

# Copyright

## Review of the WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

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## Brussels Diplomatic Conference on the Distribution of Programme-Carrying Signals Transmitted by Satellite

### Note \*

The International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite, convened jointly by WIPO and the United Nations Educational, Scientific and Cultural Organization (Unesco), took place at the invitation of the Government of Belgium, in the Palais d'Egmont at Brussels from May 6 to 21, 1974.

Delegations of 57 States, of whom 10 were in the capacity of observers, and representatives of 22 international organizations participated in the Conference. Of the 22 organizations, 5 were intergovernmental and 17 non-governmental. Although their status was that of observer, their representatives had the possibility of participating in the substantive discussions in the Main Commission and, in fact, they frequently availed themselves of this possibility.

The list of participants appears below.

WIPO and Unesco were represented by their Directors General, Dr. Arpad Bogsch and Mr. René Maheu, respectively.

The Secretariat of the Conference was provided jointly by WIPO and Unesco. The Co-Secretaries General of the Conference were Mr. Claude Masouyé (WIPO) and Ms. Marie-Claude Dock (Unesco). The names of the other members of the Secretariat appear in the list of participants.

The Conference was opened by Mr. Jean-Pierre Grafé, Minister of French Culture of Belgium, and by the Directors General of Unesco and WIPO.

Mr. Gérard L. de San (Belgium) was elected President of the Conference.

The principal bodies established by the Conference were the Main Commission, chaired by Mr. João Frank da Costa

(Brazil), a Drafting Committee, chaired by Mrs. Elisabeth Steup (Federal Republic of Germany) and a Credentials Committee, chaired by Mr. N'Déné N'Diaye (Senegal). Mr. T. S. Krishnamurti (WIPO) and Mr. Daniel de San (Unesco) were the Secretaries of the latter.

The Conference held discussions on the basis of the Draft Convention drawn up by 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 which met at Nairobi (Kenya) from July 2 to 11, 1973<sup>1</sup>.

The Conference adopted, in the English, French, Russian and Spanish languages, the text of the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite as well as a report on its work drafted by its General Rapporteur, Ms. Barbara Ringer (United States of America).

The English and Russian texts of the Convention are published in this issue; the French and Spanish texts are published in the June 1974 issue of the review *Le Droit d'Auteur*.

Official texts of the Convention will be established later on in the Arabic, Dutch, German, Italian and Portuguese languages.

The Convention was opened for signature at the close of the Brussels Conference, that is, on May 21, 1974. On that day, it was signed on behalf of the following 15 States: Belgium, Brazil, Cyprus, Germany (Federal Republic of), Israel, Italy, Ivory Coast, Kenya, Lebanon, Mexico, Morocco, Senegal, Spain, Switzerland and the United States of America. The Convention remains open for signature until March 31, 1975.

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\* This note has been prepared by the International Bureau of WIPO.

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<sup>1</sup> See *Copyright*, 1973, p. 149.

## Liste des participants/List of Participants \*

### I. Etats / States

#### ALGÉRIE/ALGERIA

##### *Chef de la Délégation/Head of the Delegation*

Abdelkader Kasdali, Secrétaire général, Ministère de l'information et de la culture.

##### *Suppléants du Chef de la Délégation/Alternate Heads of the Delegation*

Ahmed Derradji, Ministre plénipotentiaire, Délégué permanent auprès de l'Unesco, Paris.

Salah Abada, Chef du Service juridique, Ministère de l'information et de la culture.

##### *Délégué/Delegate*

Rabia Hamimi, Chef du Service juridique, Radiodiffusion-Télévision algérienne.

#### ALLEMAGNE (République fédérale d')/ GERMANY (Federal Republic of)

##### *Chef de la Délégation/Head of the Delegation*

Felix O. Gaerte, Ministre Conseiller, Ministère des affaires étrangères

##### *Suppléant du Chef de la Délégation/Alternate Head of the Delegation*

Elisabeth Steup (M<sup>me</sup>), Ministerialrätin, Bundesministerium der Justiz.

##### *Délégué/Delegate*

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Arturo A. Iglesias Echegaray, Conseiller d'Ambassade, Ambassade d'Argentine en Belgique.

#### AUSTRALIE/AUSTRALIA

##### *Chef de la Délégation/Head of the Delegation*

L. J. Curtis, First Assistant Secretary, Attorney-General's Department.

##### *Délégué/Delegate*

L. MacDonald, Assistant Secretary, Department of the Media.

##### *Conseillers/Advisers*

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Harry Bluck, Musicians' Union of Australia.

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##### *Délégués/Delegates*

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\* Les noms et titres qui figurent dans la liste ci-après sont reproduits dans la forme où ils ont été communiqués au Secrétariat par les délégations intéressées (dans l'ordre alphabétique français des noms des Etats et des Organisations).

\* Names and titles in the following list are reproduced as handed in to the Secretariat by the delegations concerned (in the French alphabetical order of the names of the States and Organizations).

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*Délégués/Delegates*

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Enrique Lizalde Chávez, Presidente, Asociación Nacional de Interpretes.

Ramón Inclán, Secretario del Consejo, Sociedad de Autores y Compositores de Música (SACM).

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**MONACO***Chef de la Délégation/Head of the Delegation*

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*Délégué/Delegate*

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*Délégué/Delegate*

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**II. Etats observateurs / Observer States****Bangladesh**

Anam Khairul, First Secretary, Embassy of Bangladesh in Belgium.  
Rafik Islam, Embassy of Bangladesh in Belgium.

**Bulgarie/Bulgaria**

Petar Avramov, Secrétaire d'Ambassade, Ambassade de Bulgarie en Belgique.

**Colombie/Colombia**

Alfonso Venegas-Leyva, Chargé d'affaires, Ambassade de Colombie en Belgique.

**Pologne/Poland**

Adam Paczocha, Premier Secrétaire, Ambassade de Pologne en Belgique.

**République du Viet-Nam/Republic of Vietnam**

Tbuy Ngoc Do Thi (M<sup>me</sup>), Secrétaire d'Ambassade, Ambassade de la République du Viet-Nam en Belgique.

**Roumanie/Romania**

Ion Soare, Ambassade de Roumanie en Belgique.

**Saint-Marin/San Marino**

Emmanuel Noël, Consul général en Belgique.

**Saint-Siège/Holy See***Chef de la Délégation/Head of the Delegation*

Giovanni Battista Morandini, Auditeur de la Nonciature apostolique en Belgique.

*Observateurs/Observers*

René Cattoir, Collaborateur à la Nonciature apostolique en Belgique.

Armand Pirard, Directeur du Centre de documentation pour la télévision.

**Turquie/Turkey**

Senbir Tümay, Premier Secrétaire, Ambassade de Turquie en Belgique.

**Zaïre/Zaire**

Nsiku Muderwa-Sbekera, Attaché culturel, Ambassade du Zaïre en Belgique.



### III. Organisations intergouvernementales / Intergovernmental Organizations

*Organisation des Nations Unies (ONU)/United Nations (UN)*

Erik Suy, Under-Secretary-General, Legal Counsel.

*Organisation internationale du Travail (OIT)/International Labour Organisation (ILO)*

Edward Thompson, Chef, Section des travailleurs non manuels, Service des conditions générales de travail.

*Conseil de l'Europe/Council of Europe*

Alexandre Papandréou, Administrateur principal, Direction des affaires juridiques.

*Organisation des Etats arabes pour l'éducation, la culture et la science (ALECSO)/Organization of Arab States for Education, Culture and Science*

A. F. Sorour, Professeur, Délégué permanent auprès de l'Unesco, Paris.

*Organisation internationale des télécommunications par satellite (INTELSAT)/International Telecommunications Satellite Organization*

S. Astrain, Secretary-General.

### IV. Organisations internationales non gouvernementales / International Non-Governmental Organizations

*Association interaméricaine de radiodiffusion (AIR)/Inter-American Association of Broadcasters*

Saint-Clair Lopes, Director del Departamento Jurídico, Asociación Brasileña de Radiotelevisión.

*Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association*

Jan Corhet, Chargé de cours à l'Université libre de Bruxelles.  
J.-A. Ziegler, Secrétaire général de la CISAC.

*Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers*

M. J. Freegard, Président du Bureau exécutif.  
J.-A. Ziegler, Secrétaire général.

*Confédération internationale des travailleurs intellectuels (CITI)/International Confederation of Professional and Intellectual Workers*

Alain Caille, Conseiller technique.  
Boris Brus, Trésorier.

*Conseil international de la musique (CIM)/International Music Council (IMC)*

John Morton, Président de la FIM.  
Daniel Laufer, Secrétaire exécutif de l'Association européenne des directeurs de bureaux de concerts et spectacles.

*Conseil international du cinéma et de la télévision (CICT)/International Film and Television Council*

Pierre Chesnais, Trésorier.

*Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry*

S. M. Stewart, Director-General.  
G. Davies (Miss), Assistant Director-General.  
Joy Elterman (Miss), Legal Assistant.

*Fédération internationale des acteurs (FIA)/International Federation of Actors*

France Delahalle (M<sup>me</sup>), Président.  
Gerald Croasdell, Secrétaire général.

*Fédération internationale des artistes de variétés (FIAV)/International Federation of Variety Artists (IFVA)*

Gerald Croasdell, Secrétaire général de la FIA.

*Fédération internationale des musiciens (FIM)/International Federation of Musicians*

John Morton, Président.  
Maurice Ferres, Vice-Président.

*Institut international du théâtre (ITI)/International Theatre Institute*

Jean Darcante, Secrétaire général.

*Internationale Gesellschaft für Urheberrecht (INTERGU)/Société internationale pour le droit d'auteur/International Copyright Society*

Gaston Halla, Secrétaire général.

*Secrétariat international des syndicats du spectacle (SISS)/International Secretariat of Entertainment Trade Unions (ISETU)*

Karl Rössel-Majdan, Memher, Executive Board.  
Janet L. Underwood (Ms.), Assistant Secretary.

*Syndicat international des auteurs (IWG)/International Writers Guild*

Roger Fernay, Vice-Président exécutif.

*Union européenne de radiodiffusion (UER)/European Broadcasting Union (EBU)*

Alhert Scharf, Président de la Commission juridique.  
M. Cazé, Vice-Président de la Commission juridique.  
Karl Remes, Vice-Président de la Commission juridique.  
Georges Straschnov, Directeur des affaires juridiques.

*Union internationale des éditeurs (UIE)/International Publishers Association (IPA)*

J. A. Koutchoumow, Secrétaire général.  
F. R. Faecq, Président de la Chambre syndicale des éditeurs de musique de Belgique.

*Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National Radio and Television Organizations of Africa*

Rabia Hamimi, Chef du Service juridique, Radiodiffusion-Télévision algérienne.

### V. Secrétariat de la Conférence / Secretariat of the Conference

**Organisation des Nations Unies pour l'éducation, la science et la culture (UNESCO)/United Nations Educational, Scientific and Cultural Organization**

*Direction générale/Directorate*

René Maheu  
Directeur général/Director-General.

