

# Copyright

Monthly Review of the  
WORLD INTELLECTUAL PROPERTY  
ORGANIZATION (WIPO)

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

7<sup>th</sup> year - No. 6  
JUNE 1971

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# INTERNATIONAL UNION

## MOROCCO

### Ratification of the Stockholm Act of the Berne Convention (with the exception of Articles 1 to 21 and of the Protocol Regarding Developing Countries)

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union that the Government of the Kingdom of Morocco deposited on April 27, 1971, its instrument of ratification dated October 8, 1970, of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Stockholm on July 14, 1967, with the declaration provided for in Article 28(1)(b)(i) of the said Act to the effect that the ratification shall not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries.

Pursuant to the provisions of Article 28(2)(c) of the Stockholm Act of the said Convention, Articles 22 to 38 will enter into force, with respect to the Kingdom of Morocco, three months after the date of this notification, that is, on August 6, 1971.

A separate notification will be made on the entry into force of the other provisions of the Stockholm Act of the said Convention, when the required number of ratifications or accessions is reached.

Berne Notification No. 28, dated May 6, 1971.

## Committee of Experts for the Protection of Type Faces

### Fifth Meeting

(Geneva, February 22 to 26, 1971)

#### Note \*

On the invitation of the Director General of WIPO, a Committee of Experts for the Protection of Type Faces met in Geneva at the headquarters of WIPO, from February 22 to 26, 1971.

All the member countries of the Paris Union had been invited as members of the Committee. Intergovernmental and international non-governmental organizations directly interested had been invited as observers. The invitation was accepted by fifteen countries, one intergovernmental organization and six non-governmental organizations. A list of participants appears at the end of this Note.

The Committee was chaired by Professor E. Ulmer (Germany (Federal Republic)). Mrs. M. Bognár (Hungary) and Miss B. A. Ringer (United States of America) were Vice-Chairmen. Mr. J. Voyame (Second Deputy Director General, WIPO) acted as Secretary of the Committee.

The discussions of the Committee were based on a preliminary draft for a Special Agreement for the Protection of Type Faces and their International Deposit and on a preliminary draft for the Regulations. These preliminary drafts, which were the result of the work of four earlier committees of experts, were submitted by the International Bureau of

WIPO with a number of amendments, primarily concerning the administrative and final provisions, and an extensive commentary.

In his opening address, the Director General of WIPO referred to the activities of the four earlier committees of experts and explained why the drafts resulting from their work were being re-examined: he pointed out that for the most part these drafts dated back to 1963 and might consequently have become a little out of date, especially since new countries were now taking an interest in the international protection envisaged. Following the work of the present Committee, the International Bureau would draft new texts which would take account of the Committee's proposals. Those texts would probably be considered by a sixth and last committee of experts before they were submitted to the Diplomatic Conference to be held at Vienna in 1973.

The following were the principal proposals of the Committee:

1. The new treaty would be a Special Agreement within the framework of Article 19 of the Paris Convention (Article 1 of the preliminary draft).

\* This Note has been prepared by the International Bureau of WIPO on the basis of the documents of the meeting.

2. However, the principle would be that countries party to the new Agreement would protect type faces either by instituting a special national deposit, or by adapting the deposit provided for industrial designs, or by copyright provisions, or by a combination of these means of protection (Article 3 of the preliminary draft).

3. In order to ensure the adequacy of the level of protection afforded by countries which would protect type faces solely by means of copyright, only those countries which were party to the Berne Convention for the Protection of Literary and Artistic Works or to the Universal Copyright Convention would be able to become parties to the new Agreement. Moreover those countries would be under an obligation to afford the same protection as that granted to their own nationals to all beneficiaries of the Agreement, even if such persons were unable to invoke the copyright conventions (Article 3).

4. The minimum term of protection would be fixed at twenty-five years (Article 6), although countries in which protection would be based on industrial property could break this term up into several periods, as is generally the case with industrial designs. The question of the starting point for the term of protection in countries protecting type faces solely by copyright would preferably be left to national legislation.

5. For the purposes of the right of priority (Article 8), the deposit of type faces would be considered as a deposit of an industrial design. Such a provision would of course hind only the parties to the new Agreement, but it would hopefully influence the interpretation given in other Paris Union countries to Article 4 of the Paris Convention, so that the deposit of an "industrial design" referred to in Article 4 would be considered as including the special deposit introduced for type faces.

6. The international deposit (Article 9) could not of course have the effect of a national deposit in countries protecting type faces solely by copyright provisions, where the only formality required would be, at the most, the placing of the symbol © provided for under the Universal Copyright Convention.

7. The countries protecting type faces by a deposit would not be permitted to require any formalities other than those contained in the Agreement and its Regulations for the international deposit (Article 9).

8. The international deposit would be effected directly with the International Bureau, and not through the Administration of the country of origin (Article 9).

9. The international deposit could not be made under sealed cover (Article 11).

10. The international deposit would simply have the effect of a national deposit, countries being free to accept it as a national registration without further procedure or to have it followed by a national registration, with or without a third-party opposition procedure (Article 12). The Agreement

should therefore speak of an international "deposit" and all references to an international "registration" should be deleted.

11. The introduction of a system of renewal would be preferable in order, inter alia, to induce depositors to consider periodically the necessity of maintaining their deposits, and thus to clear the Register of deposits which were no longer useful to maintain (Article 14).

12. It would be desirable to allow the partial renunciation of an international deposit in relation to one or more countries, but not in relation to part only of the type faces deposited (Article 15).

13. The same consideration would apply to partial assignment (Article 16).

14. The international publication of type faces deposited would replace the national publication (Article 18). While countries might always proceed to a further publication, they could do so by means of a reference to the international publication and should in no case require an additional fee from the depositor.

## List of Participants

### I. Countries

Austria: E. Dudeschek. Cameroon: J. Eked-Samnik. Canada: A. A. Keyes; R. Auger. France: R. Labry; M. Bierry. Germany (Federal Republic): E. Ulmer; G. Kelbel; E. Born. Hungary: M. Bognár (Mrs.). Italy: G. Pizzini (Mrs.); C. Ferro-Luzzi; G. Repetti. Luxembourg: P. Victor. Netherlands: W. M. J. C. Phaf; E. van Weel; G. W. Ovink; M. Enschedé. Portugal: J. Garin. Spain: J. Escudero Durán. Sweden: C. Ugglá. Switzerland: J.-L. Marro; F. Curchod; A. Hoffmann. United Kingdom: I. J. G. Davis. United States of America: B. A. Ringer (Miss).

### II. International Organizations

Council of Europe: P. von Holstein. International Association for the Protection of Industrial Property (IAPIP): E. Martin-Achard. International Chamber of Commerce (ICC): D. A. Was; Y. Saint-Gal; Ch.-L. Magnin. International Federation of Patent Agents (FICPI): B. Pochon. International League Against Unfair Competition (LICCD): E. Martin-Achard; Y. Saint-Gal. International Literary and Artistic Association (ALAD): T. Limperg. International Typographic Association (A.TYP.I.): J. Dreyfus; C. Peignot; W. P. Keegan; M. Parker.

### III. WIPO

G. H. C. Bodenhausen (*Director General*); J. Voyame (*Second Deputy Director General*); K. Pfanner (*Senior Counsellor, Head of the Industrial Property Division*); G. R. Wipf (*Counsellor, Head of the General and Periodicals Section, Industrial Property Division*); H. Warnier (*Legal Assistant, General and Periodicals Section, Industrial Property Division*).

### IV. Officers

*Chairman*: E. Ulmer (Germany (Fed. Rep.)); *Vice-Chairmen*: M. Bognár (Mrs.) (Hungary), B. A. Ringer (Miss) (United States of America); *Secretary*: J. Voyame (WIPO).

# Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites

(Lausanne, April 21 to 30, 1971)

## Report

### I. Introduction

1. The Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites (hereinafter called "the Committee"), met at Lausanne-Ouchy (Switzerland) from April 21 to 30, 1971. It had been convened jointly by the Directors General of Unesco and of the World Intellectual Property Organization (WIPO) in application of resolutions 5.123 and 5.134 adopted by the General Conference of Unesco at its fifteenth and sixteenth sessions respectively and of decisions taken at the first ordinary sessions of the Assembly and the Conference of Representatives of the International (Berne) Union for the Protection of Literary and Artistic Works.

2. The object of the meeting was to study the problems which radio and television transmissions by satellites raise in the field of copyright and of the protection of performers, of producers of phonograms and of broadcasting organizations, and to specify whether the protection of television signals transmitted by communications satellites requires modification of existing conventions or the preparation of a new international instrument.

