

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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CONVENTIONS ADMINISTERED BY WIPO

**International Convention for the Protection of Performers, Producers of Phonograms
and Broadcasting Organizations**

**Meeting of Governmental Representatives for the Re-election of the Intergovernmental Committee
of the International Convention for the Protection of Performers, Producers of Phonograms
and Broadcasting Organizations**

(Paris, December 11, 1973)

Report of the Tellers

1. In accordance with the revised Rules of Procedure adopted by the Intergovernmental Committee at its fourth session at Paris during December 3, 4 and 11, 1973, the Directors General of the International Labour Office (ILO), the United Nations Educational, Scientific and Cultural Organization (Unesco) and the World Intellectual Property Organization (WIPO) convened a meeting of all the States party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations on December 11, 1973, in order to proceed to the election of the members of the Intergovernmental Committee established by Article 32 of the Convention.
2. The representatives of the following contracting States were present and took part in the elections: Austria, Brazil, Czechoslovakia, Denmark, Ecuador, Germany (Federal Republic of), Mexico, Niger, Sweden and the United Kingdom. Total: 10 States.
3. The election was conducted in accordance with Rule 31 of the revised Rules of Procedure.
4. In the absence of the representative of Fiji, elected as a Vice-Chairman of the Intergovernmental Committee, the meeting elected as a substitute the Head of the Delegation of Mexico to act as an ad hoc member of the Nominations Committee.
5. The Nominations Committee, thus consisting of the Chairman, of one of the Vice-Chairmen of the Intergovernmental Committee and of the ad hoc member, proposed the following nine States for membership of the Intergovernmental Committee: Austria, Brazil, Congo, Czechoslovakia, Ecuador, Mexico, Niger, Sweden and the United Kingdom.
6. The proposal of the Nominations Committee was adopted unanimously by the meeting.

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BILATERAL AGREEMENTS

GERMAN DEMOCRATIC REPUBLIC—U. S. S. R.

Agreement on the Reciprocal Protection of Copyrights concluded between the German Democratic Republic and the Union of Soviet Socialist Republics *

The Governments of the German Democratic Republic and the Union of Soviet Socialist Republics,

Inspired by the desire to promote the development of their cooperation in the field of the exchange of cultural values through the utilization of scientific, literary and artistic works,

Recognizing the necessity of establishing rules and conditions governing the reciprocal protection of copyrights,

Have decided to conclude this Agreement and, to that end, have appointed their Plenipotentiaries:

For the Government of the German Democratic Republic:
Hans-Joachim Hoffmann, Minister of Culture,

For the Government of the Union of Soviet Socialist Republics:
Boris D. Pankin, Chairman of the Board of the Copyright Agency of the USSR,

who, having presented their full powers, recognized as in good and due form,

Have agreed as follows:

Article 1

Each Contracting Party shall

- (a) encourage the publication of scientific, literary and artistic works created by the citizens of the other Contracting Party;
- (b) encourage the theatres, orchestras, musical ensembles and soloists of its country to include in their repertoires dramatic, dramatico-musical, musical and choreographic works created by the citizens of the other Contracting Party.

Article 2

Each Contracting Party shall recognize the copyrights of citizens of the other Contracting Party in scientific, literary and artistic works, irrespective of the place in which they were first made available to the public, and shall safeguard

the said rights in the same conditions as those which its laws provide in respect of its own citizens.

Unpublished works may be published simultaneously in both countries, or first made available to the public in the territory of the other Contracting Party, or, again, works of authors of one of the Contracting Parties may be distributed in third countries through the intermediary of organs of the other Contracting Party, only with the consent, in each specific case, of the competent organs of both Contracting Parties.

Article 3

The rights of the heirs of authors of works falling within the scope of this Agreement shall be protected for 25 years, counted from the first of January of the year following the author's death.

Works of citizens of a Contracting Party and works first made available to the public in the territory of a Contracting Party shall be granted the terms of protection provided by the legislation of that country.

Article 4

Copyright royalties shall be settled in the currency of the country in whose territory the work has been used, in accordance with the regulations in force for the settlement of non-commercial payments.

Article 5

The practical implementation of this Agreement shall be the task of the Offices for the Protection of Copyright of the Contracting Parties. Those Offices shall conclude between themselves working agreements regulating the conditions for the grant of the rights to the use of the works protected under this Agreement, assistance to citizens in the protection of their copyrights, the conditions for the payment of royalties due to authors, for the system governing the mutual settlement of accounts and for the taxation of copyright royalties.

Article 6

This Agreement shall be applicable to every case of utilization of protected works, when such utilization takes place after the entry into force of this Agreement.

