to latest statistics:</i> Argentina, Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), India, Italy, Japan, Mexico, Netherlands, Norway, Poland, South Africa, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	<i>Intergovernmental Organizations:</i> United Nations; United Nations Industrial Development Organization; United Nations Conference on Trade and Development; International Patent Institute; Organization of American States; Permanent Secretariat of the General Treaty for Central American Economic Integration; Latin-American Free Trade Association; Council of Europe; European Atomic Energy Community; European Economic Community; European Free Trade Association; African and Malagasy Industrial Property Office <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Council of European Industrial Federations; European Industrial Research Management Association; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; Japan Patent Association; National Association of Manufacturers (U. S. A.); Union of European Patent Agents; Union des industries de la Communauté européenne
March 30 Geneva	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Enlarged Transitional Steering Committee	Structural questions	Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America	International Patent Institute
April 1 to 7 Moscow	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Standing Committee III		This meeting is not organized by BIRPI	
April 22 to 26 Munich	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Advisory Board for Cooperative Systems - Standing Committees I and II		These meetings are not organized by BIRPI	

Date and Place	Title	Object	Invitations to Participate	Observers Invited
May 3 and 4 Geneva	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Enlarged Transitional Steering Committee	Questions of technical cooperation	Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America	International Patent Institute
July 1 to 5 *) Geneva	Working Group — Patent Cooperation Treaty (PCT)	Questions concerning Formalities, etc.	States invited to the March 1968 Meeting	Observers invited to the March 1968 meeting
September 24 to 27 Geneva	Interunion Coordination Committee (6 th Session)	Program and Budget of BIRPI	Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	—
September 24 to 27 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (4 th Session)	Program and Budget (Paris Union) for 1969	Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	United Nations; International Patent Institute; Council of Europe
October 2 to 8 Locarno	Diplomatic Conference	Adoption of a Special Agreement concerning the International Classification of Industrial Designs	All Member States of the Paris Union	<i>Intergovernmental Organizations:</i> United Nations; UNESCO; Council of Europe <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; International League Against Unfair Competition; International Literary and Artistic Association; Union of European Patent Agents
October 21 to November 1 Tokyo	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Meeting		Particulars to be announced later	
November 4 to 12 Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	All Member States of the Paris Union	Observers invited to the March 1968 meeting

*) Changed from June 17 to 21.

Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
1968			
The Hague	March 6 and 7	International Patent Institute (IIB)	95 th Session of the Administrative Council
Buenos Aires	April 15 to 19	International Association for the Protection of Industrial Property (IAPIP)	Presidents' Conference
Paris	April 29 and 30	International Patent Institute (IIB)	96 th Session of the Administrative Council
Prague	May 1 to 5	International League Against Unfair Competition (LICCD)	Symposium
Strasbourg	June 17 to 21	Council of Europe	Working Party of the Committee of Experts on Patents
Amsterdam	June 9 to 15	International Publishers Association (IPA)	Congress
Vienna	June 24 to 29	International Confederation of Societies of Authors and Composers (CISAC)	Congress
Lima	December 2 to 6	Inter-American Association of Industrial Property (ASIPI)	Congress