*Office des normes internationales et des affaires juridiques/Office of International Standards and Legal Affairs*

Claude Lussier  
Directeur/Director.

*Division du droit d'auteur/Copyright Division*

Marie-Claude Dock (M<sup>lle</sup>)  
Directeur p. i./Acting Director.  
Daniel de San  
Juriste/Lawyer.  
Patrice Lyons (M<sup>lle</sup>)  
Juriste/Lawyer.

*Division de la recherche et de la planification en matière de communication (y compris les communications spatiales)/Division of Communication Research and Planning (including space communications)*

L. Sommerlad  
Chef/Chief.

*Office de l'information du public/Office of Public Information*

J. Blocker  
Directeur/Director.

A. Brock  
Chargé de liaison avec la presse/Press Relations.

P. Bordry  
Chargé de liaison avec la radio-télévision/Relations with Radio and Television.

*Division des conférences/Conference Division*

S. Charfi  
Administrateur de conférences/Conference Officer.

J. Céliset  
Contrôle des documents/Documents Control.

**Organisation Mondiale de la Propriété Intellectuelle (OMPI)/  
World Intellectual Property Organization (WIPO)**

*Direction générale/Directorate*

Arpad Bogsch  
Directeur général/Director General.

*Cabinet du Directeur général/Office of the Director General*

Claude Masouyé  
Directeur/Director.

*Division du droit d'auteur/Copyright Division*

T. S. Krishnamurti  
Chef/Head.

*Section documents et courrier/Documents and Mail Section*

H. Rossier  
Chef/Head.

**Service de liaison du Gouvernement belge/Liaison Officers of  
the Belgian Government**

Paul Van Pelt  
Conseiller, Ministère des affaires étrangères.  
Albert Van Guyse  
Ministère des affaires étrangères.

## **VI. Organes et bureaux de la Conférence/ Organs and Officers of the Conference**

### **1. Conférence/Conference**

Président/Chairman: Gérard L. de San (Belgique)

Vice-Présidents/ István Tímár (Hongrie)

Vice-Chairmen: Emile Bedran (Liban)  
Abdallah Chakroun (Maroc)  
G. E. Larrea Riebrand (Mexique)  
I. J. G. Davis (Royaume-Uni)

Rapporteur général/  
General Rapporteur: Barbara Ringer (Ms.) (Etats-Unis d'Amérique)

Secrétaires généraux/  
Secretaries General: Marie-Claude Dock (Mlle) (Unesco)  
Claude Masouyé (OMPI)

### **2. Commission principale/Main Commission**

Président/Chairman: João Frank da Costa (Brésil)

Vice-Présidents/ Chiyuki Hiraoka (Japon)  
Vice-Chairmen: Hans Danelius (Suède)

Rapporteur: Barbara Ringer (Ms.) (Etats-Unis d'Amérique)

### **3. Comité de vérification des pouvoirs/Credentials Committee**

Président/Chairman: N'Déné N'Diaye (Sénégal)

Membres/Members: Paul Dubois (Canada)  
Paul Nollet (France)  
Aurel Benárd (Hongrie)  
Chiyuki Hiraoka (Japon)  
G. E. Larrea Riebrand (Mexique)  
E. A. Sai (Ghana)

Secrétaires/Secretaries: Daniel de San (Unesco)  
T. S. Krishnamurti (OMPI)

### **4. Comité de rédaction/Drafting Committee**

Président/Chairman: Elisabeth Steup (M<sup>me</sup>) (République  
fédérale d'Allemagne)

Vice-Président/  
Vice-Chairman: Yuri Zbarov (Union soviétique)

Membres/Members: Les délégués du Canada, de la Côte d'Ivoire, de  
l'Espagne, de la France, du Kenya et de la  
Tchécoslovaquie

## Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

The Contracting States,

*Aware* that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage;

*Concerned* that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

*Recognizing*, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

*Convinced* that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors;

*Conscious* of the need not to impair in any way international agreements already in force, including the International Telecommunication Convention and the Radio Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

### Article 1

For the purposes of this Convention:

- (i) "signal" is an electronically-generated carrier capable of transmitting programmes;
- (ii) "programme" is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution;
- (iii) "satellite" is any device in extraterrestrial space capable of transmitting signals;
- (iv) "emitted signal" or "signal emitted" is any programme-carrying signal that goes to or passes through a satellite;
- (v) "derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;
- (vi) "originating organization" is the person or legal entity that decides what programme the emitted signals will carry;
- (vii) "distributor" is the person or legal entity that decides that the transmission of the derived signals to the general public or any section thereof should take place;

- (viii) "distribution" is the operation by which a distributor transmits derived signals to the general public or any section thereof.

### Article 2

(1) Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.

(2) In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified in writing of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law or of its modification.

(3) The obligation provided for in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.

### Article 3

This Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public.

### Article 4

No Contracting State shall be required to apply the measures referred to in Article 2(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

- (i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or
- (ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or
- (iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

### Article 5

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered into force for that State.

### Article 6

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

### Article 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

### Article 8

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

(2) Any Contracting State whose domestic law, on May 21, 1974, so provides may, by a written notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting State" appearing in Article 2(1) shall be considered as if they were replaced by the words "where the signal is emitted from the territory of another Contracting State."

(3) (a) Any Contracting State which, on May 21, 1974, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public may, by a written notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions.

(b) Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-General of the United Nations in writing, within six months of their coming into force, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

### Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until March 31, 1975, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(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) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

### Article 10

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

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

### Article 11

(1) Any Contracting State may denounce this Convention by written notification deposited with the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

### Article 12

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 9(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 and the Secretary-General of the International Telecommunication Union, of

- (i) signatures to this Convention;
- (ii) the deposit of instruments of ratification, acceptance or accession;
- (iii) the date of entry into force of this Convention under Article 10(1);
- (iv) the deposit of any notification relating to Article 2(2) or Article 8(2) or (3), together with its text;
- (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 referred to in Article 9(1).

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

DONE at Brussels, this twenty-first day of May, 1974.

## Конвенция о распространении несущих программы сигналов, передаваемых через спутники

Договаривающиеся Государства,

*Сознавая*, что использование спутников для распространения несущих программы сигналов быстро развивается как по своим масштабам, так и по географическому охвату;

*Озабоченные* отсутствием всемирной системы предотвращения распространения распространяющими органами несущих программы сигналов, передаваемых через спутники, которые не предназначались для этих распространяющих органов, и что это отсутствие, видимо, будет препятствовать использованию связи с помощью спутников;

*Признавая* в этой связи важность интересов авторов, артистов-исполнителей, производителей фонограмм и организаций вещания;

*Убежденные* в том, что должна быть создана международная система, в соответствии с которой будут обеспечены меры предотвращения распространения распространяющими органами несущих программы сигналов, передаваемых через спутники, которые не предназначались для этих распространяющих органов;

*Сознавая* необходимость в том, чтобы никоим образом не нанести ущерба тем международным соглашениям, которые уже вступили в силу, включая Международную конвенцию электросвязи и прилагаемые к этой Конвенции Регламенты радиосвязи и, в частности, никоим образом не помешать более широкому принятию Римской конвенции от 26 октября 1961 года, которая предусматривает защиту артистов-исполнителей, производителей фонограмм и организаций вещания;

Договорились о нижеследующем:

### Статья 1

Для целей настоящей Конвенции:

- (i) «сигнал» — создаваемая с помощью электронных средств несущая частота, способная передавать программы;
- (ii) «программа» — совокупность материалов, получаемых непосредственно или в записи, состоящих из изображений, звуков или изображений и звуков, передаваемая посредством сигналов с целью последующего распространения;
- (iii) «спутник» — любое устройство, находящееся во внешнем пространстве, способное передавать сигналы;
- (iv) «излучаемый сигнал», или «сигнал, излучаемый» является любым несущим программы сигналом, который идет на спутник или через него;

(v) «вторичный сигнал» — сигнал, получаемый путем преобразования технических характеристик излучаемого сигнала с промежуточными записями или без них;

(vi) «орган-источник» — физическое или юридическое лицо, определяющее, какие программы будут нести излучаемые сигналы;

(vii) «распространяющий орган» — физическое или юридическое лицо, решающее, должна ли иметь место передача вторичных сигналов широкой публике или любой ее части;

(viii) «распространение» — действие, посредством которого распространяющий орган передает вторичные сигналы широкой публике или любой ее части.

### Статья 2

(1) Каждое Договаривающееся Государство берет на себя обязательство принимать соответствующие меры по предотвращению распространения на своей или со своей территории любого несущего программы сигнала любым распространяющим органом, для которого сигнал, переданный на спутник или проходящий через него, не предназначается. Это обязательство применяется в том случае, когда орган-источник подпадает под юрисдикцию другого Договаривающегося Государства и когда распространяемый сигнал является вторичным сигналом.

(2) В любом Договаривающемся Государстве, в котором применение мер, упомянутых в пункте 1 этой Статьи, ограничено во времени, продолжительность такого периода устанавливается законодательством этого государства. Генеральный Секретарь Организации Объединенных Наций должен быть письменно извещен относительно продолжительности этого периода в момент ратификации, принятия или присоединения, или же, в случае последующего вступления в силу национального закона или его изменения, в течение шести месяцев после вступления в силу такого закона или его изменения.

(3) Обязательства, предусмотренные в Статье 2, пункт (1), не применяются к распространению вторичных сигналов, полученных от сигналов, которые уже были распространены распространяющим органом, для которого эти сигналы предназначались.

### Статья 3

Настоящая Конвенция не применяется, когда передаваемые сигналы идут от органа-источника или по его поручению и излучаются через спутники для непосредственного приема широкой публикой.

#### Статья 4

Ни одно Договаривающееся Государство не обязано принимать меры, предусмотренные в Статье 2 (1), если сигнал, распространяемый на его территории распространяющим органом, для которого сигнал не предназначался:

- (i) несет короткие выдержки из передаваемой с помощью сигналов программы, содержащие сообщения о текущих событиях, но только в том объеме, который оправдан информационными целями таких выдержек, или
- (ii) несет в качестве цитат короткие выдержки из передаваемой сигналами программы при условии, что такие цитаты соответствуют честной практике и оправданы информационными целями таких цитат, или
- (iii) несет передаваемую сигналами программу, учитывая, что распространение ведется исключительно в целях просвещения, в том числе для образования взрослых, или в целях научных исследований там, где упомянутая территория является Договаривающимся Государством, рассматриваемым в качестве развивающейся страны в соответствии с установившейся практикой Генеральной Ассамблеи Организации Объединенных Наций.

#### Статья 5

Ни одно Договаривающееся Государство не обязано применять настоящую Конвенцию в отношении любого сигнала, переданного до того, как эта Конвенция вступит в силу в отношении этого государства.

#### Статья 6

Настоящая Конвенция ни в коем случае не может толковаться как ограничивающая или наносящая ущерб защите, предоставляемой авторам, артистам-исполнителям, производителям фонограмм или органам вещания в силу национального законодательства или международных соглашений.