3. The participants in the meeting were:

(i) governmental experts from the following thirty-three countries: Australia, Austria, Belgium, Brazil, Canada, Cyprus, Denmark, Ethiopia, Finland, France, Germany (Federal Republic), Ghana, Greece, Holy See, India, Italy, Japan, Kenya, Malaysia, Mexico, Monaco, Morocco, Netherlands, Nigeria,

*Note:* The main steps preceding the Committee of Governmental Experts, of which the report and its annexes are reproduced hereafter, were the following:

- (i) the Working Group on Copyright Problems of Satellite Communications, convened in Geneva by the Director of BIRPI, from October 14 to 16, 1968 (see *Copyright*, 1968, pp. 230 *et seq.*);
- (ii) the Meeting of Governmental Experts on International Arrangements in the Space Communication Field, convened in Paris by the Director-General of Unesco from December 2 to 9, 1969, and in particular the Working Party set up within that meeting (*ibid.*, 1970, pp. 57 *et seq.*);
- (iii) the second ordinary session of the Intergovernmental Committee established by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), held in Paris from December 10 to 12, 1969 (*ibid.*, 1970, pp. 44 *et seq.*);
- (iv) the ordinary sessions of the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee, held in Paris from December 15 to 19, 1969.

These two Committees adopted, each as far as it was concerned, a resolution expressing, *inter alia*, the wish that a committee of governmental experts be convened as soon as possible (*ibid.*, 1970, p. 27). The competent bodies of WIPO (Assembly and Conference of Representatives of the Berne Union) and Unesco (General Conference) acceded to this wish and approved the convening of such a committee. That committee met in Lausanne-Ouchy (Switzerland) from April 21 to 30, 1971.

Philippines, Senegal, Spain, Sweden, Switzerland, Tunisia, United Arab Republic, United Kingdom, United States of America;

(ii) observers from the following four countries: Algeria, Jamaica, Syrian Arab Republic, Union of Soviet Socialist Republics;

(iii) observers from the United Nations and from the following two organizations of the United Nations system: International Labour Organisation (ILO); International Telecommunication Union (ITU); and

(iv) observers from the following ten international non-governmental organizations: Asian Broadcasting Union (ABU); European Broadcasting Union (EBU); European Conference of Posts and Telecommunications (CEPT); International Confederation of Professional and Intellectual Workers (CITI); International Confederation of Societies of Authors and Composers (CISAC); International Federation of the Phonographic Industry (IFPI); International Film and Television Council (ICT); International Literary and Artistic Association (ALAI); International Writers' Guild (IWG); Union of National Radio and Television Organizations of Africa (URTNA).

The complete list of participants is annexed to this Report (Annex D).

### II. Opening of the Meeting

4. The meeting was opened by Professor G. H. C. Bodenhausen, Director General of WIPO, and Mr. Claude Lussier, Director of the Office of International Norms and Legal Affairs, Unesco. Each recounted the work undertaken by his Organization in the preliminary studies carried out in this field.

### III. Election of the Chairman

5. On the proposal of the Delegation of France, supported by the Delegations of the United Kingdom and of Kenya, Mr. Finlay W. Simons, Head of the Delegation of Canada, was unanimously elected Chairman of the Committee.

### IV. Adoption of the Rules of Procedure

6. The Committee adopted the Rules of Procedure contained in document Unesco/WIPO/SAT/2, it being understood that the drafting of the Report of the meeting would be entrusted to the Secretariats.

### V. Election of other Officers

7. On the proposal of the Delegation of the Federal Republic of Germany, supported by the Delegation of Switzerland, the Committee unanimously elected as Vice-Chairmen the Heads of the Delegations of Japan, Kenya and Mexico.

## VI. Adoption of the Agenda

8. The agenda proposed in document Unesco/WIPO/SAT/1 was unanimously adopted by the Committee.

## VII. Documentation

9. The working documents of the Committee consisted of studies prepared by consultants (documents Unesco/WIPO/SAT/5, 6, 7 and 8), by the Secretariat of Unesco (document Unesco/WIPO/SAT/3) and by the International Bureau of WIPO (document Unesco/WIPO/SAT/4). In addition, the Committee took note of the exchange of correspondence between the Directors General of Unesco and of WIPO and the Secretary-General of the International Telecommunication Union (document Unesco/WIPO/SAT/9).

## VIII. General Discussion

10. The Committee first considered whether the solution of the problems under consideration should be effected through the revision of the Radio Regulations of the International Telecommunication Union (hereinafter referred to as "the Radio Regulations"), the revision of the Rome Convention, the conclusion of an independent new treaty, or by some other means.

11. The Delegation of the United Kingdom expressed the view that a resolution of the Committee condemning the unauthorized use of satellite-transmitted signals would suffice since the use of such signals was for practical purposes under the control of governments and since it was highly unlikely that governments would tolerate the use of such signals without authorization. Consequently, no new treaty or revision of existing treaties was needed.

12. As far as the Radio Regulations are concerned, the representative of the International Telecommunication Union (ITU) informed the Committee that no proposals for their revision for this purpose had been made to the competent bodies of ITU and that members of the ITU would probably welcome a solution to the problems under consideration which did not involve a modification to those Regulations. It was however still possible for any member of the Union to submit proposals to the forthcoming ITU Space Conference should it so desire. The observer from the Union of National Radio and Television Organizations of Africa (URTNA) said that he would propose to his Organization that it should try to persuade its members to urge their governments to propose a revision of the Radio Regulations.

13. Since the other speakers gave little, if any, support for the proposals for a mere resolution or for the idea of proposing a revision of the Radio Regulations, most of the discussion centered around the question of whether the Rome Convention should be revised or an independent new treaty concluded. A suggestion for establishing some link between any new instrument and the Rome Convention was also explored.

14. The majority of the delegations expressed the view that an independent new treaty should be concluded. Several of them joined in this view only after declaring that they would

have preferred the revision of the Rome Convention or that a clarification of the meaning of the Rome Convention would suffice since, if correctly interpreted, that Convention already provided for protection against the piracy of signals.

15. Among those who — although they would have preferred a revision of the Rome Convention — concluded by accepting the idea of an independent new treaty, several declared that they did so only because there seemed to be insufficient support for a revision of the Rome Convention. They said that they would have preferred such revision because the Rome Convention represented a balance among the three interests for the protection of which it was concluded, and because they feared that any new treaty might reduce the number of the potential acceptances of the Rome Convention since, in their opinion, a new treaty largely satisfying the needs of broadcasting organizations, together with the new treaty under preparation largely satisfying the needs of producers of phonograms, could diminish the attractiveness of the Rome Convention.

16. Most delegations which proposed or did not oppose the conclusion of a new treaty said that any new treaty should be very simple, should give great or total discretion to the Contracting States as to the choice of legal means for the protection of satellite-transmitted signals, and should be generally open to all States so as to achieve the universal acceptance that any instrument should achieve when it deals with such a global phenomenon as satellites are.

17. Several delegations said that they could accept an independent treaty only if it contained provisions safeguarding the interests of authors, performers and producers of phonograms, and did not prejudice the future of the Rome Convention.

18. Other delegations declared that they supported the idea of an independent treaty because the Rome Convention was unacceptable to them for economic, legal or political reasons. The Delegation of Ethiopia said that the Rome Convention was unacceptable to his country also because it required adherence to the Berne or Universal Copyright Conventions protecting the right of translation.

19. Several delegations urged that, even if the idea of removing the requirement of adherence to any copyright convention was to be followed or even if the idea of revising the Rome Convention was not to be followed, some links, at least formal with the Rome Convention should be established in any new instrument, in order to leave the door open to a substantive linking of the two instruments at some future date, possibly after a general revision of the Rome Convention. One of these delegations, that of Italy, presented a concrete proposal to this effect in the form of a draft Protocol to be added to the Rome Convention (see Annex B).

## IX. Draft Convention

20. After this exchange of views, the Committee established a Working Group composed of the Delegations of Austria, Canada, Ethiopia, France, the Federal Republic of Germany, Italy, Japan, Kenya, Senegal, Spain, Tunisia and the United

States of America; the terms of reference of the Working Group were to prepare a draft text of a possible new instrument and to examine the question of any link between such an instrument and the Rome Convention. Representatives of the intergovernmental and international non-governmental organizations concerned attended the meetings of the Working Group as observers. The Working Group mainly based its discussions upon the texts proposed in document Unesco/WIPO/SAT/10<sup>1</sup> and the questions for consideration proposed in document Unesco/WIPO/SAT/4<sup>2</sup>. The former was presented by the Delegations of Austria, Canada, Cyprus, the Federal Republic of Germany, Ghana, Japan, Kenya, Morocco, Nigeria, Senegal, Spain and Tunisia. The latter was prepared by the International Bureau of WIPO. Further proposals of several delegations were also considered by the Working Group.