* WIPO translation.

Article 7

This Agreement shall not affect the obligations and rights of the Contracting Parties under other international agreements.

Article 8

This Agreement may, by agreement between the Contracting Parties, be amended and supplemented on the basis of proposals from either Contracting Party.

Article 9

This Agreement has been concluded for a period of three years and shall enter into force on January 1, 1974.

The period of validity of this Agreement shall be automatically extended every three years if neither Contracting Party declares, not later than six months before the expiration of the current period, that the Agreement is denounced.

Done this twenty-first day of November 1973, in duplicate, each in the German and Russian languages, both texts being equally authentic.

On behalf of the Government
of the German Democratic
Republic

Hans-Joachim HOFFMANN

On behalf of the Government
of the Union of Soviet Socialist
Republics

PANKIN

from the end of the calendar year in which the recital or performance took place.”

8. Paragraph (2) of Article 67 shall read as follows:

“(2) Articles 11, 12, 13, 15(1), 16(1) and (3), 23, 24, 25(1), (2), (3) and (5), 26, 27, 28(1), 29, 31(1), 32 and 33(2) shall apply by analogy; however, a period of one year shall be substituted for the period of five years specified in Article 31(2).”

9. In paragraphs (1) and (2) of Article 68 the reference “Article 66(1)” is substituted for the reference “Article 66(1) or (2)”.

10. The following paragraph (3) is added to Article 68:

“(3) Paragraphs (1) and (2) shall not apply to persons participating merely in the chorus or orchestra or in a similar manner.”

11. In paragraphs (1) and (2) of Article 69 the reference “Article 66(1) and (5)” is substituted for the reference “Article 66(1) to (3)”, and the reference “Article 66(1)” for each of the references “Article 66(1) or (2)” and “Article 66(1) and (2)”.

12. The following provisions are substituted for paragraph (3) of Article 69:

“(3) Any person may, for his personal use, make, and make single copies of, visual or sound recordings of recitals or performances broadcast or of recitals or performances communicated by means of visual or sound recordings. Such visual or sound recordings may not be distributed or be used for a broadcast or public communication of the recital or performance.

(4) Article 56(1) and (3) shall apply by analogy.”

13. In Article 70 the reference “Article 66(1) and (5)” is substituted for the reference “Article 66(1) to (3)”, the reference “Article 66(6)” for the reference “Article 66(4)” and the reference “Article 66(7)” for the reference “Article 66(5)”.

14. In Article 71 the reference “Article 66(1) and (5)” is substituted for the reference “Article 66(1) to (3)”, and the reference “Article 66(6)” for the reference “Article 66(4)”.

15. The following provisions are inserted after paragraph (2) of Article 72:

“(3) The use of single recitals or performances or works of literature or music for scientific or educational purposes shall be permissible to the extent justified by the purpose.

(4) Recitals or performances of works of literature or music may be recorded on visual or sound recordings by the manager and may be reproduced within the building in which the event takes place, by means of such visual or sound recording or by other technical means, for the purpose of making the event perceptible in another room.”

16. The former paragraph (3) of Article 72 is designated paragraph (5).

17. The title of Chapter II of Part II shall read as follows: “Protection of Photographs, Sound Recordings and Broadcasts”.

17a. Paragraph (6) of Article 74 shall read as follows:

“(6) The right of protection in photographs shall terminate thirty years after they were taken or, where the photograph is made public before the expiration of that term, thirty years from the date on which it is first made public. The terms shall be computed in accordance with Article 64.”

18. Paragraph (3) of Article 76 shall read as follows:

“(3) Where a sound recording produced for commercial purposes is used for a broadcast (Article 17) or for public communication, the user shall pay equitable remuneration to the producer (paragraph (1)), subject to Article 66(7) and paragraph (2) of this Article. The persons specified in Article 66(1) shall have a claim on the producer to a share in such remuneration. In the absence of agreement between the parties entitled thereto, such share shall be one-half of the remuneration remaining to the producer after deduction of collecting costs.”

19. Paragraph (4) of Article 76 shall read as follows:

“(4) Any person may, for his personal use, make, and make single copies of, a sound recording of communications made by means of a sound recording. Such sound recordings may be neither distributed nor used for a broadcast or public communication.”

20. The former paragraph (4) of Article 76 is designated paragraph (5).

20a. The new paragraph (5) of Article 76 shall read as follows:

“(5) The right of protection in sound recordings shall terminate fifty years from their fixation or, if the sound recording is made public before the expiration of such term, fifty years from the date on which it is made public. The terms shall be computed in accordance with Article 64.”