#### Статья 7

Настоящая Конвенция ни в коем случае не может толковаться как ограничивающая право любого Договаривающегося Государства применять его национальное законодательство для предотвращения злоупотреблений со стороны монополий.

#### Статья 8

(1) За исключением положений пунктов (2) и (3) этой Статьи, никакие оговорки к настоящей Конвенции не допускаются.

(2) Любое Договаривающееся Государство может на основании своего национального законодательства на 21 мая 1974 года посредством письменной нотификации, депонированной у Генерального Секретаря Организации Объединенных Наций, заявить, что для ее целей слова

«когда орган-источник подпадает под юрисдикцию другого Договаривающегося Государства» в Статье 2 (1) следует рассматривать как ситуацию, «когда передаваемый сигнал передается с территории другого Договаривающегося Государства».

(3) (a) Любое Договаривающееся Государство, которое на 21 мая 1974 года ограничивает или отрицает охрану в отношении распространения несущих программы сигналов посредством проводов, кабелей и других подобных каналов связи среди широкой публики, может посредством письменной нотификации, депонированной у Генерального Секретаря Организации Объединенных Наций, заявить, что в том объеме и в той продолжительности, в какой национальное законодательство ограничивает и отрицает охранные меры, оно не будет применять настоящую Конвенцию для такого распространения;

(b) Любое Договаривающееся Государство, которое депонировало нотификацию в соответствии с подпунктом (a), должно письменно известить Генерального Секретаря Организации Объединенных Наций о любых изменениях в национальном законодательстве, в течение шести месяцев после вступления их в силу, в результате которых положение, содержащееся в данном подпункте, становится либо неприменимым, либо более ограниченным по своему объему.

#### Статья 9

(1) Настоящая Конвенция депонируется у Генерального Секретаря Организации Объединенных Наций. Она остается открытой для подписания до 31 марта 1975 года любым государством, являющимся членом Организации Объединенных Наций, одной из ее специализированных организаций, Международного агентства по атомной энергии или участником Статута Международного суда.

(2) Настоящая Конвенция подлежит ратификации или принятию подписавшими государствами. Она будет открыта для присоединения государств, упомянутых в пункте (1) настоящей Статьи.

(3) Ратификационные грамоты, акты о принятии или о присоединении будут депонированы у Генерального Секретаря Организации Объединенных Наций.

(4) При этом имеется в виду, что в тот момент, когда государство становится связанным настоящей Конвенцией, оно должно быть в состоянии, в соответствии со своим национальным законодательством, претворять в жизнь положения настоящей Конвенции.

#### Статья 10

(1) Настоящая Конвенция вступит в силу спустя три месяца после депонирования пятой ратификационной грамоты, акта о принятии или о присоединении.

(2) Настоящая Конвенция вступит в силу для каждого государства, которое ратифицирует или примет настоящую Конвенцию или присоединится к ней после депонирования пятой ратификационной грамоты, акта о принятии или о присоединении, спустя три месяца после депонирования его грамоты или акта.

**Статья 11**

(1) Каждое Договаривающееся Государство может денонсировать настоящую Конвенцию путем письменной нотификации на имя Генерального Секретаря Организации Объединенных Наций.

(2) Денонсация вступает в силу спустя двенадцать месяцев после получения нотификации, упоминаемой в пункте (1) настоящей Статьи.

**Статья 12**

(1) Настоящая Конвенция подписывается в единственном экземпляре на русском, английском, испанском и французском языках; все четыре текста имеют одинаковую силу.

(2) После консультации с заинтересованными правительствами Генеральным Директором Организации Объединенных Наций по вопросам образования, науки и культуры и Генеральным Директором Всемирной организации интеллектуальной собственности будут выработаны официальные тексты на арабском, голландском, итальянском, немецком и португальском языках.

(3) Генеральный Секретарь Организации Объединенных Наций сообщает государствам, указанным в пункте (1) Статьи 9, а также Генеральному Директору Организации

Объединенных Наций по вопросам образования, науки и культуры, Генеральному Директору Всемирной организации интеллектуальной собственности, Генеральному Директору Международной организации труда и Генеральному Секретарю Международного союза электросвязи:

- (i) о подписаниях настоящей Конвенции;
- (ii) о депонировании ратификационных грамот, актов о принятии или о присоединении;
- (iii) о дате вступления в силу настоящей Конвенции в соответствии с пунктом (1) Статьи 10;
- (iv) о депонировании любых нотификаций, указанных в пункте (2) Статьи 2 или в пунктах (2) и (3) Статьи 8, вместе с их текстами;
- (v) о получении нотификаций о денонсации.

(4) Генеральный Секретарь Организации Объединенных Наций направит по две заверенные копии настоящей Конвенции всем государствам, указанным в пункте (1) Статьи 9.

В УДОСТОВЕРЕНИЕ ЧЕГО нижеподписавшиеся, должным образом уполномоченные, подписали настоящую Конвенцию.

СОВЕРШЕНО в Брюсселе двадцать первого мая 1974 года.

**DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA****Accession to the WIPO Convention**

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Democratic People's Republic of Korea deposited, on May 17, 1974, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Democratic People's Republic of Korea, which is a member of a Specialized Agency brought into relationship with the United Nations, meets the condition set forth in Article 5(2)(i) of the said Convention.

Pursuant to Article 11(4)(b) of the said Convention, the Democratic People's Republic of Korea has expressed the wish to belong to Class C.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect to the Democratic People's Republic of Korea, three months after the date of deposit of the instrument of accession, that is, on August 17, 1974.

WIPO Notification No. 53, of May 31, 1974.

# BERNE UNION

## Entry into force of Articles 1 to 21 of the Paris Act (1971) and of its Appendix

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and, referring to Article 37(5) of the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works, has the honor to notify him that, pursuant to the provisions of Article 28(2)(a) of the said Act, Articles 1 to 21 and the Appendix will enter into force

on October 10, 1974.

This is the date which follows by three months the date of July 10, 1974, that is, the date on which both of the conditions set forth in Article 28(2)(a) of the said Act will have been fulfilled:

- (i) at least five countries of the Berne Union have ratified or acceded to the Paris Act (1971) without making a declaration under Article 28(1)(b);
- (ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

The first condition is fulfilled since, up to now, seven States members of the Berne Union — Cameroon, France, Germany (Federal Republic of), Hungary, Ivory Coast, Spain and Sweden — have deposited instruments of ratification of the Paris Act (1971) of the Berne Convention without making a declaration under Article 28(1)(b).

The second condition will be fulfilled on July 10, 1974, since, according to information received from the United Nations Educational, Scientific and Cultural Organization

(Unesco), the States referred to in (ii) above will become bound on July 10, 1974, by the Universal Copyright Convention as revised at Paris on July 24, 1971.

Consequently, in accordance with Article 28(2)(b) of the Paris Act (1971) of the Berne Convention, Articles 1 to 21 and the Appendix to the said Act will enter into force on October 10, 1974, with respect to the seven States referred to above and with respect to any additional State which may, before October 10, 1974, become bound by the said Articles and Appendix.

It is recalled that Germany (Federal Republic of), Norway and the United Kingdom declared that they admit the application of the Appendix to the Paris Act (1971) of the Berne Convention to works of which they are the country of origin by countries which have made a declaration under Article VI(1)(i) of the Appendix or a notification under Article I of the Appendix. The declarations of Germany (Federal Republic of), Norway and the United Kingdom took effect on October 18, 1973, March 8, 1974, and September 27, 1971, respectively.

Further, it is recalled that, pursuant to the provisions of Article 28(3) of the Paris Act (1971) of the Berne Convention, Articles 22 to 38 of that Act entered into force, with respect to each of the following eight States, on the date indicated after each: Cameroon, on November 10, 1973; France, on December 15, 1972; Germany (Federal Republic of), on January 22, 1974; Hungary, on December 15, 1972; Ivory Coast, on May 4, 1974; Norway, on June 13, 1974; Spain, on February 19, 1974; Sweden, on September 20, 1973.

Berne Notification No. 55, of May 24, 1974.



## JAPAN

### Introduction of the term of protection of fifty years

The Swiss Federal Political Department has sent the following notification to the Governments of member States of the Berne Union for the Protection of Literary and Artistic Works:

“By note of 14 March, 1974, received on the same day, the Embassy of Japan informed the Federal Political Department according to Article 30, paragraph 1, of the Berne Convention for the Protection of Literary and Artistic Works of 9 September, 1886, revised at Berlin on 13 November,

1908, and at Rome on 2 June, 1928, that Japan has introduced into its legislation, as per 1 January, 1971, the term of protection of fifty years provided by Article 7, paragraph 1, of the said Conventions.

This notification is addressed to member States of the Berne Union in application of Article 30, paragraph 1, of the Berne Convention revised at Rome on 2 June, 1928.

Berne, 30 April, 1974.”

### Accession to the Brussels Act (1948) of the Berne Convention (with effect from July 12, 1974)

#### *Notification of the Swiss Government to the Governments of Union Countries*

On June 4, 1974, Japan deposited with the Federal Political Department an instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised in Brussels on June 26, 1948, in conformity with its Article 25, paragraph (2). This accession was accompanied by the following declaration:

“The Government of Japan declares, in accordance with Article 27(3) of the Convention, that it intends to retain until December 31, 1980, the benefit of the reservation which it previously formulated, and that it will accordingly remain bound by the provisions of Article 5 of the Berne Convention of September 9, 1886, as amended by Section III of Article 1 of the Additional Act signed at

Paris on May 4, 1896, in respect of the authors' exclusive right, referred to in Article 8 of the said Convention, of making or of authorizing the translation of their works.”\*  
(WIPO translation).

This accession is notified in accordance with Article 25, paragraph (2), of the Convention and will take effect on July 12, 1974, pursuant to paragraph (3) of the said Article.

Berne, June 12, 1974.

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\* The International Bureau of WIPO has been informed by the Japanese authorities that the Government of Japan made this declaration in order to continue to apply the provisions of the old Copyright Law of Japan on the exclusive right of making and authorizing the translation of works, as a transitional measure by the present Copyright Law, to the works published before the enforcement of this Law, namely, December 31, 1970 (see the Supplementary Provisions, Article 8, *Copyright*, 1971, p. 88).

Phonograms Notification No. 14, of May 24, 1974.

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

## Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

2<sup>nd</sup> Extraordinary Session  
(Brussels, May 6 and 10, 1974)

### Report

prepared by the Secretariat and adopted by the Committee

#### Introduction

1. The Second Extraordinary Session of the Intergovernmental Committee (hereinafter called "the Committee") of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter called "the Rome Convention") was convened in accordance with the provisions of Article 32, paragraph 6 of the Rome Convention and of Rule 12 of the Rules of Procedure of the Committee, by its Chairman, Mr. J. F. da Costa (Brazil), on May 6 and 10, 1974, in Brussels, at the Palais d'Egmont.