21. The Working Group first submitted document Unesco/WIPO/SAT/13 which contained the draft of a convention except for a few provisions. The Committee discussed the Preamble and Articles I to III. In the light of these discussions, the Working Group resubmitted the Preamble and the said Articles in document Unesco/WIPO/SAT/20 which also contained all the other provisions proposed. Final consideration by the Committee was based on that document. After having agreed on certain modifications in the text of the draft Convention contained in that document, the Committee decided that the draft Convention as it appears in Annex A should be annexed to this Report.

<sup>1</sup> This document contained a draft convention to prevent unauthorized transmissions of signals from communications satellites. Its first four articles, dealing with basic questions, are reproduced hereafter:

#### Article I

Each Contracting State shall prevent the further transmission of signals consisting of images or a combination of sounds and images, where —

- (a) the transmitting organization causing the first transmission of the signals is a national of another Contracting State;
- (b) the signals have been transmitted through the medium of a communications satellite;
- (c) the further transmission of the signals is made on the territory of the Contracting State, simultaneously with the first transmission or otherwise, without the authority of the transmitting organization and for reception by the general public.

#### Article II

The legal means by which this Convention is implemented shall be a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration for the protection of signals, that duration shall not be less than 20 years from the end of the year in which the signals were first transmitted.

#### Article III

1. This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, performers, producers of phonograms, broadcasting organizations, or other contributors to the transmission, under any domestic law or international agreement.

2. No Contracting State shall be required to apply the provisions of this Convention with respect to any signals transmitted before this Convention entered into force in that State.

#### Article IV

For purposes of this Convention —

- (a) a communications satellite is any device placed in or on a body in orbit around the earth, for the purpose of transmission of signals;
- (b) transmission is any act whereby signals are sent by means of any device or process and received beyond the place from which they are sent;
- (c) the transmitting organization is the person or entity that causes the first transmission of the particular signals.

<sup>2</sup> This document is reproduced at the end of the present Report.

22. The Chairman of the Working Group, Mrs. Elisabeth Steup, Head of the Delegation of the Federal Republic of Germany, presented to the Committee a report on the discussions in the Working Group, including suggestions for the inclusion in this Report of matters of clarification and interpretation of the draft texts and positions adopted and reservations expressed by delegations participating in the Working Group. Paragraphs 23 to 48 of this Report set out these matters as noted by the Committee as well as further comments made in the Committee itself, with reference to the text of the draft Convention contained in Annex A.

#### Title

23. The Committee agreed that the title of the draft Convention should use the same expressions as those used and defined in its text.

#### Preamble

24. The Committee was divided on the question whether the words appearing in square brackets in paragraph (d) of the Preamble were appropriate. These words relate specifically to possible prejudice to wider acceptance of the Rome Convention. In view of the fact that a decision upon their exclusion or inclusion could be closely related to a decision upon the draft administrative provisions and final clauses proposed by the Delegation of Italy (see Annex B), it was eventually decided to maintain the said words as an alternative proposal.

#### Article I: Definitions

##### Item (ii): "distribution"

25. The Committee agreed that the term "distribution" included but was not limited to distribution by wire or wireless means, since future technology may make distribution possible also through additional means; that the word "transmitted" did not include the marketing or supply of fixations such as phonograms or video-cassettes, and that the transmittal "to the general public or any segment thereof" included not only traditional forms of broadcasting, but also transmittal through community antenna television systems, cable and closed circuit television, and any other means of transmittal through wires, cables, or other communications channels to subscribing members of the public.

##### Item (iii): "originating organization"

26. The definition of "originating organization" was understood to exclude postal authorities and common carriers of signals, in that they do not, themselves, make or order the making of program-carrying signals.

##### Item (iv): "programs"

27. No definition was proposed for the "signals" whose unauthorized distribution would be prohibited by the Convention, it being felt that the meaning was clear, particularly when qualified by providing in Article II that such signals must be "program-carrying". The words "bodies of material" contained in the definition of "programs" did not imply that the "body" or "material" must exist in the form of a fixation; thus, the signals may carry both "live" (unfixed) and fixed programs. The Committee being split on the question whether the Convention should cover also signals carrying

sounds only, it was decided to present two alternatives: one would cover sounds even if unaccompanied by images; the other would cover sounds only if combined with images; both would cover images.

#### Article II: Prohibition of unauthorized distribution

28. The Committee noted that the expression "prohibit and provide for sanctions" in the first sentence of Article II was further clarified by the first sentence of Article III, which made it clear that the choice of legal means for the implementation of the prohibition is a matter for domestic law, and therefore "sanctions" may be civil (for example, injunctions and damages), penal, administrative, or any two or all three of these kinds, and the choice between them was left to the discretion of the Contracting States.

29. The Delegation of Italy proposed that the Convention should prohibit not only the unauthorized distribution but also the unauthorized fixation of signals. The majority of the delegations, however, considered that such a provision would lead to a substantial and undesirable overlapping with other conventions and would require the inclusion of such exceptions to the prohibition as would make it difficult to achieve a simple instrument.

30. The Committee expressed the view that the prohibition provided for by this Article should be understood as applying also where the signal passing through the satellite is fixed before it is used for a distribution requiring authorization. Furthermore, it applied whether the signals that were distributed without authorization were directly receivable by the public (as in the case of "direct broadcast satellites") or were receivable only through the intermediary of an "earth station" (as in the case of "point-to-point" satellite communications). It was understood that the draft Convention dealt only with distribution and not with the reception of signals.

#### Item (ii): Nationality or place of emission

31. This provision would oblige any Contracting State to apply the prohibition if the originating organization is a national of another Contracting State (criterion of nationality) and, should the alternative be retained, also when the originating organization is not such a national but the emission to the satellite was made from another Contracting State (criterion of place of emission). It is to be noted that under Article IX (2) any Contracting State could apply the criterion of place of emission only, that is, would be allowed not to apply the criterion of nationality, provided that was the sole criterion in its domestic law at a given date, which could be the date of the Convention.

32. Some delegations expressed the view that the single criterion of nationality would encourage acceptance of any new instrument by countries not possessing their own earth station facilities, and considered also that the actual place of emission was not a logical test of the legal status of a communication by satellite; other delegations argued that the adoption of the two criteria together would achieve a wider protection of signals during the period before general acceptance of the new instrument.

#### Item (iv): Intervening distributions

33. It was understood that "indirectly" meant that, in the case of a distribution which was derived from signals which, after passing through the satellite, first went through one or more other intervening distributions, the prohibition did not apply when *any* of the other distributions (and not necessarily the one from which the distribution in question is actually derived) were authorized. However, some of the delegations wished that the prohibitions should also not apply where one of the said other distributions was effected in a Contracting State, regardless of whether that distribution was actually authorized or not. The alternative appearing in this provision is intended to express the wish of the said delegations, with which, however, other delegations disagreed.

#### Article III: Means of implementation; Term

34. As to the first sentence, see paragraph 28. The second sentence applies when the emission to the satellite and the distribution are not simultaneous, that is, are separated by time. The provision means that, in such cases, the prohibition applies at least during twenty years. However, since some delegations could not yet agree to any definite number of years, the word "twenty" is placed between brackets.

#### Article IV: Safeguards for the interests of contributors to programs

35. Whereas the Committee was unanimous as to paragraph (1) providing that existing systems of protection were not affected, it was not unanimous upon the question whether any new instrument should contain, in addition to the prohibition of the unauthorized distribution of signals, specific safeguards for authors of literary or artistic works, performers, producers of phonograms or other contributors to programs. The Delegation of Canada reserved its Government's position on this question; the Delegation of Ethiopia expressed the view that no such provisions should be included, because once signals are protected so also are other interests, and that the protection of other interests concerned should be purely a matter for national legislation and not for an international convention; such provisions would handicap the efficient operation of broadcasting organizations.

36. The majority of the delegations considered that some such safeguards should be included, and the Committee agreed to include in the draft Convention the three alternatives contained in Article IV, in order that the three different approaches upon which these alternatives are based could be studied by Governments. Alternative A contained in the draft text is intended to enable the author of a work protected by copyright against unauthorized broadcasting to control the inclusion of the work in a signal emitted to a satellite, whether or not that signal was directly receivable by the public, while at the same time making it clear that the author would not be entitled to payment of fees both in respect of such inclusion and in respect of the distribution to the public. The Delegation of France declared that the ideas contained in this alternative were, in its opinion, essential. Alternative B is intended to remove the protection provided by the Convention for the signals of the originating organization if such

organization failed to respect the rights granted to contributors (authors, performers, etc.) under the domestic law of the country of the originating organization or, in the absence of protection under that law, under the domestic law of the country in which the program-carrying signals are made. Alternative C is intended to provide a new right for authors of works to receive equitable remuneration from the originating organization when that organization has authorized distribution in countries bound by the new instrument but not by the Universal Copyright Convention or the Berne Convention.