21. The following paragraph (6) is added to Article 76:

“(6) The provisions of Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 56, 72(3) and 74(2) to (5) shall apply by analogy.”

22. The following provisions are inserted after Article 76:

3. Broadcasts

“Article 76a. — (1) Any person who broadcasts sounds or images or transmits them by any other similar method (Article 17, broadcasting organization) shall, subject to certain limitations provided for in the Law, have the exclusive

right to broadcast simultaneously such broadcasts by means of another transmitter, to fix the broadcast on a visual or sound recording (including in the form of a photograph), and to reproduce and distribute such recording. Reproduction shall mean also the use of a communication made by means of a visual or sound recording for the making of another such recording.

(2) Visual or sound recordings reproduced or distributed in violation of paragraph (1) of this Article may not be used for broadcasting (Article 17) or for public communication.

(3) Any person may, for his personal use, make, and make single copies of, visual or sound recordings of a broadcast. Such visual or sound recordings may be neither distributed nor used for broadcasting or for public communication.

(4) The right of protection in broadcasts shall terminate thirty years after the broadcast took place. The term shall be computed in accordance with Article 64.

(5) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 18(2), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 56, 72(3) and 74(2) to (5) shall apply by analogy.”

23. Paragraphs (1) and (2) of Article 86 shall read as follows:

“ (1) Any person who without authorization

- (i) uses a work of literature or art for a type of exploitation reserved to the author under Articles 14 to 18,
- (ii) makes a visual or sound recording of the recital or performance of a work of literature or music or makes copies of such recording, in violation of Article 66(1) and (5), or distributes such recording in violation of Article 66(1) and (5) or Article 69(3),
- (iii) broadcasts or publicly communicates, in violation of Article 66(7), Article 69(3), Article 70 or Article 71, the recital or performance of a work of literature or music,
- (iv) uses a photograph or a sound recording for a type of exploitation reserved to the producer under Article 74 or Article 76, or
- (v) uses broadcast for a type of exploitation reserved to the broadcasting organization under Article 76a

shall, even if he is without fault, pay equitable compensation to the injured party whose authorization should have been obtained.

(2) There shall be no right to such compensation, however, where a broadcast or public communication was unlawful for the sole reason that it was effected by means of visual or sound recordings or broadcasts which, under Article 50(2), Article 53(2), Article 56(3), Article 66(7), Article 69(3), Article 70, Article 71, Article 74, Article 76 or Article 76a(2) and (3), might not be used for that purpose, and where the user, without fault on his part, did not know that the visual or sound recordings or broadcasts were of such character.”

24. Paragraphs (3) and (4) of Article 87 shall read as follows:

“ (3) Where a work of literature or art is publicly recited, performed, exhibited or broadcast without authorization, or where the recital or performance of a work of literature or music is broadcast or publicly communicated in violation of Article 66(7), Article 69(3), Article 70 or Article 71, or where a photograph is publicly exhibited or broadcast in violation of Article 74, or where a sound recording is used for broadcasting or public communication in violation of Article 76(2) or (4), or where a broadcast is transmitted or publicly communicated in violation of Article 76a, the injured party whose authorization should have been obtained may demand double the amount due to him under Article 86 as indemnity for the pecuniary damages (paragraph (1)) culpably inflicted on him, or such higher damages as he may prove.

(4) Where a work of literature or art is reproduced or distributed without authorization, the injured party whose authorization should have been obtained may further demand surrender of the profits derived by the offender from the infringement. The same shall apply where the recital or performance of a work of literature or music is used in violation of Article 66(1), or a broadcast is used on a visual or sound recording in violation of Article 76a, or where a photograph, in violation of Article 74, or a sound recording, in violation of Article 76, is reproduced or distributed.”

25. In Article 95, paragraph (2) and the designation (1) of the remaining paragraph are deleted.

26. Article 96 shall read as follows:

“ *Article 96.* — Works of foreign authors (Article 10(1)) which are neither published in Austria nor a part of or a fixture on realty in Austria, but which are published abroad, shall enjoy copyright protection according to international treaties or subject to the condition of reciprocity; the Federal Minister of Justice shall be empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country.”

27. In paragraph (1) of Article 97 the reference “ Article 66(1) and (5) ” is substituted for the reference “ Article 66(1) to (3) ”.

28. Paragraph (2) of Article 97 is deleted.

29. Paragraph (3) of Article 97, which is designated paragraph (2), shall read as follows:

“ (2) In the case of recitals and performances which take place abroad, Articles 66 to 72 shall apply in favor of Austrian citizens. Foreigners shall be protected in respect of such recitals or performances in accordance with international agreements or subject to the condition of reciprocity; the Federal Minister of Justice shall be empowered to make known in the *Bundesgesetzblatt* that, and where

appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country. ”

30. The heading above Article 99 shall read as follows: “4. Protection of Sound Recordings and Broadcasts”.

31. Article 99 shall read as follows:

“ *Article 99.* — (1) Sound recordings shall be protected under Article 76, regardless of whether or where they have been published, if the producer is an Austrian citizen.