2. The following States, members of the Committee, were represented: Austria, Brazil, Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom; among the States party to the Rome Convention but not members of the Committee, the following were represented by observers: Denmark, Germany (Federal Republic of). The following States not party to the Rome Convention were also represented by observers: Australia, Canada, Finland, France, German Democratic Republic, Italy, Kenya, Morocco, Norway, Poland, Spain, United States of America.

3. Certain intergovernmental and international non-governmental organizations were also represented by observers.

4. The list of participants is contained in the Annex to this report.

#### Opening of the Session

5. The Session was opened by the Chairman of the Committee, Mr. J. F. da Costa (Brazil).

#### Adoption of the Agenda

6. The provisional agenda contained in document ILO/UNESCO/WIPO/ICR(Extr.)/II/1 was adopted.

**Draft model law concerning the protection of performers, producers of phonograms and broadcasting organizations: report on the consultation of the interested international non-governmental organizations decided by the Committee at its fourth session**

7. The Committee considered document ILO/UNESCO/WIPO/ICR(Extr.)/II/2 together with its enclosures (docu-

ments ILO/UNESCO/WIPO/ICR.4/10, ILO/UNESCO/WIPO/MLRC/II/6 and ILO/UNESCO/WIPO/ICR.4/7).

8. The delegate of the United Kingdom who in his capacity of Vice-Chairman of the Committee had presided over the Non-Governmental Study Group convened by the Secretariat of the Committee at Geneva from January 22 to 25, 1974, explained that the agreement set out in paragraph 65 of document ILO/UNESCO/WIPO/MLRC/II/6 had been reached at the very last minute, after the formal closing of the meeting, and that therefore there had been no time to consider the changes needed in the commentary consequent on the amendments made in the text of the draft model law. A draft of the changes needed in the commentary was accordingly prepared by the Secretariat after the meeting of the Study Group and circulated to the participants, but had not been agreed upon by the Study Group itself in Geneva. However, subsequently all parts of the commentary were provisionally agreed upon by the participants except that relating to Section 2(2).

9. The Chairman congratulated the delegate of the United Kingdom and the participants in the Study Group. He hoped that it would now be possible to reach complete agreement since absence of agreement might compromise the proposed Convention on satellite transmissions.

10. The observer representing the International Federation of Actors (FIA) stated that discussions in the Study Group in January 1974 had been of the nature of industrial relations bargaining. The performers had believed that agreement on the revised text of the model law had been reached in the light of the assurances given by the European Broadcasting Union (EBU). However, the letter dated March 13, 1974, from Sir Charles Curran, President of the EBU, to the Chairman of the Non-Governmental Study Group, appeared to reopen some of the points which the performers believed had been agreed. They had understood that the EBU would inform all its members, and the other broadcasting unions, of the change in its policy; yet, Sir Charles Curran's letter referred only to active members of the EBU. The performers had understood that the EBU would withdraw its opposition to the Rome Convention whereas Sir Charles Curran's letter made this withdrawal of opposition conditional on the use of the

model law by the national legislature concerned as a basis for national law; this appeared to mean that if a national legislation was not based on the model law, the EBU would reserve the right to continue to oppose the Rome Convention. Finally, Sir Charles Curran's letter made acceptance of the commentary on Section 2(2) a condition for the change in the EBU's policy. The commentary had not been agreed at the Geneva meeting. It was a matter of crucial importance to performers and related to permanent employees — a group which could not be clearly defined. The performers would stand by the agreement reached in Geneva, but the letter from Sir Charles Curran did not appear to provide an adequate guarantee that this agreement was being observed by the broadcasters.

11. The observer representing the International Federation of the Phonographic Industry (IFPI) referred to the letter addressed to the President of the European Broadcasting Union (EBU) by the President of the International Federation of Musicians (FIM), the General Secretary of the International Federation of Actors (FIA) and himself (document ILO/UNESCO/WIPO/ICR(Extr.)/II/4). The purpose of this letter was to correct inaccuracies in the letter dated March 13, 1974, from Sir Charles Curran reproduced in the Annex to document ILO/UNESCO/WIPO/ICR(Extr.)/II/2. The interested parties had reached agreement on the text of the model law, at the January meeting, as the Committee had instructed them to do. The only remaining dispute was over what the commentary should say about the agreed text. This text was a compromise and it should be left alone; it would be wiser for the commentary to be silent on one or two points.

12. The observer representing the European Broadcasting Union (EBU) said that the letter from Sir Charles Curran represented the position of the EBU, and in particular that the EBU would "inform its active members that it will withdraw its opposition to ratification of the Rome Convention if the legislature adopts the model law as the basis for domestic legislation." It had not been easy to advise the President of the EBU to accept such a radical change in EBU policy on the basis of changes in the draft model law and commentary which were not fully acceptable to the EBU and in view of the reluctance to accept such a change in policy by many EBU members. He confirmed that any change in EBU policy would be communicated to all members of the EBU and to the other broadcasting unions. The text of the commentary proposed by the Secretariat expressed the substance of an essential part of the discussion at the January meeting. If there was no reference to this matter in the commentary, there could be no agreement on the meaning of the agreed text of Section 2(2) of the draft model law. He sincerely hoped that what the Secretariat had proposed would be allowed to stand as it represented a reasonable compromise. Failure to reach a consensus on this point would reinforce the hostility of the broadcasters to the Rome Convention and would harden relations with the performers — which the broadcasters did not want.

13. The Chairman believed that the controversy on Article 12 of the Rome Convention was an artificial problem since this was optional and any of the interested parties could bring

pressure on governments to accept their point of view, but the governments will have the final decision. The only remaining difference now was on the commentary on Section 2(2), the other misunderstandings having already been resolved in the statements just made. The members of the Committee should know immediately whether agreement was possible so as to determine their attitude to the Convention on satellites.

14. The observer representing the European Broadcasting Union (EBU) said that the broadcasters did not contest the text of the draft model law agreed upon in Geneva, which was an improvement on the previous draft and gave guarantees to all three interested parties. The only remaining point of difference on the texts was the commentary on Section 2(2). It was a fact that the new text of Section 2(2) derived from the discussion on the situation of performers who are permanently employed by broadcasting organizations. Various agreements with performers' organizations, such as the Eurovision Agreement, contained definitions and dealt separately with the position of permanently employed performers. Unless the commentary explained the reason for the inclusion of the new text, no one would understand it. If all references to this matter were suppressed in the commentary, it might be argued *a contrario* that this did not refer to the position of permanently employed performers but had been included for another reason. The commentary must clarify this point. He urged the Committee to find a form of words that would give adequate expression to this point.

15. The observer representing the International Federation of Musicians (FIM) could not accept the argument that suppression of the commentary would cause people to argue *a contrario* that the text did not refer to the position of permanently employed performers, nor could he accept that the Eurovision Agreement was a reasonable parallel example, since it was a product of industrial negotiation and, therefore, solely reflected the relative position of the bargainers. He did not agree that the text of Section 2(2) was obscure; it dealt not only with the contractual conditions of performers who might be described as permanently employed but also with those of other performers and, in almost every case, the broadcaster would be able to secure what he wanted by contract. The performers accepted the new text of Section 2(2) but asked the Committee not to include the text proposed for the commentary.

16. The observer representing the International Federation of the Phonographic Industry (IFPI) supported this suggestion.

17. The observer representing the Federal Republic of Germany said that it was urgent to reach agreement in order to remove the opposition of the broadcasters to the Rome Convention. The new text of Section 2(2) did not apply exclusively to performers permanently employed by broadcasting organizations. Performers permanently employed by theaters and other persons in permanent employment who, in the course of their employment, were occasional performers, such as music teachers, might also be covered. She suggested the

following text for the commentary in regard to the addition made in Section 2(2): "these words reflect the discussion on problems raised in connection with performers in permanent employment and the contracts of such employees is the main field of application of this text."

18. One of the observers representing the International Music Council (IMC) expressed his agreement with the statements made by the observers representing the Federal Republic of Germany and the European Broadcasting Union (EBU) which reserved the position of performers who were not bound by a permanent employment contract.

19. The observer representing the International Federation of Musicians (FIM) feared that the proposal made by the observer representing the Federal Republic of Germany would be less acceptable than any other so far put forward since it would widen the field of application of the text. The performers had at all times been conciliatory and accommodating to the broadcasters. He suggested that the text proposed by the delegate of the United Kingdom in paragraph 7 of document ILO/UNESCO/WIPO/ICR(Extr.)/II/2 might be amended to read as follows: "these words were inserted following discussions on the particular situation of certain performers permanently employed by broadcasting organization."

20. The delegate of Austria said that Austrian legislation was based on the principle that the product of the labor of an employee belonged to the employer. The principle was clear but in the absence of judicial decisions, the boundaries of this principle were unclear in practice. The proposal made by the observer representing the Federal Republic of Germany was a wise one since it also covered persons other than those permanently employed by broadcasting organizations. He was, therefore, in favor of this proposal and in any case the new text proposed by the International Federation of Musicians (FIM) was unclear.

21. The observer representing the European Broadcasting Union (EBU) also found the text proposed by the observer representing the Federal Republic of Germany acceptable.

22. The observer representing the International Theatre Institute (ITI) urged the Committee not to forget the human aspects of the problem. Any concession made by the European Broadcasting Union (EBU) would not be catastrophic; but further concessions by the performers might have tragic consequences for the livelihood of the men and women involved. The proposal made by the observer representing the Federal Republic of Germany and supported by the delegate of Austria should be rejected because it extended the application of Section 2(2) to permanent theater companies, which was unacceptable.

23. The Director General of the World Intellectual Property Organization (WIPO) suggested a new text combining elements from the two previous proposals as follows: "these

words were inserted following discussions concerning in particular certain situations which may exist in respect of performers who are permanently employed."

24. The observers representing the performers' organizations wished it to be specified that the reference was to performers permanently employed by broadcasting organizations.

25. The delegate of the United Kingdom said that if agreement could not be reached, the commentary should record the views of broadcasters and those of performers separately.

26. The observer representing the European Broadcasting Union (EBU) could accept the reference to performers employed by broadcasting organizations, as it was true that only these had been the subject of discussion but he found the word "certain" unacceptable.

27. The observer representing the United States of America noted that the difficulty arose from the variety of national situations and suggested the following wording: "these words were inserted following discussions on the particular situation, which differs widely under national laws, concerning performers employed permanently by broadcasting organizations."

28. The observer representing the International Federation of Musicians (FIM) supported the last proposal made by the delegate of the United Kingdom.

29. The observer representing the European Broadcasting Union (EBU) opposed the United Kingdom proposal. The EBU could accept the proposal made by the Federal Republic of Germany or that made by the United States of America but could not agree that the commentary should set out two conflicting positions. The EBU could not change its policy with regard to the Rome Convention on such a basis — the interests involved were too great.

30. The Chairman suggested the following text: "these words were inserted following discussions concerning the particular situations which may exist with respect to performers permanently employed by broadcasting organizations."