37. The observer from the International Federation of Actors (FIA) and the International Federation of Variety Artistes (IFVA) expressed the view that none of the three alternatives proposed would provide an adequate safeguard for performers, for none provided the possibility of preventing the unauthorized emission and distribution of live performances.

#### Article V: Exceptions

38. The Committee agreed that any new instrument should contain specific exceptions to the prohibition. It was agreed to include three alternative proposals, A, B and C, in the text contained in Annex A. All three alternatives would enable Contracting States regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations to permit the distribution of programs solely for the purpose of teaching or scientific research. The Committee noted that the word "teaching" included adult education. The Delegation of France expressed the view that any exception on this point should be drafted in the same terms as those used in the draft text for the revision of the Berne Convention and the Universal Copyright Convention and in the French text of the draft Convention for the protection of producers of phonograms against unauthorized duplication.

39. The Delegations of Ghana, India, the Philippines, Tunisia and the United Arab Republic and the observer from Syria expressed the view that the word "teaching" should be replaced by the word "education", the latter being broader in its scope than the former. The Delegation of Sweden proposed that the exceptions should permit distribution for the purposes of adult education and training in agricultural, health and community activities, and the Delegation of Nigeria proposed that distribution be permitted for the purposes of public enlightenment. Other delegations, referring to the preparatory work for the revision of the Berne and Universal Copyright Conventions, expressed concern that use of a term not clearly defined such as "education" might jeopardize acceptance of the Convention.

40. The three alternatives differed in relation to exceptions to be permitted in respect of short excerpts from programs reporting current events. Alternative A would enable all States to permit the distribution of such excerpts provided that the events in question were open to the public free of charge; Alternative B would restrict the exception as a whole to developing countries only; Alternative C would maintain, for States other than developing countries, the condition that

such events should be open to the public free of charge, but would remove the said condition in respect of developing countries.

41. Referring to decisions taken at a meeting of delegations of developing countries participating in the work of the Committee, the Delegations of Brazil, Cyprus, Ghana, India, Kenya, Morocco, Nigeria, the Philippines, Senegal, Tunisia and the United Arab Republic, the observers from Jamaica and Syria and the observer from URTNA declared that the proposal contained in Alternative C constituted the only acceptable proposal.

#### Article VI: Membership and Application

##### *Paragraph (1): Membership*

42. The draft Convention provides for an "open" treaty in the sense that it permits signature and acceptance by any State that is a member of the United Nations or any of its Specialized Agencies, and is not restricted to States bound by the Rome Convention, the Berne Convention or the Universal Copyright Convention. The Delegation of France expressed the opinion that the question of whether the Convention should be open or closed should be examined only by a diplomatic conference. It expressed a preference for a membership restricted to the States party to the Berne or Universal Copyright Conventions.

##### *Paragraph (4): Application*

43. The Committee agreed that the appropriate date at which a Contracting State should be in a position, in accordance with its domestic law, to apply the provisions of the draft Convention was the date of the entry into force of the Convention for that State, rather than the date of deposit of an instrument of ratification, acceptance or accession.

#### Article VII: Entry into force

#### Article VIII: Denunciation

44. The Committee did not suggest any changes of substance to the draft Articles proposed in document Unesco/WIPO/SAT/10.

#### Article IX: Reservations

##### *Paragraph (2): Criteria*

45. See paragraph 31.

##### *Paragraph (3): Transmission by wire, etc.*

46. The majority of the delegations agreed to this provision, which would allow a State whose national law, on a stated date, which could be the date of the Convention, did not protect literary and artistic works against their transmission through community antenna television systems, cable television, and any other means of transmission through wires, cables or other communications channels to subscribing members of the public, not to apply the new Convention where the signals otherwise protected by that Convention are transmitted by the said means. The Delegation of Canada reserved its position on the question whether a stated date should be included in this paragraph. The Committee noted that the expression "subscribing members of the public" did not

imply that such members of the public were required to pay a fee or charge.

47. The Delegation of France reserved its position upon this paragraph since it considered the exception so sweeping that it might void the Convention, which could well be most needed in the case of the transmissions in question, of most of its substance.

#### Article X: Notifications

48. The Committee agreed that the International Labour Organisation should be included among the organizations to receive notifications from the Secretary-General of the United Nations in the exercise of his depository functions.

#### Links with the Rome Convention

49. The Committee considered the proposal of the Delegation of Italy, referred to in paragraph 19 above and contained in document Unesco/WIPO/SAT/12, by which the proposed new instrument would constitute a Protocol added to the Rome Convention; it agreed with the suggestion of the Delegation of Italy that the text of this proposal should not be examined in detail but should be amended by the inclusion of the International Labour Organisation among the organizations to be entrusted with administrative responsibilities and, after revision of its form by the Secretariat, be submitted to the consideration of Governments by means of being annexed to this Report (Annex B). The Delegation of Ethiopia reserved its position upon this proposal.

### X. Resolution

50. Three draft resolutions were proposed: one by the Delegation of the United Kingdom (document Unesco/WIPO/SAT/17), one by the Delegations of Belgium, Denmark, France, the Netherlands, Senegal, Spain, Sweden, Switzerland and Tunisia (document Unesco/WIPO/SAT/18; hereinafter referred to as "the proposal of the nine Delegations"), and one by the Delegation of the United States (document Unesco/WIPO/SAT/19). All dealt with the continuation of the work; that of the United Kingdom also contained, in its last paragraph, the expression of a view that, in principle, the unauthorized distribution to the general public of program-carrying signals transmitted via satellites ought to be prohibited. The proposal of the Delegation of the United Kingdom was withdrawn on condition that the intention expressed in its last paragraph be incorporated in the final resolution. (This condition was eventually fulfilled.) The proposal of the Delegation of the United States was withdrawn in favor of the proposal of the nine Delegations since the latter proposal covered also the aim pursued by the proposal of the Delegation of the United States.

51. When the proposal of the nine Delegations was discussed, the representative of the Unesco Secretariat recalled that, Resolution 5.134 adopted by the General Conference of Unesco

at its sixteenth session, made the convocation of a diplomatic conference conditional upon an express recommendation of the Committee that such a conference be convened. No such recommendation having been made, the Unesco Secretariat would inform the Executive Board of Unesco that the Committee considered that it should hold at least one more meeting. The budgetary provision for the expenses of a diplomatic conference to be held in 1971 or 1972 could doubtless be applied to a new meeting of the Committee to be held in 1972. In this case, however, there would be no funds left for a diplomatic conference in 1972. The General Conference of Unesco could, at its seventeenth session to be held in October 1972, be asked — if the Committee's further work goes in that direction — that Unesco participate in the financing of a diplomatic conference to be convened in 1973 or 1974.

52. The Director General of WIPO said that, the Executive Committee of the Berne Union meeting at least once a year, it could be anticipated that WIPO could participate in the financing of a diplomatic conference as soon as the matter was ripe for such a conference.

53. In order to incorporate the intention expressed in the last paragraph of the proposal of the Delegation of the United Kingdom, the Committee, on a suggestion by the Delegation of Senegal, unanimously agreed to add to the text of the proposal of the nine Delegations a new paragraph which appears as paragraph 1 in the Resolution contained in Annex C to this Report. The Committee noted that the reference, in the same paragraph, to "measures" to be adopted did not necessarily imply measures at the international level.

54. After the Delegation of the United Kingdom had expressed some hesitation in relation to paragraph 3(a), the Committee adopted unanimously the Resolution appearing in Annex C.

### XI. General Understanding

55. Several delegations declared, and the Committee agreed, that none of the views expressed by any of the delegations during the present meeting of the Committee was necessarily final, and in no case were those views to be regarded as binding on their respective Governments.

### XII. Adoption of the Report

56. A draft report of the meeting prepared by the Secretariats (document Unesco/WIPO/SAT/21) was considered paragraph by paragraph; certain modifications having been agreed, this Report was adopted by the Committee.

### XIII. Closing of the Meeting

57. After several delegations and observers had expressed their thanks to the Chairman of the Committee, the Chairman of the Working Group and the Secretariats, the Chairman declared the meeting closed.

ANNEX A**Draft Convention****to Prohibit the Unauthorized Distribution of Program-Carrying Signals Communicated by Satellites**

The Contracting States,

(a) Aware that the distribution of program-carrying signals communicated by satellites is rapidly developing both in volume and in geographical coverage;

(b) Noting that the lack of effective worldwide legal protection for the program-carrying signals presents an increasing danger to the interests of authors, performers, producers of phonograms, broadcasting organizations and other contributors to the programs;

(c) Convinced that the protection of originating organizations against unauthorized distribution of their programs will reinforce the protection of all those whose contributions are included in them;

(d) Anxious not to impair in any way international agreements already in force [*Alternative: add:* and in particular in no way to prejudice wider acceptance of the Rome Convention of 26 October 1961, which affords protection to performers and producers of phonograms as well as to broadcasting organizations],

Agree as follows:

*Article I*

For the purposes of this Convention:

- (i) "satellite" is any device in space capable of transmitting signals;
- (ii) "distribution" is any act whereby signals are transmitted to the general public or any segment thereof;
- (iii) "originating organization" is the person or entity that makes or orders the making of the program-carrying signals;
- (iv) "programs" are bodies of material that consist of images, sounds or both [*Alternative: replace "images, sounds or both" by "images or a combination of sounds and images"*] and that have been produced for the purpose of ultimate reception by the general public, including any segment thereof.