(2) Other sound recordings shall be protected under Article 76 if they have been published in Austria.

(3) Sound recordings by foreign producers which have not been published in Austria shall be protected under Article 76 in accordance with international agreements or subject to the condition of reciprocity; the Federal Minister of Justice is empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country.

(4) In all cases foreigners may claim the protection granted under Article 76(3) only in accordance with international agreements. ”

32. The following provision is inserted after Article 99:

“ *Article 99a.* — Broadcasts which are not emitted in Austria shall be protected only in accordance with international agreements. ”

33. Paragraph (1) of Article 100 shall read as follows:

“ (1) Foreigners who have no principal place of business in Austria shall be entitled to protection under Articles 79 and 80 only in accordance with international agreements or subject to the condition of reciprocity; the Federal Minister of Justice is empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country. ”

34. Paragraph (2) of Article 100 is deleted.

35. Paragraph (3) of Article 100 is designated paragraph (2).

36. In paragraphs (1) and (2) of Article 110 the reference “ Article 66(1) ” is substituted in both instances for the reference “ Article 66(1) and (2) ”.

Article II

(1) This Law shall enter into force, with respect to the prolongation of the terms of protection, on December 31, 1972, and in all other respects on June 1, 1973.

(2) Article I, items 2 to 3a, 7, 17a and 20a, shall apply also to works created, recitals and performances effected, photographs taken and sound recordings made before the entry into force of this Law, the term of protection of which has not expired by that date under the earlier provisions.

(3) Where the author (Copyright Act, Article 10(2)) has granted a license or consented to the use of his work prior to the entry into force of this Law, this disposal shall in case of doubt not extend for the duration of the terms of protection as prolonged under this Law; however, any person who has acquired a license or consent to use a work for a consideration shall, against payment of equitable remuneration, remain entitled to use the work also during the period of prolongation. This shall apply by analogy to the disposal of protected rights in recitals and performances of works of literature and music, and in photographs and sound recordings.

(4) Where the recital or performance of a work of literature or music has taken place prior to the entry into force of this Law, the rights of exploitation shall belong to the persons specified in Article 66(1) and (2) of the Copyright Act in its former version.

(5) Article I, item 18, shall not apply to a broadcast or public communication which took place prior to the entry into force of this Law.

(6) Article I, item 22, shall not apply to broadcasts which were emitted prior to the entry into force of this Law.

(7) Paragraphs 1 and 2 of Article III of the Law of 1953 Amending the Copyright Act, *Bundesgesetzblatt* No. 106, are repealed.

Article III

The execution of this Law is entrusted to the Federal Minister of Justice.

CORRESPONDENCE

Letter from Austria

Robert DITTRICH *

Letter from Japan

Yoshio NOMURA *

- November 3 to 14, 1975 (Berne) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- December 1 to 12, 1975 (Munich) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee
- December 8, 9 and 16, 1975 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (jointly organized with the International Labour Organisation and Unesco)
- December 10 to 16, 1975 (Geneva) — Executive Committee of the Berne Union (Extraordinary Session)
- December 11 to 13, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

UPOV Meetings

- October 21 to 23, 1974 (Geneva) — Meeting of Member and Non-Member States
- October 23, 1974 (Geneva) — Consultative Working Committee
- October 24 to 26, 1974 (Geneva) — Council
- November 5 and 6, 1975 (Geneva) — Technical Steering Committee
- November 7, 1974 (Geneva) — Working Group on Centralized Examination

Meetings of Other International Organizations concerned with Intellectual Property

- June 19 to 21, 1974 (Rijswijk) — International Patent Institute — Administrative Board
- July 2 to 5, 1974 (Monte Carlo) — International Writers Guild — Congress
- September 11 to 13, 1974 (Brussels) — International Patent Institute — Administrative Board
- October 6 to 10, 1974 (Rome) — International League Against Unfair Competition — Congress
- October 21 to 23, 1974 (Rijswijk) — International Patent Institute — Administrative Board
- November 11 to 16, 1974 (Santiago) — Inter-American Association of Industrial Property — Congress
- December 9 to 11, 1974 (Rijswijk) — International Patent Institute — Administrative Board
- May 3 to 10, 1975 (San Francisco) — International Association for the Protection of Industrial Property — Congress
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