31. The observers representing the performers' organizations and the International Federation of the Phonographic Industry (IFPI) indicated their agreement with this text.

32. The observer representing the European Broadcasting Union (EBU) said that he would try to obtain the agreement of the EBU Council on this text. While he could not recommend it to his Council with enthusiasm, he would present it objectively.

33. The Chairman suggested that if the Committee accepted the new text without a vote, this would give weight to the recommendation that would be made to the Council of the European Broadcasting Union (EBU).

34. The Committee adopted the text suggested by the Chairman for the commentary on Section 2(2) of the draft model law, as set out in paragraph 30 above.

35. The Committee then adopted the revised text of Sections 2(2), 3(2), 7(1)(e), 7(2)(c) and Sections 5 and 8 of the draft model law which had been agreed upon by the interested parties at the January 1974 consultations.

36. The Committee adopted the text as a whole of the draft model law, as revised.

37. The Committee adopted the text of the commentary proposed by the Secretariat with regard to Sections 7(1)(e), 7(2)(c) and Sections 5 and 8 of the draft model law.

38. The Committee then adopted the commentary as a whole, as revised.

#### Resolution adopted by the Assembly of the First National Symposium for Intellectual Workers in Mexico

39. The delegate of Mexico introduced document ILO/UNESCO/WIPO/ICR(Extr.)/II/3. He thanked the Secretariat for its assistance with the Symposium and the Chairman of the Committee for his participation. The conclusions of the Symposium had been unanimously adopted and he wished them to be distributed to members of the Committee and to participants in the Diplomatic Conference. The First National Symposium had been a great success; it had brought together all currents and categories of persons concerned with intellectual work and copyright problems. It had made proposals for reform of Mexican copyright law and others, of international scope, such as one for the creation of an international arbitration body to deal with disputes on copyright. The Assembly had also adopted a resolution on the proposed satellite Convention which was reproduced in document ILO/UNESCO/WIPO/ICR(Extr.)/II/3. He pointed out that the success of the Symposium which was preparatory to another international symposium at the Latin American level to be held in Mexico next year under the auspices of ILO, Unesco and WIPO, was due to the fact that it had been based on the principles of protection contained in the Rome Convention. This was a further proof that the attacks made against the Rome Convention were totally unjust and the results obtained constituted a really positive achievement which Mexico, as a developing country, could present to other countries in fulfilment of the promises it had made in earlier sessions of the Committee.

40. The Committee decided to transmit the Resolution to the Diplomatic Conference. However, it noted that the Secretariat had already done so, by making it a part of the documentation for the Diplomatic Conference on satellite transmissions.

41. The Committee unanimously adopted the present report.

42. After thanks to the Chairman by the delegates of the United Kingdom and Mexico, the Chairman declared the session closed.

## List of Participants

### I. Members of the Committee

Austria: R. Dittrich. Brazil: J. F. da Costa; L. F. de Athayde; S.-C. da Cunha Lopes; C. de Souza Amaral. Czechoslovakia: O. Kunz. Ecuador: G. Pena Matheus. Mexico: G. E. Larrea Richerand; S. Campos-Icardo; V. Blanco Labra; J. L. Fernandez Soto; E. Lizalde Chavez; O. Gutierrez; R. Inclan. Sweden: A. H. Olsson. United Kingdom: I. J. G. Davis; D. L. T. Cadman.

### II. Observers

#### (i) States party to the Convention

Denmark: W. Weincke; J. Nørup-Nielsen. Germany (Federal Republic of): E. Steup (Mrs.); E. Bungereth.

#### (ii) Other States

Australia: L. J. Curtis; L. A. MacDonald; H. Bluck. Canada: P. G. Dubois; C. C. Johnston. Finland: U.-E. Slotte; R. Meinander; U. Tanskanen; J. Tunturi; J. Lieder. France: P. Nollet. German Democratic Republic: S. Wagner. Italy: G. Meschinelli; G. Trotta; N. F. Dattilo; M. Vitali (Miss). Kenya: D. J. Coward. Morocco: A. Chakroun. Norway: V. Holmøy (Mrs.); T. Sæbe (Miss). Poland: A. Paczocha. Spain: G. Sala-Tardiu. United States of America: B. Ringer (Ms.); L. I. Flacks; D. Schrader (Ms.).

#### (iii) International Organizations

##### (a) Representatives of International Intergovernmental Organizations

Council of Europe: A. Papandréou. Organization of Arab States for Education, Culture and Science (ALECSO): A. F. Sorour.

##### (b) Representatives of International Non-Governmental Organizations

European Broadcasting Union (EBU): A. Scharf; K. Remes; G. Straschnov. International Bureau of the Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): M. J. Freegard; J.-A. Ziegler. International Confederation of Professional and Intellectual Workers (CITI): A. Caille. International Confederation of Societies of Authors and Composers (CISAC): M. J. Freegard; J.-A. Ziegler. International Federation of Actors (FIA): F. Delahalle (Mrs.); G. Croasdell. International Federation of Musicians (FIM): J. Morton; M. Ferares. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; G. Davies (Miss); H. H. von Rauscher auf Weeg. International Federation of Variety Artists (IFVA): G. Croasdell. Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society): G. Halla. International Music Council (IMC): J. Morton; D. Laufer. International Theatre Institute (ITI): J. Darcante. International Writers Guild (IWG): R. Fernay.

### III. Secretariat

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### IV. Officers

Chairman: J. F. da Costa (Brazil). Vice-Chairman: I. J. G. Davis (United Kingdom). Co-Secretaries: E. Thompson (ILO); M.-C. Dock (Miss) (Unesco); T. S. Krishnamurti (WIPO).

## Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

### Introduction

At its Third Ordinary Session (Geneva, November 1 and 2, 1971), the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome in 1961 (hereinafter referred to as "the Rome Convention") approved the idea, put forward at the preceding session, of the preparation of a draft model law to facilitate the application of the Rome Convention or accession to it. For this purpose it decided:

- (i) that its Secretariat should prepare a text, in consultation with a limited number of experts;
- (ii) that this text should be sent for comments to the States party to the Rome Convention and to the interested international non-governmental organizations;
- (iii) that the Committee should, at its next session, consider the text and any comments received (ILO/UNESCO/WIPO/ICR.3/8, p. 3).

The Intergovernmental Committee held an extraordinary session in Geneva on September 21 and 22, 1972. Included on the agenda was a "progress report on the preparation of a draft model law to facilitate ratification and implementation of the Rome Convention", and a document on this subject was circulated (ILO/UNESCO/WIPO/ICR/1972 EX/4). As stated in paragraph 15 of the Report of the Extraordinary Session (ILO/UNESCO/WIPO/ICR/1972 EX/6): "The Committee recognized the difficulties involved in the preparation of the draft model law but considered that the attempt should continue to be made to provide as simple a text as possible, where necessary taking into account differing legal traditions, and presenting such alternatives as appear necessary. The Committee decided to request the Secretariat to continue the preparation of a preliminary draft or drafts for submission to the representatives of organizations of authors, performers, producers of phonograms and broadcasting organizations, and other interested parties, who would be consulted by the Secretariat... Subsequently, a new draft text, to be prepared by the Secretariat in the light of the observations of these representatives, would be submitted to the next ordinary session of the Committee".

In response to this request the Secretariat convened a Non-Governmental Study Group to Consider the Draft Model Law Relating to the Rome Convention, which met in Geneva from September 17 to 21, 1973. The Secretariat considers that the guidance it received from this meeting, in the form of both general views and of detailed suggestions for modifications in wording, was of great value. It revised the text of the draft model law and the commentary in the light of the advice

and guidance provided by the Non-Governmental Study Group.

The draft model law and the commentary were considered by the Intergovernmental Committee at its Fourth Ordinary Session held at Paris in December 1973, when it was decided that further consultations might be arranged with the concerned international non-governmental organizations so as to revise a few provisions in the model law which had not earlier received full agreement from the parties concerned.

Accordingly, a second non-governmental study group was convened by the Secretariat at Geneva in January 1974 and, as a result of the discussions that ensued both during and after the meeting, the parties present were able to agree on certain revisions in the draft model law and the commentary on it.

The matter was thereafter considered again by the Intergovernmental Committee at its Second Extraordinary Session held at Brussels on May 6 and 10, 1974. The model law and the commentary on it, as adopted by the Committee (cf. the Report of the Committee in document ILO/UNESCO/WIPO/ICR(Extr.)/II/6), are presented in the following pages, the model law in the left-hand column and the commentary on the right.

In preparing the draft model law the Secretariat was governed by the general principle that the model law should provide the simplest possible legislative framework for the implementation of the Rome Convention as it exists, no more and no less. Application of this guiding principle has had at least three important consequences:

(1) No effort has been made to implement any international convention other than the Rome Convention, or to include provisions which, though appearing in certain national laws on the subject, are not required by the Rome Convention. Thus, rather than attempting to accommodate the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva in 1971 (hereinafter referred to as "the Phonograms Convention"), and the (then draft) Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the model law confines itself to implementing the Rome Convention. It similarly contains no specific provisions dealing with transmission by cable systems (CATV).

(2) In line with the principle that the model law should be as simple as possible, it seeks to follow the basic approach of the Rome Convention, leaving some alternatives to be set forth or discussed in the commentary. It is well known that



the Convention itself is vague on a number of points, and that it permits a number of variants in certain of its important provisions. The number of possible solutions in particular cases is very large, and the Secretariat has necessarily had to make choices. In doing so its object has been to provide as simple a text with as few alternatives or variants as possible. In every case where the model law adopts a provision that is permitted, but not required, under the Rome Convention, that fact is made clear in the commentary, which also explains in

general the reasons that guided the Secretariat in its choice and the other possible solutions available to governments.

(3) The text is intended for use as a model to the legislators in both developing and developed countries. The limitations on protection allowable under Article 15 of the Rome Convention are quite broad, and at least as a theoretical matter it is conjectural whether a developing country needs any additional or special limitations. The model law has therefore been prepared in basic conformity with Article 15.

## Text

### SECTION 1

#### *Definitions*

As used in this law, the following terms and their variant forms mean the following:

- (i) "broadcasting" is the transmission by wireless means for public reception of sounds or of images and sounds;
- (ii) "fixation" is the embodiment of sounds, images, or both in a material form sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated during a period of more than transitory duration;
- (iii) "performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;
- (iv) a "phonogram" is any exclusively aural fixation of sounds of a performance or other sounds;
- (v) a "producer of phonograms" is the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;
- (vi) "publication" is the offering of copies of a phonogram to the public in reasonable quantity;
- (vii) "rebroadcasting" is the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization;
- (viii) "reproduction" is the making of a copy or copies of a fixation or a substantial part of that fixation.