*Article II*

Each Contracting State shall prohibit and provide for sanctions against the distribution of signals carrying programs, where

- (i) a satellite has been used for the communication of the signals;
- (ii) the originating organization is a national of another Contracting State [*Alternative: add:* or the signals have been emitted to the satellite from a place in another Contracting State];
- (iii) the distribution of the signals is made on the territory of the Contracting State, simultaneously with the original emission or otherwise, without the authority of the originating organization; and

- (iv) the distribution has not been derived directly or indirectly from a distribution that was authorized by the originating organization and that took place after the passing of the signals through the satellite [*Alternative: add:* and the signals have not previously been distributed in a Contracting State].

*Article III*

The legal means by which this Convention is implemented shall be a matter for the domestic law of each Contracting State. The prohibition provided for by this Convention shall last for not less than [twenty] years from the end of the year in which the signals were emitted to the satellite.

*Article IV*

(1) This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, performers, producers of phonograms, broadcasting organizations or other contributors to the programs, under any domestic law or international agreement.

*Alternative A*

(2) When the signals for the communication of which a satellite is used carry a literary or artistic work protected in accordance with the domestic law of the Contracting State of which the originating organization is a national, the emission of the signals to the satellite constitutes the first phase of the distribution of the said work. However, the exercise of the author's right on the occasion of this emission shall not lead to the payment of fees distinct from those related to the distribution, the latter not being achieved until a transmission has taken place to the general public or any segment thereof.

(3) It shall be a matter for domestic law in each Contracting State to determine the extent, if any, to which performers and producers of phonograms whose performances or phonograms are used in a distribution to which this Convention applies are entitled to claim an equitable remuneration from the originating organization for the distribution and the conditions for such remuneration.

(4) No Contracting State shall be required to apply the provisions of this Convention with respect to any signals emitted before this Convention entered into force in that State.

*Alternative B*

(2) This Convention shall not apply in any case where the contents of the program-carrying signals emitted to the satellite do not comply with the domestic law of the State of which the originating organization is a national, where such law offers the protection referred to in paragraph (1) of this Article. In any case where the domestic law of said State does not offer such protection, this Convention shall not apply if

such protection is offered by the domestic law of the State in which the program-carrying signals are made, and the signals emitted do not comply with the latter law.

(3) No Contracting State shall be required to apply the provisions of this Convention with respect to any signals emitted before this Convention entered into force in that State.

#### Alternative C

(2) Notwithstanding the provisions of paragraph (1) of this Article, the authors of works which are used in a distribution to which this Convention applies shall in any case be entitled to claim an equitable remuneration from the originating organization, where

- (i) the works are protected against broadcasting in the country from which the emission to the satellite is made;
- (ii) the originating organization has authorized the distribution in another Contracting State which is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works;
- (iii) the distribution does not entitle the author to an equitable remuneration under the domestic law of that other Contracting State and does not fall within the provisions of Article V.

(3) It shall be a matter for domestic law in each Contracting State to determine the extent, if any, to which performers and producers of phonograms whose performances or phonograms are used in a distribution to which this Convention applies are entitled to claim an equitable remuneration from the originating organization for the distribution and the conditions for such remuneration.

(4) No Contracting State shall be required to apply the provisions of this Convention with respect to any signals emitted before this Convention entered into force in that State.

#### Article V

##### Alternative A

Notwithstanding the provisions of this Convention,

- (i) any Contracting State may, in its domestic law, permit the distribution, for the purpose of reporting current events, of short excerpts from programs containing reports of such events, provided that attendance at such events does not require the payment of an admission charge;
- (ii) any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may also, in its domestic law, permit the distribution of programs solely for the purpose of teaching or scientific research.

##### Alternative B

Notwithstanding the provisions of this Convention, any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may, in its domestic law,

- (i) permit the distribution, for the purpose of reporting current events, of short excerpts from programs con-

taining reports of such events, provided that attendance at such events does not require the payment of an admission charge;

- (ii) permit the distribution of programs solely for the purpose of teaching or scientific research.

#### Alternative C

Notwithstanding the provisions of this Convention,

- (i) any Contracting State may, in its domestic law, permit the distribution, for the purpose of reporting current events, of short excerpts from programs containing reports of such events, provided that attendance at such events does not require the payment of an admission charge;
- (ii) any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may, in its domestic law,
  - (a) permit the distribution, for the purpose of reporting current events, of short excerpts from programs containing reports of such events;
  - (b) permit the distribution of programs solely for the purpose of teaching or scientific research.

#### Article VI

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until . . . . for signature by any State that is a member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) Each State must be in a position, in accordance with its domestic law, to apply the provisions of this Convention at the date of the entry into force of this Convention for that State.

#### Article VII

(1) This Convention shall enter into force three months after deposit of the . . .<sup>th</sup> instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the . . .<sup>th</sup> instrument of ratification, acceptance or accession, this Convention shall enter into force three months after deposit of its instrument.

(3) (a) Any State may, at the time of ratification, acceptance or accession or at any later date, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification shall take effect three months after the date on which it is received.

(b) However, subparagraph (a) may in no case be interpreted as implying recognition or tacit acceptance by any one

of the Contracting States of the actual situation in any territory to which the present Convention is made applicable by another Contracting State by virtue of the said subparagraph.

#### Article VIII

(1) Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations, on its own behalf or on behalf of all or any of the territories referred to in Article VII(3).

(2) Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the United Nations of the notification of denunciation.

#### Article IX

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State which on . . . . . prohibits the unauthorized distribution of program-carrying signals solely on the basis of the place from which the signals are emitted may, by a notification deposited with the Secretary-General of the United Nations, declare that it will apply this criterion [*Alternative: if the Alternative in Article II(ii) is accepted, add: alone*] for the purposes of this Convention instead of the criterion [*Alternative: if the Alternative in Article II(ii) is accepted, replace "criterion" by criteria*] provided for in Article II(ii).

(3) Any Contracting State that on . . . . . withholds, limits, or does not provide protection under its copyright law with respect to the distribution of signals carrying works protected by copyright by means of wires, cables, or other communications channels to subscribing members of the public, may, by a notification deposited with the Secretary-General of the United Nations declare that it will not apply this Con-

vention to such distributions of signals on its territory. Such notification may be withdrawn at any time by a declaration deposited with the Secretary-General of the United Nations, and such withdrawal shall take effect six months after the date of its deposit.

#### Article X

(1) This Convention shall be established in a single original in English, French, Russian and Spanish, all four versions being equally authentic.

(2) In addition, official versions of this Convention shall be established in . . . . .

(3) The Secretary-General of the United Nations shall notify the States to which reference is made in Article VI (1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director-General of the International Labour Office [*Alternative: add: and the Secretary-General of the International Telecommunication Union*] of:

- (i) signatures of this Convention;
- (ii) deposits of instruments of ratification, acceptance and accession;
- (iii) the date of entry into force of this Convention;
- (iv) the deposit of notifications relating to Article IX, with the text of the declarations made;
- (v) the receipt of notifications of denunciation.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States to which reference is made in Article VI (1).

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at . . . . ., this . . . day of . . . . ., . . . .

## ANNEX B

### Draft Protocol

Added to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concerning the Prohibition of the Unauthorized Distribution of Signals Transmitted by Means of Communications Satellites<sup>1</sup>

#### Articles I to V

[Same as in Annex A, but replace "this Convention" by "this Protocol"]

#### Article VI<sup>2</sup>

(1) This Protocol shall be deposited with the Secretary-General of the United Nations. It shall be open until . . . . . for signature by any State that is a member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations.

(2) This Protocol shall be subject to ratification or acceptance by the signatory States separately from or together with the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. It

shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance, or accession shall be deposited with the Secretary-General of the United Nations.

(4) Each State must be in a position, in accordance with its domestic law, to apply the provisions of this Protocol at the date of the entry into force of this Protocol for that State.

#### Articles VII to IX

[Same as in Annex A, but replace "this Convention" by "this Protocol"]

<sup>1</sup> Presented by the Delegation of Italy.

<sup>2</sup> Parallels Article VI of the Draft in Annex A.

*Article X*<sup>3</sup>

(1) After this Protocol has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the Protocol. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one-third of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, who shall convene a revision conference in cooperation with the Intergovernmental Committee provided for in Article XII.