## Commentary

### SECTION 1

Six of the eight definitions in Section 1 are taken nearly verbatim from Article 3 of the Rome Convention. The definition of the term "fixation", although not strictly necessary, is consistent with the Rome Convention and is considered a useful clarification. Addition of the phrase "or a substantial part of that fixation" to the Convention's definition of "reproduction" ("the making of a copy or copies of a fixation") is consistent both with the Rome Convention and with the definition of the word "duplicate" in the Phonograms Convention.

It is understood that, as in the Rome Convention, the definition of the term "performer" is broad enough to include persons who perform for purposes of fixation rather than in the presence of an audience, as well as persons whose performances are later joined by technical editing or mixing processes with independent performances made at different times and places by other performers. It is also understood that persons such as the conductor of an orchestra or the leader of a choir are considered "performers" under the definition.

As in the Rome Convention, the definition in Section 1 requires that, to be considered "performers", persons must "perform literary or artistic works". The term "literary or artistic works" is generally regarded as broad enough to include oral works, pantomimes and improvisations, but as too restrictive to include the contributions of variety artistes, circus performers and the like. Article 9 of the Rome Convention allows a Contracting State to extend the protection offered to performers under its domestic law to "artists who do not perform literary or artistic works". Up to the present time it does not appear that any country has taken advantage of this option. If a country chooses to adopt the alternative offered by Article 9, it could implement it by adding a clause to the definition of "performers" in Section 1, such as: "... and variety artistes and other persons who participate professionally as performers in, and can be seen or heard by the public during, the presentation of events which are produced for public communication and which may be broadcast".



## SECTION 2

*Acts Requiring Authorization of Performers*

(1) Without the authorization of the performers, no person shall do any of the following acts:

- (a) the broadcasting of their performance, except where the broadcast:
  - (i) is made from a fixation of the performance, other than a fixation made under the terms of Section 7(2); or
  - (ii) is a rebroadcast authorized by the organization initially broadcasting the performance;
- (b) the communication to the public of their performance, except where the communication:
  - (i) is made from a fixation of the performance; or
  - (ii) is made from a broadcast of the performance;
- (c) the fixation of their unfixed performance;
- (d) the reproduction of a fixation of their performance, in any of the following cases:
  - (i) where the performance was initially fixed without their authorization;
  - (ii) where the reproduction is made for purposes different from those for which the performers gave their authorization;
  - (iii) where the performance was initially fixed in accordance with the provisions of Section 7, but the reproduction is made for purposes different from any of those referred to in that section.

(2) In the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would normally be inferred:

- (a) the authorization to broadcast does not imply an authorization to license other broadcasting organizations to broadcast the performance;
- (b) the authorization to broadcast does not imply an authorization to fix the performance;
- (c) the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation;
- (d) the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.

(3) Once the performers have authorized the incorporation of their performance in a visual or audio-visual fixation, the provisions of paragraphs (1) and (2)(c) and (d) shall have no further application.

(4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of any use of their performances.

(5) The protection under this section shall subsist for ... (at least 20) years computed from the end of the year in which the performance took place.

## SECTION 2

Section 2 specifies the protection offered to performers under the model law. The terminology used in subsection (1) parallels the wording of Article 7.1 of the Rome Convention as closely as possible. Except in certain cases of rebroadcasting and fixations for broadcasting purposes, which are given special treatment as described below, the minimum rights prescribed in Section 2(1) are the same as those explicitly mentioned in Article 7.1 of the Rome Convention. Thus, in general, the performer's rights with respect to broadcasting and public communication are limited to performances not already fixed or broadcast; his rights with respect to fixations are limited to unfixed performances; and his rights of reproduction from fixations are limited to the three situations specified in clauses (i), (ii) and (iii) of Article 7.1(c) of the Rome Convention.

Section 2 of the model law, in speaking of the basic rights of performers, uses the same phraseology as Section 4 with respect to phonogram producers and Section 6 with respect to broadcasting organizations: without authorization, "no person shall do" any of certain specified acts. It should be noted, however, that the language of the equivalent articles in the Rome Convention are not parallel; Article 7 gives performers "the possibility of preventing" certain acts, while Articles 10 and 13 refer to the rights of producers of phonograms and broadcasting organizations "to authorize or prohibit" certain acts. The reason for this difference in the Convention was to allow accommodation with the laws of the United Kingdom and of those of several countries patterned after them. These laws adopt a penal approach, under which certain unauthorized uses of performances constitute punishable offences, though the performer is not granted an assignable property right.

As worded in the model law, the basic provisions of Sections 2, 4 and 6 are parallel with each other, but would still allow the penal approach to be adopted for the protection of performers under Section 2. However, if a country chose to protect performers exclusively under its criminal law, certain technical revisions would be needed in other sections, notably Section 9, dealing with civil and penal remedies for violations of the law.

Under the wording used in Sections 2, 4 and 6, as implemented in Section 9, the remedies available to performers, producers of phonograms and broadcasting organizations include civil and criminal sanctions with respect to past violations, and also injunctive relief against both continued and anticipated violations. Thus, for example, a performer in a live performance who is made aware in advance of a plan to broadcast or record his performance without his consent would be entitled to obtain a court order restraining the unauthorized broadcast or fixation.

Paragraph 1 of Article 7 of the Rome Convention, in listing the minimum rights to be accorded to performers, does not include "protection against rebroadcasting, fixation for broadcasting purposes, and the reproduction of such fixation for broadcasting purposes" in cases where the performer had consented to the broadcast. Under paragraph 2(1) of Article 7,

these rights are made matters for each Contracting State to regulate under its domestic law.

The model law deals with rebroadcasting in two related ways. Under Section 2(1)(a)(ii), performers are given statutory protection against “pirate broadcasters” — that is, broadcasters who are rebroadcasting their live performance without authorization from the organization that initially broadcast the performance. Moreover, under Section 2(2)(a), the model law makes it clear that a performer’s authorization to a particular broadcasting organization to broadcast his live performance does not, without the performer’s further consent, entitle that organization to license other broadcasters to transmit the performance.

With respect to the difficult problem of the so-called “ephemeral recordings” and other fixations for broadcasting purposes, the model law contains related provisions in Section 2(1)(a)(i), Section 2(2)(b) and (d), and Section 7(2). These provisions are all based on the principle that the relations between performers and broadcasting organizations with regard to the use of performances are essentially matters to be regulated by contract.

As in the Rome Convention, Section 2 generally does not give performers a statutory right to control broadcasting from fixations of their performances, but subsection (1)(a)(i) makes an exception to this limitation in the case of ephemeral recordings made without the performer’s consent under Section 7(2). In other words, even though a broadcasting organization may be free to make ephemeral recordings under certain circumstances, it must obtain authorization from the performers before such a fixation can be used for broadcasting purposes.

Closely related to this principle are the provisions of subsection (2)(b), (c) and (d), which are intended to give performers contractual control over the use by broadcasting organizations of the fixation of their performances, the reproduction of such fixations, and the broadcasting of such fixations and reproductions. Unless the performers have agreed otherwise, subsection (2) would prevent the following:

- (1) fixing a live performance, when only broadcasting has been authorized;
- (2) reproducing a fixation, when only broadcasting and fixation have been authorized; and
- (3) broadcasting from a fixation or reproduction, when only fixation and reproduction have been authorized.

The words “or of circumstances of employment from which the contrary would normally be inferred” in the opening sentence of subsection (2) were inserted following discussions concerning the particular situations which may exist with respect to performers permanently employed by broadcasting organizations.

The model law recognizes the privilege of ephemeral recordings in Section 7(2), and the scope of that exception is discussed below in connection with that subsection. It should be emphasized here, however, that the ephemeral recordings exception deals only with the making of fixations and reproductions under the special circumstances specified in Section 7(2), and the statutory requirements prescribed in Section 2

are controlling with respect to any use of fixations and reproductions made under the exception.

Section 2(1)(d) follows the Rome Convention in giving performers the right to control the reproduction of unauthorized fixations of their live performances. However, the model law, like the Convention, is silent as to the right of performers to control other uses of fixations or broadcasts made without their consent. As a matter of principle it could be considered paradoxical if it were lawful to use, without restriction, recordings and broadcasts that are themselves piratical. On the other hand, the practical problems facing a user in determining whether a particular fixation or broadcast were lawful, coupled with the juridical dilemma of deciding which law controls whether something is "lawful", induced the drafters to leave the point open in the model law and call it to the attention of national legislators.

Section 2(4) states in general terms the principle of the performers' freedom of contract enunciated in Article 7.2(3) of the Convention. It is understood that contractual arrangements could not derogate from the minimum rights laid down in the Convention and in the model law; however, in applying this principle, it would be appropriate to examine the total effect of such contractual arrangements.

As in the corresponding provisions of Sections 4, 5 and 6, subsection (5) of Section 2 leaves open the duration of protection for performances, but the model law makes it clear that this protection must last for at least twenty years. Although Article 14 of the Rome Convention specifies that the term provided can be no shorter than twenty years, a longer term could be provided here as well as in the other provisions of the model law dealing with the length of protection. It has been pointed out that many national laws provide longer terms than twenty years in equivalent situations; certain countries might feel that the law should not allow a performer's rights to expire during his lifetime, although the difficulties a broadcaster or other user would encounter if faced with the necessity of checking the dates of death of all performers in a group have also been strongly emphasized.

### SECTION 3

#### *Granting of Authorizations by Performers*

(1) A binding authorization under Section 2 may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorization.

(2) Any authorization given by a performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment as the case may be was not a valid one.

(3) Any person who gives authorizations on behalf of performers without being a duly appointed representative, or any person who knowingly proceeds under such an unlawful authorization, shall be guilty of a criminal offence punishable by a fine of . . . .

### SECTION 3

Section 3 concerns the special problems arising from the practical necessity for individuals and groups of performers to license and enforce their rights through voluntarily-appointed representatives. Under the model law the representative must have received a written appointment from the performer granting him the right to authorize the use of the performance under Section 2. The requirements of the model law on this point would apply equally to individual performers and to the participants in group performances. Appointments of representatives could be freely granted and freely withdrawn, though, of course, a representative could be appointed for a series of transactions over a period of time.

Taking its cue from the British Dramatic and Musical Performers Protection Act, the model law would protect users from civil or criminal liability if they deal in good faith with someone purporting to represent a group of performers. However, the model law would also make it a criminal offence for

## SECTION 4

*Acts Requiring Authorization of Producers of Phonograms*

(1) Without the authorization of the producer of phonograms, no person shall directly or indirectly reproduce his phonogram.

(2) The protection referred to in paragraph (1) shall subsist for ... (at least 20) years computed from the end of the year in which the phonogram was initially made.

## SECTION 5

*Equitable Remuneration for Use of Phonograms*

(1) If a phonogram is published for commercial purposes or a reproduction of such phonogram is used directly for broadcasting or for communication to the public, a single equitable remuneration for the performers and the producer of the phonogram shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under paragraph (1) shall be paid by the producer to the performers.

(3) The amount received from the producer under paragraph (2) shall be divided among the performers or used by them, as agreed among them.

(4) The right to an equitable remuneration under this section shall subsist for ... (at least 20) years computed from the end of the year in which the phonogram was initially made.

a person to act as a representative without proper authority, or to act under an authorization knowing that the purported representative was not duly appointed.

It has been pointed out that the implementation of both Section 2 and Section 3 of the model law would be greatly facilitated if truly representative organizations of performers existed or were created in the countries adopting the model law.

## SECTION 4

This provision, granting the producer the right to authorize or prohibit direct or indirect reproduction for an unspecified period of at least twenty years, has its counterpart in Article 10 of the Rome Convention. Unlike the Phonograms Convention, the Rome Convention has no explicit requirement for protection against the unauthorized importation or distribution of phonograms, and would not cover these acts when they occur separately from the act of unauthorized reproduction. Thus, if a country wished to ratify both the Rome Convention and the Phonograms Convention, it could revise the wording of Section 4(1) as follows:

“Without the authorization of the producer of phonograms, no person shall do any of the following acts:

- (a) the direct or indirect reproduction,
- (b) the importation for the purpose of distribution to the public, or
- (c) the distribution to the public of copies of his phonogram.”

## SECTION 5

Under Article 16 of the Rome Convention, it is not obligatory for a Contracting State to adopt the provisions of this section. Subject to the provisions of Article 16, Article 12 of the Rome Convention provides: “If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both”. On the other hand, as already pointed out, this provision concerning the so-called “secondary uses” is optional: under Article 16 of the Rome Convention, a Contracting State can deposit a notification with the Secretary-General of the United Nations declaring that it will not apply the provisions of Article 12 at all, or that it will limit the protection granted by that article in certain ways. In general, the possible limitations specified in Article 16 can apply either to the types of uses protected against, or to the nationality of the beneficiaries of protection. Of the fourteen countries now Contracting States of the Rome Convention, three (Congo, Fiji and Niger) have excluded Article 12 altogether, three (Denmark, Sweden and the United Kingdom) have deposited notifications limiting protection both as to certain uses and as to certain nationalities and three (Austria, Czechoslovakia and the Federal Republic of Germany) have limited protection on the basis of nationality.

It can be argued that the model law should set out the provisions implementing Article 12 as an alternative in the text,

and explain the various options open to a Contracting State in the commentary. It is also arguable that, since the Diplomatic Conference that adopted the Rome Convention chose to set out the provisions of Article 12 in terms of a requirement rather than as an option, they should be set out in the text of the model law in the same way, leaving all explanations to the commentary. Under the approach adopted by the present text, the provisions implementing Article 12 are set forth directly rather than as an alternative, but attention has been drawn in the preceding paragraph to the fact that the provisions of this section are not obligatory.

Section 5 follows very closely the terminology of Article 12 with respect to the subject matter of protection (a phonogram published for commercial purposes), the uses protected against (direct use for broadcasting or any communication to the public), and the right granted (payment of a single equitable remuneration). Rather than setting out the various alternatives, the model law chooses to present what is probably the simplest alternative involving a single payment for the benefit of both performers and producers of phonograms. In choosing to present the alternative of a payment to the phonogram producer, to be divided equally between the producer and the performers, the drafters do not intend to imply any preference for this alternative.

The possible recipients of the equitable remuneration which is provided for in Article 12 of the Rome Convention include:

- (1) the performers alone;
- (2) the phonogram producer alone;
- (3) the performers and the producers, both of whom should be represented by a single organization;
- (4) the performers, with a provision requiring them to pay a share to the producer;
- (5) the producer, with a provision requiring him to pay a share to the performers.

The fifth alternative is the one adopted by the model law although it should be noted that the Diplomatic Conference in Rome did not accept this as the only possible way of making the payment and that the Rome Convention does not require the remuneration to be shared equally or in any other particular proportion.

Another alternative involves the establishment of a national fund into which the equitable remuneration would be paid for the benefit of performers, record producers or both. Under its 1952 law, Norway established a fund to be "used as a support for Norwegian performing artists and their heirs"; a certain part of the fund is to be allotted to the producers of phonograms actually used for public performances and broadcasts. The Norwegian law was examined at the First Ordinary Session of the Intergovernmental Committee of the Rome Convention in 1967, and a majority of the Committee considered that this general approach would not be contrary to Article 12. It has been suggested that the establishment of such a national fund would be of particular practical advantage for developing countries, since, if Article 12 were to be

## SECTION 6

*Acts Requiring Authorization of Broadcasting Organizations*

(1) Without the authorization of the broadcasting organization, no person shall do any of the following acts:

- (a) the rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts;
- (c) the reproduction of a fixation of its broadcasts:
  - (i) where the fixation, from which the reproduction is made, was done without its authorization; or
  - (ii) where the broadcast was initially fixed in accordance with the provisions of Section 7, but the reproduction is made for purposes different from any of those referred to in that section.

(2) The protection under this section shall subsist for ... (at least 20) years computed from the end of the year in which the broadcast took place.

implemented in any other way, the bulk of the remuneration might be payable to foreign performers or producers from highly developed countries.

It should also be pointed out, in connection with the uses to be protected, that a Contracting State is under no obligation to offer unlimited protection to the use of commercial phonograms in all types of broadcasting and public communication. The limitations that States have already adopted under Article 15 include the following: (1) protection solely with respect to broadcasting or for any other communication to the public for commercial purposes; (2) protection against broadcasting but not public communication; and (3) protection not extended against use in hotels, hostelries, non-commercial clubs, etc. The variety and combinations of limitations upon protection that a Contracting State might adopt are virtually infinite.

Section 5 contains only the skeleton of a system for payment and distribution.

It would be for States to establish the procedure for payments to be made to specified persons at specified intervals, determining the amounts to be paid and settling disputes as to the appropriate remuneration and its division.

The model law is intentionally silent as to the amount of remuneration and the basis for computing it; in the absence of a negotiated agreement or voluntary arbitration, the parties would have recourse to the courts for the settlement of disagreements. Alternative procedural methods for this purpose could include systems of permanent arbitration or government tribunals. The model law is also deliberately silent with respect to the intervals at which the equitable remuneration should be paid. But it should be observed that the appropriate delay following the use would depend on the circumstances, and would need to be long enough to avoid harassment of the broadcaster or other user.

## SECTION 6

Items (a), (b) and (c) of Article 13, and item (c) of Article 14 of the Rome Convention are implemented in Section 6 of the model law without any effort to expand the minimum rights guaranteed under those items. The protection offered to broadcasters thus clearly does not extend to retransmission of signals by cable services and other closed-circuit transmitters. As regards programme-carrying signals transmitted via space satellites, four of the six members of the Intergovernmental Committee of the Rome Convention considered in 1971 that the transmission of the signal, for the ultimate purpose of the reception by the public, constituted "broadcasting" within the meaning of Article 3 of the Rome Convention and since then another Member State of that Committee has also expressed the same opinion. If a country wishes to offer protection on the national level against "poaching" of satellite signals, it should take this opinion into account when considering the definitions in Section 1, or the wording of Section 6, or both.

Item (d) of Article 13 of the Rome Convention appears to require Contracting States to offer protection to broadcasting organizations against the public communication of television

## SECTION 7

*Limitations on Protection*

(1) Sections 2, 4, 5 and 6 shall not apply where the acts referred to in those sections are made for:

- (a) private use;
- (b) the reporting of current events, provided that no more than short excerpts of a performance, of a phonogram, or of a broadcast are used;
- (c) use solely for the purposes of teaching or scientific research;
- (d) quotations in the form of short excerpts of a performance, or of a phonogram, or of a broadcast, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations;
- (e) such other purposes as constitute exceptions in respect of copyright works under Sections ... of the ... Copyright Act.

(2) The requirements for authorization under Sections 2, 4 and 6 for making fixations of performances and broadcasts, for reproducing such fixations, and for reproducing phonograms published for commercial purposes shall not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcasts, provided that:

- (a) in respect of each broadcast of a fixation of a performance or of a reproduction thereof made under this subsection, the broadcasting organization has the right to broadcast the particular performance; and
- (b) in respect of each broadcast of a fixation of a broadcast, and each broadcast of a reproduction of such a fixation of a broadcast, made under this subsection, the broadcasting organization has the right to broadcast the particular broadcast; and
- (c) in respect of any fixation made under this subsection or any reproduction thereof, the fixation and any reproductions thereof, are destroyed within the same period

broadcasts "made in places accessible to the public against payment of an entrance fee". However, Article 16.1(b) allows Contracting States not to apply this provision by making a declaration to this effect, and it has been pointed out that the situation dealt with is no longer of any practical importance. This is why the provision is not included in Section 6 as an alternative, but is merely mentioned in the commentary. However, it should be clearly understood that, in order for a Contracting State of the Rome Convention to omit the requirement from its law, it must first deposit a notification with the Secretary-General of the United Nations. Were such a provision to be included, it could be Section 6(1)(d), reading as follows:

"(d) the communication to the public of its television broadcasts, where such communication is made in places accessible to the public upon payment of an entrance fee."

## SECTION 7

The limitations on protection contained in Section 7 parallel those allowed in Article 15.1 of the Rome Convention. In addition, paragraph 2 of Article 15 allows Contracting States to provide the same kinds of limitations as it provides in its domestic law "in connexion with the protection of copyright in literary and artistic works", on condition that "compulsory licences may be provided for only to the extent to which they are compatible with this Convention". The report of the Rapporteur-General on the Rome Conference gives, as examples of the latter types of limitations, "free quotation for purposes of criticism, or free use for charitable purposes". Thus, on the assumption that it is consistent with domestic copyright law, the model law includes an exception dealing with "quotations in the form of short excerpts". Subsection (1)(e) is intended to cover other exceptions similar to those which may have been provided in the domestic copyright law. Perhaps, States intending to adopt this clause might prefer, for reasons of explicitness, to list these exceptions individually, based on the copyright law, instead of using a general formula as has been proposed in this clause.

A country wishing to ratify both the Rome Convention and the Phonograms Convention would probably need to adopt an additional limitation on the scope of compulsory licensing, as provided by Article 6 of the Phonograms Convention. In that event the following provision could be added at the end of Section 7(1):

"However, where the protection involved is that provided by Sections 2 and 4 concerning the reproduction of phonograms, no compulsory licenses shall be permitted unless all of the following conditions are met:

- (i) the copies are used solely for the purpose of teaching or scientific research;
- (ii) the license is valid only for reproduction or distribution within the territory of [name of country], and shall not extend to the export of copies; and
- (iii) the license shall require the payment of an equitable remuneration, taking into account all relevant factors

as applies to fixations and reproductions of copyright works under Section . . . of the . . . Copyright Act, except for a single copy which may be preserved exclusively for archival purposes.

## SECTION 8

### *Notice of Protection of Phonograms*

As a condition of protection of phonograms under Sections 2 and 4, all copies in commerce of the published phonograms or their containers shall bear a notice consisting of the symbol © (the letter "P" in a circle), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection. If the copies or their containers do not identify the producer or the licensee of the producer by carrying his name, trademark or other appropriate designation, the notice shall also include the name of the owner of the rights of the producer. If the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who owns the rights of such performers under this law.

including the number of copies to be made or distributed."