(2) The adoption of any revision of this Protocol shall require an affirmative vote by . . . of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to this Protocol.

(3) In the event of adoption of a Protocol revising this Protocol in whole or in part, and unless the revising Protocol provides otherwise:

- (a) this Protocol shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Protocol;
- (b) this Protocol shall remain in force as regards relations between or with Contracting States which have not become parties to the revising Protocol.

*Article XI*<sup>4</sup>

Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Protocol and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

*Article XII*<sup>5</sup>

(1) An Intergovernmental Committee is hereby established with the following duties:

<sup>3</sup> Parallels Article 29 of the Rome Convention.

<sup>4</sup> Parallels Article 30 of the Rome Convention.

<sup>5</sup> Paragraphs (1) to (4), (6) and (7) parallel Article 32 of the Rome Convention.

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

(2) The Committee shall consist of representatives of the Contracting States, chosen with due regard to equitable geographical distribution. The number of members shall be . . . if there are twelve Contracting States or less, . . . if there are thirteen to eighteen Contracting States, and . . . if there are more than eighteen Contracting States.

(3) The Committee shall be constituted twelve months after the Protocol comes into force by an election organized among the Contracting States, each of which shall have one vote, by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, in accordance with rules previously approved by a majority of all Contracting States.

(4) The Committee shall elect its Chairman and officers. It shall establish its own rules of procedure. These rules shall in particular provide for the future operation of the Committee and for a method of selecting its members for the future in such a way as to ensure rotation among the various Contracting States.

(5) The Committee shall meet at the same time as the Committee provided for by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. In appropriate cases it may hold sessions in common with the above-mentioned Committee, in order to find solutions to problems concerning both the Rome Convention and this Protocol.

(6) Officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization, and the World Intellectual Property Organization, designated by the Directors General thereof, shall constitute the Secretariat of the Committee.

(7) Expenses of members of the Committee shall be borne by their respective Governments.

*Article XIII*

[Same as Article X in Annex A, but replace "this Convention" by "this Protocol"]

ANNEX C**Resolution**

The Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmissions Via Space Satellites, meeting at Lausanne from April 21 to 30, 1971, at the invitation of the Directors General of the United Nations Educational, Scientific and Cultural Organization (Unesco) and of the World Intellectual Property Organization (WIPO),

1. Recognized in its discussions that the unauthorized distribution to the general public of program-carrying signals seriously jeopardizes the development of satellite transmissions, and that measures should be adopted to avoid any prejudice;

2. Notes that the exchange of views which has taken place has not, in spite of its undeniable value, led to proposals which would enable a position to be adopted on the advisability of convening a Diplomatic Conference to find solutions to the said problems;

3. Expresses the wish:

(a) that the Committee of Experts be convened at least once more to attempt to achieve a greater degree of reconciliation between the positions both of Governments and of the interested circles;

(b) that in the meantime the Executive Committee of the Berne Union for the Protection of Literary and Artistic Works and the Intergovernmental Committees established by the Universal Copyright Convention and by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations examine, in their next sessions and each as far as it is concerned, the results of this meeting;

(c) that the said results be communicated as soon as possible to the States and organizations invited to participate in the work of the Committee of Experts;

(d) that the Secretariats of Unesco and WIPO invite the said States and organizations to communicate in writing their points of view both upon the said results and upon the opinion which could be expressed by the three intergovernmental committees mentioned above; and

(e) that until the next meeting of the Committee of Experts the competent bodies of Unesco and WIPO postpone any decision as to the convening of a diplomatic conference.

ANNEX D**List of Participants****I. Members of the Committee**

Australia: G. Lawless. Austria: R. Dittrich; H. Thoma; W. Dillenz; K. Rössel-Majdan. Belgium: G.-L. de San; F. van Isacker; A. C. Namurois; J. Vermeire; L. Remonchamps. Brazil: M. S. da Fonseca Costa Couto. Canada: F. W. Simons; B. C. McDonald; H. Hindley; R. Anger. Cyprus: A. Christofides. Denmark: W. Weincke; E. Carlsen; J. Nørup-Nielsen. Ethiopia: N. Haptewold. Finland: R. Meinander; T. Grönberg; O. Lares. France: P. Charpentier; M. Boutet; A. Kerever; M. Cazé; P. R. Lunet; J. Buffin; P. B. Nollet; J.-L. Tournier. Germany (Federal Republic): E. Steup (Mrs.); E. Bungeroth. Ghana: Y. O. Asare; G. E. Akrofi. Greece: G. Pilavachi. Holy See: H.-M. de Riedmatten. India: G. Shankar; G. S. Balakrishnan. Italy: G. Galtieri; C. Ferro-Luzzi; C. Zini-Lamberti; G. Trotta. Japan: Y. Nomura. Kenya: D. Afande; G. Straschnov. Malaysia: P. S. Lai; Seong Hong Woon. Mexico: G. E. Larrea-Richerand; J. L. Caballero; A. Loreda Hill. Monaco: C. C. R. Solamito; F. de La Panouse. Morocco: A. Zerrad; A. Chakroun. Netherlands: W. L. Haardt; J. Verhoeve; F. Klaver (Miss). Nigeria: G. E. E. Umukoro; G. A. Idowu. Philippines: M. S. Aguillon. Senegal: N'Déné N'Diaye. Spain: J.-M. Calviño Iglesias; G. Sala Tardiu. Sweden: H. Danelins; E. Ploman. Switzerland: J.-L. Marro; M. Apothéloz; V. Hauser; A. Girshberger; R. de Kalhermatten; E. Petitpierre; J. Rordorf; U. Uchtenhagen. Tunisia: A. Amri; A. Abdeljaouad. United Arab Republic: Y. Rizk. United Kingdom: W. Wallace; C. E. Lovell; E. Rohhins. United States of America: B. A. Ringer (Miss); H. J. Winter; E. N. Aleinikoff; R. V. Evans.

**II. Observer States**

Algeria: K. Lokmane. Jamaica: A. Thompson. Soviet Union: V. Sobakine. Syrian Arab Republic: A. Esber.

**III. Observers**

*United Nations and other organizations of the United Nations system*

United Nations (UN): B. Sloan; P. Raton. International Labour Organisation (ILO): E. Thompson. International Telecommunication Union (ITU): C. Stead; W. W. Scott.

*International non-governmental organizations*

Asian Broadcasting Union (ABU): H. Brack. European Broadcasting Union (EBU): H. Brack; G. Hansson; K. Remes. European Conference of Posts and Telecommunications (CEPT): W. H. Metz; T. Moeckli. International Confederation of Professional and Intellectual Workers (CITI): G. Poulle; J. Mourier. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; G. Davies (Miss). International Film and Television Council (ICT): A. Brisson; P. L. Chesnais; R. Leuzinger. FIA: R. Remhe; G. B. Croasdell. IFVA: R. Rembe; G. B. Croasdell. FIM: H. Ratcliffe; R. Lenzinger. International Literary and Artistic Association (ALAI): H. Deshois. International Writers Guild (IWG): R. Fernay. Union of National Radio and Television Organizations of Africa (URTNA): M. El Bassionni.

**IV. Consultant to the Secretariat of Unesco**

H. Saha.

**V. Secretariat**

United Nations Educational, Scientific and Cultural Organization (Unesco):

C. Lussier (*Director, Office of International Norms and Legal Affairs*); M. C. Dock (Miss) (*Head, Copyright Division*); E. L. Sommerlad (*Programme Specialist*); P. Lyons (Miss) (*Assistant Lawyer, Copyright Division*).

World Intellectual Property Organization (WIPO):

G. H. C. Bodenhausen (*Director General*); A. Bogsch (*First Deputy Director General*); C. Masouyé (*Senior Counsellor, Head, External and Public Relations Division, Head a. i., Copyright Division*); R. Harben (*Counsellor, Deputy Head, External and Public Relations Division*); S. Khan (*Legal Assistant, Copyright Division*).

**VI. Officers of the Committee**

*Chairman:* F. W. Simons (Canada). *Vice-Chairmen:* Y. Nomura (Japan); D. Afande (Kenya); G. E. Larrea-Richerand (Mexico). *Secretaries:* M. C. Dock (Miss) (Unesco); C. Masouyé (WIPO).