Section 7(2) deals with the question of the so-called "ephemeral recordings" made "by a broadcasting organization by means of its own facilities and for its own broadcast" which, under Article 15.1(c) of the Rome Convention, is generally left to domestic law. The question of ephemeral recordings, as it affects authors and other copyright owners, is dealt with in the Berne Convention for the Protection of Literary and Artistic Works (Article 11<sup>bis</sup>(3) of the 1971 Paris Act), and provisions on the subject appear in the national copyright legislations of a number of countries.

The purpose behind this exception is essentially a technical rather than an economic one. It is intended to give broadcasting organizations which are legally entitled to make a broadcast the flexibility necessary to make fixations, and reproductions of fixations, for practical reasons such as the need for delayed broadcasting, the use of more efficient transmitting apparatus, and the like.

Subsection (2)(c) relates the period of time during which a fixation or reproduction thereof made under this section can be used to that provided in the equivalent provision in the law governing copyright in works. It has been argued that the situation concerning authors is different from that of performers, since, unlike the authors, the performers are always available on hand for the necessary negotiations to be concluded. Nevertheless, it has been thought that, as in the case of subsection (1), there could well be, in the interests of uniformity, a correlation between the provisions in the law governing copyright in works and this law, so that the present law does not involve different periods from the copyright law.

Section 7(2) permits the making of reproductions of commercial gramophone records under the same circumstances as that applicable to other ephemeral recordings. It is understood, however, that any use of such reproductions for broadcasting purposes would be governed by Section 5.

## SECTION 8

Under Article 11 of the Rome Convention, this provision is not obligatory. Section 8 of the model law is an optional provision of the kind referred to in Article 11 of the Rome Convention concerning the notice to appear on phonograms. Although a notice requirement is optional under the Rome Convention, it is believed that it would be useful to include such a provision in the model law, clearly identified as an optional section, rather than merely to set out the suggested wording in the commentary. In any event, there would be practical advantages for the phonograms fixed or published in a Contracting State of the Rome Convention to include the notice prescribed in Article 11, even if the national law of that country does not require compliance with any formalities. The use of a label notice is to be recommended since, otherwise, phonograms would be exposed to the risks of piracy in other countries requiring compliance with notice or other formalities as a condition of protection.

Like the Rome Convention, the model law intentionally omits any provisions dealing with ownership and transfer of



## SECTION 9

*Remedies for Violation of Rights*

(1) In a civil action brought by any person or legal entity whose rights under this law are threatened with violation or have been violated, the following remedies shall be available:

- (a) an injunction, upon such terms as the court may deem reasonable, to restrain violations;
- (b) payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation. If the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

(2) Without prejudice to the remedies available under paragraph (1), any person who knowingly violates, or causes to be violated, the rights protected under this law shall be liable to a fine of not more than ... for the first offence, and shall be liable to a fine of not more than ..., or to imprisonment for not more than ..., or both, for each subsequent offence.

## SECTION 10

*Field of Application of Law*

(1) Protection of performers under Sections 2 and 5 is available where:

- (a) the performer is a national of ... ; or
- (b) the performance took place on the territory of ... ; or
- (c) the performance is fixed in a phonogram qualifying for protection under paragraph (2); or
- (d) the performance, which has not been fixed in a phonogram, is embodied in a broadcast qualifying for protection under paragraph (3).

(2) Protection of phonograms under Sections 4 and 5 is available where:

- (a) the producer is a national of ... ; or
- (b) the first fixation of the sound was made in ... ; or
- (c) the phonogram was first published in ... .

(3) Protection of broadcasts under Section 6 is available where:

- (a) the headquarters of the organization is situated in ... ; or
- (b) the broadcast was transmitted from a transmitter situated in ... .

(4) *Alternative A.* This law shall also apply to performers who, and to phonograms and broadcasts which, are to be protected by virtue of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

the rights it protects, on the understanding that they would be governed by the general rules of the law of each country concerned.

## SECTION 9

The provisions of Section 9 in the model law are a mere skeleton, intended to suggest generally what the domestic law might contain. If an exclusively penal approach to the protection of performers were adopted in Section 2, complementary revisions in the paragraph dealing with the penalties for a criminal offence under Section 9 would need to be made.

## SECTION 10

Section 10 attempts to bring together the various criteria of protection or points of attachment governing the applicability of the Rome Convention, as set out in Articles 2, 4, 5 and 6 of the Convention. The most difficult question raised by this section is how to deal with the option offered by paragraph 3 of Article 5 of the Rome Convention under which a Contracting State can choose, in addition to the criterion of nationality, either the criterion of publication, or the criterion of fixation, rather than both. It is true that Article 5 first sets out the three criteria as equal requirements, and provides the option only upon the deposit of a notification with the Secretary-General of the United Nations. However, in recognition of the great importance attached by some governments and organizations to the existence of the option, it appears justifiable to present the provision in the form of alternatives as long as the commentary makes it clear that all three criteria must be adopted unless a notification is deposited.

As far as performers are concerned, the Convention does not require a country to extend protection to its own nationals, but the model law does provide for such protection since it appears that a government would normally wish to do so.

*Alternative B.* This law shall also apply to performances, phonograms and broadcasts originating in certain foreign countries, in accordance with orders which shall be promulgated by the Government.

#### SECTION 11

##### *Extent of Retroactive Effect*

*Alternative A.* Nothing in this law shall prejudice the right of persons or legal entities to use, in accordance with the requirements of this law, fixations or reproductions made in good faith before the date of its coming into force.

*Alternative B.* The provisions of this law shall not apply to performances or broadcasts that took place, or to phonograms that were fixed, before the date of its coming into force.

#### SECTION 12

##### *Effect on Other Protection*

This law shall in no way be interpreted to limit or prejudice the protection otherwise secured to any person or legal entity under any other law of ... or any international agreement to which ... is a party.

#### SECTION 13

##### *Entry into Force*

This law shall come into force on ... .

#### SECTIONS 11 and 13

The question of the possible retroactive effect of the law on its effective date is dealt with in the form of alternatives. As under the Rome Convention, a country would be given the option of excluding protection for performances, broadcasts, or phonograms that had already come into existence on the effective date, or of extending protection to them on condition that no one should be compelled to destroy fixations or reproductions made or acquired in good faith. However, it is understood that if a government has chosen to include Section 5 in its law, this section would apply to such fixations and reproductions as from the effective date of the law.

#### SECTION 12

Section 12 of the model law expands somewhat on the provisions of Articles 1 and 21 of the Rome Convention, declaring generally that the law does not impinge upon the rights of any person having rights under any other national laws (laws involving copyright, unfair competition, criminal offences, communications, etc.) or any other international agreement to which the country concerned is a party.

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## CONVENTIONS NOT ADMINISTERED BY WIPO

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### Universal Copyright Convention

#### The Convention as revised at Paris in 1971 Ratifications, accession and entry into force

The Secretariat of the United Nations Educational, Scientific and Cultural Organization (Unesco) informed the International Bureau of WIPO that the following instruments of ratification of, or accession to, the Convention as revised at Paris, on July 24, 1971, were deposited with that Organization:

instrument of ratification by *Kenya* of the Convention and of Protocols 1 and 2 annexed thereto, on January 4, 1974;

instrument of accession by *Senegal* to the Convention and to Protocols 1 and 2 annexed thereto, on April 9, 1974;

instrument of ratification by *Spain* of the Convention and of Protocol 2 annexed thereto, on April 10, 1974.

Kenya, Senegal and Spain are thus tenth, eleventh and twelfth States to deposit an instrument of ratification or acceptance of, or accession to, the Convention.

In accordance with the provisions of its Article IX, paragraph 1, the Convention will enter into force three months after the deposit of twelve instruments of ratification, acceptance or accession, that is, on July 10, 1974.

With regard to the Protocols, they will, in conformity with their paragraph 2(b), enter into force in respect of each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

# CALENDAR

## WIPO Meetings

- September 2 to 6, 1974 (Geneva) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee
- September 9 to 13, 1974 (Geneva) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee
- September 9 to 13, 1974 (Geneva) — PCT Interim Advisory Committee for Administrative Questions — Working Group on Forms
- September 18 to 20, 1974 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- September 24 to 30, 1974 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions — Ordinary Sessions
- September 30 to October 4, 1974 (Geneva) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee
- October 2 to 4, 1974 (Geneva) — Scientific Discoveries — Working Group
- October 7 to 11, 1974 (Moscow) — “Role of Patent Information in Research and Development” — Symposium  
Participation open to all interested persons subject to a registration fee — *Note:* Meeting organized in cooperation with the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR
- October 16 and 17, 1974 (Vienna) — Meeting of INPADOC Users
- October 21 to 25, 1974 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 28 to November 1, 1974 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- November 4 to 8, 1974 (Geneva) — International Protection of Appellations of Origin and Other Indications of Source — Committee of Experts
- November 4 to 8, 1974 (Geneva) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee
- November 12 to 19, 1974 (Geneva) — PCT Interim Committees — Annual Sessions
- November 18 to 22, 1974 (Geneva) — Licensing Seminar
- November 25 to 29, 1974 (Geneva) — Revision of the Model Law on Inventions — Working Group
- December 2 to 6, 1974 (Yaoundé) — Francophone African Seminar on Intellectual Property
- December 9 to 13, 1974 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee
- December 16 to 18, 1974 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- January 22 to 24, 1975 (Geneva) — Publication of Licensing Opportunities — Group of Consultants
- January 27 to 30, 1975 (Geneva) — International Patent Classification — Classification of Search Files — Working Group
- February 17 to 28, 1975 (Munich) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- March 17 to 21, 1975 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (2<sup>nd</sup> Session)
- April 7 to 18, 1975 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST) and Technical Committee for Search Systems (TCSS)
- April 14 to 25, 1975 (Rijswijk) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee
- May 12 to 23, 1975 (Washington) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee
- June 4 to 6, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- June 9 to 13 (or 20), 1975 (Geneva) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee
- September 15 to 26, 1975 (Rijswijk) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee
- September 17 to 19, 1975 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- September 23 to 30, 1975 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions — Ordinary Sessions
- October 14 to 25, 1975 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST) and Technical Committee for Search Systems (TCSS)
- 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 10 to 12, 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

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

April 21 to 25, 1975 (Hamburg) — International Confederation of Societies of Authors and Composers — Congress

May 3 to 10, 1975 (San Francisco) — International Association for the Protection of Industrial Property — Congress

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## ANNOUNCEMENT OF VACANCIES

*Competitions Nos. 227, 228 and 229*

*Deputy Directors General*

The last date of application for the three vacancies of Deputy Directors General announced in *Copyright*, January 1974, has been extended from June 15 to *August 15, 1974*.

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