## Memorandum

prepared by the International Bureau of WIPO on the questions to be considered

(Document Unesco/WIPO/SAT/4)

### INTRODUCTION

1. This document is presented as a possible basis for the discussions of the Committee of Experts (hereinafter referred to as "the Committee") on the desirability of establishing an international regulation for the protection of television and radio signals particularly when they are transmitted by space satellites, as well as on the possible contents of such a regulation.
2. The present document uses the word "regulation" since it does not wish to, and does not, take a position on the question what form the proposed regulation should take, particularly whether it should be a revision of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as "the Rome Convention"), a revision of certain instruments of the International Telecommunication Union, or a special treaty. The expression "regulation" or "proposed regulation", as used in this document, should thus be understood as covering any possible form.
3. The question of the form of the proposed regulation is dealt with after that of the possible contents of the proposed regulation since, it is believed, the contents may have a decisive influence on the choice of the form.
4. Another question with which this document deals after the possible contents of the proposed regulation, and also after the question of its form, is the question whether any country or only countries party to the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention") or to the Universal Copyright Convention should be able to become party to the instrument which will contain the proposed regulation. This is because it would seem that the answer depends, to some extent at least, on the possible contents of the proposed regulation and on the answer to the question whether it will take the form of a revision of the Rome Convention (since the Rome Convention takes a position on this last question: it admits ratification, acceptance or accession only by States party to at least one of the said two Copyright Conventions).
5. Whereas, in respect of the two questions mentioned in paragraphs 3 and 4, the number of possible solutions is limited, the number of possible solutions for each question to be answered in connection with the possible contents of the proposed regulation is very high and the number of all the various combinations of the various answers is even higher. This is why it is believed that it would be utterly impractical — if not impossible — to enumerate, for the purposes of a working paper, all the possible solutions. Instead, a solution is in most cases expressly or implicitly suggested.
6. None of these suggestions should be considered as a position taken by the Secretariats presenting this document. Their only aim is to provide a possible basis for the discussions of the Committee.
7. The possible contents of the proposed regulation are dealt with in the following order. First, the subject matter ("signals") and the scope of the protection (against unauthorized retransmission and fixation) are dealt with. Secondly, the exceptions and the time limit (20 years) of the protection are dealt with. Thirdly, the question is examined who should be the beneficiary of the protection, and, fourthly, the question who should be considered legally responsible for respecting the protection. Fifthly, the question of sanctions and, sixthly, the safeguarding of rights guaranteed by national laws and other international regulations are examined. These six chapters constitute Part I ("Possible Contents of the Proposed International Regulation") of this document.
8. Part II, entitled "Form of the Proposed International Regulation and its Connection with the Copyright Conventions", deals with the two questions indicated in the title and briefly discussed in paragraphs 2 to 4 above.

### PART I

#### Possible Contents of the Proposed International Regulation Subject Matter and Scope of the Protection

9. *The Committee is invited to consider the subject and scope of the protection.*
10. The present studies stemmed mainly from a desire to give protection against the unauthorized use of television broadcasts propagated by means of "satellites", that is, man-made objects in orbit around the Earth.
11. It is believed, however, that defining the problem in the above manner might be too broad in one sense and too narrow in another.
12. It might be too broad since it is not every use that should require authorization but only certain well-defined uses.
13. It might be too narrow in at least three respects. *First*, there seems to be no reason to speak only of television and not also of radio (in the sense that it relates to sound only). *Secondly*, there seems to be no reason to speak only of satellites when the unauthorized use may relate to emissions conducted through equipment located not only on satellites but also on natural celestial bodies (e. g., the Moon), or ships or aircraft, as well as any point on the Earth. *Thirdly*, it would seem that what is involved is the protection of *signals*, rather than broadcasts. "Broadcast" is generally accepted as meaning a radio or television communication which can be received *direct* by the *general public*<sup>1</sup>. However the intended protection should cover also the unauthorized use of an emission not receivable direct by the public but destined for a receiver which can then retransmit or fix the emission.
14. For the purposes of the deliberations of the Committee, it is suggested that the following possibilities be considered:
  - (i) *the subject matter* of the protection to be guaranteed should be "program-carrying radio or television signals",
  - (ii) *the acts* which should require authorization in respect of such signals should — subject to certain limitations — be the acts of "retransmission" and "fixation".
15. The notion of radio or television *signal* is suggested because it avoids the narrowness of the notion of broadcast indicated above. But since radio and television signals may well carry messages outside the scope of the subject which is the concern of the Committee, it is suggested that the notion of signals be qualified by "program-carrying"<sup>2</sup>. Such signals should be understood as meaning radio or television signals carrying sounds or picture sequences ultimately intended for reception by members of the public; "the public" includes, of course, certain segments thereof (for example, students, or certain linguistic, occupational or religious groups). Signals carrying literary, musical or artistic works — or, perhaps, more accurately, carrying the performance or exhibition of such works — should always be regarded as "program-carrying" (whether or not the works are protected by copyright). So, also, should signals carrying sports events and news. On the other hand, communications between various elements of the authorities of the same State (for example, between military units) or of the same enterprise (for example, concerning the dispatching of taxis) should not be considered "program-carrying". Most if not all of these are already protected by virtue of existing international agreements, primarily by the "secrecy of correspondence" provisions of the International Telecommunication Convention and the Radio Regulations.

<sup>1</sup> The Rome Convention defines "broadcasting" as "the transmission by wireless means for public reception of sounds or of images and sounds"; the Radio Regulations of the ITU define "broadcasting service" as "a radiocommunication service in which the transmissions are intended for direct reception by the general public."

<sup>2</sup> An alternative approach would be to protect signals in general, but to exclude from the protection signals of specified types already regulated internationally or not suitable for such regulation.

16. As to retransmittal and fixation, these two notions could be defined in the following terms. "To retransmit" could be defined as meaning to use the received signals in a way which makes it possible — through the emission of strengthened or new radio or television signals, signals carried by wire, or any other signals — to hear the sounds and to see the pictures carried by the original signals. The notion would include both simultaneous and delayed retransmittal. A signal would be considered received whether or not it was an original signal or an intervening (authorized or unauthorized) retransmission thereof. "To fix" could be defined as meaning to make a record of the sound or of the picture or of both, that is, to store it or them in a way which makes it possible to hear the sound and to see the picture, possibly with the help of additional equipment, either at the time when the signals are fixed or, more characteristically, at a later time. Multiplication (reproduction, copying) of the fixation would be considered to be covered by the notion of fixing, since it requires the making of additional records.

17. Possible exceptions from the protection against the said uses are offered for consideration in the next chapter.

### Exceptions and Limits in respect of the Protection

18. *The Committee is invited to examine what limits and what exceptions should be allowed in respect of the protection described above.*

19. *Exceptions.* The Committee may wish to examine the possibility of deciding that it should be a matter for national legislation to permit the fixation of the signal in certain special cases, provided that such fixation does not conflict with a normal exploitation of the signal or of authorized fixations of it and does not unreasonably prejudice the legitimate interests of the beneficiary of the protection.

20. *Time limit.* Any use, including retransmission or multiplication of any fixation, whether made with or without the permission of the beneficiary of the protection, should be free after 20 years, that is, after the expiration of the 20<sup>th</sup> year following the year in which the emission of the fixed signal took place. It is proposed that this time limit should be regarded as a minimum, and, if the national law of the country in which protection is claimed provides for a longer protection, that time limit should apply.

### Beneficiary of the Protection

21. *The Committee is invited to consider who should be the beneficiary of the protection.*

22. In answering this question, the Committee may wish to consider the following possible solution. The beneficiary of the protection should be the person with whom the program-carrying radio or television signal originates. The signal could be regarded as originating with the person who orders its emission, that is, who has at least the initial responsibility for the fact that the program-carrying signal is emitted, whether or not the technical equipment required for the emission is owned or controlled by that person. For example, a signal of the British Broadcasting Corporation emitted with equipment belonging wholly or partly to the postal authorities of the UK Government would be protected for the benefit of the British Broadcasting Corporation because it is that Corporation which orders the emission of the signals.

23. The "person" who is the beneficiary may be a State authority, a legal entity or a natural person.

### Responsibility for Respecting the Protection

24. *The Committee is invited to consider who should be legally responsible for respecting the protected rights.*

25. In considering this question, the Committee may wish to examine the following suggestions.

26. *Primary responsibility.* It would seem that responsibility for unauthorized retransmission or fixation should lie primarily with the person — State authority, legal entity or natural person — who "orders" the retransmission or fixation, that is, who has at least the initial responsibility for the fact that the program-carrying signal is retransmitted or fixed (including multiplication of the fixation), whether or not the

technical equipment required for the retransmission or fixation (multiplication) is owned or controlled by that person.

27. *Subsidiary responsibility of certain persons.* The Committee may wish to consider the additional possibility that responsibility should, when no remedy can be obtained from the person ordering the unauthorized retransmission or fixation, lie also with any person (legal entity or natural person, but *not* a State authority) who (a) owns or controls the technical equipment used for the unauthorized retransmittal or fixation, or (b) has a certain accessory role in connection with the unauthorized retransmittal or fixation. Such accessory role could be regarded as that of a person who, in connection with the unauthorized retransmission or fixation: (i) provides, maintains or repairs the equipment used, (ii) provides supplies, (iii) provides the transport of persons, equipment or supplies, or (iv) orders or produces programs, including advertisements. The foregoing four points are inspired by the European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories, signed at Strasbourg on January 22, 1965.

28. Responsibility of the kind referred to in the preceding paragraph would obtain only if the person has knowledge (for example, because he has been put on notice by the beneficiary of the protection) of the unauthorized nature of the retransmission or fixation and — as already indicated — if no remedy can be obtained from the person primarily responsible (that is, the person who ordered the unauthorized retransmission or fixation). However, an alternative solution which the Committee might wish to consider would consist in omitting the second condition. In that case, the responsibility under discussion would become a joint (solidary) responsibility rather than a subsidiary responsibility.

### Sanctions Against Infringement

29. *The Committee is invited to examine what sanctions against any infringement of the protected rights should be provided for in any international regulation.*

30. The Committee may wish to consider — among others — the following possibility:

(a) Each Contracting State should undertake to provide in its national law effective measures for sanctions against any infringement of the prohibition of retransmission or fixation provided for in the proposed international regulation.

(b) Such measures should include appropriate preventive measures, as well as damages to be paid by the infringing party to the beneficiary of the protection.

31. The further question arises whether any sanctions applicable under national law against the unauthorized retransmission or fixation of domestic broadcasts should not, in any case, be applicable also in the case of infringements under the proposed international regulation.

### Safeguarding of Certain Rights

32. *The Committee is invited to examine the desirability of providing, expressis verbis, that nothing in the proposed international regulation should be capable of an interpretation which would diminish rights and responsibilities guaranteed by other international instruments or by national laws.*

33. It could be argued that such a provision is not indispensable since nothing in the new instrument would diminish any existing rights and obligations. It might, nevertheless, increase legal security if the said principle were spelled out *expressis verbis*. The new instrument could, for example, provide that nothing in it may be interpreted in a way which would result in diminishing:

(i) the rights of copyright owners provided for in national laws and international treaties, in particular the Berne Convention and the Universal Copyright Convention,<sup>3</sup>

(ii) the rights of performers, producers of phonograms and broadcasting organizations provided for by national laws and international treaties, in particular the Rome Convention,<sup>3</sup>

<sup>3</sup> Such a provision would be unnecessary if the proposed regulation were to take the form of a revision of the Rome Convention and Article 1(2) of that Convention were to remain unchanged.

(iii) any rights of news agencies and organizers of sports events or entertainment provided for by national laws and international treaties,

(iv) the right of the secrecy of international correspondence and any other similar rights guaranteed by national laws or international treaties, particularly by the International Telecommunication Convention, the Radio Regulations, and other international agreements administered by the International Telecommunication Union,<sup>4</sup>

(v) the responsibilities of States for certain activities of governmental agencies and non-governmental entities under the Treaty on Principles Governing the Activities of States in the Exploration and the Use of Outer Space Including the Moon and Other Celestial Bodies.

## PART II

### Form of the Proposed International Regulation and its Connection with the Copyright Conventions

#### Form of the Proposed International Regulation

34. *The Committee is invited to recommend a suitable form for the proposed international regulation, in particular whether it should take the form of a revision of the Rome Convention, of a revision of the ITU Convention and Radio Regulations, or of a separate treaty.*

35. The main arguments for establishing the proposed "international" regulation as a revision of the Rome Convention appear to be the following:

(i) The proposed regulation would deal with a matter germane in its nature to, and possibly partly overlapping with a subject of, the Rome Convention. Consequently, it would be natural to amend the Rome Convention. Furthermore, overlapping would automatically be avoided.

(ii) The Rome Convention established a balance and an interrelationship between the protection of broadcasters, performers and phonogram producers. This simultaneous and balanced protection of the three groups would not exist in a separate treaty, which would not, or would only indirectly, deal with the interests of performers and phonogram producers but which would, for the most part, deal with the interests of the broadcasting organizations.

(iii) The Rome Convention makes the protection of the said three groups dependent upon and subject to the international protection of copyright, in that it provides that only such States may become party to it as are party to the Berne Convention or the Universal Copyright Convention. Unless a similar provision is written into the separate treaty, this dependence upon and subordination to copyright would be lost if the proposed regulation does not take the form of a revision (without affecting the said provision) of the Rome Convention.

36. The main arguments for establishing the new regulation in the form of a revision of the *International Telecommunication Convention or the Radio Regulations* of the International Telecommunication Union (ITU) appear to be the following:

(i) The subject matter of the proposed protection being television and radio signals, it would be natural and logical to deal with it in international instruments already dealing with some — albeit different — aspects of the protection of such signals.

(ii) The almost global membership of ITU makes it likely that any amendment of its instrument will be accepted by almost all countries of the world.

37. The main arguments for establishing the proposed regulation in the form of a *separate treaty* appear to be the following:

(i) The Rome Convention, in almost ten years of existence, has been accepted by only eleven countries. (The Berne Convention and/or the Universal Copyright Convention have been accepted by a total of about 80 countries.) There are no present indications that this membership will substantially increase in the foreseeable future to reach anything like the number of adherents to the Copyright Conventions or the ITU Convention.

<sup>4</sup> Such a provision would be unnecessary if the proposed regulation were to take the form of a revision of the ITU instruments.

(ii) Acceptance of a separate treaty on the protection of television and radio signals would not only do nothing to weaken the position of copyright owners, performers and phonogram producers but would, in practice, substantially strengthen it. No broadcasting organization can live without the use of protected works, performances of performing artists, and phonograms. It can be assumed as a certainty that any broadcasting organization, in its contractual negotiations with copyright owners, performers and phonogram producers, could be required to protect the interests of these three groups (by having to obtain their authorizations or to make adequate payments to them) whenever that broadcasting organization is protected, thanks to the protection of the signals the emission of which it orders, by virtue of a separate treaty. Without a legal basis given to the broadcaster to prohibit the retransmission and the fixation abroad of the signals carrying its broadcasts, the broadcasting organization has no means of negotiating the conditions of such retransmission or fixation. Conversely, if it has a basis for such negotiations, it is, as a practical matter, in a position to defend also the interests of copyright owners, performers, phonogram producers, news agencies, organizers of sports events, or any other group whose cooperation it needs in the original emission.

(iii) Establishment and acceptance of a separate treaty would probably require less time than revision of any ITU instrument, since the procedures for such revision take a particularly long time.

(iv) A separate treaty would make it possible to deal with signals which carry programs (rather than signals at large) and to safeguard the interests of copyright owners, performers, phonogram producers, news agencies and organizers of sport events. Any revision of an ITU instrument would probably exclude the possibility of any reference to the content of the signal and to the special interests, since ITU Conventions, by their nature, are concerned only with the technical aspects of telecommunications and not with their content or the proprietary interests connected with such content.

#### Connection with the Copyright Conventions

38. *The Committee is invited to take a position on the question whether only such States should be able to become party to the contemplated regulation as are bound by the Berne Convention and/or the Universal Copyright Convention.*

39. The Rome Convention contains a provision which establishes the said restriction. The question is, should it be maintained if the Rome Convention is revised or, if a separate treaty is established, should that treaty contain a similar restriction on eligibility for membership?

40. The main argument which has been used for such a restriction appears to be that "it would be inequitable to have . . . broadcasting organizations of a country enjoy international protection when the literary and artistic works they used might be denied protection in that country" (Report on the Diplomatic Conference of Rome; remarks under Article 23).

41. The main arguments against the said restriction appear to be the following:

(i) There is no logical link between the protection of television or radio signals (or broadcasting) and the protection of authors, since the former are protected (or should be protected) also when the program contains works no longer protected by copyright or when the program consists of matter other than literary and artistic works.

(ii) The restriction would close the new regulation to more than 50 countries not party to either Copyright Convention. It is unlikely that these countries would accept one or both of the said Copyright Conventions merely because they wish to become party to the proposed regulation.

(iii) Protection of broadcasters, thanks to the proposed regulation, would not only do nothing to weaken but would strengthen the position of copyright owners, as described in paragraph 37(ii), above.

*CORRESPONDENCE*

**Letter from Tunisia**



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**Abderrahmane AMRI**  
**Director General of SODACT**



## Meetings of Other International Organizations concerned with Intellectual Property

July 5 to 24, 1971 (Paris) — Unesco — Diplomatic Conference for the Revision of the Universal Copyright Convention

September 9 and 10, 1971 (West Berlin) — International League Against Unfair Competition — Study Mission on German Restrictive Trade Practices Law

September 14 to 17, 1971 (Nice) — Union of European Patent Agents — General Assembly

November 3 to 6, 1971 (Geneva) — Unesco — Intergovernmental Copyright Committee

International Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):

September 13 to 17, 1971 — Working Party I

October 11 to 22, 1971 — Working Party I

November 15 to 19, 1971 — Working Party I

November 29 to December 3, 1971 — Working Party II

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